TENTH JUDICIAL DISTRICT FAMILY
COURT PUBLIC EDUCATION
BOOKLET

What to Expect as a Self-Represented Petitioner or Respondent

In a FAMILY COURT TRIAL or EVIDENTIARY HEARING

This guidebook is intended to be an informative and practical resource for understanding the basic procedures of family court in the Tenth Judicial District. The statements in this booklet do not constitute legal advice and may not be cited as legal authority. This booklet does not take the place of the Minnesota Rules of Civil Procedure, the Minnesota Rules of General Practice, the Minnesota Rules of Evidence or the individual practices of the Judges of this Court. All parties using this booklet remain responsible for complying with all applicable rules of procedure. If there is any conflict between this guidebook and the applicable rules, the rules govern.

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Introduction

This booklet is intended for self-represented parties preparing for trial (or evidentiary hearing[1]) in a Family Court case. **Trials are complicated.** This booklet is meant to make the trial more *understandable*.

Family Court case trials and evidentiary hearings generally do not involve a jury.[2] Instead, the Judge decides what facts are proven. This booklet does **not** cover issues related to juries. A trial is not the same as a court appearance or motion hearing. The trial is the final phase of a Family Court case, where witnesses and evidence are presented. Many other hearings may occur before the trial or instead of a trial. This booklet does **not** explain what happens at other court appearances. Carefully read all orders and letters from the Court to understand what is expected at each court appearance. If you are unsure, you can call Court Administration for clarification or contact the Tenth Judicial District Self-Help Center at 763-760-6699.

In addition to reading this booklet, we encourage you to:

- **Get advice from a lawyer.** You can hire a lawyer for a one-time consultation, or for ongoing coaching as you move ahead in the case. **"Limited scope services"** is an alternative to having a lawyer represent you fully. For information on finding a lawyer: www.mncourts.gov/selfhelp/?page=252.
- **Go to a law library** for more information about Civil Trials. Lawyers study this, and so can you. For a list of libraries: www.mncourts.gov/selfhelp/?page=253
- **Watch a Family Court trial at the courthouse. To look up a Court Calendar, go to: http://pa.courts.state.mn.us/Search.aspx?ID=900.**
- **Visit the court's online Self-Help Center** for general information about family cases and for lawyer referral information: www.mncourts.gov/selfhelp.

[1] A trial is conducted when there has never been a final decree in a case and the decree issued after the trial will "close" the case. An evidentiary hearing is held to resolve pre-trial and post-trial issues when facts pled in a motion justify the scheduling of an evidentiary hearing. The procedures in this booklet apply to evidentiary hearings as well as trials.

[2] The alleged father in a paternity trial has the right to a jury trial under the state constitution if he does not agree that he is the biological father of the child. *Smith v. Bailen*, 258 N.W.2d 118 (Minn. 1977). Practically speaking, this rarely occurs because of modern genetic testing technology.

Settlement

Many cases settle the day of trial – sometimes before, and sometimes after testimony is given. "Settle" means that the parties involved reach an agreement and the Judge approves the agreement. You may be asked several times at different stages of the case to try to settle your dispute. The Judge may require both parties to meet or attend mediation to try to reach a settlement before the trial starts. The Judge will also schedule a "Pre-Trial Conference" to talk with the parties about the trial issues and evidence and take steps to speed up the actual trial. You should come to the Pre-Trial Conference prepared to offer a solution to settle the case, and be ready to consider settlement offers from the other side. Each time you come to court, including at the final trial, you can expect the Judge to ask you and the other party what you have done to try to settle the case.

There are many benefits to settling your case. A settlement allows the parties to find creative solutions that fit their needs, and also allows parties to have a "known" result. By settling, you save time and money and have an outcome that you both can live with. Going to trial and letting the Judge decide is always a gamble. By not settling, you give up control of your case and allow the judge to make major decisions that affect your lives. If you are unhappy with the judge's decision, then you may find yourself appealing to the Court of Appeals, which only adds to the time and expense of litigating the issues. In the event you and the other party are able to reach an agreement before the trial day, call Court Administration right away.

If there is a trial, things will typically happen in this order:

1. Opening statements
2. Petitioner's case-in-chief (witnesses and exhibits)
3. Respondent's case-in-chief (witnesses and exhibits)
4. Final arguments

These stages of the trial are explained further starting on page 12.

