

**IN THE SUPREME COURT OF FLORIDA**

**IN RE: AMENDMENTS TO THE FLORIDA  
RULES OF JUVENILE PROCEDURE**

**CASE NO.: SC08-1612**

**RESPONSE TO COMMENTS OF THE  
DEPARTMENT OF CHILDREN AND FAMILIES**

David N. Silverstein, Chair, Juvenile Court Rules Committee, and John F. Harkness, Jr., Executive Director, The Florida Bar, file this response to comments filed by the Department of Children and Families in the above case. The comments were approved by the Committee on an email vote of 16-3-1, and approved by the Executive Committee of The Florida Bar Board of Governors by a vote of 9-0.

On August 26, 2008, the Committee filed with the Court a Fast-Track Report in Response to 2008 Legislative Changes proposing amendments to various rules and forms. On September 25, 2008, the Court issued an opinion approving the amendments. Because the proposals had not been published for comment in advance, the Court directed that they be published after approval. The amended rules and forms were noticed for comment in the October 15, 2008, Florida Bar *News*. One comment was filed, from the Department of Children and Families. The Committee was directed to respond to comments by December 15, 2008. However, the Committee filed a motion for extension on December 15, 2008, and was granted an extension until December 31, 2008.

The Committee does not object to the department's suggestion to indicate in the Court's opinion or add language to *Fla. R. Juv. P. 8.225* providing that the required notice shall not be construed to require that any

foster parent, preadoptive parent, or relative caretaker be made a party to the proceedings solely on the basis of such notice and the right to be heard. The Committee also does not have an objection to the Court specifying that the definition of the term “relative caretaker” should be consistent with federal law. The Committee is proposing additional amendments to *Rule 8.225(c)(3)* to incorporate these suggestions. *See* page 5.

The Committee does not agree with the department’s proposed change to the 72-hour requirement for notice to all foster or preadoptive parents of all proceedings or hearings in *Rule 8.225(c)(3)*. The Committee believes the intent of the legislature in amending section 39.502(17), Florida Statutes, is clear and should be followed. However, the Committee agrees with the department that there will be situations in practice, such as emergency hearings, when 72 hours notice may be impossible. Accordingly, the Committee proposes an additional amendment to *Rule 8.225*.

The amended rule is attached in the full page and two-column formats.

The Committee respectfully requests that the Court amend *Fla. R. Juv. P. 8.225* as shown on the attachments.

Respectfully submitted \_\_\_\_\_.

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CERTIFICATE OF SERVICE

I certify that a copy of this document was provided by U.S. Mail on  
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**RULE 8.225. PROCESS, DILIGENT SEARCHES, AND SERVICE OF PLEADINGS AND PAPERS**

**(a) Summons and Subpoenas.**

**(1) Summons.** Upon the filing of a dependency petition, the clerk shall issue a summons. The summons shall require the person on whom it is served to appear for a hearing at a time and place specified not less than 72 hours after service of the summons. A copy of the petition shall be attached to the summons.

**(2) Subpoenas.** Subpoenas for testimony before the court, for production of tangible evidence, and for taking depositions shall be issued by the clerk of the court, the court on its own motion, or any attorney of record for a party. Subpoenas may be served within the state by any person over 18 years of age who is not a party to the proceeding. In dependency and termination of parental rights proceedings, subpoenas may also be served by authorized agents of the department or the guardian ad litem. Except as otherwise required by this rule, the procedure for issuance of a subpoena by an attorney of record in a proceeding shall be as provided in the Florida Rules of Civil Procedure.

**(3) Service of Summons and Other Process to Persons Residing in the State.** The summons and other process shall be served upon all parties other than the petitioner as required by law. The summons and other process may be served by authorized agents of the department or the guardian ad litem.

**(A)** Service by publication shall not be required for dependency hearings and shall be required only for service of summons in a termination of parental rights proceeding for parents whose identities are known but whose whereabouts cannot be determined despite a diligent search. Service by publication in these circumstances shall be considered valid service.

**(B)** The failure to serve a party or give notice to a participant in a dependency hearing shall not affect the validity of an order of adjudication or disposition if the court finds that the petitioner has completed a diligent search that failed to ascertain the identity or location of that party.

(C) Personal appearance of any person in a hearing before the court eliminates the requirement for serving process upon that person.

