

ALABAMA RULES OF JUVENILE PROCEDURE

Rule 13.

Issuance of notices and service of summons.

The following procedures shall apply for the issuance of notices and the service of summonses in delinquency, child-in-need-of-supervision, dependency, and termination-of-parental rights cases in juvenile courts:

(A) *Summons.* Service of summonses shall be pursuant to the Alabama Rules of Civil Procedure, except as hereinafter provided:

- (1) After a petition alleging that a child is delinquent, in need of supervision, or dependent, or after a termination-of-parental-rights petition has been filed, summonses shall be issued to and personally served by a process server pursuant to Rule 4(i)(1), Alabama Rules of Civil Procedure, upon each of the following persons: the parent or parents, legal guardian, or legal custodian, and other persons who appear to the juvenile court to be proper or necessary parties to the proceedings, requiring them to appear personally before the juvenile court at the time fixed to answer or testify as to the allegations of the petition. A child, if he or she is 12 or more years of age, shall be served with the summons directly by a process server and not by service upon any other person or by certified mail. Upon motion and for good cause shown, the court may direct that an adult be served by certified mail pursuant to Rule 4(i)(2), Alabama Rules of Civil Procedure. A copy of the petition shall be attached to each summons.
- (2) The hearing on the allegations of the petition shall be set by entry on a trial docket or by written order at least 14 days before the date set, except where a shorter period of time is agreed to by all the parties. The clerk shall forthwith and, in no event more than three days after a case has been placed on the trial docket, provide notice as required by section (C) of this rule.
- (3) There shall be no service by publication of any proceeding in the juvenile court except in proceedings to terminate parental rights pursuant to § 12-15-318, Ala. Code 1975, or to remove the disabilities of nonage pursuant to § 26-13-3, Ala. Code 1975.
- (4) The service of the summonses shall give the juvenile court jurisdiction over the persons served. Except with respect to required service upon a child, nothing in this rule is intended to prevent the court from proceeding when a person as to whom notice or service is otherwise required to be given or issued cannot be found.

- (5) An adult who is a party may waive service of the summons by written stipulation or by voluntary appearance at the hearing. A person who is summoned but who fails to appear, without reasonable cause for the failure to appear, may be proceeded against for indirect criminal contempt.
- (6) A party not served under this rule may, for good cause shown, petition the juvenile court in writing for a modification of any order or judgment of the juvenile court. The juvenile court may dismiss this petition if, after a preliminary investigation, the juvenile court finds that the petition is without substance. If the juvenile court finds that the petition should be reviewed, the juvenile court may conduct a hearing upon the issues raised by the petition and may make any orders authorized by law relative to the issues as it deems proper.

(B) *Notices of Detention Hearings, Shelter-Care Hearings, and 72-hour Hearings.* Oral or written notice of all detention hearings and shelter-care hearings in delinquency and child-in-need-of-supervision cases, stating the date, time, place, and purpose of the hearings and that the child, parent or parents, legal guardian, or legal custodian has the right to counsel, shall be given to the parent or parents, legal guardian, or legal custodian if he or she can be found and to the child if the child is over 12 years of age. Oral or written notice of the 72-hour hearing in dependency cases, stating the date, time, place, and purpose of the hearing and the right to counsel, shall be given to the parent or parents, legal guardian, or legal custodian if he or she can be found. Nothing in this rule is intended to prevent the court from proceeding when a person required to receive notice as prescribed herein cannot be found.

(C) *Notices of Other Hearings.* Except for detention, shelter-care, and 72-hour hearings, written notice of all hearings and hearings on the merits of the petition as otherwise provided in this rule shall be provided to all parties in the proceedings, and such notice shall include the date, time, place, and purpose of the hearings.

(D) *Notices to Foster Parents, Preadoptive Parents, and Relative Caregivers.* The juvenile court shall ensure that foster parents, preadoptive parents, and relative caregivers of a child in foster care under the responsibility of the State are notified, orally or in writing, of the date, time, and place of any juvenile court proceeding to be held with respect to a child in their care.