Role of the Judge

The Judge's role is to assure that the trial proceeds in an orderly manner, and that both sides have as full an opportunity to be heard as the rules of procedure and evidence allow. In a Family Court trial or evidentiary hearing, the Judge also decides if the Petitioner has proven their case, and what the award or outcome will be. The Judge will give you general guidance on what is expected and how the trial will go. Within the scope of the issues raised in the court forms you filed, you decide what topics to cover, what evidence is important, and what questions to ask of witnesses.

The Judge must be neutral and fair to both sides. They are the umpire, not the coach. The Judge may ask a question of a witness to clarify something, but will not take over and ask all the questions they think are important. It is your case, and you decide what you want the Judge to hear and see. The Judge cannot tell you what questions to ask.

Rules of Evidence and Rules of Civil Procedure

The Judge will conduct the trial using the *Minnesota Rules of Civil Procedure*, the *Minnesota Rules of Evidence* and the *Minnesota General Rules of Practice*. You can find these rules in county law libraries and online at https://www.revisor.mn.gov/court_rules/. Law libraries also have books that explain more about the various Rules, and include excerpts from court cases that have interpreted the Rules.

No one can predict in advance exactly which rules will come into play, but some of the rules that most frequently apply are found at the end of this booklet. The Judge is required to follow these rules, and so are you and all other trial participants.

The basic idea of the *Rules of Evidence* is to insure that the evidence is trustworthy. It would be unfair to everyone if the Judge relied on questionable evidence in making a decision. In nearly all trials, testimony from witnesses is used as evidence. How does the Court know that a statement is truthful? The protections are: 1) the witness is given an oath and promises to tell the truth and 2) the

witness is in the courtroom and can be asked questions (cross-examined) by the other side. The "Hearsay" rule of evidence requires that the person who made a statement be present in court to testify. Generally, you can't testify about what someone else told you. There are important exceptions to this rule, spelled out in the *Rules of Evidence*, Rule 801, Hearsay.

The *Rules of Evidence,* Rule 901 addresses what is needed for a document, photograph, telephone and computer record, or physical object to be reliable and allowed as evidence.

Usually, for evidence of this type to be admitted as evidence, you need a witness to explain how the document or information was created and to testify that the information really is what it appears to be (that it is authentic). Questions are asked of the witness to lay a "foundation" to cover what the item is, who created it, when, where, and why. Some documents can be admitted into evidence without a witness, such as a certified copy of a public record. See *Rules of Evidence*, Rule 902.

Another important concept in the *Rules of Evidence* is relevancy. If evidence is not relevant to the case, it is generally not allowed. Relevant evidence helps the Judge decide if your story is true. If your witness is testifying and you hear "Objection your honor, that testimony is irrelevant" you need to be prepared to explain why the testimony is important in deciding the case. If the Judge is persuaded that the line of questioning will help them make a decision in the case, the Judge will state "Objection overruled. Witness, you may continue answering the question." Alternatively, if the Judge finds that the testimony is irrelevant or if it does not help them make a decision in the case, the Judge may sustain the objection. The Judge will state "Objection sustained. Witness, you cannot answer the question." Even relevant evidence may be kept out. A Judge may refuse evidence if it is repetitive and merely slowing down the trial.

For example, a Judge may admit one or two photos showing the condition of the roof, rather than allowing 20 photos showing basically the same thing. See *Rules of Evidence*, Rule 403.

Preparing Evidence

Evidence includes witness testimony, your testimony, and documents, pictures, or other objects. Evidence must be presented the day of trial. It cannot be submitted after the trial (except by order of the Judge depending on the circumstances). Judges often send the parties a Scheduling Order or Pretrial Order requiring them to exchange *Exhibit Lists* and *Witness Lists* by a certain date. Some orders may also list the exhibit numbers you and the other party may use. *Witness List* (FAM905) and *Exhibit List* (FAM902) forms are available online at http://mncourts.gov/GetForms.aspx?c=18. The Judge may require the parties to show each other their exhibits before the day of trial. Check your Scheduling Order/Pretrial Order to see what it says. This allows both sides to better prepare for trial.

The Judge cannot investigate or gather evidence. Non-attorneys who don't understand this will say things to the Judge like:

- "Here is Witness Joe's phone number. You can call him and ask him yourself."
- "Here is the address. You can drive by and see for yourself that she has let the house fall apart."
- "Judge, here is the harassing text message the other party sent me" (while holding up their phone to show the judge the text message).

