

RULE 53. COMMENCEMENT OF PROCEEDINGS – PERMANENCY OR TERMINATION OF PARENTAL RIGHTS**Rule 53.01. Commencement**

A permanency or termination of parental rights matter is commenced by filing a petition with the court. If a child in need of protection or services file exists, the permanency or termination of parental rights petition shall be filed in a separate file.

53.02. Summons

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

Subd. 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. Additionally, the court 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 matter involving the subject child. A summons shall not be served upon a putative father, as defined in Minnesota Statutes, section 259.21, subdivision 12, 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. 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.** 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.

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 44.02, subd. 3(a);

(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) for a permanency matter other than a termination of parental rights matter, a statement that failure to appear may result in:

(1) permanent out-of-home placement of the child pursuant to a permanency petition;

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

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

(4) an order granting the relief requested;

(f) for a termination of parental rights matter, a statement that failure to appear may result in:

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

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

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

(4) an order granting the relief requested; and

(g) 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 termination of the person's parental rights.

Subd. 3. Timing of Service of Summons and Petition. In any permanency or termination of parental rights matter, the summons and petition shall be served upon all parties in a manner that will allow for completion of service at least 10 days prior to the date set for the admit/deny hearing. In cases where publication of a summons is ordered, published notice shall be made pursuant to Rule 16.02, subd. 3 at least once per week for three weeks with the last publication at least 10 days before the date of the hearing. Notice sent by certified mail to the last known address shall be mailed at least 20 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. Pursuant to Minnesota Statutes, section 260C.307, subdivision 3, in a termination of parental rights matter a waiver by a parent who is a minor or is incompetent is only effective if the parent's guardian ad litem concurs in writing.

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 53.03. Notice of Admit/Deny Hearing

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

Subd. 1. Upon Whom Served.

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. In a permanency matter other than a termination of parental rights matter, the court administrator shall serve a notice of hearing upon relatives if required by Minnesota Statutes, section 260C.204, paragraph (b). In a termination of parental rights

matter, the court administrator shall serve a notice of hearing on the child's grandparents if required by Minnesota Statutes, section 260C.307, subdivision 3.

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) for a permanency matter other than a termination of parental rights matter, a statement pursuant to Rule 18.01 that failure to appear may result in:

(1) permanent out-of-home placement of the child pursuant to a permanency petition;

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

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

(4) an order granting the relief requested;

(g) for a termination of parental rights matter, a statement pursuant to Rule 18.01 that failure to appear may result in:

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

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

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

(4) an order granting the relief requested; and

(h) 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 53.04. 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 53.05. 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 53.06. 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 53 is added in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule is the counterpart to Rule 44 for permanency and termination of parental rights matters.

Rule 53.04 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.