

**STANDING ORDER 1-93  
PROCEDURES FOR CARE AND PROTECTION CASES  
UNDER ST.1992, C. 303**

**(1) Scope.** This order applies to all care and protection cases filed in the Juvenile Court Department on or after January 29, 1993.

**(2) Meaning of Terms.** As used in this standing order, the following terms shall be construed as follows:

"Parent" shall include an unwed father or mother.

"Preliminary hearing" shall mean the first time the case is before a judge.

"Uncontested case" shall mean any case in which there is no appearance by, or on behalf of, the parent or guardian, or in which the parent or guardian does not otherwise make himself or herself known to the court; and, any case in which there is an appearance by, or on behalf of, the parent or guardian, but the parent or guardian does not contest an adjudication and disposition.

**(3) Summons to Parent/Guardian.** In every care and protection case, a summons shall be served on each of the parents of the subject child, and, if a parent cannot be found, the guardian, if any, in the following manner:

(A) If the present address of a parent or guardian is known, service shall be accomplished by delivering a copy of the said summons to each of the parents or the guardian, or by leaving said summons with a person of proper age to receive the same, at the place of residence of the parent or guardian of the subject child.

(B) If no present address of a parent or guardian is known, service shall be accomplished, either within or without of the Commonwealth, by

(i) certified mail, to the last known address of each of the parents or the guardian, at least fourteen days before the date of the pre-trial conference; and

(ii) publication in accordance with paragraph 10.

If the identity of a parent is not known, service shall be accomplished by publication in accordance with paragraph 10.

Service shall be accomplished by the petitioner.

Personal service may be accomplished at the preliminary hearing or the 72-hour hearing if the parent or guardian is present.

**(4) Appointment of Counsel.** In every care and protection case counsel shall be appointed at the preliminary hearing for each parent, guardian, and child in accordance with the provisions of

SJC Rule 3:10. In the event that a party is not present at the preliminary hearing, counsel shall nevertheless be appointed pending a determination of indigence. Counsel may be appointed for a parent whose identity is unknown, if the court deems such appointment appropriate.

**(5) Discovery.** Parties may obtain discovery of documents which are relevant to the subject matter of the pending proceeding, except matters which are privileged.

Upon motion by a party, the court may allow other methods of discovery, and make any order which the court determines is necessary, in the interests of justice, to protect a party or person from whom discovery is sought.

**(6) Pre-trial Conference.** There shall be a pre-trial conference in every case within twelve weeks of the date on which a care and protection petition has been filed. The pre-trial conference shall occur only after an investigator's report required under G.L. c. 119, se. 24, is available. The date of the pre-trial conference shall be scheduled at the time of the preliminary hearing or the 72-hour hearing. All parties are required to be present with counsel at the pre-trial conference, except that counsel for the child may appear without his/her client. Failure of one or more parties to appear shall not preclude the court from proceeding with the pre-trial conference.

Among those issues to be considered at the pre-trial conference are:

(i) the identification of the issues;

(ii) the marking of exhibits;

(iii) the list of witnesses; and

(iv) any other matter which, in the discretion of the court, may aid in the adjudication and disposition of the case.

**(7) Hearing on the Merits.** A hearing on the merits shall be scheduled at the pre-trial conference within two months from the date of the pre-trial conference.

**(8) Motion Requesting Adjudication to Dispense With Consent to Adoption.** When a request is made by motion in the course of a care and protection proceeding that the court enter an adjudication dispensing with the need for consent to the adoption of a child, said motion shall:

(i) be made in writing;

(ii) set forth the docket number of the care and protection proceeding in which said motion is being made;

(iii) set forth the division in which the care and protection proceeding was filed; and

(iv) be served on all other parties at least seven days prior to the date of hearing on the motion.

**(9) Uncontested Cases.** If a case is uncontested, unless the parents have agreed to entry of an adjudication and disposition, the court shall, on the assigned trial date, or by agreement of the parties on the assigned pre-trial conference date, hold a hearing. At the hearing, the court may require the parties to submit evidence that will ensure that the court has sufficient credible facts to make a determination of whether the child is in need of care and protection and should be committed to the Department of Social Services, and whether it is in the best interests of the child to dispense with consent to adoption. Such evidence may include testimony from lay and expert witnesses, reports from investigators, social workers and other professionals having knowledge of the case or an opinion relevant to the case, affidavits and other documents, and any other information from reliable sources which the court deems necessary for its determination. If the court concludes that there are facts sufficient to warrant a determination of parental unfitness, then the petitioner shall present to the court an adoption plan. The court may deem sufficient, without further specificity, a plan that elaborates in detail what steps the agency intends to employ to find a suitable adoptive parent for the subject child.

If a parent agrees to the entry of an adjudication and disposition, the court shall make inquiry of such parent on the record to establish that the consent is knowing and voluntary, and then may enter said adjudication and disposition.

In any uncontested case in which a notice of appeal is filed, the court shall make written findings of fact and conclusions of law.