**(4) Service of Summons and Other Process to Persons Residing Outside of the State in Dependency Proceedings.**

(A) Service of the summons and other process on parents, parties, participants, petitioners, or persons outside this state shall be in a manner reasonably calculated to give actual notice, and may be made:

(i) by personal delivery outside this state in a manner prescribed for service of process within this state;

(ii) in a manner prescribed by the law of the place in which service is made for service of process in that place in an action in any of its courts of general jurisdiction;

(iii) by any form of mail addressed to the person to be served and requesting a receipt; or

(iv) as directed by the court. Service by publication shall not be required for dependency hearings.

(B) Notice under this rule shall be served, mailed, delivered, or last published at least 20 days before any hearing in this state.

(C) Proof of service outside this state may be made by affidavit of the person who made the service or in the manner prescribed by the law of this state, the order pursuant to which the service is made, or the law of the place in which the service is made. If service is made by mail, proof may be in a receipt signed by the addressee or other evidence of delivery to the addressee.

(D) Personal appearance of any person in a hearing before the court eliminates the requirement for serving process upon that person.

**(b) Paternity Inquiry and Diligent Search.**

(1) **Identity Unknown.** If the identity of a parent is unknown, and a petition for dependency, shelter care, or termination of parental rights is filed, the court shall conduct the inquiry required by law. The information required by law may be submitted to the court in the form of a sworn affidavit executed by a person having personal knowledge of the facts.

(2) **Location Unknown.** If the location of a parent is unknown and that parent has not filed a permanent address designation with the court, the petitioner shall undertake a diligent search as required by law.

(3) **Affidavit of Diligent Search.** If the location of a parent is unknown after the diligent search has been completed, the petitioner shall file with the court an affidavit of diligent search executed by the person who made the search and inquiry.

(4) **Continuing Duty.** After filing an affidavit of diligent search in a dependency or termination of parental rights proceeding, the petitioner, and, if the court requires, the department, are under a continuing duty to search for and attempt to serve the parent whose location is unknown until excused from further diligent search by the court. The department shall report on the results of the continuing search at each court hearing until the person is located or until further search is excused by the court.

(5) **Effect of Paternity Inquiry and Diligent Search.**

(A) Failure to serve parents whose identity or residence is unknown shall not affect the validity of an order of adjudication or disposition if the court finds the petitioner has completed a diligent search.

(B) If the court inquiry fails to identify any person as a parent or prospective parent, the court shall so find and may proceed without further notice.

(C) If the inquiry, diligent search, or subsequent search identifies and locates any person who may be a parent or prospective parent, the court shall require notice of the hearing to be provided to that person. That person must then be given an opportunity to become a party to the

proceedings by completing a sworn affidavit of parenthood and filing it with the court or the department.

**(c) Notice and Service of Pleadings and Papers.**

**(1) Notice of Arraignment Hearings in Dependency**

**Cases.** Notice of the arraignment hearing must be served on all parties with the summons and petition. The document containing the notice to appear in a dependency arraignment hearing must contain, in type at least as large as the balance of the document, the following or substantially similar language: “FAILURE TO PERSONALLY APPEAR AT THE ARRAIGNMENT HEARING CONSTITUTES CONSENT TO THE ADJUDICATION OF THIS CHILD (OR THESE CHILDREN) AS A DEPENDENT CHILD (OR CHILDREN) AND MAY ULTIMATELY RESULT IN LOSS OF CUSTODY OF THIS CHILD (OR THESE CHILDREN).” Any preadoptive parents of the children and all participants, including the child’s foster parents and relative caregivers, must be notified of the arraignment hearing.

**(2) Notice of Assessment of Child Support.**

Other than as part of a disposition order, if the court, on its own motion or at the request of any party, seeks to impose or enforce a child support obligation on any parent, all parties and participants are entitled to reasonable notice that child support will be addressed at a future hearing.