A Judge is not allowed to seek out evidence. It is your responsibility to bring all the evidence to court and present it during trial. For example, the litigant who attempted to show the judge the text message on their cell phone improperly offered it into evidence. The correct way to present the text message or other electronic evidence (such as emails) is to print copies, present them to the judge and ask that they be admitted into evidence. Copies should also be given to the other party, who then has an opportunity to object to that evidence being admitted. See *Objections* on page 17.

"Marking" Exhibits

Documents are "marked" by placing a sticker on the document or object with consecutive numbers (for example, "Ex. 1," which is an abbreviation for "Exhibit 1," "Ex. 2," "Ex. 3," etc.). Sometimes, documents and exhibits are "marked" before the trial day. Some Judges prefer that the court clerk or court reporter mark the exhibit when it is offered at trial. Before the trial, contact Court Administration to check the procedure for marking exhibits. Below is an example of an exhibit sticker

and can be purchased any any office supply store.

Arranging for Witnesses

Plan ahead. The Judge will not delay the trial to let you arrange for witnesses you could have contacted earlier. You should contact your witnesses as soon as the Court schedules your trial date.

Witnesses must be present the day of the trial. Not all witnesses will necessarily be allowed to testify. They must be able to offer first-hand knowledge. See *Rules of Evidence*, Rule 602. Even if the testimony is admissible, if multiple witnesses are repeating the same information, the Judge may not allow them all to testify due to time restrictions.

The idea of first-hand knowledge (also called personal knowledge) is illustrated by this example: Your witness Mary testifies that the other party regularly leaves your joint minor child alone. An objection is made. "I object, your Honor. Lack of personal knowledge." You then ask Mary how she knows that the other party leaves the minor child alone. If she responds "My friend was there and told me about it," Mary's statement will not be allowed into evidence. She is repeating what someone else saw and does not have first-hand knowledge. However, if Mary actually saw the other party leave the minor child alone, you should begin questioning Mary by asking where she was when she gained this knowledge, how she gained this knowledge, in order to establish that she was present with the other party and actually saw her leave the minor child alone.

Sometimes a party will call an "expert witness" to testify in their case. An expert is someone with scientific, technical or other specialized knowledge about a certain topic (*e.g.*, accountant, appraiser, psychologist, Guardian ad Litem, etc.). Experts are often called to give their opinion about a fact of the case, such as the value of property or a certain recommendation for custody or parenting time. Rule 702 of the *Rules of Evidence* requires that reliability of the expert's testimony be established by laying the foundation of the expert's qualifications on the topic area, including their education and professional experience. As with all evidence, the expert's testimony is also subject to the *Rules of Evidence*. However, it should be noted that experts are allowed to rely on hearsay in forming an opinion. It is up to the Judge whether or not to admit the expert's testimony into evidence.

Subpoenas and Witness Fees

If a witness is not cooperating, you may get a witness to come to court to testify or bring documents to court through a "subpoena" (a court order directing someone to appear in court and/or bring documents, or face arrest). The law in Minnesota regarding subpoenas in civil cases is found in Rule 45 of the *Minnesota Rules of Civil Procedure*. However, use of a subpoena cannot guarantee that your witness will come to court. If your witness agrees to come to court, you do not need a subpoena. If you need to subpoena a witness, do not delay.

The process for obtaining a subpoena in the Tenth Judicial District differs by county. Some counties require you to fill out and file a subpoena form. Other counties will ask for your information, enter it into a form, and print it for you. Contact Court Administration to find out the process in your county. If your county requires you to fill out the subpoena form, it is called *Subpoena in a Civil Case* (CIV101). The form is found here: http://mncourts.gov/GetForms.aspx?c=16. Fill out the form by writing the name and address of the person you want to subpoena, and listing the place of testimony and the courtroom, date and time of

the hearing/trial. File the form with Court Administration and pay the filing fee. Court fees are listed online at http://mncourts.gov/Help-Topics/Court-Fees.aspx.

If your subpoena is approved, arrange for someone 18 or older (not you) to serve the subpoena on the witness, along with the witness fee (you pay the witness fee).

