

# Notice and Engagement Round Table







## **Notice and Engagement Round Table**

In December 2010, with the help of Casey Family Programs and the Department of Family and Protective Services (DFPS), the Permanent Judicial Commission for Children, Youth and Families (Children’s Commission) co-hosted a round table discussion on notice and engagement of parties and stakeholders in Child Protective Services (CPS) cases. The round table brought together various stakeholders, including judges from across the state, representatives of DFPS, prosecutors, attorneys, former foster youth, parents and relatives who were involved in CPS cases, and foster parents. The discussion focused on compliance with statutorily required notice procedures and methods of engaging relatives and other stakeholders who may be able to help the child reach permanency.

Essentially, notice and engagement are two separate issues. First, the Family Code requires DFPS to provide “notice” (information) relating to certain DFPS actions and the Texas Rules of Civil Procedure require DFPS to obtain service of citation and serve notice related to child-protection suits to designated parties and participants. Second, engagement relates to efforts beyond the required notice that are intended to encourage participation and involvement in the court process to help the child achieve permanency as quickly as possible.

The discussion revealed that notice is not always provided as statutorily required and that engagement of essential participants is often disregarded.

### **I. Notice**

DFPS is responsible for providing notice of several matters, some relating to agency activities (such as investigations or removals) and some relating to a lawsuit (requiring service in accordance with the Texas Rules of Civil Procedure). While the same word “notice” is used for both, it is important to distinguish between the two to understand the rules for executing each.

First, the Family Code requires that DFPS provide notice to parents of the investigation and removal of a child and notice to relatives following the removal.<sup>1</sup> These obligations, however, do not need to be executed in accordance with the notice requirements of the Texas Rules of Civil Procedure.

Next, in lawsuits filed by DFPS, it is responsible for obtaining service of citation containing the original petition and notice of trial settings and other events during the pendency of the legal case. These notice requirements come not only from the Texas Rules of Civil Procedure, but also the Family Code and federal law. With respect to service of the citation, the Family Code directs that service be made “as in other civil cases.”<sup>2</sup> Accordingly, DFPS is responsible for obtaining service of citation to all parties listed in Section 102.009(a) of the Family Code.<sup>3</sup> Service must be accomplished via the method prescribed in Rule 106 and by an authorized person under Rule 103 of the Texas Rules of Civil Procedure.

Additionally, the persons enumerated in Family Code Section 102.009 are also entitled to notice of hearings and trial settings. Texas Rule of Civil Procedure 245 governs the timeframe within which DFPS, as the petitioner, must notify parties in the case of trial settings.

Finally, the Family Code mandates that written notice be provided pursuant to Texas Rule of Civil Procedure 21a of the case review hearings mandated by Chapter 263. Rule 21a states notice shall be provided “in person or by agent or by courier receipt delivery or by certified or registered mail, to the party’s last known address, or by [fax] . . . or by such other manner as the court in its discretion may direct.”

#### **A. Compliance with Requirements**

**Service of Citation & Petition:** The round table discussion revealed that DFPS is not consistently or timely providing service of citation or notice as required by the rules.

Participants suggested several reasons for the lack of compliance with service of citation requirements. Often the parent-respondents in CPS cases are difficult to locate and move frequently without providing DFPS with an updated address. Typically, DFPS has difficulty locating a noncustodial parent, especially when that parent is an “alleged father” and has not legally established paternity. Mothers are sometimes reluctant to disclose the name or location of the alleged father for various reasons. For instance, the mother might not know his location or they are no longer in communication. Complicating

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<sup>1</sup> Specifically, DFPS is required to provide notice to parents about an ongoing investigation pursuant to Texas Family Code Section 261.307 (Information Relating to Investigation Procedure). If the investigation rules out the alleged perpetrator, Section 261.315 requires DFPS to provide notice to that individual so that he or she can request removal of the allegations from DFPS records. If the investigation results in removal of the child, DFPS must provide notice to the parents pursuant to Section 262.109. Within 30 days after the removal, Federal law requires that DFPS exercise due diligence to identify and provide notice to all adult grandparents and other adult relatives of the child. 42 U.S.C. § 671(a)(29). DFPS has incorporated this federal requirement into its policy. See DFPS CPS Handbook § 2663 (Notification to Relatives Following a Removal), *available at* [http://www.dfps.state.tx.us/handbooks/CPS/Files/CPS\\_pg\\_2650.jsp#CPS\\_2663](http://www.dfps.state.tx.us/handbooks/CPS/Files/CPS_pg_2650.jsp#CPS_2663).

