

## Service

Summons shall be served pursuant to Civil Rules 4(A), (C), and (D), 4.1-4.3, 4.5, and 4.6. The summons shall direct the party served to appear at a stated time and place. Where service is by certified mail, the time shall not be less than seven days after the date of mailing (O.R.J.P. 16(A)).

When the residence of a party is unknown and cannot be ascertained by reasonable diligence, service must be made by publication (O.R.J.P. 16(A)). Before service by publication is made, an affidavit of a party or party's counsel must be filed with the court and the affidavit must state that service of summons cannot be made because the residence of the person is unknown to the affiant and cannot be ascertained with reasonable diligence and shall settle for the last known address of the party to be served (O.R.J.P. 16(A)). Service by publication upon a non-custodial parent is not required in delinquent child or unruly cases when the person alleged to have legal custody of the child has been served with summons pursuant to O.R.J.P. 16, but the court may not enter any order or judgment against any person who has not been served with process or served by publication unless that person appears (O.R.J.P. 16(A)).

Service by publication shall be made by newspaper publication, by posting and mail, or by a combination of these (O.R.J.P. 16(A)). The court shall determine which methods should be used by local rule (O.R.J.P. 16(A)). If service by publication is made by newspaper publication, upon the filing of the affidavit, the clerk shall serve notice by publication in a newspaper of general circulation in the county in which the complaint is filed, and if no newspaper is published in the county, then publication shall be in a newspaper published in an adjoining county (O.R.J.P. 16(A)). The publication shall contain the name and address of the court, the case number, the name of the first party on each side, and the name and last known address, if any, of the person or persons whose residence is unknown (O.R.J.P. 16(A)). The publication shall also contain a summary statement of the object of the complaint and shall notify the person to be served that the person is required to appear at the time and place stated (O.R.J.P. 16(A)). The time stated shall not be less than seven days after the date of publication (O.R.J.P. 16(A)). The publication shall be published once and service shall be complete on the date of publication (O.R.J.P. 16(A)).

After the publication, the publisher or the publisher's agent shall file with the court an affidavit showing the fact of publication together with a copy of the notice of publication (O.R.J.P. 16(A)). The affidavit and copy of the notice shall constitute proof of service (O.R.J.P. 16(A)).

If service by publication is made by posting and mail, upon the filing of the affidavit the clerk shall cause service of notice to be made by posting in a conspicuous place in the courthouse in which the division of the common pleas court exercising jurisdiction over the complaint is located and in additional public places in the county that have been designated by local rule for the posting of notices pursuant to Rule 16(A) of the O.R.J.P. (O.R.J.P. 16(A)). The number of additional public places to be designated shall be either two places or the number of state representative districts that are contained wholly or partly in the county in which the courthouse is located, whichever is greater (O.R.J.P. 16(A)). The notice shall contain the same information required in a newspaper publication (O.R.J.P. 16(A)). The notice shall be posted in the required locations for seven consecutive days (O.R.J.P.

16(A)). The clerk also shall cause the summons and accompanying pleadings to be mailed by ordinary mail, address correction requested, to the last known address of the party to be served (O.R.J.P. 16(A)). The clerk shall obtain a certificate of mailing from the United States Postal Service (O.R.J.P. 16(A)). If the clerk is notified of a corrected or forwarding address of the party to be served within the seven day period that notice is posted pursuant to O.R.J.P. 16, the clerk shall cause the summons and accompanying pleadings to be mailed to the corrected or forwarding address (O.R.J.P. 16(A)). The clerk shall note the name, address, and date of each mailing in the docket (O.R.J.P. 16(A)).

After the seven days of posting, the clerk shall note on the docket where and when notice was posted (O.R.J.P. 16(A)). Service shall be complete upon the entry of posting (O.R.J.P. 16(A)).

### ***Summons and warrants***

After a complaint is filed, the court shall issue a summons directed to the child, the child's parents, guardian, or custodian, and any other necessary parties, and the summons must require the parties to appear in court at a fixed time to answer the complaint (O.R.J.P.

15(A)). If the summons is issued for a child who is under fourteen years of age and is alleged to be delinquent, unruly, or a juvenile traffic offender, it shall be served upon the child's parents, guardian, custodian or other person with whom the child lives (O.R.J.P. 15(A)). If the child lives with someone other than the child's parent or guardian, then the parents or guardian should be summoned (O.R.J.P. 15(A)). A copy of the complaint must accompany the summons (O.R.J.P. 15(A)). If the child is alleged to be abused, neglected, or dependent, the child should not be summoned unless the court directs otherwise (O.R.J.P. 15(A)).

