Rules for the Care and Protection of Children: Rule 5. Process

A. Summons to parent/guardian; service of process by publication

1. Care and protection cases

After the filing of the care and protection petition, the petitioner shall cause a summons or order of notice and a copy of the petition to be served by a court officer, constable, deputy sheriff, sheriff, police officer, or other person approved by the court on each of the parents of the child, the legal guardian, if any, the legal custodian, if any, and the Department, if the legal custodian. The summons or order of notice shall be on a form approved by the Chief Justice of the Juvenile Court and shall be served on each of the above in the following manner:

(a) If the place of residence or whereabouts of the persons above is known, service shall be accomplished by delivery in hand. Service shall be accomplished on the Department by delivering the summons or order of notice to the appropriate Office of the Regional Counsel.

(b) Personal service may be accomplished the first time the matter comes before the judge or at the temporary custody hearing on persons above, if present, and upon a representative of the Department.

(c) If the Department is not the legal custodian, the petitioner shall provide notice to the Department of the filing of the petition by certified or registered mail, return receipt requested, to the appropriate Office of Regional Counsel, attention to the Regional Counsel.

(d) If the place of residence or whereabouts of persons above, except the parent(s), is known but the petitioner has been unable to accomplish in-hand service despite diligent efforts to do so, on the petitioner's written motion for alternate manner of service setting forth the diligent efforts made to accomplish in-hand service, the court may order that service be accomplished by certified or registered mail, return receipt requested, to the last known place of residence, the mailing to be at least twenty-one days before the date of the pretrial conference, unless the court otherwise orders.

(e) If the place of residence or whereabouts of a parent is known but the petitioner has been unable to accomplish in-hand service despite diligent efforts to do so, or the place of residence or whereabouts of a parent cannot be found after diligent efforts, on the petitioner's written motion for alternate manner of service setting forth the diligent efforts made to accomplish in-hand service or ascertain the place of residence or whereabouts,

the court may order that service be accomplished on that parent, either within or outside of the Commonwealth, by:

(i) certified or registered mail, return receipt requested, to the last known place of residence of the parent, the mailing to be at least twenty-one days before the date of the pretrial conference, unless the court otherwise orders, and

(ii) publication in accordance with subsection (g), below.

(f) If the identity of a parent is not known, service shall be accomplished on that parent by publication in accordance with subsection (g), below.

(g) Whenever service by publication is required in a care and protection case, the court shall, upon motion of the petitioner, other party, or sua sponte, issue an Order for Service by Publication. With leave of court, the petitioner shall cause notice to be served upon such parent by: (i) publication once a week for 3 consecutive weeks in any newspaper as the court may order; (ii) publication on a website designed for such purpose for 3 consecutive weeks; or (iii) electronic means reasonably calculated to reach the parent as determined by the court. For purposes of this section, electronic means includes, but is not limited to, email or text message. Whenever the court orders service by publication the court shall also require the petitioner to file a Military Affidavit on a form approved by the Chief Justice of the Juvenile Court as to the parent to be served by publication.

(h) If, after the petitioner has perfected service of process in accordance with this rule, no parent has appeared or can be found, and the legal guardian, if any, has not appeared and the legal custodian, if any, has not appeared, a summons shall be issued to the person with whom such child last resided, if known.

2. Guardianship of a minor cases

Except as provided for in subsection (i), after the filing of a guardianship petition, the petitioner shall cause notice and a copy of the petition to be served by a court officer, constable, deputy sheriff, sheriff, police officer, or other person approved by the court on the person(s) set forth in **G. L. c. 190B, § 5-206**. The notice shall be on a form approved by the Chief Justice of the Juvenile Court and shall be served with a copy of the petition in the following manner:

(a) If the place of residence or whereabouts of persons entitled to notice pursuant to **G. L. 190B, § 5-206** is known, service shall be accomplished by delivery in hand on the:

(i) parent(s);

(ii) child if age fourteen or older and not the petitioner;

(iii) person given care or custody of the child by court order and with whom the child has resided within sixty days prior to the filing of the petition, excluding foster parent(s);

(iv) current guardian or conservator for the child; and

(v) the Department, if the legal custodian. In-hand service shall be accomplished on the Department by delivering the notice to the appropriate Office of the Regional Counsel.

(b) Personal service may be accomplished on person(s) entitled to in-hand service pursuant to paragraph (a), if present, and upon a representative of the Department, if the legal custodian, when the matter comes before the judge.

(c) Service shall be accomplished on all others entitled to notice pursuant to **G. L. c. 190B, §5-206** by certified or registered mail, return receipt requested, to the last known place of residence or whereabouts, if known. Service shall be accomplished on the Department, if not the legal custodian, by certified or registered mail, return receipt requested, to the appropriate Office of Regional Counsel, attention to the Regional Counsel.

