

**IN THE SUPREME COURT OF FLORIDA
TALLAHASSEE, FLORIDA**

**IN RE AMENDMENTS TO
THE FAMILY LAW RULES
OF PROCEDURE**

CASE NO. SC11-40

COMMENT TO PROPOSED FAMILY LAW RULE 12.070

The Family Law Rules Committee proposes amending Rule 12.070 with the addition of new subdivision (c)(2) which would require a petitioner utilizing constructive service to publish notice in the county of filing and where the respondent last resided. While the Family Law Rules Committee should be commended for its efforts in seeking to increase the likelihood of actual notice to a respondent, this commentator has a concern that the rule as proposed will establish a barrier that prevents an indigent petitioner from being able to utilize constructive service.

Boddie v. Connecticut, 401 U.S. 371(1971), requires that an indigent petitioner in a state court family law proceeding must be provided an opportunity to participate in the state's established regulatory scheme without being barred from participation by reason of indigence. Florida's existing statutory scheme regarding constructive service makes that

accommodation. Presently a family law petitioner who establishes civil indigence under Fla. Stat. § 57.081 and 57.082 can utilize constructive service without cost as Fla. Stat. § 49.10(b) authorizes posting (Fla. Stat. § 49.11) in the county of filing as an alternative to publication.

The proposed rule amendment requires a petitioner using constructive service to publish in the county of filing and the county of the respondent's last known residence. The rule does not provide, indeed does not appear to allow, a method by which an indigent petitioner can utilize posting in the county where the respondent last resided. There is statutory authority for an indigent petitioner to request the clerk in the county of filing to post but there is no existing authority to require the clerk in the county of last residence to post. A requirement to publish notice, with its incumbent cost, must have some form of accommodation for an indigent petitioner so as to comply with federal due process requirements. No accommodation for the participation of an indigent petitioner is provided.

The Family Law Rules Committee, in its report, notes the problem when it states, "There is also some concern about the additional cost for publishing in two different locations." However, the noted concern was not addressed with a solution. This commentator represents indigent family law petitioners as a major portion of his practice. There are scores of other

Florida attorneys in the same position. These practitioners and pro se litigants utilize the existing statutory scheme for indigent constructive service on a regular basis. The proposed rule, if implemented as written, will result in an inevitable Boddie challenge.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. mail to Steven Patrick Combs, 3217 Atlantic Blvd., Jacksonville, FL 32207-8901 on March _____, 2011.

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