GENERAL LEGAL ISSUES

Service

Service in dependency proceedings.

- **Notice to parents of shelter hearings**. Notice to parents must be that which "best ensures their actual knowledge of the date, time and location of the hearing." §§ 39.402(5), 39.502(1). Where the identity or location of the parents/legal custodians is unknown or they evade service, and they are not present at the hearing, the person who attempted to provide notice shall advise the court, either in person or by sworn affidavit, of his/her attempts to provide proper notice. § 39.402(5).
- **For all other dependency proceedings**. The summons and a copy of the petition shall be served on all "parties," other than petitioner, at least 72 hours before the hearing. The parties include:
  - child;
  - child's legal parent(s);
  - DCF, if not the petitioner;
  - guardian ad litem, if one is appointed.
    See §§ 39.502, 39.01(51)(defines "parties"), 39.01(50)(defines "participants"); *see also* § 61.518 (notice required before child custody decisions are made).
- **For initial hearings**. The clerk or deputy clerk issues a summons once a legally sufficient petition is filed and petitioner requests it.
  - **For subsequent hearings**. It is the duty of the petitioner or moving party to notify all parties and participants. § 39.502(3), (6).
- **Upon first appearance before the court**. Each party must provide the court with a permanent mailing address. The court must advise each party that this address will be the one used by the court and the petitioner for notice purposes unless and until it is notified otherwise. § 39.0131.
  - Service to permanent mailing address is presumed to be appropriate service. Rule 8.224(c).
  - Service by publication is not required for dependency hearings.
  - Personal appearance in a hearing before the court eliminates the need to serve formal process on that person. § 39.502(2).
- **Unknown identity or location.** When the parent's identity is unknown or the parent's location is unknown and there is no permanent mailing address on file with the court, the petitioner must conduct a "diligent search and inquiry." § 39.502(8); Rule 8.225(b)
  - Petitioner must then file a sworn affidavit of diligent search and inquiry with the court. § 39.502(8); Rule 8.225(b).
  - Court must conduct a detailed inquiry, pursuant to § 39.503. If the inquiry or search reveals the identity or location of a prospective parent, the court shall require notice of the hearing to that individual, as well as give him/her an opportunity to become a party, by filing a sworn affidavit of parenthood with the court. § 39.503(8).

- Court may appoint a guardian ad litem for the child. § 39.502(8).
- Validity of proceeding - Once the court finds "diligent search and inquiry" is completed, the order adjudicating the child dependent remains valid. § 39.502(8), (10).
- Continuing duty to search - Petitioner must continue to search for the parent and advise the court of its progress at every subsequent hearing, until the court excuses it from further search. § 39.502(9).

➢ **For persons outside Florida**. Service of the summons and other process must be given in a manner "reasonably calculated to give actual notice" and may be accomplished:
- by personal delivery, as prescribed by Florida law;
- in a manner prescribed by the laws of the state in which service is being made;
- by mail, return receipt requested;
- by the manner directed by the court. Rule 8.225(a)(4); § 39.502(7).

➢ **Summons for arraignment**. The summons for arraignment must include language contained in § 39.506(3). Once a person has been properly served with such notice, his or her failure to appear constitutes his/her consent to the court's adjudication of the child as dependent.

Service in termination of parental rights proceedings.

➢ Notice of the date, time, and place of the advisory hearing for the petition to terminate parental rights, along with a copy of the petition, must be personally served on the following:
- child's parents;
- child's legal custodians or caregivers;
- if the parents who would be entitled to notice are dead or unknown, a living relative of the child, unless upon diligent search and inquiry, no such relative can be found;
- any person who has physical custody of the child;
- any grandparent entitled to notice under § 63.0425;
- any prospective parent identified under the search and inquiry process identified in § 39.503 or § 39.803;
- guardian ad litem for the child, if one was appointed. § 39.801(3); Rule 8.505.

➢ When a party cannot be personally served or a parent's location is unknown, despite a "diligent search," service by publication is required. §§ 39.801(3(b), 49.011(13); Rule 8.225(a)(3)(A), 8.505(c).
- The first date of publication of the notice of hearing to terminate parental rights must be at least 28 days before the hearing. The last date of

Often one of the challenges with service by publication is determining what location to publish: the location where the trial will be held or the parent's last known location. Judges may wish to consult Mullane v. Central Hanover Bank Trust Co., 399 U.S. 306, 314 (1950), which held: An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objectives. *See also* Rule 8.225(a)(4)(A) (requiring service on parents outside the state be in a manner reasonably calculated to give actual notice).

publication must be 20 days before the hearing. Rule 8.225(4)(b). In the Interest of D.P., 595 So. 2d 62 (Fla. 1st DCA 1992).

- Personal appearance in a hearing before the court eliminates the need to serve formal process on that person. Rule 8.225(a)(4)(D).
- The court may waive service to persons who have executed a proper written surrender of the child to DCF or a licensed child-placing agency. § 39.801(3)(c); Rule 8.505(d).

➢ When the parent's identity is unknown or the parent's location is unknown, petitioner must conduct a "diligent search and inquiry." Rule 8.225(b); § 39.803.

- Petitioner must then file a sworn affidavit of diligent search and inquiry with the court. Rule 8.225(b).
- Court must conduct a detailed inquiry, pursuant to § 39.803. If the inquiry or search reveals the identity or location of a prospective parent, the court shall require notice of the hearing to that individual, as well as an opportunity to become a party, by filing a sworn affidavit of parenthood with the court. § 39.803(8).
- Continuing duty to search - Petitioner must continue to search for the parent and advise the court of its progress at every subsequent hearing, until the court excuses it from further search. Rule 8.225(b)(4).

Summons for advisory hearing must include language contained in § 39.801(3). Once a parent has been properly served with such notice, the parent's failure to appear constitutes his/her consent to the court terminating his/her parental rights to the child. If the parent appears at advisory hearing but does not personally appear at adjudicatory hearing, despite the court's order that he/she do so, the parent's failure to appear constitutes his/her consent to court terminating his/her parental rights.