[Amended eff. 5-1-94; Amended eff. 6-22-2007; Amended eff. 2-1-2008; Amended eff. 1-9-2009; Amended 7-14-2011, eff. 10-1-2011; Amended 5-1-2014, eff. 7-1-2014; Amended 10-23-2020, eff. 2-1-2021.]

Comment

Notice by publication, when personal service cannot be effected, is not provided for in most juvenile cases. Effectiveness of this notice must be balanced against the necessity for immediacy of the hearing and the requirement of confidentiality of juvenile court proceedings. Rule 27 provides modification procedure when a party has not been served personally or by publication.

Rule 23(B) provides for a waiver of the right to notice of the hearing. See also § 12-15-53(e), Ala. Code 1975, providing for a waiver of service of summons.

[Comment amended eff. 5-1-94.]

Comment to Rule 13(E) Adopted effective June 22, 2007

Subsection (E) was added to comply with 42 U.S.C. § 629h(b)(1), which conditions funding for the Alabama Court Improvement Program grant for fiscal year 2007 on the requirement that the Supreme Court have in effect a rule requiring state courts to ensure that foster parents, pre-adoptive parents, and relative caregivers of a child in foster care under the responsibility of the State are notified of any proceeding to be held with respect to the child. The language in subsection (E) was taken verbatim from 42 U.S.C. § 629h(b)(1).

Comment to Amendment to Rule 13 Effective February 1, 2008

Rule 13 was amended to clarify when summons and notices of hearings should be provided in juvenile court proceedings.

The word "service" was added in place of "notice" in subsection (A)(2) to track the language in Rule 4.3, Ala. R. Civ. P. The first sentence in subsection (A)(4) was added to track the language in § 12-15-53(e), Ala. Code 1975, except that the statute exempts the child from this waiver provision; that exemption was not included in the amended rule. Also, the words "indirect criminal" were added before the word "contempt" to specify the type of contempt proceeding that may be brought for failing to have reasonable cause to appear as a result of a summons.

Subsection (B) in its entirety is new and tracks § 12-15-60(b), Ala. Code 1975.

Subsection (C) was added to ensure that written notice of all hearings

(not including detention and shelter-care hearings as provided in subsection (B) and hearings on the merits of the petition as provided in subsection (A)(1)) are provided to all parties in the proceedings.

A title was added to subsection (D), formerly subsection (E) (adopted effective June 22, 2007).

Comment to Amendment to Rule 13 Effective January 9, 2009

Subsection (A)(1) of this rule was amended to clarify that the clerk of the court shall ensure that summonses are issued in delinquency, dependency, and child-in-need-of-supervision cases to the parties listed requiring them to appear personally before the juvenile court at the time fixed to answer or to testify as to the allegations of the petition. This language is to be read together with Ala. Code 1975, § 12-15-122(a), which provides that "[a]fter a petition alleging delinquency, in need of supervision, or dependency has been filed, the juvenile court shall direct the issuance of summonses" It is the duty of the clerk of the court to issue summonses. See Rule 4.I.(C), Alabama Rules of Judicial Administration, and Ala. Code 1975, § 12-17-94(a)(1). In addition, the provision requiring that a summons be served at least 24 hours prior to the hearing was deleted.

Subsection (A)(4) was amended to clarify that an adult party may waive service of the summons to be consistent with Ala. Code 1975, § 12-15-122(d).

Subsection (B) was amended to provide that oral or written notice of all detention and shelter-care hearings in delinquency and in-need-of-supervision cases, stating the date, time, place, and purpose of the hearings and the right to counsel, shall be given by a juvenile probation officer to the parent, legal guardian, or legal custodian, if they can be found, and to the child if the child is over 12 years of age. This language was added to be consistent with Ala. Code 1975, § 12-15-207(b).

Language was also added to subsection (B) to provide that oral or written notice of the 72-hour hearing in dependency cases, stating the date, time, place, and purpose of the hearing and the right to counsel, shall be given to the parent, legal guardian, or legal custodian, if he or she can be found. This language was added to be consistent with Ala. Code 1975, § 12-15-308(b). Similar changes were made to subsection (C) to make that subsection consistent with subsection (B).