<sup>2</sup> Tex. Fam. Code § 102.009(c).

<sup>3</sup> Specifically, Section 102.009 provides that service of citation shall be provided to a managing conservator, a possessory conservator, a person having possession of or access to the child under an order, a person required by law or by order to provide for the support of the child, a guardian of the person or estate of the child, each parent as to whom the parent-child relationship has not been terminated or process has not been waived under Chapter 161, an alleged father unless there is attached to the petition an affidavit of waiver of interest or unless the petitioner has complied with the provisions of Section 161.002(b)(2), (3), or (4), a man who has filed a notice of intent to claim paternity, DFPS or the Title IV–D agency, a prospective adoptive parent, a person designated as the managing conservator in a revoked or unrevoked affidavit of relinquishment or written consent to adoption, or any other person who has or who may assert an interest in the child.

matters is the fact that prosecutors and representatives of DFPS do not always have quick or reliable access to information databases, such as the registries maintained by the Vital Statistics Unit (VSU).

The VSU of the Texas Department of State Health Services (DSHS) maintains three separate databases that must be searched in a child-protection case: the Paternity Registry (containing notices of intent to claim paternity filed to preserve rights a man might have to a child);<sup>4</sup> the Acknowledgement of Paternity Registry (containing records of acknowledgments signed by a mother and a man claiming to be the biological father);<sup>5</sup> and a database containing information on the court of continuing jurisdiction, if any, for a particular child.<sup>6</sup> Each of these databases is established and governed by separate statutory provisions and are not cross-referenced. DFPS does not have computer access to the VSU databases, which slows their ability to identify fathers. DFPS caseworkers must submit a written request for each type of search and wait around 14 days for the request to be processed by an employee of DSHS.

The persons authorized to obtain information in the databases (i.e. the individuals permitted to request a search of the database) varies for each registry, and the statutory provisions relating to release of information is different for each.<sup>7</sup> In practice, the duty of submitting the request is not always completed by the same individual. For instance, the duty could be completed by the DFPS caseworker, the attorney for DFPS, or the county attorney. One participant stated that, in her area, a court order was required to obtain access to information in the Acknowledgment of Paternity database. Following the round table, a representative of DFPS clarified that a court order is no longer required. However, it is unclear whether that applies to all of the types of individuals that might be checking the database (including prosecutors).

Caseworkers often perform the initial search for family members using a variety of free or publicly available internet databases.<sup>8</sup> Caseworkers also have access to the Diligent Search Unit (DSU) within DFPS, charged with searching for absent parents and extended family members and conducts inquiries through public information sources. However, the DSU also lacks access to the three registries and must submit a request to DSHS, which can delay the process by an additional week because the DSU must group search requests together rather than submitting requests one at a time.

**Notice to Adult Relatives Regarding Removal:** It is unclear whether DFPS is successful in notifying adult relatives within 30 days of the removal, as is required by federal law and DFPS policy. Round table participants discussed that parents are often reluctant to provide caseworkers with contact information for relatives because they are embarrassed or believe that the case will be resolved quickly without the need to involve relatives. DFPS's duty to notify relatives is more easily completed when parents provide information at the beginning of the case, and it can avoid delays associated with obtaining information from the various databases discussed above. One parent that was formerly involved in a CPS case suggested providing parents with more information or a parent partner (an assigned parent who has

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<sup>4</sup> Tex. Fam. Code § 160.402.

<sup>5</sup> *Id.* § 160.302.

<sup>6</sup> *Id.* § 155.101.

<sup>7</sup> Compare *Id.* §§ 155.101, 160.313, 160.412.

<sup>8</sup> Specifically, caseworkers search internet databases, including various White Pages ([www.Whitepages.com](http://www.Whitepages.com)), [www.Anywho.com](http://www.Anywho.com)), Google ([www.Google.com](http://www.Google.com)), the Federal Bureau of Prisons' Inmate Locator ([www.bop.gov](http://www.bop.gov)), Victim Information and Notification Everyday's National Database ([www.vinelink.com](http://www.vinelink.com)), Tex. Dep't of Crim. Justice's Offender Database (<http://168.51.178.33/webapp/TDCJ/index2.htm>), and Mexico's Social Service Agency (Sistema Nacional para el Desarrollo Integral de la Familia (DIF)) [www.dif.sip.gob.mx](http://www.dif.sip.gob.mx); see also Appendix 5261, DFPS's CPS Handbook ("Detailed Diligent Search for Parent (Steps to Take)") ([http://www.dfps.state.tx.us/handbooks/CPS/Files/CPS\\_px\\_5261a.jsp#CPS\\_apx5261a](http://www.dfps.state.tx.us/handbooks/CPS/Files/CPS_px_5261a.jsp#CPS_apx5261a)).

been involved in a CPS case and can act as a parent's guide and ally) so that they better understand the process.