If you subpoena a witness, you will need to pay that witness $20 per day, plus mileage from the witness' home to the courthouse and back. The fee for mileage is set by state law and is stated in *Minn. Stat.* § 357.22 (2019). A witness that you have subpoenaed does not have to come to court unless they received one day's witness fee and mileage expenses in advance. Some witnesses served with a subpoena may also be entitled to reasonable compensation for their time, in addition to mileage and the $20 witness fee. Read *Minnesota Rules of Civil Procedures*, Rule 45.03(d) for specific details.

If you have an Order waiving the court filing fees (*In Forma Pauperis* or IFP) and you cannot afford to pay the witness fees, you can ask the court to pay these fees for you. To do this, fill out a *Supplemental Affidavit for Proceeding In Forma Pauperis* (IFP103) and the *Proposed Supplemental Order for Proceeding In Forma Pauperis* (IFP 105) available online at http://mncourts.gov/GetForms.aspx?c=19&p=107 and give it to Court Administration. A Judge will decide who pays the witness fees - you or the Court. Witness fees and mileage apply only to witnesses who are subpoenaed. To put it simply:

SUBPOENA ➔ you have to pay witness fees and mileage (unless you were approved to have your fees waived).

NO SUBPOENA ➔ you DO NOT have to pay witness fees and mileage.

Witness and Exhibit Lists

You should fill out a *Witness List* (FAM905) form. This is a list of people you plan to call as witnesses to testify on your behalf at the trial. Additionally, you should fill out an *Exhibit List*

(FAM902) form. This is a list of all the documents and objects you have marked as an exhibit, in order, with a brief description of what the exhibit is. For example:

I am the ☒ Petitioner / ☐ Respondent in this case. I plan to present the following exhibits during trial:

Exhibit #	Description
1	Medical Records of Jane Doe
2	Bank Statement of John Doe

On the day of trial (or before, if the Scheduling Order/Pretrial Order requires this before the day of trial), you must bring the original evidence, such as documents, photographs or objects. Be sure to bring 3 copies of any documents. One copy is for the Judge, one copy is for you, and one copy is for the other party. Whenever you refer to a document during the trial, you, the other party, and the Judge should have a copy. The witness will be looking at the original document, and the original will be offered and admitted into evidence and become part of the trial record.

Before the trial starts, the Judge might ask if you and the other party have **stipulated** to the admissibility of any of the documents or objects. Stipulating to admissibility means that both sides agree that a document or object should be considered as evidence in the trial. It is common to stipulate to the admissibility of evidence if there is no dispute that the document or object is authentic. For example, both sides might stipulate to the admissibility of 2019 Federal Income Tax Returns. Even though copies of the returns are admitted into evidence, you still need to explain to the Judge the significance of the information. How does the information in the tax returns support your claim? Likewise, the other side can use the tax returns to support their version of what happened.

"Trial Notebook"

Attorneys often create what is called a "trial notebook," and you can too. This helps you organize into one binder with tabbed sort-pages all of the parts of your case (Opening Statement, Witness List, Exhibit List, copies of Exhibits, questions you plan to ask each witness, Final

Argument). Before creating your Trial Notebook, think about what you need to prove. A two column chart can be helpful. On the left, list each fact that supports your case. On the right, list the evidence that will prove each fact. Use this chart as you decide what evidence (documents, objects, testimony) you will need, and as you create a list of questions for each witness.

The Trial Begins

Trials are scheduled for a set period of time. If the Scheduling Order/Pretrial Order does not tell you the length of the trial, call Court Administration to see how much time is scheduled. You can assume that you will have ½ the allotted time to present your case, and the other side will have the remainder of the time. Knowing how long you have will help you prepare. You need to be organized, and plan out how long you can spend with each witness and topic.

Remote hearings. The Court may conduct family court matters remotely. You will receive a notice informing you whether the hearing or trial is remote (via Zoom) or in person. You will likely receive specific instructions from Court Administration or the Judge. Be sure to carefully follow the instructions on how to submit your exhibits prior to the hearing or trial. Hearing or trial participants should review the information found at https://mncourts.gov/Remote-Hearings.aspx.

Be on time for your court date. If your hearing or trial is in person, allow yourself extra time in case you run into bad traffic or weather, and to allow time to find parking and go through security when you enter the courthouse. If your hearing or trial is remote, allow yourself extra time to log in. Make sure you understand how to unmute yourself and start your video when prompted by the Judge. If you are not in the physical or virtual courtroom when the clerk calls the case, you can lose the case by "default." If you have an emergency or are delayed, call Court Administration. Calling does not necessarily protect you from losing by default as the Judge is not required to wait for you to get there.

