

Notice and Service 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 simple human error; and
- Recent Court of Appeals opinions have established that process errors (even though harmless in terms of *actual* impact) could create a major jurisdictional pitfall.

Jurisdictional Issues

- Subject matter jurisdiction:

In Re C.T. and R.S., 643 S.E.2d 23 (N.C. App. 2007)

- Issue: Mother appealed termination arguing (for first time on appeal) that trial court had no subject matter jurisdiction over the case because summons was not issued (“directed”) to juvenile (no actual confusion or prejudice or lack of notice was alleged).
- Holding: Failure to have a summons issued to the juvenile under §7B-1106 equals lack of subject matter jurisdiction of the court over the petition with respect to that juvenile.
- Result: Order terminating rights VACATED.

Jurisdictional Issues

- Subject matter jurisdiction (con'd):
 - Holding has been reiterated by Court of Appeals in *In Re K.A.D.*, 653 S.E.2d 427 (N.C. App. 2007) and most recently in *In Re I.D.G.*, COA07-1107 (Feb. 5, 2008).
 - In both cases, the objection to failure to issue summons to the juvenile was raised for the first time on appeal, and in both cases the Court vacated the termination order against the respondent-appellant parent.

Jurisdictional Issues

- Personal jurisdiction:
 - Challenges to personal jurisdiction based on improper or insufficient service of summons or notice are far less likely to succeed when first made on appeal.
 - 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. and R.S.*)
 - Standing: Arguments on appeal by parent-respondents that service was improper upon *the juvenile* probably will not succeed because the parent does not have standing as to that issue. See *In Re J.B.*, 616 S.E.2d 264, 269 (2005).
 - When these challenges are timely and successful, however, they can significantly delay a proceeding (and sometimes derail it if the problem is significant).

NOTICE AND SERVICE IN A/N/D AND TPR PROCEEDINGS

UNC School of Government
Feb. 2008

	<u>Abuse, Neglect, Dependency</u>	<u>Termination of Parental Rights</u>	
	Petition	Motion (where A/N/D pending)	Petition
<u>Required Notice</u>	SUMMONS Rule 4, issued immediately upon filing. <u>See</u> Form AOC-J-142	NOTICE per 7B-1106.1 (no summons required)	SUMMONS Rule 4, issued immediately upon filing. <u>See</u> Form AOC-J-208 (5/07 revision or later)
<u>To Whom</u> (if not a movant or petitioner)	Summons Issued to and Served <i>with Petition</i> upon: "Parent, guardian, custodian, or caretaker" Not less than five days prior to hearing. (Court may waive this time requirement in its discretion.) <u>See</u> 7B-406 and 7B-407.	Notice Directed to and Served <i>with Motion</i> upon: 1. Parents 2. Guardian of the Person 3. Custodian 4. DSS or other agency w/ placement authority 5. G.A.L. if appointed per 7B-601 and not relieved 6. Juvenile, if 12 years or older at time motion filed	Summons Issued to and Served <i>with Petition</i> upon: 1. Parents 2. Guardian of the Person 3. Custodian 4. DSS or other agency w/ placement authority 5. The juvenile (of any age) <u>See</u> 7B-1106. <u>See also</u> 7B-1105 for service upon unknown parent.
<u>Method of Service</u>	Per Rule 4(j). Rule 4(j1) service (publication) may be used if person "cannot be found by a diligent effort" <u>See</u> 7B-407. <div style="border: 1px solid black; padding: 5px; font-size: small;">*Although only the "parent, guardian, custodian, or caretaker" is issued a summons and formally served, copies of the petition must be prepared to be "available" to each parent, guardian and item, social worker, or other necessary party. <u>See</u> 7B-402(c). Also, the clerk of court must provide a copy of the petition and notices to the local G.A.L. office. <u>See</u> 7B-408.</div>	Per Rule 5(b). But per Rule 4 if the recipient: 1. Not originally served the A/N/D summons [Note: The juvenile is likely to fall into this category]; 2. Originally was served by publication that did not include notice in conformity with 7B-406(b)(4); 3. Two years has elapsed since date the original A/N/D action filed; or 4. The Court so orders. <u>See</u> 7B-1102(b).	Per Rule 4(j).** Exception: If a juvenile has been appointed a G.A.L., the juvenile's summons and copy of the petition must be served upon the G.A.L. rather than per Rule 4(j). <u>See</u> 7B-1106(a). **Note that minor parents are not to be treated as under a "disability" per the meaning of 4(j)(2).