**Notice of Hearing Dates:** DFPS also is not routinely complying with the requirements for notice relating to permanency and placement review hearings.<sup>9</sup> Participants indicated that providing notice in a CPS case presents unique challenges, including a long list of persons who are statutorily entitled to notice and the frequent and routine hearings requiring notice to all of those persons. The obligation of providing notice to so many individuals can become extremely burdensome and costly.

As previously discussed, DFPS struggles with maintaining updated records of the participants' addresses due to lack of communication of the information to DFPS as well as internal communication failures within the agency. Parents often move during what is a typically unstable time in their lives and children frequently change placements multiple times within a year. However, if the attorneys and DFPS caseworkers are meeting their responsibilities, they should be in regular contact with their clients and should be able to ensure updated contact information for notice purposes.

The round table participants noted that most judges do not hold DFPS to their obligation to provide written notice pursuant to Rule 21a and, instead, allow oral "in-court" notice to suffice to inform interested persons of the next review hearing. In-court notice is one way to provide actual notice of upcoming hearings to persons present in the courtroom, but it is not effective in providing notice to those not present in court or to update parties and participants when there has been a change in date or time of a setting. Without the provision of written notice after in-court notice is given, not all persons learn of upcoming hearings. Furthermore, in court notice does not satisfy DFPS's obligation of notice under Rule 21a. However, it should be noted that Rule 21a allows the judge discretion to order that notice be provided in another manner. If the judge authorizes notice by an alternative manner, the judge must take steps to ensure that notice is received by all persons entitled to receive notice.

## ***B. Possible Solutions***

**Service of Citation:** DFPS has a statutory duty to serve citation on a parent whose parental rights are being affected.

- 1. Judicial Practice:** Judges should verify that citation and notices have been properly served to all entitled persons or that service has been properly waived, if a parent has elected to waive service. Review the record prior to every hearing for a return of service as required by Rule 107 of the Texas Rules of Civil Procedure and proof of compliance with Rule 21a.
- 2. Service Check Docket:** Jurisdictions might establish a Service Check Docket, described by Judge Kim Brown of Tarrant County as an uncontested docket held on a weekly basis to verify [with the clerk] that proof or certification of service has been properly executed, returned, and is included in the court's record.
- 3. Assistance of Other Parties:** Parties to the case should be informed about the status of service prior to hearings and encouraged to offer assistance in locating parents and relatives. The attorney ad litem for the child is in a unique position to assist with this and should raise concerns to the court about service since it is the child whose permanency is delayed because service is not accomplished timely.

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<sup>9</sup> See Tex. Fam. Code §§ 263.301, 263.501.

4. **Increased Diligent Search Efforts:** Texas Lawyers for Children (TLC) maintains a listserv of attorneys willing to provide pro bono services to lawyers handling child abuse and neglect cases and may be willing to assist with diligent search efforts.
5. **Waiver of Service by Sheriff or Constable:** Tarrant County and the Child Protection Court of South Texas accomplish service of citation by a waiver of service that has the copy of the suit affecting the parent-child relationship (SAPCR) attached. In other words, if the parent is present at the ex parte hearing, the attorney representing DFPS asks the parent if they would be willing to waive service of citation and, instead, receive a copy in person in court.
6. **Statutory Changes:** The legislature should consider statutory changes that would provide DFPS with direct (computer) access to the VSU database so it can search the registries directly. Streamlining the process by cross-referencing the databases and allowing DFPS access would enhance the ability for parties to timely receive notice of the lawsuit. Also, eliminating the requirement that DFPS pay a fee for searching the registry would reduce costs. These changes are a vital to ensure that parents have the opportunity to be involved in the case from the beginning. Many important decisions are made within the first 14 days. If a parent or alleged father cannot be located without a search of the registries, service cannot be made at the time of filing and is delayed until the request is processed, and as a result, that parent might miss crucial parts of the case.
7. **Training:** DFPS should include training to increase awareness among its staff of what is required to obtain information from the registries. Currently, DFPS is required to submit requests to the VSU at DSHS to conduct searches of the three databases. It normally takes two to three weeks to receive a response to the request. Also, DFPS should ensure that the workers know they no longer need to submit a court order with their request for a search of the AOP database. Additionally, DFPS should collaborate with county attorney offices (or whatever agency handles representation of DFPS) so that those attorneys are also aware of the ways to obtain information from the database. Training for both caseworkers and attorneys should address the urgency of obtaining contact information so that parties can receive timely service of the citation and petition.

