

CHAPTER 25

FAILURE TO APPEAR AND DEFAULT PROCEDURES

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	GENERAL PROCEDURE	AUTHORITY
25.01	<p>FAILURE TO APPEAR – PROCEDURE</p> <p>A. ADMIT/DENY HEARING, PRETRIAL CONFERENCE, OR TRIAL. Except as noted in below in section “B”, if a parent, legal custodian, or Indian custodian fails to personally appear for an admit-deny hearing, a pretrial hearing, or a trial after being properly served with a summons or notice of hearing, the court may:</p> <ol style="list-style-type: none"> 1. Receive evidence in support of the petition and, if proved by the applicable standard of proof (see section “24.02” below), enter the relief requested in the petition as to that parent, legal custodian, or Indian custodian; or 2. Reschedule the hearing. <p>B. EXCEPTION FOR FAILURE TO APPEAR. A parent, legal custodian, or Indian custodian is not subject to default proceedings if the party enters a written denial or an on-the-record denial through counsel without the party’s personal appearance.</p> <p>C. PROPER SUMMONS OR NOTICE OF HEARING REQUIRED. A default order may not be entered if the Summons or Notice of Hearing:</p> <ol style="list-style-type: none"> 1. Was not properly and timely served, or 2. Does not comply with the content requirements of RJPP 32.02, subd. 4; RJPP 32.03, subd. 3; or RJPP 32.04, which require that the Summons or Notice of Hearing state the consequences of failure to appear. <p><i>Comment: The Summons and Notice of Hearing forms located on CourtNet comply with the content requirements specified in RJPP 32.02, 32.03, and 32.04, including stating the consequences of failure to appear.</i></p>	<ul style="list-style-type: none"> • RJPP 18.01 • <i>In Re the Matter of the Welfare of the Children of Deloris Coats</i>, 633 N.W.2d 505 (Minn. 2001)) (default in termination of parental rights appropriately granted where parent fails to present a reasonable excuse for failure to personally appear at pretrial hearing) <p>RJPP 35.02</p> <ul style="list-style-type: none"> • RJPP 18.01 • RJPP 32.02, subd. 4 (Summons content) • RJPP 32.03 (Notice of Admit/Deny Hearing content) • RJPP 32.04 (Notice of Subsequent Hearing content)
25.02	<p>STANDARD OF PROOF</p> <p>A. CHIPS, TPR, AND OTHER PERMANENCY PETITION. To be proved at trial, the statutory grounds set forth in a Child in Need of Protection or Services Petition, Termination of Parental Rights Petition, or Other Permanency Petition must be proved by clear and convincing evidence.</p> <p>B. INDIAN CHILD.</p> <ol style="list-style-type: none"> 1. Foster Care Placement. In the case of an Indian child, no foster care placement may be ordered in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, as defined in Minnesota Rules parts 9560.0221 and 9560.0500 to 9560.0670, that the continued custody of the child by the parent or legal custodian or Indian custodian is likely to result in serious emotional or physical damage to the child. 	<ul style="list-style-type: none"> • RJPP 39.04, subd. 1 • Minn. Stat. § 260C.317, subd. 1 (termination of parental rights) <p>RJPP 39.04, subd. 2(a)</p>

	GENERAL PROCEDURE	AUTHORITY
	<p>25.02 Standard of Proof (continued)</p> <p>2. Termination of Parental Rights. In the case of an Indian child, no termination of parental rights may be ordered in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, as defined in Minnesota Rules parts 9560.0221 and 9560.0500 to 9560.0670, that the continued custody of the child by the parent or legal custodian or Indian custodian is likely to result in serious emotional or physical damage to the child.</p> <p><i>Comment: In In Re the Matter of M.S.S., 465 N.W.2d 412 (Minn. Ct. App. 1991), the court held that the parental rights to an Indian child may not be terminated unless the county proves beyond a reasonable doubt that it has complied with section 1912(f) of the Indian Child Welfare Act, 25 U.S.C. § 1901 et. seq., requiring the county to make active efforts to prevent or avoid placement.</i></p>	<p>RJPP 39.04, subd. 2(b)</p>