

CHAPTER 21
FILING AND SERVICE; SUMMONS AND NOTICE
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	PROCEDURE	AUTHORITY
	METHODS OF FILING AND SERVICE	RJPP 31
21.01	<p>TYPES OF FILING</p> <p>A. GENERALLY. Any paper may be filed with the court either personally, by U.S. mail, or by facsimile transmission.</p> <p>B. FILING BY FACSIMILE TRANSMISSION. Any paper may be filed with the court by facsimile transmission. Filing shall be deemed complete at the time that the facsimile transmission is received by the court. The facsimile shall have the same force and effect as the original. Only facsimile transmission equipment that satisfies the published criteria of the supreme court shall be used for filing in accordance with this rule.</p> <p>C. FACSIMILE FILING FEES; ORIGINAL DOCUMENT. Within five (5) days after the court has received the transmission, the party filing the document shall forward the following to the court:</p> <ol style="list-style-type: none"> 1. A \$25 transmission fee, unless otherwise provided by statute or rule or otherwise ordered by the court; 2. The original signed document; and 3. The applicable filing fee, if any. <p>E. NONCOMPLIANCE. Upon failure to comply with the requirements of this rule, the court may make such orders as are just including, but not limited to, an order striking pleadings or parts thereof, staying further proceedings until compliance is complete, or dismissing the action, proceeding, or any part thereof.</p>	<p>RJPP 31.01, subd. 1</p> <p>RJPP 31.01, subd. 2</p> <p>RJPP 31.01, subd. 2(b)</p> <p>RJPP 31.01, subd. 2(d)</p>
21.02	<p>TYPES OF SERVICE</p> <p>A. PERSONAL SERVICE. Personal service means personally delivering the original document to the person to be served or leaving it at the person's home or usual place of abode with a person of suitable age and discretion residing therein, unless the court authorizes service by publication. Rule 21.02 specifies the procedure for personal service for persons in state as well as outside of Minnesota.</p> <p>B. U.S. MAIL. Service by U.S. Mail means placing a copy of the document in the U.S. mail, first class, postage prepaid, addressed to the person to be served.</p> <p>C. PUBLICATION. Service by publication means the publication in full of the notice or other papers in the regular issue of a qualified newspaper, once each week for the number of weeks specified pursuant to RJPP 32.02. Service by publication substitutes for personal service where authorized by the court. The court shall authorize service by publication only if the petitioner has filed a written statement or affidavit describing unsuccessful efforts to locate the party to be served. The publication must be made in a manner reasonably calculated to give actual notice of the proceeding.</p>	<p>RJPP 31.02, subd. 1</p> <p>RJPP 31.02, subd. 2</p> <p>RJPP 31.02, subd. 3</p>

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	<p>21.02 Types of Service (continued)</p> <p>D. FACSIMILE SERVICE. Service by facsimile means transmission by facsimile equipment that satisfies the published criteria of the Supreme Court, addressed to the person to be served.</p>	RJPP 31.02, subd. 4
21.03	<p>SERVICE BY FACSIMILE TRANSMISSION</p> <p>Unless these rules require personal service, by agreement of the parties any document may be served by facsimile transmission. The facsimile shall have the same force and effect as the original. Reports and other documents that are not court orders shall not be served directly upon a party who is represented.</p>	RJPP 31.03
21.04	<p>SERVICE UPON COUNSEL; SOCIAL SERVICES AGENCY</p> <p>Unless personal service upon a party is required, service upon counsel for a party or counsel for a participant shall be deemed service upon the party or participant. Service upon the county attorney shall be deemed to be service upon the responsible social services agency.</p>	RJPP 31.04
21.05	<p>SERVICE OF SUBPOENA</p> <p>A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the state.</p>	RJPP 31.05
21.06	<p>COMPLETION OF SERVICE</p> <p>A. SERVICE BY MAIL. Service by mail is complete upon mailing to the last known address of the person to be served.</p> <p>B. SERVICE BY FACSIMILE. Service by facsimile is complete upon completion of the facsimile transmission.</p>	RJPP 31.06
21.07	<p>PROOF OF SERVICE</p> <p>A. AFFIDAVIT OF SERVICE. On or before the date set for appearance, the person serving the document shall file with the court an affidavit of service stating:</p> <ol style="list-style-type: none"> 1. Whether the document was served; 2. How the document was served; 3. The person on whom the document was served; and 4. The date and place of service. <p>B. SOCIAL WORKER AND GUARDIAN AD LITEM COURT REPORTS. Social workers and guardians ad litem are not required to file proof of service when serving the court reports required under Rule 38 and, instead, shall include with their report a non-notarized certificate of distribution stating:</p> <ol style="list-style-type: none"> (1) the name of the person served, (2) the method of service, (3) the date and place of service, and (4) the name of the person submitting the certificate of distribution. <p>C. EXCEPTION IF SERVICE BY COURT ADMINISTRATOR. If the court administrator served the document, the court administrator may file a written statement in lieu of an affidavit of service.</p>	<ul style="list-style-type: none"> • RJPP 31.07, subd. 1 • Minn. Stat. § 260C.152, subd. 4 <p>RJPP 31.07, subd. 2(a)</p> <p>RJPP 31.07, subd. 2(b)</p>