Subsection (D) was amended to provide that foster parents, preadoptive parents, and relative caregivers are to be given notice, orally or in writing, of the date, time, and place of any juvenile court proceeding being held with respect to a child in their care. This language was intended to be consistent with Ala. Code 1975, § 12-15-307, which is part of the Dependency and Termination of Parental

Rights Article of the Alabama Juvenile Justice Act of 2008. A "preadoptive parent" is a person who has been approved by an agency to adopt a child but has not been granted adoptive-parent status by court order.

Comment to Amendment to Rule 13
Effective October 1, 2011

Subsection (A)(5) contains the language from former Rule 27, which has been rescinded. For purposes of subsection (D), relative caregivers would not include kinship guardians defined in Ala. Code 1975, §§ 12-15-301(6) and 38-12-32(5), effective October 1, 2010. Because Rule 1(E) provides that, for purposes of these Rules, the term "legal guardian" also includes a "kinship guardian," a kinship guardian would receive notices of juvenile court proceedings as would a legal guardian. Other changes to this rule were technical.

Comment to Amendment to Rule 13
Effective July 1, 2014

Rule 13 was amended to make termination-of-parental rights cases subject to its provisions.

Subsection (A)(2) of Rule 13 was amended to acknowledge that service by publication is authorized in removal-of-disabilities-of-nonage cases as provided in Ala. Code 1975, § 26-13-3.

Subsections (A)(3) and (B) were amended to indicate that a court may proceed in the absence of notice to or service upon certain persons who cannot be found when doing so would otherwise be permitted by law; provided that these Rules are not to be understood as implying any effort to abrogate statutory or constitutional principles relating to in personam jurisdiction or due process. It is not the office of these Rules to govern the efficacy of orders or judgments as to parties over whom the juvenile court has not acquired jurisdiction.

Comment to Amendment to Rule 13
Effective February 1, 2021

Subsection (A)(1) was amended to require that, once issued, a summons in a delinquency, child-in-need-of-supervision, dependency, or termination-of-parental-rights proceeding be personally served (by a process server) upon the parent(s), legal guardian(s), or legal custodian(s), and other persons who appear to the juvenile court to be proper or necessary parties to the proceedings. For purposes of this rule, a child age 12 or older shall be served directly by a process server. Personal service upon persons on behalf of the child or service by certified mail is not authorized. Upon motion and good cause shown, a court may direct that an adult be served by certified mail.

The words "at the time fixed" in subsection (A)(1) raise an ambiguity whether the time fixed for the hearing to answer or testify as to the allegations of the petition shall be placed on the summons at the time of service of the summons or may be placed in a subsequently issued notice mailed to the recipient of the summons. The language of Rule 13(A)(1) tracks language found in § 12-15-122(a), Ala. Code 1975. Simultaneous with the adoption of this amendment, the summons form was amended to provide checkboxes for the date, time, and place for the hearing to answer or testify as to the allegations of the petition and for a statement that a notice of the date, time, and place of this hearing will be mailed once fixed at a later time.

A new subsection (2) was added to section (A) to provide that the hearing on the allegations of the petition shall be set by entry on a trial docket or by written order at least 14 days before the date set for trial except where a shorter time is agreed to by all of the parties. The clerk shall forthwith and, in no event more than three days after a case has been placed on the trial docket, notify all parties by providing notice as required by section (C) of this rule. This language is similar to language in Rule 40, Alabama Rules of Civil Procedure, for civil actions.

What was subsection (2) of section (A) was renumbered (3) and was amended to specify the Alabama Code sections providing for service in termination-of-parental-rights (§ 12-15-318, Ala. Code 1975) and removal-of-disabilities-of-nonage (§ 26-13-3, Ala. Code 1975) proceedings.

Subsections (3), (4), and (5) of section (A) were renumbered (4), (5), and (6), respectively.

Note from the reporter of decisions: The order amending effective June 22, 2007, Rule 1, Rule 20, and Rule 28(C), and adopting effective June 22, 2007, Rule 13(E); the Comment to Rule 13(E) Adopted Effective June 22, 2007; the Comment to Amendment of Rule 1 Effective June 22, 2007; the Comment to Amendment of Rule 20 Effective June 22, 2007; and the Comment to Amendment of Rule 28(C) Effective June 22, 2007, is published in that volume of *Alabama Reporter* that contains Alabama cases from 957 So.2d.