(d) If the place of residence or whereabouts of a person, except the parents, entitled to in-hand service pursuant to paragraph (a) is known but the petitioner has been unable to accomplish in-hand service despite diligent efforts to do so, on the petitioner's written motion for alternate manner of service setting forth the diligent efforts made to accomplish in-hand service, the court may order that service be accomplished by certified or registered mail, return receipt requested, to the last known place of residence, the mailing to be at least fourteen days before the petition for guardianship is heard, unless the court otherwise orders.

(e) If the place of residence or whereabouts of a parent is known but the petitioner has been unable to accomplish in-hand service despite diligent efforts to do so or the place of residence or whereabouts of a parent cannot be found after diligent efforts, on the petitioner's written motion for alternate manner of service setting forth the diligent efforts made to accomplish in-hand service or ascertain the place of residence or whereabouts, the court may order that service be accomplished on that parent, either within or outside of the Commonwealth, by:

(i) certified or registered mail, return receipt requested, to the last known place of residence of the parent, the mailing to be at least fourteen days before the petition for guardianship is heard, unless the court otherwise orders, and

(ii) publication in accordance with subsection (g), below.

(f) If the identity of a parent is not known, service shall be accomplished on that parent by publication in accordance with subsection (g), below.

(g) Whenever service by publication is required in a guardianship case the court shall, upon motion of the petitioner, other party, or sua sponte, issue an Order for Service by Publication. The petitioner shall cause notice to be published in accordance with the order at least once in the newspaper or newspapers designated by the court, the publication to appear at least seven days before the petition for guardianship is heard, unless the court otherwise orders. Whenever the court orders service by publication the court shall also require the petitioner to file a Military Affidavit on a form approved by the Chief Justice of the Juvenile Court, as to the parent to be served by publication.

(h) If the minor is entitled to any benefit, estate, or income paid or payable through the United States Veterans. Administration or its successor, service shall be made on the Veterans Administration or its successor by certified or registered mail, return receipt requested, unless the court otherwise orders.

(i) No notice need be given in the following circumstances: (1) to a person entitled to notice under this rule who has assented in writing to the allowance of the petition if the assent is filed in court; (2) to a parent who executes an adoption surrender in conformance with **G. L. c. 210, § 2**; or (3) if the court has terminated parental rights pursuant to **G. L. c.119, § 26** or **c. 210, § 3**.

(j) A motion for the appointment of a temporary guardian may not be filed unless a guardianship petition has been filed. If service of the notice of the guardianship petition has not been made in accordance with this rule, a copy of the motion for the appointment of temporary guardian and written notice of its hearing shall be served with the notice of the guardianship petition, unless the court otherwise orders.

3. Parentage and child support cases

After the filing of a complaint for parentage or an order of child support, or both, the plaintiff shall cause notice and a copy of the complaint to be served by a court officer, constable, deputy sheriff, sheriff, police officer, or other person approved by the court on each of the parents of the child unless a parent has assented to the filing of the complaint, on the child, if the child is age fourteen years or older, on the Department, if the legal custodian, and on the person entitled to notice pursuant to **G.L. c. 209C, § 6**. After the filing of a complaint for parentage by a person who claims to be a de facto parent pursuant to G.L. c. 209C, § 25, the plaintiff shall cause notice and a copy of the complaint to be served by a court officer, constable, deputy sheriff, sheriff, police officer, or other person approved by the court on all parents, legal guardians and legal custodians of the child and

any other party to the proceeding. The notice shall be on a form approved by the Chief Justice of the Juvenile Court and shall be served with a copy of the complaint in the following manner:

(a) If the place of residence or whereabouts of a parent is known, service shall be accomplished on that parent by delivery in hand to the parent. If the child is age fourteen years or older, service shall be made in the same manner on the child. Service shall be accomplished on the Department by delivering the notice to the appropriate Office of the Regional Counsel, attention to the Regional Counsel.

(b) Personal service may be accomplished on the parent or child who is age fourteen years or older, if present, and on a representative of the Department, if the legal custodian, when the matter comes before the judge.

(c) If the Department is not the legal custodian of the child, the plaintiff shall provide notice to the Department of the filing of the complaint by certified or registered mail, return receipt requested, to the appropriate Office of Regional Counsel, attention to the Regional Counsel.

