

IN THE SUPREME COURT OF ALABAMA
October 23, 2020

ORDER

IT IS ORDERED that Rule 13, Alabama Rules of Juvenile Procedure, be amended to read in accordance with Appendix A to this order;

IT IS FURTHER ORDERED that the Comment to the amendment to Rule 13 be adopted to read in accordance with Appendix B to this order;

IT IS FURTHER ORDERED that the amendment of Rule 13 and the adoption of the Comment are effective February 1, 2021; and

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to the follow Rule 13:

"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."

Parker, C.J., and Bolin, Shaw, Wise, Bryan, Sellers, Mendheim, Stewart, and Mitchell, JJ., concur.

Witness my hand this 23rd day of October, 2020.



Clerk, Supreme Court of Alabama

FILED
October 23, 2020
2:47 pm
Clerk
Supreme Court of Alabama

APPENDIX A

RULE 13. ISSUANCE OF NOTICES AND SERVICE OF SUMMONSES

The following procedures shall apply to 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.

APPENDIX B

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.