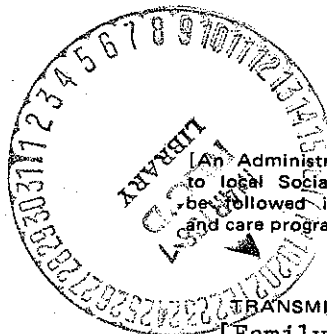


NEW YORK STATE
 DEPARTMENT OF SOCIAL SERVICES
 40 NORTH PEARL STREET, ALBANY, NEW YORK 12243

JESAR A. PERALES
 Commissioner



[An Administrative Directive is a written communication to local Social Services Districts providing directions to be followed in the administration of public assistance and care programs.]

ADMINISTRATIVE DIRECTIVE

TRANSMITTAL NO.: 87 ADM-8
 [Family & Children Services]

TO: Commissioners of Social Services
 Directors of Authorized Agencies

SUBJECT: Limitation for Publications of Petitions
 to Terminate Parental Rights

DATE: March 17, 1987

SUGGESTED
 DISTRIBUTION:

Child Welfare Executives and Supervisory Staff
 Staff Development Coordinators
 Legal Staff
 Foster Care Staff
 Adoption Staff

CONTACT PERSON:

All inquiries concerning this release should be directed to Fred Cantlo, Regional Director, Metropolitan Regional Office, (212) 488-3485; John O'Connor, Regional Director, Eastern Regional Office, (518) 473-1095; Karen Schimke, Regional Director, Buffalo Regional Office, (716) 847-3145; Frank Petrus, Regional Director, Western Regional Office, (716) 238-8201.

I. Purpose

The purpose of this release is to inform local districts and authorized agencies of the provision of Chapter 811 of the Laws of 1986 which prohibits the publication of the entire petition to terminate parental rights.

II. Background

Section 617 of the Family Court Act contains the procedures which must be followed when serving a summons and petition in a proceeding to terminate parental rights.

FILING REFERENCES

| Previous ADMs/INFs | Releases Cancelled | Dept. Regs. | Social Services Law and Other Legal References | Bulletin/Chapter Reference | Miscellaneous Reference |
|--------------------|--------------------|-------------|--|----------------------------|-------------------------|
| | | | SSL 384-b FCA 622 617 CPLR 316 | | |

Pursuant to Section 384-b.3(e) of the Social Services Law, service of process shall be made in accordance with Section 617 of the Family Court Act whenever a proceeding to terminate parental rights is initiated in family court irrespective of the grounds listed in the petition. Section 617 of the Family Court Act specifies that the parent(s) must be given a copy of the petition and notice of the proceedings, preferably through personal service, at least twenty days prior to the court ordered date of appearance. That section further states that if, after reasonable efforts, personal service is not made, such substitute service or service by publication as may be ordered by the court shall be sufficient.

Prior to the enactment of this new legislation, a judicial order for service by publication usually was interpreted as requiring publication of the entire petition, including the detailed allegations, in a newspaper most likely to be seen by the parent(s). However, because of the increase in the average age of a child now being adopted, concern was raised that such publication could prove embarrassing to the child. In addition, it was thought that such details were unnecessary to provide adequate notice to the parent(s). Chapter 811 of the Laws of 1986 resolves these concerns.

III. Program Implications

With the enactment of Chapter 811 of the Laws of 1986, when a judge orders service of a summons with notice of a proceeding to terminate parental rights by publication in a newspaper, the law now mandates that "in no event shall the whole petition be published." The law further specifies that the notice shall state:

- "1. the date, time and purpose of the proceeding,
2. that upon failure of the person summoned to appear, all of his or her parental rights in the child may be terminated, and
3. that his or her failure to appear shall constitute a denial of his or her interest in the child, which denial may result, without further notice, in the transfer or commitment of the child's care, custody or guardianship or in the child's adoption in this or any subsequent proceeding in which such care, custody, or guardianship or adoption may be at issue."

IV. Required Action

Preparation of the petition to terminate parental rights and notification to the parent(s) are usually considered the responsibilities of an agency's attorney. However, the lack of sufficient legal staff or differing practices in the local district may mean that these responsibilities are left to the caseworker. Therefore, when a judge orders service by publication, either the legal staff person or the caseworker who prepares the summons with notice for publication must insure the notice includes only the information contained in paragraphs 1., 2. and 3. of Section III.

It is important to note that before the court will order service by publication, the agency must convince the court that reasonable efforts have been made to locate and personally serve the parent(s). Such efforts should include the following:

- ° A check of the telephone directories of those cities where the parent(s) have been known to reside.
- ° Inquiries at the Post Office, Board of Elections, Department of Motor Vehicles, Social Services Department, Social Security Administration, the police department, etc.
- ° Requests for assistance from the support enforcement unit, parent locator service and putative father registry.

The agency's attempts must be documented in an affidavit which is attached to the motion for service by publication.

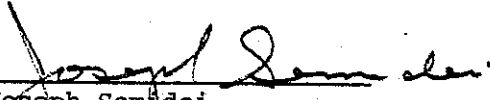
Once the court is satisfied that the exact whereabouts of the parent(s) cannot be determined and an order is given by the judge for service by publication, the law now provides that only the summons with notice and those items mandated to be included in the notice may be published. Publication must occur in newspapers designated in the order as likely to give notice to the parent(s). A single publication in only one newspaper designated in the order is sufficient.

The law further stipulates in Rule 316 of the Civil Practice Law and Rules, which pertains to all orders of service by publication, that the publication of a

summons with notice must be made within thirty days after the order is granted. Service is complete on the twenty-eighth day after the day of publication.

V. Effective Date

This directive is effective March 15, 1987, retroactive to August 2, 1986, the effective date of Chapter 811 of the Laws of 1986.


Joseph Semidei
Deputy Commissioner
Division of Family and
Children Services

STATE OF NEW YORK

8891--A

Cal. No. 1191

IN SENATE

April 22, 1986

Introduced by Sen. COOK -- read twice and ordered printed, and when printed to be committed to the Committee on Child Care -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the family court act, in relation to the service of a summons

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. Subdivision (d) of section six hundred seventeen of the
2 family court act, as added by chapter six hundred sixty-six of the laws
3 of nineteen hundred seventy-six, is amended to read as follows:
4 (d) Service of the [petition] summons and other process with a notice
5 as specified herein by publication shall be made in accordance with the
6 provisions of CPLR 316, provided, however, that a single publication of
7 the summons or other process with a notice as specified herein in only
8 one newspaper designated in the order shall be sufficient. In no event
9 shall the whole petition be published. The petition shall be delivered
10 to the person summoned at the first court appearance pursuant to section
11 one hundred fifty-four-a of this chapter. The notice to be published
12 with the summons or other process shall state:
13 1. the date, time, place and purpose of the proceeding,
14 2. that upon failure of the person summoned to appear, all of his or
15 her parental rights in the child may be terminated, and
16 3. that his or her failure to appear shall constitute a denial of his
17 or her interest in the child, which denial may result, without further
18 notice, in the transfer or commitment of the child's care, custody or
19 guardianship or in the child's adoption in this or any subsequent
20 proceeding in which such care, custody or guardianship or adoption may
21 be at issue.
22 § 2. This act shall take effect immediately.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [] is old law to be omitted.

LBD14277-03-6