O.R.J.P. 15(B) requires that the summons contain the following:

1. The name of the party or person with whom the child may be or, if unknown, any name or description by which the person or party can be identified with reasonable certainty.
2. A summary statement of the complaint and in juvenile traffic offense and delinquency proceedings, the numerical designation of the applicable statute or ordinance.
3. A statement that any party is entitled to representation and that if any party is indigent, that party may request a court appointed attorney pursuant to O.R.J.P. 4(A).
4. An order to the party or person to appear at a stated place and time with warning that if the party or person fails to appear, that party may lose valuable rights or be subject to court sanctions.
5. An order to the parent, guardian, or other person having care of a child alleged to be an unruly or delinquent child for being an habitual or chronic truant, to appear personally at the hearing and all proceedings, and an order directing the person having physical custody or control of the child to bring the child to the hearing, with warning that if the child does not appear, the parent, guardian or person caring for the child may be subject to court sanctions, including contempt.
6. A statement that if a child is found to be abused, neglected, or dependent and the complaint seeks an order of permanent custody, an order of permanent custody would cause the parents, guardian, or custodian to be divested of all parental rights and privileges permanently.

7. A statement that if the child is adjudicated abused, neglected, or dependent and the complaint seeks an order of temporary custody, an order of temporary custody will cause the removal of the child from the legal custody of the parents, guardian, or other custodian until the court terminates the order of temporary custody or permanently divests the parents of their parental rights.
8. A statement that if the child is adjudicated abused, neglected, or dependent and the complaint seeks an order for a planned permanent living arrangement, an order for a planned permanent living arrangement will cause the removal of the child from the legal custody of the parent, guardian or other custodian.
9. A statement, in a removal action, of the specific disposition sought.
10. The name and telephone number of the court employee designated by the court to arrange for the prompt appointment of counsel for indigent persons.

The court may endorse upon the summons an order directed to parents, guardian or other person with the child to appear before the court personally and to bring the child with them to hearing (O.R.J.P. 15(C)).

If it appears that the summons will be ineffective or the welfare of the child requires that the child be brought to the court, a warrant may be issued against the child accompanied by a copy of the complaint (O.R.J.P. 15(D)). The warrant must contain the name of the child or, if unknown, a description of the child by which the child can be identified with reasonable certainty, a summary statement of the complaint or numerical designation of the applicable statute or ordinance (in juvenile traffic offense and delinquency proceedings) (O.R.J.P. 15(E)). Furthermore, a copy of the complaint must be attached to the warrant and the warrant must command that the child be taken into custody and brought before the court without unnecessary delay (O.R.J.P. 15(E)).

When a summons, warrant, citation or subpoena is issued to any officer, including sheriff of any county or any marshal, constable, or police officer, the expense in serving the same shall be paid by the county, township, or municipal corporation in the manner prescribed for the payment of sheriffs, deputies, assistants, and other employees (O.R.C. § 2151.19).

### ***Subpoenas***

Form and issuance of subpoenas are governed by Rule 17 of the O.R.J.P., which requires that every subpoena:

1. State the name of the court from which it is issued, the title of the action, and the case number;
2. Command each person to whom it is directed, at a time and place specified in the subpoena, to do one or more of the following:
  - a. Attend and give testimony at a trial, hearing, proceeding, or deposition;
  - b. Produce documents or tangible things at a trial, hearing, proceeding or deposition;
  - c. Produce and permit inspection and copying of any designated documents that are in the possession, custody, or control of the person;
  - d. Produce and permit inspection and copying, testing, or sampling of any tangible things that are in the possession, custody, or control of the person.
3. Set forth the text of division (D) and (E) of Rule 17 of the O.R.J.P. (discussed below).

A command to produce and permit inspection may be joined with a command to attend and give testimony, or may be issued separately (O.R.J.P. 17(A)(1)(c)).