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	SUMMONS AND NOTICE	RJPP 32
21.08	COMMENCEMENT OF PROCEEDING A juvenile protection matter (see definition in Chapter 3.33) is commenced by filing a petition with the court.	RJPP 32.01
21.09	SUMMONS A. 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. B. SERVICE UPON WHOM. 1. Generally. The court shall serve a summons and petition upon each party identified in RJPP 21 and upon any other person whose presence the court deems necessary to a determination concerning the best interests of the child. 2. 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 legal custodian, and any attorney representing a party in an ongoing child in need of protection or services proceeding involving the subject child. C. COST. 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. D. METHOD OF SERVICE. 1. Generally. Unless the court orders service by publication pursuant to RJPP 31.02, subd. 3, the summons and petition shall be personally served upon the child's parent or legal custodian, and the summons shall be served personally or by U.S. mail upon all other parties and attorneys. 2. Habitual Truant, Runaway, and Prostitution Matters. (a) Generally. When the sole allegation is that the child is a habitual <u>truant</u> , a <u>runaway</u> , or engaged in prostitution, initial service may be made as follows: (1) the court may send notice and a copy of the petition or notice to appear by U.S. mail to the legal custodian, the person with custody or control of the child, and each party and participant; or (2) a peace officer may issue a notice to appear or a citation. (b) 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.	RJPP 32.02, subd. 1 • RJPP 32.02, subd. 2(a) • Minn. Stat. § 260C.151, subd. 1 • RJPP 32.02, subd. 2(b) • Minn. Stat. § 260C.307, subd. 3 • RJPP 32.02, subd. 2(a) • Minn. Stat. § 260C.152, subd. 2 RJPP 32.02, subd. 3(a) RJPP 32.02, subd. 3(b)(1) RJPP 32.02, subd. 3(b)(2)

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	<p>21.09 Summons (continued)</p> <ol style="list-style-type: none"> 3. Voluntary Placement – Service by Mail. In all cases involving a voluntary placement of a child pursuant to RJPP 44, the summons shall be served by U.S. mail upon the parent or legal custodian. 4. Indian Child – ICWA Notice Served by Registered Mail. In a child protection proceeding for the foster care placement or termination of parental rights of an Indian child, notice of the pending proceeding must be provided to the child, child’s parent or Indian custodian, and Indian tribe by the prosecuting authority by registered mail with return receipt requested unless personal service is accomplished. <p>E. REQUIRED CONTENT</p> <ol style="list-style-type: none"> 1. Generally. A summons shall contain or have attached: <ol style="list-style-type: none"> (a) 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 RJPP 31.02, subd. 3(a); (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 RJPP 25; and (e) A statement that failure to appear may result in: <ol style="list-style-type: none"> (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. 2. Child in Need of Protection or Services Matters. In addition to the content requirements set forth above in section 1(a), in any child in need of protection or services matter the summons shall also contain or have attached a statement pursuant to RJPP 18.01 that: <ol style="list-style-type: none"> (a) if the person summoned fails to appear, the court may conduct the hearing in the person’s absence; and (b) 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. 	

