

**RULE 44. COMMENCEMENT OF PROCEEDINGS****Rule 44.01. Commencement**

A child in need of protection or services matter is commenced by filing a petition with the court, or by the filing of a citation pursuant to Rule 45.01, subd. 2.

**Rule 44.02. Summons**

A summons shall be issued by the court ordering the initial appearance in court of the person(s) to whom it is directed.

**Subdivision 1. Upon Whom Served; Method; Cost.**

(a) **Generally.** The court shall serve a summons and petition upon each party identified in Rule 32; the child's parents, except alleged fathers who shall be served a notice pursuant to Rule 44.03; 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 non-profit or public agency shall be paid by the petitioner.

**(b) Methods of Service:**

(1) **Parents, Parties, and Attorneys.** Unless the court orders service by publication pursuant to Rule 16.02, subd. 3, the summons and petition shall be personally served upon the child's parents or legal guardian. Service of the summons and petition upon other 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 44.03.

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

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.

**Subd. 2. Content.** A summons shall contain or have attached:

(a) a copy of the petition, supporting documents, and ex parte order for emergency protective care, if any; however, these documents shall not be contained in or attached to the summons if the court has authorized service of the summons by publication pursuant to Rule 16.02, subd. 3;

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

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

(d) a statement explaining the right to representation pursuant to Rule 36;

(e) a statement 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

(f) 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) the hearing may result in an order granting the relief requested in the petition.

**Subd. 3. Timing of Service of Summons and Petition.** The summons and petition shall be served either at or before the emergency protective care hearing, or at least three 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 days before the hearing. If service is made outside the state or by publication, the summons shall be served or published at least 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 pursuant to Rule 16.02, subd. 3, one time with the last publication at least 10 days before the date of the hearing.

**Subd. 4. Waiver.** Service is waived by voluntary appearance in court or by a written waiver of service filed with the court.

**Subd. 5. 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 proceed against the person for civil contempt of court pursuant to Rule 13 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.

#### **Rule 44.03. Notice of Admit/Deny Hearing**

A notice shall be issued by the court notifying the person to whom it is addressed of the specific time and place of a hearing.

##### **Subd. 1. Upon Whom Served.**

If the initial hearing is an admit/deny hearing, the court administrator shall serve a summons and petition upon all parties identified in Rule 32, and a notice of hearing and petition upon all participants identified in Rule 33, 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. 2. 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 36;
- (e) a statement explaining intervention as of right and permissive intervention pursuant to Rule 34;
- (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. 3. Method of Service.** 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.

#### **Rule 44.04. Notice of Subsequent Hearings**

(a) **Upon Whom.** For each hearing following the 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, the 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 days before the date of the next hearing or 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.

#### **Rule 44.05. 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 attendance of the parties at a stated time and place. Such an order shall be reduced to writing pursuant to Rule 9.

**Rule 44.06. Petitioner's Notice Responsibility Under the Indian Child Welfare Act**

The petitioner shall provide all notices as required by the Indian Child Welfare Act and as provided in Rule 30.01.

***2019 Advisory Committee Comment***

*Rule 44 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 32.*

*Rule 44.04 encourages 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.*