

Personal Jurisdiction and Service of Process in Abuse, Neglect, and Dependency and TPR Proceedings

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Importance of Careful Notice and Service in Juvenile Proceedings

- Chapter 7B contains specific notice and service requirements for both A/N/D and TPR that can be more complicated and specific than Rule 4;
- The requirements differ between the two types of proceedings, creating opportunities for confusion;
- The differences are not always intuitive or based on a due-process rationale, creating opportunities for error; and
- Careful attention to requirements will prevent challenges that could delay proceedings.

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Service of Process: The Basics

Challenges to Service of Process:

- Service of Process errors create challenges both to:
 - process under Rule 12 (b)(4) and (5); and
 - personal jurisdiction under Rule 12(b)(2)
- While personal jurisdiction and process are separate due process issues, often they are treated the same when service is challenged.

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Service of Process: The Basics

Challenges to Service of Process:

• Limits:

- **Waiver:** Service challenges must be made by motion before trial court or in responsive pleading or amendment, or they are waived.
 - Rule 12(h)(1) (quoted in *In Re C.T.*, 643 S.E.2d 23 (N.C. App. 2007))
- **Standing:** The challenger must have standing to make the argument.
 - Appeal by parent-respondent concerning service upon the juvenile probably will not succeed because the due process concern is the juvenile's, not the parent's. *In Re J.A.P. and I.M.P.*, No. COA07-1562 (April 2008); *In Re J.B.*, 616 S.E.2d 264, 269 (2005).

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Service of Process: The Basics

• How to determine the relevant service requirements:

- Look to Chapter 7B first
 - A/N/D proceedings: § 7B-407
 - TPR proceedings: 7B-1102(b) (if by motion); 7B-1106 (if by petition)
- These provisions specify whether service must be:
 - Pursuant to Rule 4 (or specific parts of it);
 - Pursuant to Rule 5; or
 - By another (more limited) method.

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NOTICE AND SERVICE IN ADVANCED TPR PROCEEDINGS		APPLICABLE RULES	
Provision	Notice	Termination of Parental Rights	
		Waiver (Rule 4, Rule 5, Rule 6)	Retention (Rule 4, Rule 5, Rule 6)
Standard 200A	ADVANCEMENT Not a standard proceeding upon filing See the relevant provisions of the Rules of Civil Procedure	RULE 4 (or 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 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1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067,	ADVANCEMENT Not a standard proceeding upon filing See the relevant provisions of the Rules of Civil Procedure
Standard 200B	ADVANCEMENT Not a standard proceeding upon filing See the relevant provisions of the Rules of Civil Procedure	RULE 4 (or 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 18	

Abuse, Neglect, and Dependency Petitions

Type of Notice Required:

- Summons
 - Form AOC-J-142 - Includes both the summons and the relevant notice of hearing on petition
 - Must be issued “immediately after” petition filed (no 5-day cushion as in Rule 4). See § 7B-406(a).
 - Summons served *with* petition (Form AOC-J-130), Affidavit as to Status of Minor Child (Form AOC-CV-609), and any Order for Nonsecure Custody (AOC-J-150).

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Abuse, Neglect, and Dependency Petitions

To Whom Issued and Served:

- “Parent, guardian, custodian, or caretaker”
 - No requirement of issuance to or formal service upon juvenile, unlike in TPR actions
 - See § 7B-406(a)

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Abuse, Neglect, and Dependency Petitions

Methods of Service (§ 7B-407):

- Default: Per N.C. R. Civ. P. 4(j).

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Abuse, Neglect, and Dependency Petitions

- Rule 4(j) allows service by:
 - Personal delivery or delivery to “dwelling house or usual place of abode with some person of suitable age and discretion then residing therein”; or
 - Delivery via registered or certified mail; or
 - Delivery via U.S. Mail signature confirmation; or
 - Delivery via express delivery service (Fed Ex, UPS, DHL); or
 - If person is under a disability (minor or incapacitated), by one of the methods listed above plus the additional requirements of 4(j)(2).