(d) If the place of residence or whereabouts of a parent is known but the plaintiff has been unable to accomplish in-hand service despite diligent efforts to do so or the place of residence or whereabouts of a parent cannot be found after diligent efforts, on the plaintiff's written motion for alternate manner of service setting forth the diligent efforts made to accomplish in-hand service or ascertain the place of residence or whereabouts, the court may order that service be accomplished on that parent, either within or outside of the Commonwealth, by:

> **(i)** certified or registered mail, return receipt requested, to the last known place of residence of the parent, the mailing to be at least fourteen days before the complaint for parentage or support is heard, unless the court otherwise orders, and
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> **(ii)** publication in accordance with subsection (e), below.

(e) Whenever service by publication is required in a parentage or child support case the court shall, upon motion of the plaintiff, other party, or sua sponte, issue an Order for Service by Publication. The plaintiff shall cause notice to be published in accordance with the order at least once in the newspaper or newspapers designated by the court, the publication to appear at least seven days before the complaint for parentage or support is heard, unless the court otherwise orders. Whenever the court orders service by publication the court shall also require the plaintiff to file a Military Affidavit on a form approved by the Chief Justice of the Juvenile Court as to the person to be served by publication.

4. Change of name cases

Except as provided in subsection (e), after the filing of a change of name petition, the petitioner shall serve notice on each of the parents of the child and upon the Department if the legal custodian or if there is a care and protection case pending, in accordance with an order of notice. An order of notice shall be on a form approved by the Chief Justice of the Juvenile Court and shall be served with a copy of the petition in the following manner:

(a) Service shall be accomplished by certified or registered mail, return receipt requested, on the parent to the last known place of residence of the parent and on the Department to the appropriate Office of the Regional Counsel, attention to the Regional Counsel, the mailing to be at least fourteen days before the petition for change of name is heard, unless the court otherwise orders.

(b) Service may be accomplished by a court officer on the parent, if present, and on a representative of the Department when the matter comes before the judge.

(c) If the place of residence or whereabouts of a parent is known but the petitioner has been unable to accomplish service by certified or registered mail despite diligent efforts to do so or if the place of residence or whereabouts of a parent cannot be found after diligent efforts, on the petitioner's written motion for alternate manner of service setting forth the diligent efforts made to accomplish service or ascertain the place of residence or whereabouts, the court may order that service be accomplished on that parent, either within or outside of the Commonwealth, by publication in accordance with subsection (d), below.

(d) Whenever service by publication is required in a change of name case the court shall, upon motion of the petitioner, or sua sponte, issue an Order for Service by Publication. The petitioner shall cause notice to be published in accordance with the order at least once in the newspaper or newspapers designated by the court, the publication to appear at least seven days before the petition is heard, unless the court otherwise orders. Whenever the court orders service by publication the court shall also require the petitioner to file a Military Affidavit on a form approved by the Chief Justice of the Juvenile Court, as to the parent to be served by publication.

(e) No notice need be given in the following circumstances: (1) to a person entitled to notice under this rule who has assented in writing to the allowance of the petition if the assent is filed in court; (2) to a parent who executes an adoption surrender in conformance with **G. L. c. 210, § 2**; or (3) if the court has terminated parental rights pursuant to **G. L. c. 210, § 3**.

B. Filing proof of publication

Following publication in accordance with the order, counsel for the petitioner or plaintiff shall promptly complete and file in the Clerk's office an Affidavit of Notice of Publication on a form approved by the Chief Justice of the Juvenile Court and shall file a completed Military Affidavit as to the person served by publication.

C. Joint publication

In a case involving two or more children who have the same parents, the petitioner or plaintiff may accomplish service by joint publication. In all other cases, there shall be a separate publication for each child who is a subject of a case.

D. Filing of return of service

The officer or other person making service in accordance with this rule shall make a return of service on a copy of the summons or order of notice that the petitioner or plaintiff shall promptly file with the court.

Note

See Trial Court Rules, Rule IV Uniform Rule Requiring Disclosure of Pending and Concluded Care or Custody Matters and Rule X Uniform Rule Requiring Disclosure of Present or Past Receipt of Public Assistance Benefits by Minor Children. Current Juvenile Court forms are available online on the Juvenile Court website.

Subsection A. Service on the Department. When providing service in hand or by certified or registered mail on the Department, the address to be used is that of the Office of the Regional Counsel for the region in which the case is filed.

Subsection A.3. See G.L. c. 209C, § 6, relative to persons who must be joined as a party and the manner of notice required.

Subsection A.4. Petitions for change of name pursuant to G. L. c. 210, § 12 are for name changes other than those that occur in the context of adoption cases or, in some instances, parentage cases. After the petition for change of name is allowed, the clerk may, upon request, issue a Certificate of Name Change. Allowance of the petition for change of name will not result in an amendment of the birth certificate. The birth name remains the same.