

Rule 32. Summons and Notice**32.01 Commencement**

A juvenile protection matter is commenced by filing a petition with the court.

32.02 Summons

Subdivision 1. Definition. A summons is a document issued by the court that orders the initial appearance in court of the person to whom it is directed.

Subd. 2. Upon Whom; Cost.

(a) **Generally.** Except as provided in subdivision 3, the court shall serve a summons and petition upon each party identified in Rule 21; the child's parents, except alleged fathers who shall be served a notice of hearing pursuant to Rule 32.03; and any other person whose presence the court deems necessary to a determination concerning the best interests of the child. The cost of service of a summons and petition filed by someone other than a nonprofit or public agency shall be paid by the petitioner.

(b) **Termination of Parental Rights Matters.** In addition to the requirements of subdivision 2(a), in any termination of parental rights matter the court administrator shall serve the summons and petition upon the county attorney, any guardian ad litem for the child's parent or legal guardian, and any attorney representing a party in an ongoing child in need of protection or services proceeding involving the subject child. A summons shall not be served upon a putative father, as defined in Minnesota Statutes, section 259.21, who has failed to timely register with the Minnesota Fathers' Adoption Registry under Minnesota Statutes, section 259.52, unless that individual also meets the requirements of Minnesota Statutes, section 257.55, or is required to be given notice under Minnesota Statutes, section 259.49, subdivision 1.

Subd. 3. Service.

(a) **Parents, Parties, and Attorneys.** Unless the court orders service by publication pursuant to Rule 31.02, subdivision 3, the summons and petition shall be personally served upon the child's parents or legal guardian. Service of the summons and petition upon parties and attorneys shall be made through the E-Filing System or by personal service, U.S. mail, e-mail or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court. Alleged parents and participants shall be served a notice of hearing and petition pursuant to Rule 32.03. The court may authorize alternative personal service pursuant to Rule 31.02, subdivision 5.

(b) Habitual Truant, Runaway, and Sexually Exploited Child Matters.

(1) **Initial Service.** Notwithstanding the requirements of subdivisions 2(a) and 3(a), when the sole allegation is that the child is a habitual truant, a runaway, or a sexually exploited child, initial service may be made as follows:

(i) in lieu of a summons, the court may serve a notice of hearing and a copy of the petition by U.S. mail upon the legal custodian, the person with custody or control of the child, and each party and participant; or

(ii) a peace officer may issue a notice to appear or a citation.

(2) **Failure to Appear.** If the child or the child's parent or legal custodian or the person with custody or control of the child fails to appear in response to the initial service, the court shall order such person to be personally served with a summons.

(c) **Voluntary Placement.** In all cases involving a voluntary placement of a child pursuant to Rule 44, the summons shall be served upon the parent or legal custodian personally, by U.S. mail, through the E-Filing System, by e-mail or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court.

Subd. 4. Content.

(a) **Generally.** A summons shall contain or have attached:

(1) a copy of the petition, court order, motion, affidavit or other legal documents not previously provided; however, these documents shall not be contained in or attached to the summons and complaint if the court has authorized service of the summons by publication pursuant to Rule 32.02, subdivision 3(a);

(2) a statement of the time and place of the hearing;

(3) a statement describing the purpose of the hearing;

(4) a statement explaining the right to representation pursuant to Rule 25; and

(5) a statement that failure to appear may result in:

(i) the child being removed from home pursuant to a child in need of protection or services petition;

(ii) the parent's parental rights being permanently severed pursuant to a termination of parental rights petition;

(iii) permanent transfer of the child's legal and physical custody to a relative;

(iv) a finding that the statutory grounds set forth in the petition have been proved; and

(v) an order granting the relief requested.

(b) **Child in Need of Protection or Services Matters.** In addition to the content requirements set forth in subdivision 4(a), in any child in need of protection or services matter the summons shall also contain or have attached a statement pursuant to Rule 18.01 that:

(1) if the person summoned fails to appear, the court may conduct the hearing in the person's absence; and

(2) a possible consequence of the hearing is that the child may be removed from the home of the parent or legal custodian and placed in foster care, and such removal may lead to other proceedings for permanent out-of-home placement of the child or termination of parental rights.

(c) **Termination of Parental Rights Matters.** In addition to the content requirements set forth in subdivision 4(a), in any termination of parental rights matter the summons shall also contain or have attached a statement pursuant to Rule 18.01 that if the person summoned fails to appear the court may conduct the hearing in the person's absence and the hearing may result in termination of the person's parental rights.

(d) **Permanent Placement Matters.** In addition to the content requirements set forth in subdivision 4(a), in any permanent placement matter the summons shall also contain or have attached a statement pursuant to Rule 18.01 that if the person summoned fails to appear the court may conduct the hearing in the person's absence and the hearing may result in an order granting the relief requested in the petition.

Subd. 5. Timing of Service of Summons and Petition.