**(3) Notice of Hearings to Participants and Parties Whose Identity or Address are Known.**

Any preadoptive parents, all participants, including foster parents and relative caregivers, and parties whose identity and address are known must be notified of all proceedings and hearings ~~subsequent to the initial hearing~~, unless otherwise provided by law. Notice ~~to parents in proceedings involving shelter hearings and hearings resulting from medical emergencies~~ emergency hearings must be that which is most likely to result in actual notice. It is the duty of the petitioner or moving party to notify any preadoptive parents, all participants, including foster parents and relative caretakers, and parties known to the petitioner or moving party of all hearings ~~subsequent to the initial hearing~~, except hearings which must be noticed by the court. Additional notice is not required if notice was provided to the parties in writing by the court or is contained in prior court orders and those orders were provided to the participant or party. All foster or preadoptive parents must be provided at



least 72 hours notice, verbally or in writing, of all proceedings or hearings relating to children in their care or children they are seeking to adopt to ensure the ability to provide input to the court. This subdivision shall not be construed to require that any foster parent, preadoptive parent, or relative caretaker be made a party to the proceedings solely on the basis of notice and a right to be heard.

**(4) Service of Pleadings, Orders, and Papers.** Unless the court orders otherwise, every pleading, order, and paper filed in the action after the initial petition, shall be served on each party or the party's attorney. Nothing herein shall be construed to require that a plea be in writing or that an application for witness subpoena be served.

**(5) Method of Service.** When service is required or permitted to be made upon a party or participant represented by an attorney, service shall be made upon the attorney unless service upon the party or participant is ordered by the court.

(A) Service is excused if the identity or residence of the party or participant is unknown and a diligent search for that person has been completed in accordance with law.

(B) Service upon the attorney shall be made by delivering a copy to the attorney or by mailing it to the attorney's last known address.

(C) Delivery of a copy within this rule shall mean:

(i) handing it to the attorney;

(ii) leaving it at the attorney's office with the person in charge thereof;

(iii) if there is no one in charge of the office, leaving it a conspicuous place therein; or

(iv) transmitting it by facsimile to the attorney's or party's office with a cover sheet containing the sender's name, firm, address, telephone number, and facsimile number, the number of pages transmitted, and the recipient's facsimile number. When service is made by

facsimile, a copy shall also be served by any other method permitted by this rule. Facsimile service occurs when transmission is complete.

(D) If the party or participant is not represented by an attorney, service of all pleadings or papers shall be upon the party or participant. Service may be made by mail to the party's or participant's permanent mailing address, if one has been provided to the court; to the last known address, if a permanent mailing address has not been provided to the court; or by leaving it at their usual place of abode with some person of their family above 15 years of age and informing such person of the contents.

(E) Service by mail shall be complete upon mailing.

(6) **Filing.** The filing of pleadings and other papers with the court as required by these rules shall be made by filing the original with the clerk of the court either before service or immediately thereafter. The court may permit the papers to be filed with it, in which event the filing date shall be noted thereon and the papers shall be transmitted to the office of the clerk.

(7) **Certificate of Service.** When any authorized person shall in substance certify:

“I certify that a copy/copies has/have been furnished to (insert names or names) by (delivery) (mail) (fax) on (date).

\_\_\_\_\_”  
Title”

this certificate shall be taken as prima facie proof of such service in compliance with all rules of court and law. The certificate must be signed by he attorney of record, clerk or deputy clerk, judicial assistant, or judge.

**Proposed rule**

**Reasons for change**

**RULE 8.225. PROCESS, DILIGENT SEARCHES, AND SERVICE OF PLEADINGS AND PAPERS**

(a) [No change]

(b) [No change]

(c) **Notice and Service of Pleadings and Papers.**

(1) [No change]

(2) [No change]

(3) **Notice of Hearings to Participants and Parties Whose Identity or Address are Known.** Any preadoptive parents, all participants, including foster parents and relative caregivers, and parties whose identity and address are known must be notified of all proceedings and hearings ~~subsequent to the initial hearing~~, unless otherwise provided by law. Notice to parents in proceedings involving ~~shelter hearings and hearings resulting from medical emergencies~~ emergency hearings must be that which is most likely to result in actual notice. It is the duty of the petitioner or moving party to notify any preadoptive parents, all participants, including foster parents and relative caretakers, and parties known to the petitioner or moving party of all hearings ~~subsequent to the initial hearing~~, except hearings which must be noticed by the

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Amended in response to comments of the Department of Children and Families.

- (4) [No change]
- (5) [No change]
- (6) [No change]
- (7) [No change]

I certify that this rule was read against the Court's opinion in this case of September 25, 2008 and West's *Florida Rules of Court –State* (2008).

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Ellen H. Sloyer, Associate Editor  
Legal Publications  
The Florida Bar