

CHAPTER TWENTY-FIVE
NOTICE AND MANDATORY HEARINGS
Chapters 232 and 600A

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A. NOTICE IN JUVENILE CASES

1. OVERVIEW

One of the most important tasks of the Court is to assure that the litigants are afforded adequate notice and opportunity to present their case. It is often only the court that can protect the right of the parties in this regard. A child in a delinquency case has the right to due process of law including notice of specific charges of the offense alleged. In re Gault, 387 U.S. 1 (1967). The relationship between parent and child is constitutionally protected under the fourteenth amendment to the United States Constitution. In Interest of K.L.C., 372 N.W.2d 223, 226 (Iowa 1985). Notice of the hearing and an opportunity to be heard appropriate to the nature of the case is the most rudimentary demand of due process of law. Stubbs v. Hammond, 135 N.W.2d 540, 543 (Iowa 1965). Notice, to comply with due process requirements, must be given sufficiently in advance of scheduled court proceedings so that reasonable opportunities to prepare will be afforded, and it must 'set forth the alleged misconduct with particularity'. In Interest of Hewitt, 272 N.W.2d 852, 856 (Iowa 1985). The courts nationwide have strictly enforced notice requirements. Id. at 856. Where substantial defects in the notice are present, jurisdiction does not attach. Id. at 857. Action of the court cannot be premised upon grounds as to which the child and parents have not had proper notice. In Interest of Kelly, 262 N.W.2d 781, 784 (Iowa 1978), Long v. Long, 255 N.W.2d 140, 144 (Iowa 1977).

2. DELINQUENCY CASES

a. DETENTION AND SHELTER CARE HEARINGS

A notice shall be served upon the child, the child's attorney, the child's guardian ad litem if any, and the child's known parent, guardian, or custodian not less than twelve hours before the time the hearing is scheduled to begin and in a manner calculated fairly to apprise the parties of the time, place and purpose of the hearing. In the case of a hearing for a child waived for prosecution as a youthful offender, this notice may accompany the waiver order. If the court finds that there has been reasonably diligent effort to give notice to a parent, guardian, or custodian and that the effort has been unavailing, the hearing may proceed without the notice having been served. Iowa Code Section 232.44(3).

Because detention and shelter care hearings must be held upon short notice [within 24 and 48 hours following a child's admission to detention or shelter care], notice has traditionally been provided orally by the Juvenile Court Officer or social worker placing the child. A written or other record of the efforts of the juvenile court officer or social worker to notice the parties should be made. Personal service with a formal return of service could

also be provided where law enforcement take the child into custody after issuance of a written court order.

SEE APPENDIX - FORM DEL139 - Certification of Notice of Hearing

b. ADJUDICATORY HEARINGS

(1) SUMMONS

After a petition has been filed the court shall set a time for an adjudicatory hearing and unless the parties named in subsection 2 voluntarily appear, shall issue a summons requiring the child to appear before the court at a time and place stated and requiring the person who has custody or control of the child to appear before the court and to bring the child with the person at that time. The summons shall attach a copy of the petition and shall give notification of the right to counsel provided for in section 232.11. Iowa Code Section 232.37(1).

The Rules of Civil Procedure govern the practice and procedure of the court except where the rules or statutes expressly provide a different procedure in particular courts or cases. Rule 1.101, Iowa Rules of Civil Procedure. The petition and original notice in sufficient copies are to be provided to the clerk. The original notice shall contain the name of the court and the names of the parties and be directed to the necessary party or parties. Rule 1.302(1), Iowa Rules of Civil Procedure. The original notice shall be signed by the clerk and under seal of the court. Rule 1.302(3), Iowa Rules of Civil Procedure. The original notice and a copy of the petition are to be served together. Rule 1.302(3), Iowa Rules of Civil Procedure. Directions for service are also to be provided to the sheriff. Rule 1.302(2), Iowa Rules of Civil Procedure.

SEE APPENDIX - FORM DIRECT - Standard Directions for Service and Directions For Service in Juvenile Cases.