(a) **Generally.** The summons and petition shall be served either at or before the emergency protective care hearing held pursuant to Rule 30, or at least three (3) days prior to the admit/deny hearing, whichever is earlier. At the request of a party, the hearing shall not be held at the scheduled time if the summons and petition have been served less than three (3) days before the hearing. If service is made outside the state or by publication, the summons shall be served or last published at least ten (10) days before the hearing. In cases where publication of a child in need of protection or services petition is ordered, published notice shall be made one time with the last publication at least ten (10) days before the date of the hearing. Service by publication shall be made pursuant to Rule 31.02, subdivision 3.

(b) **Termination of Parental Rights Matters and Permanent Placement Matters.** In any termination of parental rights matter or permanent placement matter the summons and petition shall be served upon all parties in a manner that will allow for completion of service at least ten (10) days prior to the date set for the admit/deny hearing. In cases where publication of a termination of parental rights or other permanency summons is ordered, published notice shall be made once per week for three (3) weeks with the last publication at least ten (10) days before the date of the hearing. Pursuant to Minnesota Statutes, section 260C.307, subdivision 3, notice sent by certified mail to the last known address shall be mailed at least twenty (20) days before the date of the hearing. Service by publication shall be made pursuant to Rule 31.02, subdivision 3.

Subd. 6. Waiver. Service is waived by voluntary appearance in court or by a written waiver of service filed with the court.

Subd. 7. Failure to Appear. If any person personally served with a summons or subpoena fails, without reasonable cause, to appear or bring the child if ordered to do so, or if the court has reason to believe the person is avoiding personal service, the court may sua sponte or upon the motion of a party or the county attorney pursuant to Rule 15 proceed against the person for contempt of court or the court may issue a warrant for the person's arrest, or both. When it appears to the court that service will be ineffectual, or that the welfare of the child requires that the child be immediately brought into the custody of the court, the court may issue a warrant for immediate custody of the child.

(Amended effective January 1, 2004; amended effective January 1, 2007; amended effective July 1, 2014; amended effective July 1, 2014; amended effective July 1, 2015.)

1999 Advisory Committee Comment (amended 2003)

Rule 32.02 specifies the procedure for summoning a party to his or her first appearance in a case. Rule 32.03 specifies the procedure for providing initial notice to a participant. While failure to notify a non-legal custodial parent does not create a jurisdictional defect, the best practice is to invite that parent to participate in the proceedings, as failure to do so may create substantial barriers to permanency.

32.03 Notice of Emergency Protective Care or Admit/Deny Hearing

Subdivision 1. Definition. A notice is a document issued by the court notifying the person to whom it is addressed of the specific time and place of a hearing.

Subd. 2. Upon Whom.

(a) **Emergency Protective Care Hearing.** If the initial hearing is an emergency protective care hearing, the court administrator, or designee, shall inform all parties and participants identified by the petitioner in the petition, and their attorneys, of the date, time, and location of the hearing.

(b) **Admit/Deny Hearing.** If the initial hearing is an admit/deny hearing, the court administrator shall serve a summons and petition upon all parties identified in Rule 21, and a notice of hearing and petition upon all participants identified in Rule 22, the county attorney, any attorney representing a party in the matter, and the child through the child's attorney, if represented, or the child's physical custodian.

Subd. 3. Content. A notice shall contain or have attached:

(a) a copy of the petition, but only if it is the initial hearing or the person has intervened or been joined as a party and previously has not been served with a copy of the petition;

(b) a statement of the time and place of the hearing;

(c) a statement describing the purpose of the hearing;

(d) a statement explaining the right to representation pursuant to Rule 25;

(e) a statement explaining intervention as of right and permissive intervention pursuant to Rule 23;

(f) a statement pursuant to Rule 18.01 that failure to appear may result in:

(1) the child being removed from home pursuant to a child in need of protection or services petition;

(2) the parent's parental rights being permanently severed pursuant to a termination of parental rights petition;

(3) permanent transfer of the child's legal and physical custody to a relative;

(4) a finding that the statutory grounds set forth in the petition have been proved; and

(5) an order granting the relief requested; and

(g) a statement that it is the responsibility of the individual to notify the court administrator of any change of address.

Subd. 4. Method of Service.

(a) **Emergency Protective Care Hearing.** If the initial hearing is an emergency protective care hearing, written notice is not required to be served. Instead, the court administrator, or designee, shall use whatever method is available, including, but not limited to, phone calls, personal service, the E-Filing System, or e-mail or other electronic means agreed upon in writing by the person to be served, to inform all parties and participants identified by the petitioner in the petition, their attorneys, and the tribal social services agency as required by Minnesota Statutes, section 260.761, subdivision 2(c), of the date, time, and location of the hearing.

(b) **Admit/Deny Hearing.** If the initial hearing is an admit/deny hearing, the court administrator shall serve the notice of hearing and petition through the E-Filing System or by personal service, U.S. mail, e-mail or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court.

(Amended effective January 1, 2004; amended effective January 1, 2007; amended effective August 1, 2009; amended effective July 1, 2015; amended effective October 1, 2016.)