Note from the reporter of decisions: The order amending Rule 13, effective February 1, 2008, and adopting the Comment to Amendment to Rule 13 Effective February 1, 2008, is published in that volume of *Alabama Reporter* that contains Alabama cases from 972 So.2d.

Note from the reporter of decisions: The order amending effective January 9, 2009, Rule 1(A), Rule 8, Rule 13, Rule 20(A), Rule 24, Rule 28, and Rule 31, and adopting effective January 9, 2009, the Comment to Amendment to

Rule 1(A) Effective January 9, 2009; the Comment to Amendment to Rule 8 Effective January 9, 2009; the Comment to Rescission of Rule 11 Effective January 9, 2009; the Comment to Amendment to Rule 13 Effective January 9, 2009; the Comment to Rescission of Rule 16 Effective January 9, 2009; the Comment to Amendment to Rule 20(A) Effective January 9, 2009; the Comment to Amendment to Rule 24 Effective January 9, 2009; the Comment to Amendment to Rule 28 Effective January 9, 2009; the Comment to Amendment to Rule 31 Effective January 9, 2009; and the Comment to Rescission of Rule 32 Effective January 9, 2009, is published in that volume of *Alabama Reporter* that contains Alabama cases from 996 So. 2d.

Note from the reporter of decisions: The order amending effective October 1, 2011, Rule 1, Rule 2, Rule 3, Rule 5, Rule 6, Rule 8, Rule 9, Rule 12, Rule 13, Rule 14, Rule 15, Rule 15.1, Rule 17, Rule 18, Rule 20, Rule 23, Rule 24, Rule 25, Rule 26, Rule 28, and Rule 31 and adopting effective October 1, 2011, Rule 8.1 and the Comment to Amendment to Rule 1 Effective October 1, 2011; the Comment to Amendment to Rule 2 Effective October 1, 2011; the Comment to Amendment to Rule 3 Effective October 1, 2011; the Comment to Amendment to Rule 5 Effective October 1, 2011; the Comment to Amendment to Rule 6 Effective October 1, 2011; the Comment to Amendment to Rule 8 Effective October 1, 2011; the Comment to Adoption of Rule 8.1 Effective October 1, 2011; the Comment to Amendment to Rule 9 Effective October 1, 2011; the Comment to Amendment to Rule 12 Effective October 1, 2011; the Comment to Amendment to Rule 13 Effective October 1, 2011; the Comment to Amendment to Rule 14 Effective October 1, 2011; the Comment to Amendment to Rule 15 Effective October 1, 2011; the Comment to Amendment to Rule 15.1 Effective October 1, 2011; the Comment to Amendment to Rule 17 Effective October 1, 2011; the Comment to Amendment to Rule 18 Effective October 1, 2011; the Comment to Amendment to Rule 20 Effective October 1, 2011; the Comment to Amendment to Rule 23 Effective October 1, 2011; the Comment to Amendment to Rule 24 Effective October 1, 2011; the Comment to Amendment to Rule 25 Effective October 1, 2011; the Comment to Amendment to Rule 26 Effective October 1, 2011; the Comment to Amendment to Rule 28 Effective October 1, 2011; and the Comment to Amendment to Rule 31 Effective October 1, 2011, is published in that volume of *Alabama Reporter* that contains Alabama cases from 63 So. 3d.

Note from the reporter of decisions: The order amending Rule 1, Rule 2, Rule 3, Rule 5, Rule 5.1, Rule 6, Rule 8, Rule 8.1, Rule 12, Rule 13, Rule 14, Rule 15, Rule 18, Rule 20, Rule 24, Rule 26, Rule 28, and Rule 31 effective July 1, 2014, is published in that volume of *Alabama Reporter* that contains Alabama cases from 135 So. 3d.

Note from the reporter of decisions: The order amending Rule 13 and adopting the Comment thereto, effective February 1, 2021, is published in that volume of **Alabama Reporter** that contains Alabama cases from ___ So. 3d.

