

CHAPTER 10**PRETRIAL HEARING****TABLE OF CONTENTS**

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	PROCEDURE	AUTHORITY
10.01	RECOMMENDED HEARING LENGTH 30 minutes	Resource Guidelines, pp. 91-94
10.02	PURPOSE The purpose of a pretrial hearing is to attempt to resolve the case and, if not, to prepare the matter for trial.	RJPP 36.02
10.03	TIMING The court shall convene a pretrial hearing at least ten (10) days prior to trial.	RJPP 36.01
10.04	NOTICE A. UPON WHOM SERVED. For each hearing following the EPC Hearing or Admit/Deny Hearing, the court administrator shall serve upon each party, participant, and attorney a written notice of the date, time, and location of the next hearing including any pretrial conference (the "Notice of Hearing" form is located on Courtnet). B. TIMING AND METHOD. Notice of the next hearing shall be delivered at the close of each prior hearing or mailed at least five (5) days before the date of the hearing or ten (10) days before the date of the hearing if mailed to an address outside the state. If written notice is delivered at the end of the prior hearing, later written notice is not required. C. DEFAULT. 1. Failure to Appear. Except as otherwise provided in Rule 35.02, subd. 1, if a parent, legal custodian, or Indian custodian fails to appear for an admit-deny hearing, a pretrial hearing, or a trial after being properly served with a summons pursuant to Rule 32.02 or a notice pursuant to Rule 32.03 or 32.04, the court may receive evidence in support of the petition or reschedule the hearing. 2. Default Order. If the petition is proved by the applicable standard of proof, the court may enter an order granting the relief sought in the petition as to that parent, legal custodian, or Indian custodian.	RJPP 32.04 RJPP 32.04 RJPP 18.01 RJPP 18.02
HEARING PROCEDURE		
10.05	INITIAL PROCEDURE A. AT THE COMMENCEMENT OF THE HEARING, THE COURT SHALL ON THE RECORD: 1. State the case name and file number. 2. Ask all parties, participants, and attorneys present to identify themselves for the record. 3. Determine whether all required persons have been informed of the time and place of the hearing and what further efforts, if any, must be taken to notify all parties and participants as rapidly as possible of the pendency of the matter and the date and time of the next hearing. 4. Determine whether child is or should be present. If the child is present, determine whether it is in child's best interest to be present or excluded from the hearing. 5. (Best practice) Ask audience to identify themselves and their relationship to the child and family.	<ul style="list-style-type: none"> • RJPP 36 • Resource Guidelines, pp. 91-94

	PROCEDURE	AUTHORITY
	<p>10.05 Initial Procedure (continued)</p> <p>B. IF NOT PREVIOUSLY DETERMINED AT A PRIOR HEARING, THE COURT SHALL:</p> <ol style="list-style-type: none"> 1. Determine whether all parties and participants have been served a copy of the petition. Unless a party otherwise consents to do so, a party may not be required to admit or deny the statutory allegations of the petition if the party did not receive possession of the petition at least three (3) days before the hearing. 2. Advise any child or the child’s parent or legal custodian who appears in court and is unrepresented of the right to representation pursuant to RJPP 25. If counsel is appointed at the pretrial conference, the conference shall be reconvened the next available date. 3. Verify the name, age, race, and current address of the child who is the subject of the matter, unless stating the information would endanger the child or seriously risk disruption of the current placement. 4. Inquire whether the child is an Indian child and, if so, determine whether the Indian child’s tribe has been notified. 	<p>RJPP 36.02(b)</p> <p>RJPP 36.02(c)</p> <p>RJPP 25 (specifies who is entitled to court appointed counsel)</p>
10.06	<p>DETERMINATIONS</p> <p>During the pre-trial conference the court shall do the following:</p> <ol style="list-style-type: none"> 1. Determine whether a settlement of any or all of the issues has occurred or is possible. Use discretion in determining whether and to what extent the court should get involved in settlement negotiations. 2. Determine whether all parties have been served and, if not, review all past efforts to date to serve all parties. 3. Determine whether any child or the child’s parent or legal custodian who appears in court is unrepresented, and appoint counsel if appropriate under RJPP 25. If counsel is appointed at the pretrial conference, the conference shall be reconvened at a later date. 4. Determine whether the child shall be present and testify at trial and, if so, under what circumstances. 5. Identify any unresolved discovery matters. 6. Resolve any pending pretrial motions. 7. Identify and narrow issues of law and fact for trial, including identification of: <ol style="list-style-type: none"> (a) The factual allegations admitted or denied; (b) The statutory grounds admitted or denied; (c) Any stipulations to foundation and relevance of documents; and (d) Any other stipulations, admissions, or denials. 8. Discuss exchange of witness lists and a brief summary of each witness’ testimony. 9. Discuss exchange of exhibit lists. 10. Estimate the length of time for trial and the trial date(s). 11. Review the permanent placement deadline. 12. If not already submitted, set the date for service and filing of caseworker and guardian ad litem reports prior to trial. 	<p>RJPP 36.02</p> <p>RJPP 25 (specifies who is entitled to court appointed counsel)</p>