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Abuse, Neglect, and Dependency Petitions

Methods of Service (con'd)

- Per Rule 4(j1)–Publication:
 - The court may authorize service by publication *only* if recipient cannot be found “by a diligent effort”



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Abuse, Neglect, and Dependency Petitions

- To satisfy the court as to a “diligent effort,” DSS may have to show that it:

- Contacted known family and friends for possible whereabouts
- Searched various records databases:
 - Ex. samples: White Pages; Internet sites; Utility companies; USPS; NC Department of Corrections, Fed. Bureau of Prisons, and local jails; Clerk of Superior Court; ESC; Social Security Administration; DMV; Medicaid offices; County Board of Elections; Register of Deeds offices; tax offices; National Sex Offender Registry (www.nsopr.gov)
 - See also “Checklist for Diligent Searches” by Chuck Frye of Davidson County DSS (included in packet)



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Abuse, Neglect, and Dependency Petitions

Timing of Service:

- Summons must be served not less than five days prior to hearing
 - Court has discretion to shorten notice period
 - See § 7B-407



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Abuse, Neglect, and Dependency Petitions

Other notice-related requirements:

- § 7B-402(c)
 - Copies of the petition must also be prepared to be “available” to the guardian ad litem, social worker, “and any person determined by the court to be a necessary party.”
- § 7B-408
 - Immediately upon filing, the clerk must provide a copy of the petition and notices of hearing to local guardian ad litem office.

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TPR Proceedings

Notice and service requirements:

- Depend on whether action is brought by petition or motion:
 - If no A/N/D action is pending, TPR proceeding is an original action and must be brought by petition.
 - If A/N/D action is pending, action can be brought by motion in the pending case.
 - Can also be brought by petition, and court may consolidate A/N/D and TPR actions. See § 7B-1102.

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TPR Proceedings: **By Motion**

Type of Notice Required:

- Notice per § 7B-1106.1 (No summons.)
 - Specific content requirements:
 - Name of juvenile
 - Notice of 30-day response requirement
 - Notice regarding continuation of prior-appointed counsel
 - Notice of indigent parents' right to appointed counsel
 - Notice regarding setting of hearing date
 - Notice of purpose and right to attend
 - Form AOC-J-210, "Notice of Motion Seeking Termination of Parental Rights" (includes content requirements listed above)

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TPR Proceedings: **By Motion**

To Whom Notice Directed and Served:

- Parents
- Guardian of the Person
- Custodian (judicially appointed)
- Juvenile's guardian ad litem (if appointed in A/N/D proceeding and not relieved)
- The juvenile, if 12 or older at time of motion



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TPR Proceedings: **By Motion**

Methods of Service (§ 7B-1102):

- **Default:** Per N.C. Rule of Civ. P. 5(b).
- Rule 5(b) is a relaxed service requirement, allowing service by:
 - Mailing a copy to the party at the party's last known address; or, if address is unknown, filing it with the clerk; or
 - Delivering a copy to the party by:
 - Handing it to the party or her attorney;
 - Leaving it at attorney's office with partner or employee; or
 - Sending it to the attorney's office by confirmed fax transmission

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TPR Proceedings: By Motion

Methods of Service (con'd):

- However, Rule 4 service is required if:
 - The person to be served was not originally served with summons in A/N/D action [Note: The Juvenile!];
 - The person to be served was served originally by publication that did not have adequate notice of potential for termination (§ 7B-406(b)(4)e);
 - Two years has elapsed since the date of the original action; or
 - The Court so orders.
- § 7B-1102(b)(1)-(2).

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TPR Proceedings: By Petition

Type of Notice Required:

- Summons
 - Issued “upon the filing of the petition.” Assume no 5-day cushion as in Rule 4. See § 7B-1106(a).
 - Form AOC-J-208
 - Revised 4/08. (Do not use version prior to 5/07 -- contains error as to service of juvenile.)