Be prepared to stay at the courthouse or in your remote hearing longer than expected. Make

adequate arrangements for childcare. Explain to an employer that you might be delayed. There is a possibility that unanticipated or emergency situations will come up that your Judge has to handle. This means your trial may be delayed or interrupted.

Courtroom Behavior

Wear conservative clothing. Shorts, T-shirts, low necklines and torn clothing are not appropriate. Lawyers are required to dress professionally. You do not have to buy new clothing for court, but remember it is a formal place and you want to be conservative and respectful in dress and behavior. The same rules of dress and behavior apply to remote hearings or trials. Please review the Best Practices for Remote Hearings: https://mncourts.gov/Remote-Hearings.aspx

Do not bring children. Unless the Judge has told you to bring your children to the hearing or trial, make arrangements for someone to take care of your children.

Certain behaviors are not allowed because they are noisy, distracting or disrespectful. You cannot: chew gum, eat, read a newspaper, sleep, wear a hat, listen to earphones, carry a cell phone or pager unless it's turned off, have a camera or camera phone, or carry a weapon.

During the trial, you should listen carefully. Ask the Judge for permission to speak. You should talk directly to the Judge – not to the other party. When you talk to the Judge, start by saying, "Your Honor." Speak loudly and clearly, and remember that **only one person can speak at a time**. A court reporter is taking down everything said in the courtroom and can only record one speaker at a time. Avoid arguing with or interrupting another person, and control your emotions. For further guidance, please see the MN Supreme Court Rules of Decorum: https://www.revisor.mn.gov/court_rules/rule/apscrd/

Opening Statement

Opening statements are the first part of a trial. For your opening statement, be prepared to briefly summarize what the case is about, what outcome you will ask for, and what evidence you will

present that relates to the case. The evidence consists of witness testimony, exhibits received in evidence, and any facts you and the other party formally agree to.

As part of the pre-trial work, you and the other side might create a list of facts you agree on. This is referred to as "Stipulated Facts." Agreeing that certain facts are true will shorten the time it takes to try the case, and can help limit the number of witnesses needed.

The opening statement is not your testimony. Testimony is given later, under oath. The opening statement is not a time for making your arguments. That comes later in the Final Arguments. In some cases, the Judge may not allow the parties to make opening statements, especially if the case is simple and the time allotted for the trial is short.

Petitioner and Respondent's Case-in-Chief

After the opening statements, the Petitioner presents their evidence. This is called the Petitioner's *case-in-chief*. When the Petitioner is done with all of their witnesses and evidence, it is then the Respondent's turn to present their case-in-chief.

Your case-in-chief may consist only of your testimony under oath, or it may include testimony of other witnesses. If you have other witnesses, tell your Judge the order in which you want to present your evidence: who will testify first, second, third, and so on. This will help keep the trial moving in a timely and orderly fashion. Be aware that the Judge may call witnesses out of order based on witness availability and the court's schedule. The Judge may also ask you to summarize what the witness will say, before the witness is called. Be prepared to explain in a few sentences how the witness' testimony is important to your case.

When you call a witness to testify, you must ask questions for the witness to answer. This is called *direct examination*. Your questions should have the witness answer Who, What, Why When, Where, and How. You should have a list of questions for each of your witnesses. You can also tell your witness prior to the trial what you plan to ask, so your witness is prepared.

Examples of a direct examination questions:

- How long have we known each other?
- When did the child start having problems at school?
- How would you describe my relationship with my children?
- Where were you when the police came and took the children away?

During direct examination, you should ask one question at a time. Do not wrap several questions into one – it's difficult for the witness to respond to compound questions. Also, keep in mind that YOU cannot testify while asking your witness questions. Often, the context or the whole story does not come out until several witnesses have testified. The Judge may make notes to remember the testimony of each witness, and in your Final Argument you can explain how all the evidence fits together.

The witness can only testify from first-hand knowledge – things they saw or heard themselves. The witness may have seen you together with your children on a number of occasions, but they don't know anything firsthand from the times they were not present. Information about other aspects of your relationship with your children must be proven through other witnesses or records. Sometimes a witness is *hostile* or not answering as you expected. Do not argue with a witness. Just ask questions.