Original notices are "personally served" by delivering a copy to the proper person. Service upon a competent adult is made by serving the person personally or by obtaining their signed, dated acknowledgment of service [acceptance of service], or by serving the person's cohabiting spouse at any place, or by serving any adult person residing in that person's dwelling house or usual place of abode at that dwelling place. Rule 1.305(1), Iowa Rules of Civil Procedure. A summons is to be served upon both the child and the custodial parent. Service of summons is to be done personally unless otherwise ordered. Iowa Code Section 232.37(4). Personal service upon a minor [under age 18] is made as follows:

"by serving the minor's conservator or guardian, unless the notice is served on behalf of such conservator or guardian, or the minor's parent, or some person aged eighteen years or more who has the minor's care and custody, or with whom the minor resides, or in whose service the minor is employed. Where the notice is served on behalf of one who is the conservator or guardian and the conservator or guardian is the only person who would be available upon whom service could be made, the court shall appoint, without prior notice on the ward, a guardian ad litem upon whom service shall be made and defend for the minor." Rule 1.305(2), Iowa Rules of Civil Procedure.

A "guardian" is "a person who is not the parent of a child, but who has been appointed by a court or juvenile court having jurisdiction over the child, to have a permanent self-sustaining relationship with the child and to make important decisions which have a permanent effect on the life and development of that child and to promote the general welfare of that child." Iowa Code Section 232.2(21). A "fiduciary" includes "personal representative, executor, administrator, guardian, conservator, and trustee." Iowa Code Section 633.3(17). Service of process on a person under eighteen (18) years of age may be made upon his guardian, if he has one, or upon persons over eighteen (18) years of age with whom he resides, or for whom he is working, or who has his custody and control. Commonly, service is made upon a parent if the child is living at home. Volz, Iowa Practice, Volume 3, Section 2313, page 80.

SEE APPENDIX - FORM DEL106 - Summons - Delinquency Adjudication.

(2) NOTICE

Notice of the pendency of the case shall be served upon the known parents, guardians or legal custodians of a child if these persons are not summoned to appear as provided in subsection 1. Notice shall also be served upon the child and upon the child's guardian ad litem, if any. The notice shall attach a copy of the petition and shall give notification of the right to counsel provided for in section 232.11. Iowa Code Section 232.37(2).

A notice and a copy of the petition together with any court order setting the hearing and appointing counsel is then served upon necessary parties who were not provided a summons.

SEE APPENDIX - FORM DEL107 - Notice - Del. Adjudication
FORM DEL103 - Delinquency Petition
FORM DEL104 - Order Setting Hearing and Appointing Counsel.

Note that service is made upon known parents only and thus no notice is required to a parent whose identity is unknown, e.g. where paternity has not been established. Guardians to whom notice is required are those previously appointed by the District or Juvenile Court. Legal custodians to whom notice is required are defined in Iowa Code Section 232.2(11) to include **"a step-parent or relative within the fourth degree of consanguinity to a child who has assumed responsibility for the child, a person who accepted a release of custody pursuant to division IV, or a person appointed by a court or a juvenile court having jurisdiction over a child."** Thus notice to a custodial step-parent appears necessary. Query is notice required to a "non-custodial" step-parent? When has a step-parent or relative assumed responsibility for the child - over their person only or what about financial responsibility ?

Note further that in delinquency proceedings "counsel" and not a "guardian ad litem" is appointed pursuant to Iowa Code Section 232.11. This is in contrast to child in need of assistance and termination cases where both counsel and a guardian ad litem is appointed for the child. [See Iowa Code Sections 232.89(2), 232.112(2), and 232.113(2).] In delinquency cases, child's counsel is not a necessary party to whom service must be provided. A child, however, cannot waive counsel at a hearing for any reason [See Iowa Code Section 232.11(2)] Notice to the child's counsel in a juvenile delinquency hearing is not jurisdictional, but rather a practical necessity. It would seem acceptable that notice of the delinquency adjudicatory hearing be provided to child's counsel by ordinary mail or other regular procedure without the need for a return of service.

(3) HOW SERVICE IS MADE

Service of summons or notice shall be made personally by the sheriff by delivering a copy of the summons or notice to the person being served. If the court determines that personal service of summons or notice is impracticable, the court may order service by certified mail addressed to the last known address. Service of summons or notice shall be made not less than five days before the time fixed for hearing. Service of summons, notice, subpoenas or other process, after an initial valid summons or notice, shall be made in accordance with the rules of the court governing such service in civil actions. Iowa Code Section 232.37(4).

Service of notice is now required be made by personal service by the **sheriff** and not by some other process server. Under the Rules, it is still permissible to take a signed, dated acknowledgment "acceptance" of service.

SEE APPENDIX - FORM ACCEPT - Acceptance of Service.

