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**IN THE DISTRICT COURT OF** **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ COUNTY, KANSAS**

**IN THE INTEREST OF:**

**Name** **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Case No.** **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Year of Birth \_\_\_\_\_\_\_\_\_\_\_\_ A □** **male** **□ female**

**SUMMONS**

Pursuant to K.S.A. 38-2236

You are hereby notified that a petition has been filed in this court alleging that the child named above is a Child in Need of Care, a copy of which is attached. A hearing on the petition has been scheduled as shown below.

The parent(s), and any other person having legal custody, are required to appear before this court on the date and time as shown below, or prior to that time file written response to the petition with the Clerk of the District Court. Failure to respond or to appear before the court at the time shown will not prevent the court from entering judgment as requested in the petition, finding that the child is a Child in Need of Care, and removing the child from the custody of parent, parents or any other present legal custodian until further order of the court. If, after the child has been adjudged to be a Child in Need of Care, the court finds a parent or parents unfit, the court may make an order permanently terminating the parents’ parental rights.

An attorney has been appointed as guardian *ad litem* for the child. Each parent, legal custodian, foster parent, relative and interested party has the right to appear before the court and be heard personally, either with or without an attorney. The Court will appoint an attorney for any parent who desires an attorney but is financially unable to hire one. The Court may order one or both parents to pay child support.

Date and time of hearing: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_, at \_\_\_\_\_\_\_\_ □ a.m. □ p.m.

Place of hearing: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Summons dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Clerk/Judge of the District Court

Persons/addresses to be served:

Mother: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Father: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Guardian *ad litem*: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Person with whom child residing, if other than parent: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Other: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Service by first class mail to:

Maternal grandparents: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Paternal grandparents: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**REPORT OF PERSONAL SERVICE**

I certify that a true and correct copy of the Summons, with a copy of the petition attached, was served on the following persons in the manner and on the dates indicated below:

Name Date/Time Location of service Manner

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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A statement subject to penalty of perjury.

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature

Authority

K.S.A. 38-2236.

Notes on Use

K.S.A. 38-2236 provides that the court shall issue a summons setting the petition for hearing within 30 days of filing. If the child was taken into protective custody pursuant to K.S.A. 38-2242, the petition shall be served at the temporary custody hearing required by 38-2243, and record of service made a part of the proceedings. K.S.A. 38-2235.

K.S.A. 38-2236 requires that the summons and copy of the petition be served on the guardian *ad litem*, the parents or parent having legal custody or who may be ordered to pay child support, the person with whom the child is residing, and any other person designated by the county/district attorney. A copy of the petition and summons shall be mailed to the child’s grandparents, if the child does not reside with them.

K.S.A. 38-2237 provides that the summons may be served by personal and residential service, in compliance with K.S.A. 60-303, and on individuals outside of the state in compliance with K.S.A. 60-308. Service may be made by first class mail, and is complete upon the person’s appearing in response thereto, which may render service by first class mail too inefficient to use. If the person fails to appear, process shall be served by personal service, residential service, certified mail service or publication service. Service by return receipt delivery is complete in accordance with K.S.A. 60-303(c). Service by publication may be employed if service cannot be completed by any other method, after due diligence has been exerted. The petitioner shall file an affidavit and request approval of service by publication, Form 259.

If a parent is incarcerated or confined to a state or federal hospital or other institution, service shall be made to both the confined parent and the person in charge of the institution, by return receipt delivery to addressee only. It shall be the duty of the person in charge of the institution to confer with the parent, if the parent’s mental condition is such that a conference will serve any useful purpose, and to advise the court in writing as to the wishes of the parent with regard to the child. Personal service on an incarcerated or confined parent who is present in the courtroom cures any defect in notice to the person in charge of the institution. K.S.A. 38-2237.

Every officer to whom the summons is delivered for service shall make written report of the place, manner and date of service. If, by order of the court, process is served by a person other than an officer the same report of service shall be made by affidavit. The clerk or deputy clerk shall make written report of service by mail. Service by publication shall be reported by affidavit, with a copy of the published notice attached to the affidavit. K.S.A. 38-2238.

Comments

An incapacitated parent is entitled to service on the guardian/conservator in severance proceedings. *In re Baby Boy Bryant*, 9 Kan. App. 2d 768, 689 P.2d 1203 (1984).

This case includes a good discussion of due diligence. *In re L.S.*, 14 Kan. App. 2d 261, 788 P.2d 875 (1990).

The statute does not provide for service on counsel of record in lieu of parent. *In re H.C.*, 23 Kan. App. 2d 955, 939 P.2d 937 (1997).

Short notice provided by publication service does not prejudice the parent’s rights, under the facts of this case. This case provides a helpful discussion of due diligence. *In re J.H.*, 25 Kan. App. 2d 372, 962 P.2d 1127 (1998).