**Notice:** Notice of hearings does not have to be accomplished through a sheriff or constable. It must merely satisfy Rule 21a of the Texas Rules of Civil Procedure, which allows the court some direction to order that notice be accomplished in an alternative manner.

1. **Training:** DFPS should ensure caseworkers are trained on the difference between service and notice and the applicable statutory provisions and rules.
2. **Standing Order:** Courts should consider issuing a standing order in their jurisdiction allowing notice required by Family Code Chapter 263 to be accomplished via email, with a read receipt requested, unless an individual has not provided an email address or expressly requests some other form of notice.<sup>10</sup> Any alternative method of service approved by the court must be appropriate under the circumstances. For instance, if a participant does not have access to email, ordering notice by email is not appropriate. Further, any alternative method of providing

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<sup>10</sup> Rule 21a of the Texas Rules of Civil Procedure provides that written notice may be provided "in person or by agent or by courier receipt delivery or by certified or registered mail, to the party's last known address, or by telephonic document transfer . . . or by such other manner as the court in its discretion may direct."

notice should comply with the spirit of Rule 21a, allowing for some type of documentation to prove receipt of the notice.

- 3. Public Hearing Schedule Webpage:** Although it would not satisfy Rule 21a, DFPS and courts could consider whether a public website might be established so that parents, foster parents, caregivers and other interested parties may view non-confidential hearing date, time, and location information. This would help increase awareness of upcoming hearings.

## II. Engagement

### A. *Effectiveness of Efforts*

The second part of the round table focused on engagement of parties, children, caregivers, and other stakeholders with an interest in the child's well-being. Most participants felt that DFPS could improve its engagement efforts; individuals who might be able to assist in the case are not being engaged, and even when they receive notice and attempt to participate, they do not feel welcome or are discouraged from participating.

The discussion revealed that DFPS leaves a great deal of discretion to individual caseworkers to decide whether to engage relatives and other family members early in the case. Both caseworkers and prosecutors expressed that hearings are often easier and take less time without the involvement of family, and as a result, some caseworkers have made it a practice to not include family members. Understandably, bringing another voice to the table requires additional time. Taking time to engage participation may assist the family and child reach permanency more quickly. Engaging children, youth, and other stakeholders may provide the court with additional information regarding names and whereabouts of an absent parent and potential placements.

Including participants in the court process is also a requirement of the Family Code. Specifically, the Family Code provides that the child, parent, foster parent or relative providing care, and any other person named by the court to have an interest in the child is entitled to be present and be heard at the hearing. However, several round table participants indicated that they had been excluded from being present in the courtroom. One foster parent stated that, when she came to court for a permanency hearing, she was forced to leave the courtroom and was not allowed to participate. Other participants expressed that they are unfamiliar with the proceedings and are too intimidated to raise their voice. Other barriers affect their participation as well; in large urban counties with more than one court house, participants get lost trying to find the location of the hearing. Docketing also discourages participation; some courts schedule all hearings first thing in the morning, and participants spend most of the day waiting for their cases to be called.

During the discussion, both DFPS and judges recognized that relatives and other caregivers can be a great asset and need to be involved early in the case. However, some DFPS and court practices seem to discourage participation by those individuals. To encourage meaningful participation of relatives and caregivers, both DFPS and the courts need to make a concerted effort to notify them of hearings and welcome their contribution. An initial step is to empower these individuals with information about the hearings, so that they understand what is going on and can add value to the proceedings.

## **B. Possible Solutions**

- 1. Policy changes:** DFPS agreed to review its policies and revise them, if necessary, to emphasize the importance of engaging families. Similarly, DFPS should revise caseworker training to provide instruction on early engagement of the family in the investigation and ex parte stage. This should not be difficult to accomplish if DFPS is already engaging many families in Family Team Meetings, which usually occurs early in the case before removal.
- 2. Judicial Training:** Judges should be trained on the importance of family engagement, along with ideas and tools for docket management to accommodate family members' participation. Notice and engagement is a topic on the agenda for the CPS Judicial Conference scheduled for July 2011.
- 3. Attorney and Advocate Training:** Attorneys and CASA volunteers should be trained on the importance of family engagement, and be instructed to locate and encourage the early and continued involvement of relatives and other appropriate persons. Attorneys representing parents could encourage relatives to be a support system for the parent-client and help keep the parent on track to achieving reunification.