The clerk shall issue a subpoena, signed but otherwise in blank, to a party requesting it, who shall complete it before service (O.R.J.P. 17(A)(2)). An attorney who has filed an appearance on behalf of a party in an action also may sign and issue a subpoena on behalf of the court in which the action is pending (O.R.J.P. 17(A)(2)). If the issuing attorney modifies the subpoena in any way, the issuing attorney shall give prompt notice of the modifications to all other parties (O.R.J.P. 17(A)(3)).

The court shall order at any time that a subpoena be issued for service on a named witness upon an ex parte application of a party and upon a satisfactory showing that the presence of the witness is necessary and that the party is financially unable to pay the witness fees (O.R.J.P. 17(B)). If the court orders the subpoena to be issued, the costs incurred by the process and the fees of the witness so subpoenaed shall be paid in the same manner that similar costs and fees are paid in case of a witness subpoenaed in behalf of the state in a criminal prosecution (O.R.J.P. 17(B)).

A subpoena may be served by a sheriff, bailiff, coroner, clerk of court, constable, probation officer, or a deputy of any [of the aforementioned], by an attorney or the attorney's agent, or by any person designated by order of the court who is not a party and is not less than eighteen years of age (O.R.J.P. 17(C)). Service of a subpoena upon a person named in the subpoena shall be made by delivering a copy of the subpoena to the person, by reading it to him or her in person, or by leaving it at the person's usual place of residence, and by tendering to the person upon demand the fees for one day's attendance and mileage allowed by law (O.R.J.P. 17(C)). The person serving the subpoena shall file a return of the subpoena with the clerk (O.R.J.P. 17(C)). If the witness being subpoenaed resides outside the county in which the court is located, the fees for one day's attendance and mileage shall be tendered without demand (O.R.J.P. 17(C)). The return may be forwarded through the postal service or otherwise (O.R.J.P. 17(C)).

A party or attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena (O.R.J.P. 17(D)(1)).

A person who is commanded to produce documents or other things is not required to appear in person at the place of production or inspection unless that person is commanded to attend and give testimony at a trial, hearing, proceeding, or deposition (O.R.J.P.

17(D)(2)(a)). A person commanded to produce under O.R.J.P. 17 may serve upon the party or attorney designated in the subpoena written objections to production. The objections must be served within fourteen days after service. If objection is made, the party serving the subpoena shall not be entitled to production except pursuant to an order of the court that issued the subpoena. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce, may move at any time for an order to compel the production. An order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the production commanded.

On timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does any of the following:

1. fails to allow reasonable time to comply;
2. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies;
3. requires disclosure of a fact known or opinion held by an expert not retained or specially employed by any party in anticipation of litigation or preparation for trial if the fact or opinion does not describe specific events or occurrences in dispute and results from study by that expert that was not made at the request of any party;
4. subjects a person to undue burden.

If a person who is requested to produce documents or other tangible things is subjected to undue burden, that person may file a motion, but that person must have attempted to resolve any claim of undue burden through discussions with the issuing attorney first, and the motion must be supported by an affidavit of the subpoenaed person or certificate of the subpoenaed person's attorney that efforts were made to resolve the claim of undue burden (O.R.J.P. 17(D)(4)). If a motion is made under (c) or (d) above, the court shall quash or modify the subpoena unless the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated (O.R.J.P. 17(D)(5)).

A person responding to a subpoena to produce documents shall, at the person's option, produce the documents as they are kept in the usual course of business or organized and labeled to correspond with the categories in the subpoena (O.R.J.P. 17(E)(1)). A person producing documents pursuant to a subpoena for them shall permit their inspection and copying by all parties present at the time and place set in the subpoena for inspection and copying (O.R.J.P. 17(E)(1)).

When information subject to a subpoena is withheld on a claim that is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim (O.R.J.P. 17(E)(2)).

Failure by any person without adequate excuse to obey a subpoena served upon that person may be in contempt of the court from which the subpoena issued (O.R.J.P. 17(F)). A subpoenaed person or that person's attorney who frivolously resists discovery under Rule 17 of O.R.J.P. may be required by the court to pay the reasonable expenses, including reasonable attorney's fees, of the party seeking the discovery (O.R.J.P. 17(F)). The court from which the subpoena was issued may impose upon a party or attorney in breach of the duty imposed by O.R.J.P. 17(D)(1) an appropriate sanction that may include, but is not limited to, lost earnings and reasonable attorney's fees.

All issues concerning subpoenas shall be resolved prior to the time otherwise set for hearing or trial (O.R.J.P. 17(H)).