JUVENILE CODE REVISION:
Service by Mail

REPORT

(SB 71)

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From
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Report Approved at
Oregon Law Commission Meeting on
November 22, 2002

Juvenile Code Revision Work Group
Service by Mail Report

I. Introductory Summary

Last session, HB 2611 (2001)[1] created the "Juvenile Court Dependency Procedure Code." It made a number of changes and clarifications in statewide juvenile court practice. Sections 8 and 9 of the 2001 bill revised and recodified provisions providing for service of summons in both dependency and termination of parental rights proceedings. In making these changes, the legislature clearly placed service by mail in the category of "alternative service" which requires a court order before such service may be attempted. The Continuing HB 2611 Sub-Work Group of the Oregon Law Commission's Juvenile Code Revision Work Group recognizes that court intervention prior to service by mail is not constitutionally mandated and is an unnecessary impediment; the Sub-Work Group recommends legislative amendment.

2. History of the Project

This project was initiated by the Continuing HB 2611 Sub-Work Group of the Juvenile Code Revision Work Group whose task was to compile necessary amendments to the new dependency procedures enacted as part of HB 2611 (2001). The Sub-Work Group considered the proposal regarding service by mail at a meeting on September 5, 2002. The meeting was attended by Ted Meece from the Oregon Department of Justice; Mickey Logan from the Oregon Department of Justice; Timothy Travis from the State Court Administrator's Office; and Lisa Kay from the Juvenile Rights Project. Ted Meece drafted the bill proposal. Virginia Vanderbilt, Senior Deputy Legislative Counsel, also provided the Sub-Work Group with drafting services. The draft bill and report were presented to the full Juvenile Code Revision Work Group[2] on September 20, 2002 and were approved on November 15, 2002.

3. Statement of the Problem Area

Former ORS 419B.277 (1999) was ambiguous as to whether court approval was required for service by mail because it was written in the passive voice.[3] In

[1] 2001 Or. Laws Ch. 622.

[2] Senator Kate Brown, an Oregon Law Commissioner, chairs the Juvenile Code Revision Work Group.

[3] That statute provided in part:

419B.277 Alternative service

(1) If any parent or guardian required to be summoned as provided in ORS 419B.271 cannot be found within the state, summons may be served on the parent or guardian in any of the following ways: (a) If the address

practice, it had not been considered necessary to obtain a court order prior to serving a parent by certified mail, since it is clear that under Oregon civil practice rules, service by certified mail is constitutionally adequate so long as a return receipt signed by the responding party is obtained. *See, e.g. Lake Oswego v. Steinkamp,* 298 Or 607, 614, 695 P2d 565 (1985). The new statute, ORS 419B.824 (2001), classifies service by mail, whether or not a signed receipt is obtained, as one form of "alternative service" that must be "ordered by the court" under ORS 419B.821(4). As such, the statute mandates an unnecessary procedure that requires more attorney and judicial time that equates to more expense.

4. Objective of the Proposal

The proposal seeks to allow the maximum flexibility in fulfilling constitutionally adequate service before having to use service that requires obtaining court approval. Under current law, the petitioner may choose from only three methods of service that do not require seeking a court order: personal service, substituted service upon another member of the household, or office service. All three of these methods of service are described in terms virtually identical to ORCP 7D (2)(a), (b) and (c). Service by mail on individuals, as described in ORCP 7D (3)(a)(i), was not included among those methods in the 2001 legislation even though service by mail was used previously under the authority of former ORS 419B.277.

The proposed bill does not simply re-enact the previous statutory provision to permit service by mail but instead provides clarity and uses language drawn in relevant part from ORCP 7D(2)(d) and D(3)(a)(i). Under the proposal, service by mail would require that the respondent sign the return receipt in order for the service to be effective.

The proposal makes two other changes. The first is to clarify what showing is required before "alternative service" may be obtained. Under current practice, court approval for service by publication, an alternative service method, can be granted only when it is clear that an extensive search, documented in an affidavit prepared by a DHS employee, demonstrates that the parent cannot be found. The proposal would make no distinction between service inside and outside the state. The current statute, ORS 419B.824(5), implies that alternative service by publication may be authorized if the parent cannot be found *within the state.* This is a meaningless distinction. If a parent can only be found *outside* the state, they must nevertheless be served. No responsible practitioner would seek an order of publication if they had reason to think that the parent could be served without

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of the parent or guardian is known, by sending the parent or guardian a copy of the summons by registered or certified mail with a return receipt to be signed by the addressee only.

alternative service. For that reason, the proposed amendment simply requires that the inability to effect service as specifically provided for in the preceding subsections be demonstrated to the court before alternative service may be used.

The second change revises the provisions for mailing the summons when done pursuant to court order, presumably in connection with publication. The amendment would delete the reference to the parent or guardian's address "*if known"* since it is presumed that the address is *not* known, and provides that certified and first class mail may be sent to any address the court specifies, deleting the requirement for service by addressee only. The "addressee only" language is deleted for the reason that it is presumed that either such service has already been attempted as specified in subsection (4) or was considered a useless attempt. Furthermore, it was thought that once the other forms of service had been abandoned, any mailing should have the maximum probability that it would be opened rather than returned as undeliverable. Directing the certified mail to the "addressee only" simply reduces the chance that it will be delivered and seen by anyone.