When you are done with your questioning of your witness, tell the Judge. The other party (or their lawyer) will then ask questions of the witness. This is called *cross- examination*. The questions asked during cross-examination must be related to the testimony the witness just gave. Cross-examination is used to clarify the witness' testimony, and can also be used to undermine or discredit the testimony.

Examples of cross-examination questions:

- You value my house to be $300,000.00?

- You did not walk through my house?
- You base your valuation on the last 3 sales in my neighborhood?

The goal is to ask questions that require only a "Yes" or "No" answer. Cross-examining a witness can be difficult. Non-lawyers often have trouble asking cross-examination questions and instead end up making statements or arguments. In that case, the Judge may give you another chance to get it right, but then may say "you can testify when you sit on the stand as a witness" and end the cross-examination.

After the other party cross-examines your witness, you may ask the witness more questions in what is called *redirect examination,* or *rebuttal*, but those questions must be related to something discussed on cross-examination only. Do not feel that you must cross-examine a witness or ask questions on redirect examination. It is fine to say that you have no further questions.

If you testify as a witness in your case, you will be given an oath and will usually be asked to sit in the witness box. You won't have to ask questions of yourself. After you are sworn in, the Judge will let you testify in a narrative fashion (tell the facts of the case as a story). You should pause in your story to tell the Judge when you are changing topics. For example, "Now I'm going to talk about when I went to see the accountant." This gives the other side an opportunity to object to a topic. When you are finished with your testimony, the lawyer or other party will be able to ask you questions on cross-examination. You cannot pick and choose which question to answer if you testify. Once you are done testifying, the Judge will tell you to "step down."

In addition to witness testimony, you may have documents, photos or objects you want to use as evidence. It is important to know that papers you may have filed with the court before the trial are **not** evidence. If you want the Judge to consider something as evidence, list it as an exhibit in your Exhibit List, mark it as an exhibit, and offer it into evidence at the trial. If you filed an original document into the court file, you should have copies of the document at the trial and let the Judge

know the original is already in the court file.

To offer an exhibit into evidence, you usually need a witness who can tell the Judge what the exhibit is. For example, if you have photos, the person who took the photos should testify about them, if possible, to explain when and where the photos were taken. You can be the witness if you have sufficient knowledge about the exhibit.

Objections

Objections are challenges to the evidence that is being presented by the other side. Usually, objections are made because a party believes the evidence is not admissible according to the *Rules of Evidence*. You (and the other party) can object to questions, witness testimony, or exhibits that you believe do not comply with the rules of evidence and procedure. If you wish to object, you should tell the Judge very clearly, "Objection." The Judge will ask you to explain why you object, and then the other party will get to respond. If either side objects to something, all questioning should stop immediately (if a witness is testifying, the witness should stop talking immediately). You must have a valid reason to object, according to the *Rules of Evidence*. "He's lying" is not a valid objection.

If the Judge **sustains** the objection, the witness can't talk about whatever was objected to. If the Judge **overrules** the objection, the witness can go ahead and talk about whatever was objected to. If you don't understand the Judge's ruling on an objection, ask them to explain.

If you have a key piece of evidence and the attorney for the other side objects to it, the Judge will decide if that evidence is admissible and becomes part of the record. If the Judge rules against you, you might be able to correct the problem. If the evidence is not relevant, you can't fix that. If the objection was based on "lack of foundation" for a document, you might be able to ask the witness questions to explain what the document is and show it is authentic, and get the document admitted into evidence. Do not expect the Judge to tell you what to do or say to correct the problem. It is your job to make the legal arguments, and the Judge's job to make a ruling. You should study the *Rules of*

Evidence before the trial, and get advice from a lawyer if you are unsure about how to get key evidence into the record. Success at trial is largely a result of preparation.

Final Argument (also called Closing Statement)

After all the evidence has been presented, you and the other party will be allowed to make final arguments. Some judges may allow the parties to submit written arguments after the hearing. In your final argument, be prepared to explain what you are asking the Court to do, and how the evidence presented supports your request. If you want a certain property division, for example, tell the Judge what property division it is that you want, and summarize the evidence to show why you are entitled to it. You may comment on any evidence that was presented at the trial (yours and the other side's) and tell the Judge what you think that evidence means. You are not allowed to tell the Judge any new facts about the case during final argument – the evidence is over by this point.

You should also tell the Judge anything else you are asking the Court to do, if applicable, *e.g.*, attorney fees, payment of debts, etc.