Original notices may be served by any person who is neither a party nor the attorney for a party to the action, although a party, his agent or attorney may take an acknowledgment of service and deliver a copy of notice in connection therewith. Rule

1.302(5), Iowa Rules of Civil Procedure. A return of service or proof of service is to be filed with the Court by the sheriff or other process server making the service. Rule 1.308(4), Iowa Rules of Civil Procedure. Acceptance of service on the record in juvenile cases is also common.

SEE APPENDIX - FORM CERTIF - Certificate of Service.

Service of notice may be made by certified mail both where the Court determines personal service "impracticable". Use of this alternative form of service requires a court order for good cause shown. For example, where the party resides outside the state of Iowa, certified mailing may be used. An affidavit of a party or statement in a verified petition that a party resides outside the state of Iowa and is thus outside the normal service of process within the state, should serve as an appropriate basis for service by certified mail if a last known address is known for the party.

SEE APPENDIX - FORM DEL108 - Order for Mailed Notice - Delinquency.

Proof of mailing must be by affidavit of the party mailing the notice and shall have attached to it a duplicate copy of the papers referred to in the affidavit. Rule 1.308(5), Iowa Rules of Civil Procedure. See also In Interest of J.W., 498 N.W.2d 417, 421 (Iowa App. 1993).

SEE APPENDIX - FORM DEL109 - Affidavit of Mailing - Delinquency.

In the case of a known party with unknown whereabouts, published notice would be the only method of service possible, however amendment to Section 232.37(4) deleted published notice as an alternative form of notice to a known parent without unknown whereabouts. Rule 1.310, Iowa Rules of Civil Procedure specified those actions in which the original notice may be served by publication and delinquency juvenile actions are not listed. An affidavit of a party or his/her attorney is required showing that no mailing address is known and that diligent inquiry has been made to ascertain it before published notice can be approved by the Court. Rule 60.1(a), Iowa Rules of Civil Procedure.

SEE APPENDIX - FORM DEL110 - Affidavit for Published Notice.

If the Court finds that no mailing address is known for the party and that the Petitioner has made a diligent inquiry to ascertain it but the same has been unsuccessful, the Court may order the notice provided to the party by publication.

SEE APPENDIX - FORM DEL111 - Order for Published Notice.

Published notice is to be published three (3) consecutive weeks in a newspaper of general circulation, published in the county where the petition is filed, with the newspaper to be the one selected by the Petitioner. Rule 1.313, Iowa Rules of Civil Procedure.

SEE APPENDIX - FORM DEL 112 - Notice for Publication (Delinquency).

Proof of publication by the publisher or an employee of the newspaper must be filed with the clerk before a default can be entered against a party served by publication. Rule 1.314, Iowa Rules of Civil Procedure. It appears well advised to publish only the child's initials as opposed to full name to protect the child from adverse notoriety prior to any adjudication of delinquency. There exists no specific statutory requirement that the child's full name not be published in delinquency notices. There also exists no authority to dispense with notice to a known party whose whereabouts are unknown.

The real test for determining if means of service other than personal service or its equivalent will suffice is whether the method is reasonably calculated to give actual notice and, if there is some doubt on that point, is it at least the best possible procedure under the circumstances. Iowa Rules of Civil Procedure Annotated, West Publishing, Volume 1, Comment to former Rule 60 [now Rule 1.310] at page 356, citing Hardy v. Green, 277 F. Supp. 958 (DC Mass. 1967). Thus while a published notice in a local newspaper may not actually give notice to a party residing out of state, such notice may be "the best possible alternative under the circumstances".

Service of additional matters, including all pleadings and orders, after service of an original summons or notice is to be made in accordance with Rule 1.415 of the Rules of Civil Procedure. Rule 1.415 allows for service by either personal delivery or by ordinary mail to the party's attorney, if any, or if not, directly to the party, unless the court orders the party served directly in addition to service upon the party's attorney. Note that 2001 amendment to the Juvenile Code deletes the requirement that notice in the same manner as for adjudicatory hearings be made in the case of modification hearings under Section 232.54. Iowa Code Section 232.54(8), SF458, Section 27. Now only "reasonable notice" which includes ordinary mailed notice is all that is required for review, modification, and permanency hearings in delinquency cases.