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<p>21.09 Summons – Required Content (continued)</p> <p>3. Termination of Parental Rights Matters. In addition to the content requirements set forth above in section 1(a), in any termination of parental rights matter the summons shall also contain or have attached a statement pursuant to RJPP 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 parent’s rights.</p> <p>4. Permanent Placement Matters. In addition to the content requirements set forth above in section 1(a), in any permanent placement matter the summons shall also contain or have attached a statement pursuant to RJPP 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.</p> <p><i>Comment: The Summons and Notice of Hearing forms located on CourtNet that comply with the Rules and statutes.</i></p> <p>F. TIMING OF SERVICE OF SUMMONS AND PETITION.</p> <p>1. Generally. The summons and petition shall be served either at or before the emergency protective care hearing held pursuant to RJPP 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 personally served, mailed, 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.</p> <p>2. 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 petition 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 § 260C.307, subd. 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.</p>	<ul style="list-style-type: none"> • RJPP 32.02, subd. 4(c) • Minn. Stat. § 260C.151, subd. 1 (content of summons; summons shall have petition attached) • RJPP 32.02, subd. 4(3) • Minn. Stat. § 260C.151, subd. 1, (content of summons; summons shall have petition attached) <p>RJPP 32.02, subd. 5(a)</p> <ul style="list-style-type: none"> • RJPP 32.02, subd. 5(b) • Minn. Stat. § 260C.307, subd. 3

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	<p>21.09 Summons – Required Content (continued)</p> <p>G. WAIVER. Service is waived by voluntary appearance in court or by a written waiver of service filed with the court.</p> <p>H. 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 RJPP 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.</p>	<p>RJPP 32.02, subd. 6</p> <p>RJPP 32.02, subd. 7</p>
21.10	<p>NOTICE OF EMERGENCY PROTECTIVE CARE OR ADMIT/DENY HEARING</p> <p>A. 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.</p> <p>B. UPON WHOM.</p> <ol style="list-style-type: none"> 1. Emergency Protective Care Hearing. If the initial hearing is an Emergency Protective Care Hearing (see Chapter 8), written notice is not required to be served. Instead, the court administrator, or designee, shall use whatever method is available to inform all parties and participants identified by the petitioner, and their attorneys, of the date, time, and location of the hearing. 2. Admit/Deny Hearing. If the initial hearing is an Admit/Deny Hearing (see Chapter 9), the court administrator shall serve a summons and petition upon all parties identified in RJPP 21, and a notice and petition upon all participants identified in RJPP 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. <p>C. CONTENT. A notice shall contain or have attached:</p> <ol style="list-style-type: none"> 1. 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; 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 RJPP 61; 5. A statement explaining intervention as of right and permissive intervention pursuant to RJPP 23; 	<p>RJPP 32.03, subd. 1</p> <p>RJPP 32.03, subd. 2(a)</p> <p>RJPP 32.03, subd. 2(b)</p> <p>RJPP 32.03, subd. 3</p>

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	<p>21.10 Notice of Emergency Protective Care or Admit/Deny Hearing (continued)</p> <p>6. A statement pursuant to RJPP 18.01 that failure to appear may result in:</p> <ol style="list-style-type: none"> The child being removed from home pursuant to a child in need of protection or services petition; The parent's parental rights being permanently severed pursuant to a termination of parental rights petition; Permanent transfer of the child's legal and physical custody to a relative; A finding that the statutory grounds set forth in the petition have been proved; and An order granting the relief requested; and <p>7. A statement that it is the responsibility of the individual to notify the court administrator of any change of address.</p> <p>D. SERVICE BY MAIL OR DELIVERY AT HEARING. Notice shall be served by U.S. Mail or may be delivered at a hearing. The court may order service of notice to be by personal service.</p>	RJPP 32.03, subd. 4
21.11	<p>NOTICE OF SUBSEQUENT HEARINGS</p> <p>For each hearing following the Emergency Protective Care or Admit/Deny Hearing, the court administrator shall serve upon each party, participant, and attorney a written notice of the date, time, and location of the next hearing. Such notice shall be:</p> <ol style="list-style-type: none"> Delivered at the close of each hearing; Mailed at least five (5) days before the date of the hearing, Mailed at least fifteen (15) days before the date of the hearing if mailed to an address outside the state. <p>If written notice is delivered at the end of the hearing, later written notice is not required so long as the notice complies with the content requirement stated in section 21.10(C), including the consequences of failure to appear.</p>	RJPP 32.04
21.12	<p>ORDERS ON THE RECORD</p> <p>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 RJPP 10.</p>	RJPP 32.05
21.13	<p>NOTICE WHEN CHILD IS AN INDIAN CHILD</p> <p>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 RJPP 23. Such notice shall be by registered 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</p>	<ul style="list-style-type: none"> • RJPP 32.06 • Minn. Stat. § 260C.152, subd. 3 • 25 USC § 1912(a)

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	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.	