

RULE 58. TRIAL - PERMANENCY OR TERMINATION OF PARENTAL RIGHTS**Rule 58.01. Timing**

Subd. 1. Trial. Pursuant to Rule 52.02, subd. 4, a trial regarding a permanency or termination of parental rights matter shall commence within 60 days of the first admit/deny hearing. A trial required by Minnesota Statutes, section 260C.204, paragraph (d), clauses (2) and (3) following a permanency progress review hearing shall be commenced within 60 days of the filing of the petition required by that statute. Testimony shall be concluded within 30 days from the commencement of the trial, and whenever possible should be over consecutive days. Continuances and adjournments shall comply with Rule 5.01, subd. 2.

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 58.02. 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) pursuant to Rule 29.02, 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 as listed in subd. 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, sections 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 58.03. Standard of Proof

Subd. 1. Permanency Matter. In a permanency matter other than a termination of parental rights matter, the standard of proof is clear and convincing evidence.

Subd. 2. Termination of Parental Rights Matter.

(a) **Non-Indian Child.** Pursuant to Minnesota Statutes, section 260C.317, subdivision 1, in a termination of parental rights matter involving a non-Indian child, the standard of proof is clear and convincing evidence.

(b) **Indian Child.** Pursuant to the Indian Child Welfare Act, 25 U.S.C. section 1912(f), and Rule 28.04, in a termination of parental rights matter involving an Indian child, the standard of proof is beyond a reasonable doubt.

Rule 58.04. Decision

(a) **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.

(b) **Decision - Permanency Matter.** Pursuant to Minnesota Statutes, section 260C.509, after a permanency trial the court shall order the child returned to the care of the parent or guardian from whom the child was removed; or, if it is in the child's best interests, order a permanency disposition or a termination of parental rights. The court shall issue a decision consistent with Minnesota Statutes, sections 260C.511 to 260C.513, and shall include in its order the findings required by Minnesota Statutes, section 260C.517. The court shall order further hearings if required by Minnesota Statutes, section 260C.519, and shall conduct any further review as required by Minnesota Statutes, section 260C.521.

(c) **Decision - Termination of Parental Rights Matter.**

(1) **Generally.** If the court finds that the statutory grounds set forth in the petition are not proved, the court shall either dismiss the petition or determine that the child is in need of protection or services. If the court determines that the child is in need of protection or services, the court shall either enter or withhold adjudication pursuant to Rule 50 and schedule further proceedings pursuant to Rule 51. If the court finds that one or more statutory grounds set forth in the termination of parental rights petition are proved, the court may terminate parental rights.

(2) **Particularized Findings - Non-Indian Child.** In addition to making the findings required in paragraph (c)(1), the court shall also make findings as follows:

(i) In any termination of parental rights matter, the court shall make specific findings regarding the nature and extent of efforts made by the responsible social services agency to rehabilitate the parent and reunite the family, including, where applicable, a statement that reasonable efforts to prevent placement and for rehabilitation and reunification are not required as provided by Minnesota Statutes, section 260.012, paragraph (a).

(ii) Before ordering termination of parental rights, the court shall make a specific finding that termination is in the best interests of the child and shall analyze:

1. the child's interests in preserving the parent-child relationship;
2. the parent's interests in preserving the parent-child relationship; and
3. any competing interests of the child.

(iii) As provided in Minnesota Statutes, section 260C.301, subdivision 7, the interests of the child are paramount.

(3) **Particularized Findings - Indian Child.** In any termination of parental rights proceeding involving an Indian child, the court shall make specific findings as provided in Rule 28.07, subd. 4. The best interests of the child shall be determined consistent with the Indian Child Welfare Act, 25 U.S.C. sections 1901-1963.

2019 Advisory Committee Comment

Rule 58 is added in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule is the counterpart to Rule 49 for permanency and termination of parental rights matters.

Rule 58.03 addresses the standards of proof for permanency and termination of parental rights matters. For an Indian child in a permanency proceeding, under Rule 28.04, subd. 3 and the Indian

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Child Welfare Act (ICWA), 25 U.S.C. section 1912(e), the standard of proof is clear and convincing evidence. The same standard of proof applies to a non-Indian child in a permanency proceeding. In re D.L.D., 865 N.W.2d 315, 322 (Minn. Ct. App. 2015) (relying on an earlier version of the Rules of Juvenile Protection Procedure to determine the standard of proof.) For an Indian child in a termination of parental rights matter, under Rule 28.04, subd. 3 and ICWA, 25 U.S.C. section 1912(f), the standard of proof is beyond a reasonable doubt. For a non-Indian child in a termination of parental rights matter, the standard of proof is clear and convincing evidence under the Juvenile Court Act, Minnesota Statutes, section 260C.317, subdivision 1.