The notice must be provided to the party not less than five (5) days prior to the date set for hearing, whether the notice is made personally, by certified mail, or by publication using the last date of publication as the date considered for this purpose. Note that the five-day notice provision of Iowa Code Section 232.37 takes precedence over the twenty (20) days requirement for known defendants in Rule 1.303(1) of the Iowa Rules of Civil Procedure. In computing time, the first day shall be excluded and the last included. Iowa Code Section 4.1(23). In computing periods of time fixed by statute or by proceedings thereunder, the court is to uniformly comply with the statutory method, unless contrary to legislative intent. Harney v. Clear Creek Comm. School Distr., 154 N.W.2d 88, 92 (Iowa 1967).

c. WAIVER HEARINGS

Reasonable notice that states the time, place, and purpose of the waiver hearing shall be provided to the persons required to be provided notice for adjudicatory hearings under section 232.37. Summons, subpoenas and other process may be issued and served in the same manner as for adjudicatory hearings as provided in section 232.37. Iowa Code Section 232.45(3).

Thus notice of waiver hearings is made in identical fashion to the adjudicatory hearing. Note that a copy of the motion to waive and order setting waiver hearing

SEE APPENDIX - FORM DEL121 - Order Setting Waiver Hearing.

An order setting the waiver hearing is also provided to the parties. Note that the motion to waive must be filed before an adjudicatory hearing on the merits of the action is held. Iowa Code Section 232.45(1). Query whether the summons and notice for adjudicatory hearing must also be served in order to avoid additional service in the event the motion to waive is denied? Serving both notices may serve to confuse the parties. It may also be possible to obtain their stipulation to waive further service of notice of adjudicatory proceedings in the event the matter is not waived to adult court. This acceptance of service and waiver of further personal service would not be available for an absent party, however.

SEE APPENDIX

- FORM DEL122 - Summons Delinquency Waiver
- FORM DEL123 - Notice Delinquency Waiver
- FORM DEL124 - Order for Mailed Notice Waiver
- FORM DEL125 - Affidavit of Mailing Waiver
- FORM DEL126 - Affidavit for Published Notice
- FORM DEL127 - Order for Published Notice Waiver
- FORM DEL128 - Notice for Publication Waiver

d. DISPOSITIONAL AND REVIEW HEARINGS

As soon as practicable following the entry of an order of adjudication pursuant to section 232.47 or notification that the child has received a youthful offender deferred sentence pursuant to section 907.3A, the court shall hold a dispositional hearing in order to determine what disposition should be made of the matter. Iowa Code Section 232.50(1).

The court shall hold a periodic dispositional review hearing for each child in placement pursuant to section 232.52(2)(d) or (e), to determine the future disposition status of the child. The hearings shall not be waived or continued beyond twelve months after the last dispositional hearing or dispositional review hearing. Iowa Code Section 232.50(2).

Neither the dispositional nor the mandatory delinquency dispositional review provisions of section 232.50 include any requirements for notice and thus it appears that ordinary mailed notice pursuant to section 232.37(4) would suffice.

e. MODIFICATION HEARINGS

At any time prior to its expiration, a dispositional order may be terminated, modified, or vacated and another dispositional order substituted therefor only in accordance with the following provisions: (1) [in order to terminate, modify or vacate and substitute and order with respect to dispositional orders made pursuant to section 232.52(2)(a), (b), or (c)], (2) [to terminate or enter a less restrictive disposition upon motion of the custodian with respect to dispositional orders entered pursuant to section 232.52(2)(d) or (e)], (3) [to modify to enter an equally restrictive dispositional order with respect to dispositional orders entered pursuant to section 232.52(2)(d), (e), or (f)]. . . . Notice shall be afforded all parties, and a hearing shall be held at the request of any party4) [upon motion of child or parent to terminate or impose less restrictive placement with respect to a dispositional order entered pursuant to section 232.52(2)(d), (e), or (f)], (5) [upon motion of the state or custodian to impose a more restrictive disposition with respect to an order entered pursuant to section 232.52(2)(d) or (e)] 5) [terminate or modify disposition of a child who has received a youthful offender deferred sentence pursuant. Iowa Code Section 232.54.

Notice requirements of this section shall be satisfied by providing reasonable notice to persons required to be provided notice for adjudicatory hearings under section 232.37 except that notice shall be waived regarding a person who was notified of the adjudicatory hearing and who failed to appear. Iowa Code Section 232.54.

Effective July 1, 2001, personal service of notice of modification hearings is not required. SF 458, Section 27.

SEE APPENDIX - FORM DEL180 - Motion for Modification
- FORM DEL183 Order Setting Modification Hearing
- FORM DEL184 - Summons, and Notice.