**(10) Service by Publication.** In cases governed by the provision of G.L. c. 119, s. 24, requiring the petitioner to cause notice to be served upon a parent by publication in a newspaper, the court shall, upon motion by the petitioner, without regard to whether the identity of the parent is known or unknown, authorize such publication by issuing an "Order For Service By Publication", in the following form:

CARE AND PROTECTION/DISPENSING WITH  
PARENTAL CONSENT TO ADOPTION

DOCKET NUMBER: \_\_\_\_\_

***ORDER FOR SERVICE BY PUBLICATION***

***COMMONWEALTH OF MASSACHUSETTS***

*Juvenile Court Department  
Boston Division  
17 Somerset Street  
Boston, Massachusetts 02108*

*[name of subject child]*

*WHEREAS this matter is a care and protection petition regarding the subject child [name of subject child]; and*

*WHEREAS [identify party seeking order] has represented to this court that [enter name of parent or guardian to be served or if name of parent or guardian is unknown, mother of \_\_\_\_/father of \_\_\_\_/guardian of \_\_\_\_] cannot be found within the Commonwealth, that his/her present whereabouts are unknown, that personal service on him/her is therefore not practicable, that he/she has not voluntarily appeared in this matter, and that therefore service on him/her must be effectuated by publication;*

*It is therefore ORDERED that said parent/guardian is directed to appear in this court, at the court address set forth above, on [pre-trial conference date], at 9:00 a.m., or in default thereof this court may proceed to a trial on the merits and adjudication of this matter.*

*It is further ORDERED that the accompanying summons be published in the [enter name of newspaper designated by judge] once in each of three successive weeks, the final publication to appear no later than seven days before the aforementioned date, [enter pre-trial conference date], and that a copy of the summons be mailed to the said parent/guardian at his/her last known address by certified mail at least fourteen days before the aforementioned date. The publication and mailing shall be proved by affidavit of counsel containing a particular statement thereof, accompanied by copies of the advertisements, or tear sheets, of the newspaper containing all three publications. Said affidavit shall be filed with the Clerk-Magistrate's office.*

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*CLERK-MAGISTRATE*

*DATE ISSUED: [date]*

The judge who orders the service by publication shall designate the newspaper in which the publication is to appear.

Upon the issuance of an order for service by publication, the Clerk-Magistrate's office shall issue a "Summons By Publication", in the following form:

CARE AND PROTECTION/DISPENSING WITH  
PARENTAL CONSENT TO ADOPTION

DOCKET NUMBER: \_\_\_\_\_

***SUMMONS BY PUBLICATION***

***COMMONWEALTH OF MASSACHUSETTS***

*Juvenile Court Department  
Boston Division  
17 Somerset Street  
Boston, Massachusetts 02108*

TO:

*[name of parent or guardian to be served, or if name of parent or guardian is unknown, mother of \_\_\_\_/father of \_\_\_\_/guardian of \_\_\_\_]*

*A petition has been presented to this court by [name of petitioner], seeking, as to the subject child [name of child], that said child be found in need of care and protection and committed to the Department of Social Services. The court may dispense with your consent to the adoption of the said child if it finds that the child is in need of care and protection and that the best interests of the child would be served by said disposition.*

*You are hereby ORDERED to appear in this court, at the court address set forth above, on [pre-trial conference date], at 9:00 a.m., for a PRE-TRIAL CONFERENCE.*

*You may bring an attorney with you. If you cannot afford an attorney, the court will appoint an attorney to represent you.*

*If you fail to appear, the court may proceed with a trial on the merits of the petition and an adjudication of this matter.*

*For further information, call the Office of the Clerk Magistrate at \_\_\_\_\_.*

WITNESS:

*FRANCIS G. POITRAST*

*FIRST JUSTICE*

*DATE ISSUED: [date]*

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*CLERK-MAGISTRATE/ASSIST. CLERK-MAGISTRATE*

The Summons By Publication shall be given to the attorney for the petitioner, who shall have it published in accordance with the Order For Service By Publication. The Clerk-Magistrate's office shall also provide the attorney for the petitioner an "Affidavit of Notice of Publication", in the following form:

CARE AND PROTECTION/DISPENSING WITH  
PARENTAL CONSENT TO ADOPTION

DOCKET NUMBER: \_\_\_\_\_

**AFFIDAVIT OF NOTICE OF PUBLICATION**

I, \_\_\_\_\_, attor-

(name of attorney who requested service by publication)

ney of record for \_\_\_\_\_,

(name of party whom attorney represents)

hereby certify under the pains and penalties of perjury that in accordance with the order of this court I published the summons by publication in this matter once in each of three successive weeks in the \_\_\_\_\_, a newspaper

(name of newspaper)

published in \_\_\_\_\_, said publications being made on

(location of newspaper)

\_\_\_\_\_, 19\_\_\_, on \_\_\_\_\_, 19\_\_\_,

(1st date of pub.)

(2nd date of pub.)

and on \_\_\_\_\_, 19\_\_\_, clippings of said

(3rd date of pub.)

summons by publication from the newspaper pages in which said publications appeared being attached hereto and made a part of this affidavit. I further certify under the pains and penalties of perjury that I mailed a copy of the said summons to the last known address of

\_\_\_\_\_

(name of parent/guardian)

by certified mail.

\_\_\_\_\_

Attorney for \_\_\_\_\_

\_\_\_\_\_, 19\_\_ Subscribed and sworn to before me

\_\_\_\_\_

Notary Public

Upon accomplishing service in accordance with the Order For Service By Publication, the attorney for the petitioner shall forthwith complete the affidavit and file it with the Clerk-Magistrate's office.

There shall be a separate publication for each child who is a subject of a case.

**(11) Written Adjudication.** In all cases, whether contested or uncontested, in which the court makes an adjudication dispensing with consent to adoption, the court shall enter a written adjudication, on a document separate from any findings of fact and conclusions of law. All adoption agencies shall notify the court forthwith by letter when a child is adopted outside the division of the Juvenile Court Department where the adjudication was made, and receipt of such written notice shall be docketed.

Approved effective January 29, 1993.