

RULE 49. TRIAL**Rule 49.01. Timing**

Subd. 1. Trial. Pursuant to Rule 43, subd. 3, a trial regarding a child in need of protection or services matter shall commence within 60 days from the date of the emergency protective care hearing or the admit/deny hearing, whichever is earlier. Testimony shall be concluded within 30 days from the commencement of the trial, and whenever possible should be over consecutive days.

Subd. 2. Continuance. The court may, either on its own motion or upon motion of a party or the county attorney, continue or adjourn a trial to a later date upon written or oral findings made on the record that a continuance is necessary for the protection of the child, for accumulation or presentation of evidence or witnesses, to protect the rights of a party, or for other good cause shown, so long as the permanency time requirements set forth in these rules are not delayed. Failure to conduct a pretrial hearing shall not constitute good cause. Continuances and adjournments shall comply with Rule 5.01, subd. 2.

Subd. 3. Effect of Mistrial; Order for New Trial. Upon a declaration of a mistrial, or an order of the trial court or a reviewing court granting a new trial, a new trial shall be commenced within 30 days of the order.

Rule 49.02. Procedure

Subd. 1. Initial Procedure. At the beginning of the trial the court shall on the record:

(a) verify the name, age, race, and current address of the child who is the subject of the matter, unless stating the address would endanger the child or seriously risk disruption of the current placement;

(b) inquire whether the child is an Indian child and, if so, determine whether the Indian child's tribe has been notified;

(c) determine whether all parties are present and identify those present for the record;

(d) determine whether any child or the child's parent or legal custodian is present without counsel and, if so, explain the right to representation pursuant to Rule 36;

(e) determine whether notice requirements have been met and, if not, whether the affected person waives notice;

(f) if a child who is a party or the child's parent or legal custodian appears without counsel, explain basic trial rights listed in subdivision 2(a);

(g) determine whether the child and the child's parent or legal custodian understand the statutory grounds and the factual allegations set forth in the petition and, if not, provide an explanation; and

(h) explain the purpose of the hearing and the possible transfer of custody of the child from the parent or legal custodian to another when such transfer is permitted by law and the permanency requirements of Minnesota Statutes, section 260C.503 to 260C.521.

Subd. 2. Conduct and Procedure.

(a) **Trial Rights.** The parties and the county attorney shall have the right to:

(1) present evidence;

(2) present witnesses;

(3) cross-examine witnesses;

(4) present arguments in support of or against the statutory grounds set forth in the petition; and

(5) ask the court to order that witnesses be sequestered.

(b) **Trial Procedure.** The trial shall proceed as follows:

(1) the petitioner may make an opening statement confined to the facts expected to be proved;

(2) the other parties, in order determined by the court, may make an opening statement or may make a statement immediately before offering evidence, and the statement shall also be confined to the facts expected to be proved;

(3) the petitioner shall offer evidence in support of the petition;

(4) the other parties, in order determined by the court, may offer evidence;

(5) the petitioner may offer evidence in rebuttal;

(6) the other parties, in order determined by the court, may offer evidence in rebuttal;

(7) when evidence is presented, other parties may, in order determined by the court, cross-examine witnesses;

(8) at the conclusion of the evidence the parties, other than the petitioner, in order determined by the court, may make a closing statement;

(9) the petitioner may make a closing statement; and

(10) if written argument is to be submitted, it shall be submitted within 15 days of the conclusion of testimony, and the trial is not considered completed until the time for written arguments to be submitted has expired.

Rule 49.03. Standard of Proof

Pursuant to Minnesota Statutes, section 260C.163, subdivision 1, paragraph (a), and the Indian Child Welfare Act, 25 U.S.C. section 1912(e), in a child in need of protection or services matter, the standard of proof is clear and convincing evidence.

Rule 49.04. Decision

Subd. 1. Timing. Within 15 days of the conclusion of the testimony, during which time the court may require simultaneous written arguments to be filed and served, the court shall issue its findings and order regarding whether one or more statutory grounds set forth in the petition have been proved. The court may extend the period for issuing an order for an additional 15 days if the court finds that an extension of time is required in the interests of justice and the best interests of the child.

Subd. 2. Decision. The court shall dismiss the petition if the statutory grounds have not been proved. If the court finds that one or more statutory grounds set forth in the petition have been proved, the court shall either enter or withhold adjudication pursuant to Rule 50 and schedule the matter for further proceedings pursuant to Rule 51. The findings and order shall be filed with the court administrator, who shall proceed pursuant to Rule 9.

2019 Advisory Committee Comment

Rule 49 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. Rule 49 was formerly codified as Rule 39.

Former Rule 39.01 consisted of a definition of the term "trial." The committee believed it was unnecessary to define the term "trial," and so the former Rule 39.01 was deleted. Rule 49.01, subd. 1(f) is amended to clarify that the "basic trial rights" the court must explain are the rights listed in subd. 2(a) of the rule. The remaining amendments are not intended to substantively change the rule's meaning.