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TPR Proceedings: By Petition

To Whom Issued (“Directed”) and Served:

- Parents
- Guardian of the Person
- Custodian (Judicially appointed)
- The juvenile
 - Any age

See § 7B-1106.



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TPR Proceedings: By Petition

Methods of Service (§ 7B-1106(a)):

- Per Rule 4(j).
- Exception: If juvenile has been appointed a g.a.l., the juvenile's summons and copy of petition must be served upon the g.a.l. rather than per Rule 4(j).
- Note also that minor parents are not to be treated as under a "disability" for purposes of 4(j)(2).

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TPR Proceedings: By Petition

Serving Unknown Parent

- 7B-1105:
 - Preliminary hearing required
 - If identity determined at hearing, that parent must be summoned according to 7B-1106
 - If identity not determined at hearing, court shall order proper newspaper publication of notice in locations most likely to reach the parent

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HANDOUT EXERCISE 1: TERRENCE

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HANDOUT EXERCISE 2:
PATRICIA

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International Service

Rule 4(j) applies. Three basic methods:

- “Internationally agreed means” of service
 - Typically Hague or Inter-American Convention
- If no such means exists, parties may effect service:
 - In a manner prescribed by foreign law;
 - In a manner directed by foreign authority in response to a letter rogatory; or
 - By form of mail requiring signed receipt, if foreign law allows.
- By other method ordered by the court, if not in violation of international agreement

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International Service

- For guidance as to Hague Convention, see W. Mark C. Weidemaier, “International Service of Process Under the Hague Convention,” Administration of Justice Bulletin No. 2004/07, UNC School of Government.
 - Included in materials

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Serving Military Personnel

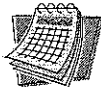


- General rules apply (Rule 4), but can become complicated depending on level of cooperation from military bases and whether the recipient is overseas.
- For guidance, see W. Mark C. Weidemaier, "Service of Process and the Military," Administration of Justice Bulletin No. 2004/08, UNC School of Government.
 - Included in materials

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Keeping a Summons Alive

Key Deadlines:



- **60 days:** Time allowed for service after issuance of summons
- **90 days:** Time allowed from date of issuance in which to get extension of time to serve summons

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Keeping a Summons Alive

60-day Rule:

- RULE 4(C):
"Personal service or substituted personal service of summons as prescribed by Rule 4(j)(1) a and b, must be made within 60 days after the issuance of the summons. ..."
- If service cannot be made by the 60th day, the summons cannot be served thereafter in its original form, and must then be extended.
 - The summons is just "dormant", not yet invalid.

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Keeping a Summons Alive

Extension of summons:

- If service cannot be accomplished within time allowed, petitioner has up to 90 days from issuance to get an extension of the summons. Rule 4(d).
- Petitioner may obtain repeated extensions if service cannot be accomplished within time allowed. Serial extensions are permitted as long as each extension is obtained within 90-day timeframe.

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Keeping a Summons Alive

Extension of summons (con'd):

- 2 Methods (interchangeable):
 - Endorsement by clerk
 - Usually a notation on original summons
 - Note: Juvenile summons forms were revised 4/08 to include endorsement blocks, so this method is more convenient than it was before.
 - Alias and pluries summons
 - Issued by clerk; must reference date of original summons
 - A "check box" at top of summons form

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Keeping a Summons Alive

Extension of summons (con'd):

If no extension is secured within 90-day time limit:

- Action DISCONTINUED as to defendant not served;
- A new alias and pluries or endorsement can issue, "but, as to such defendant, the action shall be deemed to have commenced on the date of such issuance or endorsement." Rule 4(e).
- So, the passage of time between initial commencement and the new commencement date may compromise the evidentiary basis for the A/N/D or TPR petition as to that person.

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HANDOUT EXERCISE 3:
MARY & CARLOS

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HANDOUT EXERCISE 4:
KAREN & PAUL

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