Burden of Proof

The party who started the case or brought the motion has the "**burden of proof**." That party bears the burden of demonstrating that they have proven their case by a "preponderance of the evidence." To meet their burden of proof, the Petitioner must present sworn, admissible evidence at an evidentiary hearing or trial.

In most civil cases, the Petitioner has to prove his or her case by a "**preponderance of the evidence**." Using the scales as an example, a preponderance of the evidence would be tipping the balance of the scales, even a tiny bit, in Petitioner's favor.

If the Respondent counter-petitioned or counter-motioned, the Respondent has the burden of proof for their requests. For example, if **you have the burden of proof** and the evidence weighs in

favor of the other party, or if the balance is equal, you have not met your burden of proof. The Court will not be able to give you what you asked for in your pleadings. To put it another way, if after listening to all the evidence the Judge thinks it's a toss-up, the Petitioner loses and did not meet their burden of proof.

Decision

The Judge decides the outcome of a case when there is no jury. They will listen to all the testimony presented in the trial and review all of the exhibits. The Judge will decide what facts were proven, and whether you are entitled to the relief you seek.

It is important that you understand what happens when the trial is done and if there are more steps you must complete. For example, sometimes parties ask permission to file a "proposed Judgment and Decree" or the Judge may request one after the trial is over. A proposed Judgment and Decree or proposed Order is a document in which a party or his lawyer lays out the facts of the case and the desired outcome, and attempts to persuade the Judge that the law supports the outcome the party has requested.

The Judge will decide if they want a proposed Order to be submitted and if so, will set a due date. A proposed Order cannot contain any new evidence or evidence that was not offered at the trial.

After the trial is over, and after any further documents (if any) are submitted, the matter is taken "under advisement" and the Judge has 90 days to make a decision.

Post-Decision

There are a number of details that may come into play after the trial is concluded and the Court issues an order. If either party is unhappy with the Judge's decision, there are options to reopen or appeal the order. Generally, a party seeking to appeal the decision to the Court of Appeals has 60 days to do so. If you want to reopen or appeal the decision, you should talk to a lawyer to get legal advice.

If the parties have been divorced, there may be additional documents that need to be completed

and submitted to the Court. If the Judge is dividing a 401(k), 403(b), pension plan, or other qualified plan, then the parties must file a separate, proposed order called a QDRO (Qualified Domestic Relations Order). Only after the Judge signs off on the QDRO can the retirement assets be divided between the parties.

Another type of document must be completed when one party is awarded in the divorce decree all interest in the parties' real property. A Quit Claim Deed and Summary Real Estate Disposition Judgment are documents that are used to transfer one party's interest in the real property to the party who will be keeping the property. Both of these documents are proof that title to real property has been transferred from one party to another.

If you haven't already done so, you may be asked to submit a Certificate of Dissolution for the Judge's signature. Once signed, the Certificate of Dissolution can be used to prove that you are divorced. It can also be used to prove your name was changed in the divorce case. However, the Certificate of Dissolution cannot be used to prove that title to real property has been transferred from one party to another.

Rules that Commonly Come into Play in Family Court Trials

Minnesota Rules of Civil Procedure

Rule 45.03 (Protection of Persons Subject to Subpoena)

- **(a) Requirement to Avoid Undue Burden**
- **(b) Subpoena for Document Production Without Deposition**
- **(c) Motion to Quash or Modify Subpoena**
- **(d) Compensation of Certain Non-Party Witnesses**

Minnesota Rules of Evidence

Rule 401: Definition of Relevant Evidence

Rule 402: Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible

Rule 403: Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time

Rule 602: Lack of Personal Knowledge

Rule 609: Impeachment by Evidence of Conviction of Crime

- **(a) General rule**
- **(b) Time limit**
- **(c) Effect of pardon, annulment, vacation or certificate of rehabilitation**
- **(d) Juvenile adjudications**
- **(e) Pendency of appeal**

Rule 611: Mode and Order of Interrogation and Presentation

- **(a) Control by court**
- **(b) Scope of cross-examination**
- **(c) Leading questions**

Rule 701: Opinion Testimony by Lay Witness

Rule 702: Testimony by Experts

Rule 801 (Definitions)

- **(a) Statement**
- **(b) Declarant**
- **(c) Hearsay**
- **(d) Statements which are not hearsay**
  - (1) *Prior statement by witness*
  - (2) *Statement by party-opponent*

Rule 802: Hearsay Rule