The language "notice shall be afforded all parties and a hearing shall be held at the request of any party" also tends to indicate that if no party, nor the court requests a hearing on the issue, the an order may enter upon the application of the party or the court upon proper notice and without a formal hearing. Note further that Rule 1.435(1) of the Iowa Rules of Civil Procedure provides that "all pretrial motions on file fourteen (14) days or more shall be deemed submitted unless (1) a hearing has been set, or (2) another time for submission is fixed by rules statute, or order of court entered for good cause shown." Rule 1.431 further provides that "unless otherwise ordered by the court or provided by rule or statute, such party opposing the motion shall file within ten days after a copy of the motion has been served a written resistance to the motion." Rule 8.4 of the Iowa Rules of Juvenile

Procedure provides that “any motion filed with the juvenile court shall be promptly brought to the attention of the judge or referee by the moving party.” Thus it may be argued that where proper notice of a motion to modify, terminate, or vacate and substitute is given and no responsive pleading or resistance and no request for hearing is made, the court may order the relief requested without hearing. The stipulation of the parties to the modification, termination, or vacation and substitution of a dispositional order with waiver of notice of hearing would also suffice to give the court jurisdiction to proceed upon the parties request for the same. This may also serve as a better method than depending upon a lack of timely request for hearing to justify entry of the order without hearing.

SEE APPENDIX - FORM DEL181 - Stipulation and Waiver of Notice
- FORM DEL182 - Order Modifying Disposition on Stipulation.

Note that a modification hearing is normally required with regard to dispositional orders entered pursuant to section 232.52(2)(d), (e), and (f) where the request is made by a child or parent for a less restrictive disposition or termination or pursuant to subsections (d) or (e) where the state is seeking a more restrictive disposition. The language that " a hearing shall be held at the request of any party or upon the court's own motion" is absent from subsections (4) and (5). The written stipulation and waiver of notice and hearing could be used in such case, however.

f. PERMANENCY HEARINGS

Reasonable notice shall be provided of a permanency hearing for an out-of-home placement in which the court has included a determination that continuation of the child in the child’s home is contrary to the child’s welfare. <u>Iowa Code</u> Section 232.58(2).

Effective July 1, 2001, permanency hearings are required in delinquency cases where federal funds are accessed to pay for the foster care placement of the child. Ordinary mailed notice of such hearings is acceptable.

3. CHILD IN NEED OF ASSISTANCE CASES

a. TEMPORARY REMOVAL HEARINGS

At any time after the petition is filed any person who may file a petition under section 232.87 may apply for, or the court on its own motion may order, a hearing to determine whether the child should be temporarily removed from home. Where the child is in the custody of a person other than the child's parent, guardian or custodian as the result of action taken pursuant to section 232.78 or 232.79, the court shall hold a hearing to determine whether the temporary removal should be continued. Iowa Code Section 232.95(1).

Section 232.95 provides no requirements for notice of a temporary removal hearing. It may be assumed that "notice in a manner calculated fairly to apprise the parties of the time, place and purpose of the hearing" contained in Section 232.44(3) could be applicable by implication. The social worker or Juvenile Court Officer removing the child should notify the parties either personally or by telephone of the time and place of the removal hearing.

[SEE APPENDIX - FORM CH135 - Return of Service - Temporary Removal](#)

There may also be time for mailed notice to the parties since Rule 8.12 of the Iowa Rules of Juvenile Procedure allows ten days within which to schedule the removal hearing. Such mailing could be by ordinary mail as there is no more restrictive requirement. The notice could also be provided personally by the peace officer or juvenile court officer assisting in the removal providing they had a copy of the court order in hand which schedules the removal hearing.

b. ADJUDICATORY HEARINGS

After a petition has been filed the court shall issue and serve summons, notice, subpoenas, and other process in the same manner as for adjudicatory hearings in cases of juvenile delinquency as provided in section 232.37. In addition to the persons required to be provided notice under section 232.37, notice for any hearing under this division shall be provided to the agency, facility, institution, or person, including a foster parent or an individual providing preadoptive care, with whom a child has been placed. Iowa Code Section 232.88.

Thus the same basic rules apply in child in need of assistance adjudicatory hearings as for delinquency adjudicatory hearings.