Abuse, Neglect, and Dependency Petitions

Type of Notice Required:

- Summons
 - General provisions of Rule 4 apply
 - Note: Issued “immediately after” petition filed (no 5-day cushion as in Rule 4). See § 7B-406(a).
- Form AOC-J-142
 - Includes both the summons and the relevant notice of hearing on petition

Abuse, Neglect, and Dependency Petitions

To Whom Issued and Served:

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

Abuse, Neglect, and Dependency Petitions

Method of Service:

- Per Rule 4(j). See § 7B-407.
 - Includes personal and confirmed delivery service
- Summons served *with* petition (Form AOC-J-130), Affidavit as to Status of Minor Child (Form AOC-CV-609), etc.
- Served not less than five days prior to hearing
 - Court has discretion to shorten notice period



Abuse, Neglect, and Dependency Petitions

Method of Service (con'd)

- Service by publication:
 - If recipient cannot be found “by diligent effort”, the court MAY authorize service per 4(j1)
 - “Diligent efforts” may require:
 - Contacting known family and friends
 - Searching records databases:
 - Examples: 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; Social Security, Medicaid, County Board of Elections, Register of Deeds offices, tax offices; National Sex Offender Registry (www.nsopr.gov)



Abuse, Neglect, and Dependency Petitions

Other 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.

TPR Proceedings

- Notice and Service requirements differ depending on whether the TPR proceeding is brought by petition or by 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. § 7B-1102.

TPR Proceedings: By Motion

Type of Notice Required:

- Notice per § 7B-1106.1 (No summons.)
 - Specific content requirements are set forth in (b):
 - 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
 - This content appears in text of Form AOC-J-210, “Notice of Motion Seeking Termination of Parental Rights”

TPR Proceedings: By Motion

To Whom Notice Directed and Served:

- Parents
- Guardian of the Person
- Custodian (judicially appointed)
- DSS or other agency with placement authority
- 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*



TPR Proceedings: By Motion

Method of Service:

- Per N.C. Rule of Civ. P. 5(b). See § 7B-1102.
- 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

TPR Proceedings: By Motion

Method 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).

TPR Proceedings: By Petition

Type of Notice Required:

- Summons
 - General provisions of Rule 4 apply
 - Note: Issued “upon the filing of the petition”
Assume no 5-day rule as in Rule 4. See § 7B-1106(a).
- Form AOC-J-208
 - Use only the 5/07 revision (or later)! Includes “check box” for juvenile.

TPR Proceedings: By Petition

To Whom Issued (“Directed”) and Served:

- Parents
- Guardian of the Person
- Custodian (Judicially appointed)
- DSS or other agency with placement authority
- The juvenile
 - *Any age*



See § 7B-1106.

TPR Proceedings: By Petition

Method of Service:

- Per Rule 4(j). See § 7B-1106(a).
- 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).

HANDOUT EXERCISE 1: TERRENCE

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HANDOUT EXERCISE 2: PATRICIA

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

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.

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.

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 do not have endorsement block that appears on general civil summons, so this method is less convenient in juvenile cases.
 - Alias and pluries summons
 - Issued by clerk; must reference date of original summons
 - Usually a “check box” on summons form
 - Most common form of extension

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.

HANDOUT EXERCISE 3: MARY & CARLOS

HANDOUT EXERCISE 4:
KAREN & PAUL