

**Rule 31. Notice of Final Hearing or Trial****31.01 Notice**

**Subdivision 1. Definition.** A notice of hearing is a document providing notice of the specific date, time and place of a hearing or trial upon an adoption petition.

**Subd. 2. Upon Whom.**

(a) **Generally.** Except as provided in paragraph (b), the petitioner shall serve a notice of hearing and adoption petition upon:

- (1) all parties under Rule 20;
- (2) the parent of a child if:
  - (i) the person's name appears on the child's birth record as a parent;
  - (ii) the person has substantially supported the child;
  - (iii) the person either was married to the person designated on the birth record as the biological mother within the 325 days before the child's birth or married that person within the ten (10) days after the child's birth;
  - (iv) the person is openly living with the child or the person designated on the birth record as the biological mother of the child, or both;
  - (v) the person has been adjudicated the child's parent;
  - (vi) the person has filed a paternity action within thirty (30) days after the child's birth and the action is still pending; or
  - (vii) the person and the mother of the child signed a declaration of parentage before August 1, 1995, which has not been revoked or a recognition of parentage which has not been revoked or vacated;
- (3) a person who has timely registered pursuant to Minnesota Statutes, section 259.52;
- (4) the responsible social services agency;
- (5) any parent who has abandoned the child or who has lost custody of the child through a divorce decree or dissolution of marriage; and
- (6) the child's Indian tribe, if the child is an Indian child.

(b) **Child Under Guardianship of Commissioner of Human Services.** For a child under the guardianship of the Commissioner of Human Services, the court administrator shall serve a notice of hearing and petition, unless service of the petition has already been accomplished, upon:

- (1) the child's tribe if the child is an Indian child;
- (2) the responsible social services agency;
- (3) the child's guardian ad litem;
- (4) the child, if the child is age ten or over;
- (5) the child's attorney;
- (6) the adopting parent; and

(7) the county attorney.

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

### **31.02 Notice Not Required**

Without express order of the court, a notice of the hearing and petition shall not be served upon:

(a) persons whose parental rights have been terminated or who have consented to the adoption of the child;

(b) persons who have not timely registered pursuant to Minnesota Statutes, section 259.52;

(c) persons who have waived notice of hearing pursuant to Minnesota Statutes, section 259.49, subdivision 1;

(d) a putative father who has timely registered with the Minnesota Fathers' Adoption Registry pursuant to Minnesota Statutes, section 259.52, but who fails to timely file an intent to claim parental rights form with the court; and

(e) a putative father who has registered with the Minnesota Fathers' Adoption Registry pursuant to Minnesota Statutes, section 259.52, and who has filed a completed denial of paternity form and a consent to adoption form.

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

### **31.03 Content of Notice of Hearing**

A notice of hearing shall contain or have attached:

(a) an adoption petition;

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

(c) a statement describing the purpose of the hearing as either:

(1) a final hearing pursuant to Rule 41 if it is an uncontested adoption matter; or

(2) a pretrial conference pursuant to Rule 43 if it is a contested adoption matter;

(d) a statement explaining the right to representation pursuant to Rule 23;

(e) a statement explaining intervention pursuant to Rule 21;

(f) a statement explaining that if the person fails to appear at the hearing, the court may still conduct the hearing and grant the adoption pursuant to Rule 18; and

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

(Amended effective January 1, 2007.)

### **31.04 Service of Notice of Hearing**

**Subdivision 1. Timing.** A notice of hearing shall be served, within or without the state, at least fourteen (14) days before the date of a final hearing in an uncontested matter and at least thirty (30) days before the date of the commencement of the trial in a contested matter.

#### **Subd. 2. Method of Service - Parent.**

(a) **Generally.**

(1) **Personal Service.** The petitioner shall serve the notice of hearing upon the child's parents by personal service pursuant to Rule 25.02.

(2) **Service by Publication.** If personal service cannot be made upon the parent, the petitioner or petitioner's attorney shall file an affidavit setting forth the diligent effort that was made to locate the parent, and the names and addresses of the known kin of the child. If satisfied that the parent cannot be served personally, the court shall order three (3) weeks of published notice to be given pursuant to Rule 25.02, subdivision 3, the last publication to be at least ten (10) days before the date set for the hearing. Service by publication shall be completed by the petitioner in a location approved by the court. Where service is made by publication, the court may cause such further notice to be given as it deems just. If, in the course of the proceedings, the court determines that the interests of justice will be promoted, it may continue the proceeding and require that such notice as it deems proper shall be served on any person. In the course of the proceedings the court may enter reasonable orders for the protection of the child if the court determines that the best interests of the child require such an order.

**Subd. 3. Method of Service - Parties Where Child Under Guardianship of Commissioner of Human Services.** For a child under the guardianship of the Commissioner of Human Services, the court administrator shall serve the notice of hearing and petition upon the parties 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. Method of Service - Indian Tribe.** The petitioner shall serve the notice of hearing by registered U.S. mail with return receipt requested upon the Indian tribe if the child is an Indian child.

**Subd. 5. Method of Service - Others.** (a) If the petitioner is a Registered User of the E-Filing System or required to electronically serve documents under Rule 14 of the General Rules of Practice for the District Courts, the petitioner shall serve the notice of hearing through the E-Filing System. This does not apply to service upon Indian tribes.

(b) The petitioner shall serve the notice of hearing by U.S. mail upon the child's guardian ad litem; the child, if age ten (10) or older; the child's Indian custodian, if the child is an Indian child; the child's legal custodian or legal guardian, if other than the Commissioner of Human Services; any person who has intervened as a party; any person who has been joined as a party; the responsible social services agency; and any person who has timely complied with the requirements of Minnesota Statutes, section 259.52.

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

#### ***2015 Advisory Committee Comment***

*Rule 31.04, subdivision 1, is amended to require that the notice of hearing must be served at least fourteen (14) days, rather than ten (10) days, prior to the date of the hearing in an uncontested matter, which is consistent with the requirements of Minnesota Statutes, section 259.49, subdivision 2.*