	PROCEDURE	AUTHORITY
	<p>10.06 Determinations (continued)</p> <p>13. Review conditions, services, examinations, or evaluations imposed upon the child, parent, legal custodian, or a party. Determine whether the necessary examinations, evaluations, and reports will be completed in a timely matter.</p> <p>14. Review the child’s current placement and determine the child’s placement pending trial.</p> <p>15. Review parental and sibling visitation schedules pending trial.</p> <p>16. Determine any other relevant issues.</p> <p><i>Comment: This section addresses the need to determine whether the child will testify. The intent of the rule is to provide that an order protecting the child from testifying or placing conditions on the child’s testimony can only be made after notice of motion and a hearing. Any such motion should be heard and resolved at the pretrial conference.</i></p> <p><i>Best Practice: During the Pretrial Hearing, it is also best practice to discuss the following issues:</i></p> <ol style="list-style-type: none"> 1. Whether the court will be asked to take judicial notice of any other files 2. Continuances once trial has started 3. Confidentiality of reports 4. Orders directing social services to testify 5. Submission of proposed findings and order 6. Whether telephonic testimony will be necessary 7. Scheduling of appearances by experts 	<p>RJPP 36.02</p>
<p>10.07</p>	<p>PRETRIAL ORDER</p> <p>Within 10 days of the conclusion of the Pretrial Hearing, the court shall issue a pretrial order which shall:</p> <ol style="list-style-type: none"> 1. State whether all parties have been properly served and, if not, state what additional steps, if any, must be taken. 2. Specify all factual allegations and statutory grounds admitted and denied. 3. Direct that, from the date of the pretrial conference through the date of trial, the parties shall have a continuing obligation to update information provided during the pretrial. 4. Specify any stipulations to foundation and relevance of documents and any other stipulations. 5. State whether the child shall be present and testify at trial and, if so, under what circumstances. 6. Resolve any pending discovery matters or pretrial motions. 7. Set the date for exchange of witness lists and a brief summary of each witness’ testimony. 8. Set the date for exchange of exhibit lists. 9. Confirm the trial date and estimate the length of trial. 10. Specify a date for the submission of reports from the caseworker, guardian ad litem, and any service providers. 11. Direct where the child shall be placed pending trial, including necessary findings in support of the placement. 12. Specify any changes in conditions imposed upon the parent, legal custodian, or a party. 	<ul style="list-style-type: none"> • RJPP 36.02 • RJPP 10.01 (all on-the-record findings and orders must be reduced to writing)

	PROCEDURE	AUTHORITY
	<p>10.07 Pretrial Order (continued)</p> <p>13. Specify any changes in services, examinations visitation or evaluations imposed upon the child, parent, legal custodian or a party.</p> <p>14. State that unless otherwise modified by this order, all previous orders shall remain in full force and effect.</p> <p>15. State the consequences of failure to appear pursuant to RJPP 18: If a parent, legal custodian, or Indian custodian fails to appear for a pretrial hearing or a trial after being properly served with a summons pursuant to RJPP 32.02 or a notice pursuant to RJPP 32.03 or 32.04, the court may receive evidence in support of the petition or reschedule the hearing. If the petition is proved by the applicable burden of proof, the court may enter an order granting the relief sought in the petition as to that parent, legal custodian, or Indian custodian.</p> <p>16. State the decision regarding any other relevant issues.</p>	<p>RJPP 36.02</p> <p>RJPP 18 (provides that court may enter default order if failure to appear at Admit/Deny, Pretrial, or Trial)</p>
10.08	<p>CONTINUING OBLIGATION TO UPDATE INFORMATION</p> <p>From the date of the pretrial hearing through the date of trial, the parties shall have a continuing obligation to update information provided during the pretrial hearing.</p>	RJPP 36.04
10.09	<p>NOTICE OF SUBSEQUENT HEARINGS</p> <p>For each hearing following the Admit/Deny Hearing, the court administrator shall serve upon each party, participant, and attorney a notice of the date, time, and location of the next hearing. The notice shall be delivered at the close of the hearing or mailed at least five (5) days before the date of the hearing or fifteen (15) days before the date of the hearing if mailed to an address outside the state. If written notice is delivered at the end of the hearing, later written notice is not required.</p>	RJPP 32.04
10.10	<p>NEXT STEPS: TRIAL</p> <p>If the case is not resolved during the Pretrial Conference, the matter should be set for trial. For a child protection matter, trial must commence within sixty (60) days of the date of the Emergency Protective Care (EPC) Hearing or the Admit/Deny hearing, whichever is earlier. A trial regarding a termination of parental rights matter or other permanent placement matter shall commence within sixty (60) days of the first scheduled admit/deny hearing.</p>	RJPP 39.02, subd. 1(a)–(c)