## **III. Moving Forward (Next Steps)**

### **A. Training**

- 1. Judicial / Legal System:**
  - a. Procedures for monitoring compliance with service and notice requirements and enforcing noncompliance (such as sanctions under Rule 21b of the Texas Rules of Civil Procedure).
  - b. Instruction on ability to issue a standing order allowing notice to be accomplished via email with a read receipt requested unless not feasible.
  - c. Emphasize the importance of timely service and notice and its impact on timely resolution of the case and permanency for the child.
  - d. Increase judicial awareness of resources available to DFPS through the Vital Statistics Unit (VSU) and other databases, so that judges can inquire regarding the status of pending requests.
  - e. Address attitudes and misconception regarding the involvement of alleged fathers, relatives, caregivers, and youth, and emphasize the importance (and statutory requirements) of their involvement throughout the case.
  - f. Practices to ensure parents, youth and other participants understand their rights and feel welcomed and empowered to participate in the case.
  - g. Practices to increase the early involvement of parents and family members at the ex parte stage (the point of removal) and inform parents of the right to legal counsel.

## **2. DFPS Investigators & Caseworkers**

- a. Differences between Service and Notice under the Texas Rules of Civil Procedure and Family Code, and notice requirements of the Family Code that do not have to be executed in accordance with the Texas Rules of Civil Procedure.
- b. Procedures for searching for parents and relatives and requesting information from the VSU (including emphasis on the importance of obtaining contact information so that service or notice can be timely executed.)
- c. Procedures for engaging families at the investigative stage and involving them in the ex parte hearing (and the importance of this early involvement).
- d. Ensure Family Team Meeting staff apprises parents of their rights and that the nature of the FTM is voluntary.
- e. Ensure caseworkers advise parents of their right to a court appointed attorney if they cannot afford one, and not merely that they have the right to hire one

### ***B. Tools***

1. Develop a checklist for judges to monitor compliance with service and notice requirements (available through the Child-Protection Benchbook).
2. Consider the feasibility of creating a publicly accessible website that includes basic, non-confidential information about hearing dates and times.

### ***C. DFPS Policy***

1. DFPS should examine its policy regarding certain criminal convictions that may affect an individual's suitability for placement.
2. DFPS should examine its Memorandum of Understanding with the DSHS regarding obtaining and paying for birth certificates and other family information. To the extent necessary, DFPS should revise policies and current practices to streamline its access to information.
3. DFPS should work with DSHS to obtain computer access to the VSU databases.
4. DFPS should partner with the Parent Collaboration Group or other parent representatives to establish a mentoring group for parents who are involved in a CPS case to help overcome issues of embarrassment and fear.

### ***D. Statutory***

1. Examine whether Texas Family Code Chapter 160, Section 155.101, and/or 108.110 should be amended to give DFPS direct computer access to the VSU databases that contain information on the court of continuing jurisdiction, acknowledgments of paternity, and filings of intent to claim paternity, without the necessity of a court order

or fee, including the cost to accomplish such a change. Lack of access delays service of citation and notice and acts as a barrier to achieving permanency as quickly as possible. The delay results in increased foster care expenses for DFPS and county expenses associated with the lawsuit.

***E. Workgroup issue (additional consideration needed)***

1. Examine whether a statutory change of Section 262.114 of the Family Code is warranted. Participants indicated that home studies cannot realistically be accomplished prior to the 14-day hearing. Accordingly, a statutory change replacing the requirement with a more realistic means of assessing the safety and suitability of a proposed placement may be required.
2. Consider the difference in the list of persons entitled to notice of hearings under Sections 263.301 and 263.501, and specifically, the inclusion of licensed administrator under Section 263.501 (Placement Reviews) but not 263.301 (Permanency Reviews). Evaluate whether statutory revision is appropriate to make the provisions consistent.
3. Examine the feasibility of judges making a “No Reasonable Efforts” finding when DFPS refuses to approve a home study and place the child in the home. Caveat: the statutory requirement of reasonable efforts relates to the need to remove the child and efforts to return the child home after removal, and there is a question about whether this finding is appropriate in this context.