

6.4 Summons

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6.4 Summons

A. Issuance of Summons

Upon the filing of a delinquency petition, the clerk of superior court must issue a summons to the juvenile and to the juvenile's parent, guardian, or custodian requiring them to appear for a hearing at a stated place and time. G.S. 7B-1805(a). A copy of the juvenile petition must be attached to each summons. *Id.* Counsel should review the juvenile court file to ensure that the summons contains the correct information, that it was properly issued, and that the "Return of Service" reflects proper and timely service on both the juvenile and the juvenile's parents, particularly if the juvenile or parent is not present.

Issuance and service of a summons involve the court's personal jurisdiction over the juvenile. *In re K.J.L.*, 363 N.C. 343, 347 (2009). Errors on the face of a summons or in the service of a summons "are examples of insufficiency of process and insufficiency of service of process," which can be waived by the juvenile. *In re J.T.*, 363 N.C. 1, 4 (2009); *see also In re D.S.B.*, 179 N.C. App. 577, 579 (2006) (juvenile could not challenge summons on appeal because juvenile, through counsel, made general appearance in the case and never objected to the summons). If there is a defect in the summons or in the service of the summons, counsel should consider asserting that the court lacks personal jurisdiction over the juvenile. A challenge to the court's personal jurisdiction must be made in the first motion or pleading that counsel files or during the first appearance in court. *Swenson v. Thibaut*, 39 N.C. App. 77, 89 (1978). If counsel files a pleading or makes an appearance in court without contesting the court's personal jurisdiction over the juvenile, the juvenile will be deemed to have made a general appearance, which waives any objection to the lack of personal jurisdiction. *Id.* However, if counsel includes a challenge to the court's personal jurisdiction in the first pleading or asserts the lack of personal jurisdiction before raising any other argument during the first appearance, the issue of personal jurisdiction will be preserved. *Draughon v. Harnett County Bd. of Educ.*, 166 N.C. App. 449, 452 (2004). As courts are "very liberal" in construing statements of counsel as a general appearance, *In re Hodge*, 153 N.C. App. 102, 106 (2002), the better practice is to file a written motion asserting the lack of personal jurisdiction over the juvenile. *Hall v. Hall*, 65 N.C. App. 797, 799 (1984) (defendant's initial action was filing motion to dismiss for lack of personal jurisdiction; nothing else appearing, subsequent general appearance would not have waived right to challenge personal jurisdiction).

B. Requirements for Summons

A summons must be printed on the form prepared by the Administrative Office of the Courts. G.S. 7B-1805(b); *see* [Form AOC-J-340](#) (Juvenile Summons and Notice of Hearing (undisciplined/delinquent)) (May 2014). Pursuant to G.S. 7B-1805(b)(1)–(5), the juvenile summons must include notice of the following:

- nature of the proceeding and the purpose of the scheduled hearing;
- right to counsel and information on how to have counsel appointed before the hearing;
- that if the court finds at the hearing that the allegations are true, the court will hold a dispositional hearing with the authority to enter orders affecting substantial rights of the juvenile and the juvenile’s parent, guardian, or custodian;
- that the parent, guardian, or custodian is required to attend scheduled hearings and that failure to attend without reasonable cause may result in proceedings for contempt of court; and
- that the parent, guardian, or custodian must bring the juvenile to court for all scheduled hearings and that failure to do so without reasonable cause may result in proceedings for contempt of court.

The summons must also notify the juvenile and the juvenile’s parent, guardian, or custodian that dispositional orders affecting substantial rights may include those that affect the juvenile’s custody; impose conditions on the juvenile; require that the juvenile receive medical, psychiatric, psychological, or other treatment and that the parent participate in the treatment; require the parent to undergo psychiatric, psychological, or other treatment or counseling; order the parent to pay for treatment that is ordered for the juvenile or the parent; order the parent to pay support for the juvenile for any period the juvenile does not reside with the parent; and order the parent to pay attorney’s fees or other fees or expenses as determined by the court. G.S. 7B-1805(b)(3)a.–f.

Counsel should check the summons to make sure that the statutory information is included and the appropriate boxes on the form have been checked. If the summons is not in proper form, counsel should consider filing a motion to dismiss based on lack of personal jurisdiction over the juvenile.

C. Service

The juvenile and the parent, guardian, or custodian must be personally served with the summons and petition not less than five days before the date of a scheduled hearing. G.S. 7B-1806. The court has discretion to waive the time requirements for service; however, the statute provides no criteria for exercising that discretion. *Id.* A law enforcement officer is responsible for service of the summons and petition. G.S. 15A-301(c). If the officer fails to serve the summons and petition, the officer must return them to the clerk within 30 days with a reason for the failure of service. G.S. 7B-1806, G.S. 15A-301(d)(2). If the officer cannot find the parent, guardian, or custodian through diligent effort, the court may authorize service of the summons by mail or publication.

G.S. 7B-1806. The court may also issue a show cause order to a parent, guardian, or custodian who is personally served, but fails without reasonable cause to appear and bring the juvenile to the scheduled hearing. *Id.*

Counsel should examine the court file to determine whether the summons was properly served. If there was a defect in the service of the summons, counsel should consider filing a motion to dismiss based on the lack of personal jurisdiction over the juvenile.