

Withholding Consent to Adoption—Section 45 Hearing Checklist (Preliminary Matters)

When a child is released to a child placing agency, the DHHS, or the court, that entity has the authority to consent to the child's adoption.¹ [MCL 710.43\(1\)\(b\)-\(d\)](#). If the child placing agency, the DHHS, or the court withholds its consent to adopt, the adoptive parent may file a motion claiming the decision to withhold consent is arbitrary and capricious. [MCL 710.45\(2\)](#). The court must grant or deny an adoptive parent's motion to determine whether the decision to withhold consent was arbitrary and capricious within 91 days of the motion's filing date, unless good cause is shown. [MCL 710.45\(6\)](#).

Upon receipt of a petition to adopt claiming that the adoptive parent has been unable to obtain the required consent to adopt and is challenging the decision to withhold consent, the court must:

- Determine that the petitioner attached to the adoption petition a motion alleging the decision to withhold consent was arbitrary and capricious, and that the attached motion contains all of the following:
 - Specific steps the adoptive parent took to obtain the consent.
 - Results the adoptive parent received in trying to obtain the consent.
 - Specific reasons the adoptive parent believes the decision to withhold consent is arbitrary and capricious. See [MCL 710.45\(2\)](#).
- Determine that the court is not the one withholding consent. If it is the court, then the motion must be heard by a visiting judge. See [MCL 710.45\(9\)](#).
- Determine that the consent to adopt is not being withheld because consent was already provided to another adoptive parent, the child has already been placed with that adoptive parent, and the adoption order was entered or 56 days has elapsed since the child's placement. See [MCL 710.45\(3\)](#).
- Order a full investigation as provided in [MCL 710.46](#), or decide to waive or modify the full investigation. See [MCL 710.45\(6\)](#); [MCL 710.46\(1\)](#).

¹ For a detailed discussion on Withholding Consent to Adoption, see the Michigan Judicial Institute's [Adoption Proceedings Benchbook](#), Chapter 7.

- Provide notice of the motion to all interested parties listed in [MCL 710.24a](#), the prospective adoptee's guardian ad litem (if one has been appointed), and the petitioner who is seeking the consent. [MCL 710.45\(5\)](#).

Hold a hearing on the adoptive parent's motion.

For court forms related to adoption proceedings, see the One Court of Justice [website](#).