1999 Advisory Committee Comment (Amended 2003)

Rule 32.02 specifies the procedure for summoning a party to his or her first appearance in a case. Rule 32.03 specifies the procedure for providing initial notice to a participant. While failure to notify a non-legal custodial parent does not create a jurisdictional defect, the best practice is to invite that parent to participate in the proceedings as failure to do so may create substantial barriers to permanency.

32.04 Notice of Subsequent Hearings

(a) **Upon Whom.** For each hearing following the emergency protective care or admit/deny hearing, the court shall order and the court administrator shall serve upon each party, participant, and attorney a written notice of the date, time, and location of the next hearing.

(b) **Form.** The notice may be on a form prepared by the State Court Administrator or included in the order resulting from the hearing.

(c) **Timing.** Unless otherwise ordered by the court, such notice shall be personally served by the close of the current hearing. If not served by the close of the current hearing, the notice shall be served as soon as possible after the hearing, but no later than five (5) days before the date of the next hearing or ten (10) days before the date of the next hearing if mailed to an address outside of the state.

(d) **Method of Service.** If not served by the close of the current hearing, the notice may be served by U.S. mail, through the E-Filing System, by e-mail or other electronic means agreed upon in writing by the person to be served, or as directed by the court.

(Added effective January 1, 2004; amended effective January 1, 2007; amended effective July 1, 2015.)

2015 Advisory Committee Comment

Rule 32.04 is amended in 2015 to encourage the best practice of personally serving the notice of hearing by the close of the current hearing. The Committee recognizes that in some instances the date of the next hearing cannot reasonably be set by the close of the current hearing because of scheduling difficulties. In those instances, the notice may be served by authorized alternative means following the current hearing.

32.05 Orders on the Record

An oral order stated on the record directed to the parties which either separately or with written supplementation contains the information required by this rule is sufficient to provide notice and compel the presence of the parties at a stated time and place. Such an order shall be reduced to writing pursuant to Rule 10.

32.06 Petitioner's Notice Responsibility Under Indian Child Welfare Act

Pursuant to 25 U.S.C. section 1912(a), in any juvenile protection proceeding where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe of the pending proceedings and of the right of intervention pursuant to Rule 23. Such notice shall be by registered U.S. mail with return receipt requested, unless personal service has been accomplished. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary of the Interior in like manner, who shall have fifteen (15) days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental

rights proceeding shall be held until at least ten (10) days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary of the Interior, provided that the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty (20) additional days to prepare for such proceeding. The original or a copy of each notice shall be filed with the court together with any return receipts or other proof of service.

(Amended effective January 1, 2004; amended effective January 1, 2007; amended effective August 1, 2009; amended effective July 1, 2015.)

2008 Advisory Committee Comment

Notice to Indian Child's Parent, Indian Custodian, and Indian Tribe Required under ICWA. See the 2008 Advisory Committee Comment following Rule 34.03 for information about the notice required under the Indian Child Welfare Act (ICWA) to be provided to the Indian child's parent, Indian custodian, and Indian tribe, including timing of the notice and time to respond.

Content of ICWA Notice. The Bureau of Indian Affairs Guidelines for State Courts: Indian Child Custody Proceedings (BIA Guidelines) provides as follows regarding the content of the notice required to be provided under Rule 32.06 to the Indian child's parent or Indian custodian and the Indian child's tribe:

"Notice Requirements

a. In any involuntary child custody proceeding, the state court shall make inquiries to determine if the child involved is a member of an Indian tribe or if a parent of the child is a member of an Indian tribe and the child is eligible for membership in an Indian tribe.

b. In any involuntary Indian child custody proceeding, notice of the proceeding shall be sent to the parents and Indian custodians, if any, and to any tribes that may be the Indian child's tribe by registered mail with return receipt requested. The notice shall be written in clear and understandable language and include the following information:

- i. The name of the Indian child.*
- ii. His or her tribal affiliation.*
- iii. A copy of the petition, complaint or other document by which the proceeding was initiated.*
- iv. The name of the petitioner and the name and address of the petitioner's attorney.*
- v. A statement of the right of the biological parents or Indian custodians and the Indian child's tribe to intervene in the proceeding.*
- vi. A statement that if the parents or Indian custodians are unable to afford counsel, counsel will be appointed to represent them.*
- vii. A statement of the right of the natural parents or Indian custodians and the Indian child's tribe to have, on request, twenty days (or such additional time as may be permitted under state law) to prepare for the proceedings.*
- viii. The location, mailing address and telephone number of the court.*
- ix. A statement of the right of the parents or Indian custodians or the Indian child's tribe to petition the court to transfer the proceeding to the Indian child's tribal court.*

x. The potential legal consequences of an adjudication on future custodial rights of the parents or Indian custodians.

xi. A statement in the notice to the tribe that since child custody proceedings are usually conducted on a confidential basis, tribal officials should keep confidential the information contained in the notice concerning the particular proceeding and not reveal it to anyone who does not need the information in order to exercise the tribe's right under the Act."

BIA Guidelines, 44 Fed. Reg. 67584, 67588, 67591 at B.5 (Nov. 26, 1979).