

**IN THE SUPREME COURT OF FLORIDA**

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

**CASE NO.: SC11-40**

**RESPONSE TO COMMENT OF BAY AREA LEGAL SERVICES, INC.**

Steven P. Combs, Chair, Family Law Rules Committee, and John F. Harkness, Jr., Executive Director, The Florida Bar, file this response to comments filed by Bay Area Legal Services, Inc., in this case. This response has been approved by the Committee by a vote of 24-0.

The Family Law Rules Committee acknowledges the holdings in *Boddie v. Connecticut*, 401 U.S. 371 (1971), *Sheppard v. Sheppard*, 329 So. 2d 1 (Fla. 1976), and *Grissom v. Dade County*, 293 So. 2d 59 (Fla. 1974), regarding participation by indigent parties in court proceedings.

Bay Area Legal Services, Inc., objects to the dual publication requirement in proposed *Fla. Fam. L. R. P.* 12.070(c)(2) because there is no statutory requirement for clerks in other counties in Florida to post notice. While this is a correct statement of law, the Committee is not clear that a clerk in another county would refuse to post notice based on this argument.

The comment also objects to posting notice in other states. If the court rules that indigent parents have a right to litigate “custody” of minor children without payment of any costs, there may be no way to reconcile that decision with the respondent parent’s right to due process notice. However, it does not seem that the petitioner parent has a right to proceed without payment of costs if the parent is claiming child support and service is obtained under section 48.194, Florida Statutes. Law enforcement or process servers in other states generally do not provide free service of process.

Publication in the “county where the court is located” following a diligent search complies with section 49.10(1)(a), Florida Statutes. The second publication is for the purpose of providing notice to the respondent parent in a “child custody proceeding” governed by the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), sections 61.501–61.542, Florida Statutes. Reasonable notice and an opportunity to be heard are the foundations of procedural due process and are a prerequisite to jurisdiction under the UCCJEA. When the person being served is outside the state, section 61.509, Florida Statutes, requires that notice “must be given in a manner reasonably calculated to give actual notice,” but notice may be given by publication “if other means are not effective.” § 61.509(1), Fla. Stat. The notice may be given in a manner prescribed by the state in which the service is made. *Id.* This notice should not be treated as less important than an indigent petitioner’s right to obtain a court decision on a particular issue. *See* discussion in FLORIDA DISSOLUTION OF MARRIAGE, §4.13 (Fla. Bar CLE 10th ed. 2010).

The Committee is concerned that both publication and posting do not really provide notice to anyone. It is common for petitioners to publish in publications that have the lowest circulation because they are the least expensive. This coupled with the fact that very few people read newspapers today makes it unlikely that the respondent will see the publication. When the respondent has never resided in the county or the State of Florida, it is almost certain that the respondent or someone who will inform the respondent will never see the publication. The problem is compounded with posting. A notice is posted in the courthouse and even though the statute refers to the “front door of the courthouse,” the posting is inside, past security and the other locations and is left to the clerk’s discretion.

The problem with publication and posting is compounded by the ease with which a party can comply with the diligent search requirements of section 49.041, Florida Statutes. A parent can move to Florida with minor children and in six

months petition to dissolve the marriage and request 100% parenting time with the children. The parent alleges a diligent search, under section 49.041(1), Florida Statutes, and that the residence of the other party is unknown, section 49.041(3), Florida Statutes. Under section 49.041, Florida Statutes, the petitioner then posts notice. Unless the parent lists an address for the other parent, notice is not mailed as provided in section 49.12, Florida Statutes.

Some judges and magistrates reported that, when questioned, parents admitted knowing information that could be used to locate the other parent and in some cases, the judge or magistrate was able to locate an address on the judge's computer in the courtroom. Mailing to a person's last known address and filing the results with the clerk may provide actual notice or reveal a forwarding address.

Situations like this highlight the importance of the diligent search requirements and the necessity of requiring disclosure of the last known address. The Committee urges the Court to adopt those suggestions, even if it rejects the dual publication requirements.

Finally, because the current statutory methods of posting and publishing are antiquated and provide minimal notice, the Committee hopes that the Court might suggest that the legislature consider whether it is time to begin utilizing the internet in some manner to provide more meaningful notice.

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

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STEVEN P. COMBS

Chair

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## **CERTIFICATE OF SERVICE**

I certify that a copy of this response was provided by U.S. Mail on  
\_\_\_\_\_ to Richard A. Motley, Bay  
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