

**Notice and Service in A/N/D and TPR Proceedings:
CASE SCENARIOS**

EXERCISE 1: CHALLENGING JURISDICTION

Terrence

(a) Terrence is a ten-year-old respondent juvenile in a TPR proceeding brought by the county (by petition). DSS has custody of Terrence and has placed him with his grandmother. A summons is issued to Terrence and Terrence's parents. Terrence is served via Rule 4(j)(2) by delivery of the summons to Terrence and his grandmother at her home.

Neither Terrence's guardian ad litem nor any other person objects to service throughout the proceeding. An order is issued terminating parental rights.

Terrence's mother appeals, stating that the lower court was without subject matter jurisdiction. Her attorney argues that the summons was not properly served upon Terrence.

Was the summons properly served upon Terrence?

How would the Court of Appeals rule on the issue of subject matter jurisdiction?

(b) Assume DSS initiated the TPR matter by motion rather than petition.

What would the requirements have been service upon:

- **Terrence?**
- **His guardian ad litem?**
- **His parents?**
- **His grandmother?**

Would DSS be allowed to bring the TPR action by motion (rather than petition) if:

- **Terrence were age 12 or older?**
- **The abuse and neglect petition had been filed more than 2 years prior?**

EXERCISE 2: SERVICE

Patricia

- (a) Patricia has two children. Jessica is age 4 and Jonah is age 14. An abuse and neglect petition is pending in district court with respect to both children, and Patricia is represented by counsel. Both children were assigned guardians ad litem.

One year into the abuse and neglect matter, DSS files a motion pursuant to 7B-1102 to terminate parental rights over both children. The motion and notice are served upon Patricia by delivery to her lawyer. The motion and notice are directed to and served upon Jonah by service to his guardian ad litem. No one objects to process or service throughout the proceeding.

The TPR proceeding results in an order terminating parental rights over both Jessica and Jonah.

Patricia appeals. Her attorney argues that there was no subject matter jurisdiction of the court over the TPR action as to Jonah (age 14) because DSS served only a notice to him rather than having a summons issued.

Does this argument succeed?

- (b) Patricia's attorney also argues that there was no personal jurisdiction over James in the TPR action because the notice to him was served only upon his guardian ad litem and not upon him personally?

How would the Court of Appeals address this argument?

- (c) Patricia's attorney also contends that there was no subject matter jurisdiction over Jessica (age 4) in the TPR action because no notice was directed to or served upon her.

Is her attorney correct?

What if no notice had been served upon Jonah?

(d) Assume the TPR motion was filed two years and one month after the A/N petition was filed. On appeal, Patricia's attorney argues that service of the TPR motion and notice upon her (via her lawyer) was improper, and thus the termination order should be vacated.

Was service proper? How should the Court of Appeals rule?

EXAMPLES 3 & 4: EXTENSIONS! RULES 4(d), (e)

Example 3: Mary and Carlos

- (a) DSS files TPR petition and has a summons issued to respondent parent, Mary, a North Carolina resident, on June 1. Summons is delivered to sheriff for service.

On August 2 (62 days later), the original summons is not yet served on Mary after two attempts. Service by mail is also not successful.

On August 3 (day 63), DSS attorney goes to clerk's office for an endorsement. On her way, her office calls to tell her that the sheriff has just returned the (original) summons served upon Mary personally and executed on August 1 (day 61).

Should DSS attorney still seek endorsement upon the original summons?

- (b) DSS attorney decides to obtain endorsement on Mary's original summons and delivers it to sheriff for service on day 63. By day 123, Mary has not yet been served with the extended summons. DSS attorney obtains alias and pluries summons on day 124. Mary is served alias and pluries summons four days later by the sheriff's office.

Mary challenges service, stating that the alias and pluries summons on day 124 was invalid because it followed a prior endorsement rather than a prior alias and pluries.

Should Mary's argument succeed?

- (c) The other respondent parent, Carlos, lives in Venezuela. A summons was also issued to Carlos on June 1 at the time of the filing of the petition. DSS attorney has been attempting personal service pursuant to Hague and Inter-American Convention service protocols. By October 1, four months later, no service has been made upon Carlos.

Has DSS attorney's time to obtain extension of original summons upon Carlos passed?

Example 4: Karen and Paul

- (a) TPR petition is filed April 1 and summonses are issued to respondent parents, Karen and Paul, who live separately.

Paul is served April 8 by certified mail.

On July 3, DSS receives certified mail receipt showing Karen received the summons on July 2 (day 92).

Has service been obtained on Karen by certified mail?

- (b) On July 5 (day 95), DSS attorney obtains issuance of alias and pluries summons on Karen. Service is completed ten days later, on July 15.

Karen's attorney argues to the district court judge that the action against Karen was effectively dismissed under Rule 41 upon failure to serve or obtain extension within 90 days. (Thus DSS must refile action against Karen.)

How would (should) the court rule?

- (c) Karen's attorney argues that the action against Karen did not commence until July 15 (date of service of alias and pluries).

Should this argument succeed?

What is the date of commencement of the action against Karen?

What about Paul? How might the difference impact the presentation of the case?