- SEE APPENDIX
- FORM CH150 - CHINA Petition
 - FORM CH151 - Order Setting Hearing Appoint Counsel/ GAL
 - FORM CH152 - Summons and Notice - CINA
 - FORM CH153 - Notice
 - FORM CH158 - Order for Mailed Notice
 - FORM CH161 - Order for Published Notice
 - FORM CH162 - Notice of Publication [CHINA]

Note, however, that upon the filing of a petition in a CHINA case, the court is required to appoint counsel and a guardian ad litem for the child. Said guardian ad litem then becomes a necessary party to whom notice of the action must be given. See Iowa Code Sections 232.89(1), 232.87(4), 232.88, 232.36(3)(b)(4), and 232.37(2). Note that pursuant to Section 232.37(2) notice of the case must be served upon both the child and upon the child's guardian ad litem. Thus it would not appear that service upon the child's guardian ad litem alone would not be sufficient. A party who appears by counsel, however, and who waives notice would give the court jurisdiction to proceed. Also note that notice must be provided to foster parents and foster agencies with whom a child is placed at the time of the adjudicatory hearing pursuant to amendment to section 232.88.

c. CAVEAT ON GENERAL APPEARANCE

A general appearance is the submission to the jurisdiction of the court and effectively waives the necessity of notice and defects in the notice given. Cullinan v. Cullinan, 226 N.W.2d 33, 35 (Iowa 1975). If a party appears in person or by attorney, he submits himself to the jurisdiction of the court and may not thereafter avoid the jurisdiction through special appearance [now motion to dismiss]. Lonning v. Lonning, 199 N.W.2d 60, 62 (Iowa 1972).

A general appearance may be made by formal appearance or by implication. 5 Am. Jr. 2d "Appearance", Section 14, page 490. An appearance may be either express or it may arise by implication from the defendant's seeking, taking, or agreeing to some step or proceeding in the cause beneficial to himself or detrimental to the plaintiff other than one contesting only jurisdiction. 6 C.J.S. "Appearance", Section 18, page 22. A general appearance is effected by introducing evidence, examining witnesses, cross-examining witnesses, etc. Id. at Section 24, page 31. If the appearing party requests relief or discloses a purpose that goes beyond challenging the jurisdiction of the court over the subject matter or the parties, the appearance is considered general and all jurisdictional challenges will be deemed waived. Matter of Estate of Dull, 303 N.W.2d 402, 407 (Iowa 1981). In determining whether a given appearance is special or general we look to the substance of the appearance rather than its form and base our determination upon the purpose and the type of relief requested. Id. at 407. Knowledge of the pending proceedings and an intention to appear are the ordinary requisites to render an act or course of conduct an appearance. 6 C.J.S. "Appearances", Section 18, page 24.

Under Iowa Code Sections 232.88 and 232.37(2) notification of the pendency of a child in need of assistance action shall be served upon known parents. Even where a non-

custodial parent is incarcerated and has abandoned the child, if his whereabouts are known or ascertainable, he should be notified. In Interest of M.L.M., 464 N.W.2d 688, 690 (Iowa App. 1990). This is not to say that such an individual has an absolute right to be physically present at the hearings as it is in the discretion of the court to permit a non-custodial parent to be made a party to the proceedings under Section 232.91. In Interest of T.M.C., 429 N.W.2d 165, 167 (Iowa App. 1988). It is not a denial of due process of law, to deny a prisoner transportation and participation in a juvenile hearing concerning the prisoner's child where the parent receives notice of the petition and hearing, is represented by counsel, counsel is present at the termination hearing, and the parent has an opportunity to present testimony by deposition. In Interest of J.S., 470 N.W.2d 48, 52 (Iowa App. 1991).

The language contained in Section 232.91 that "a parent without custody may petition the court to be made a party to the proceedings under this division" implies that a petition to intervene and granting of the same by the court is required before notice of the CHINA action must be given to a non-custodial parent. This appears in contrast to the definition of a "parent" in Section 232.2 and contrary to the dictates of the court in In Interest of M.L.M., *supra*. Perhaps a better reading of that section entitled "Presence of Parents and guardian ad litem at hearings" is that before a hearing may take place in the absence of a non-custodial parent, who has been made a party to the proceedings, proper notice must be given. A non-custodial parent may provide the court with a dispositional alternative which would be unavailable were that parent not notified of the proceedings.

The amendments to Section 232.91 which added subsection (3) now provides that a foster parent, foster agency, or preadoptive care provider for a child may now at a minimum be given "the opportunity to be heard" during the hearings under division III and which added subsection (2) now provides that those person may petition to intervene and be made a party to the proceedings under division III. 1998 amendments to Rule 75 of the Iowa Rules of Civil Procedure now provide that "upon timely application, anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) where the applicant claims an interest relating to the property or transaction which the subject to the actions and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties." Whether the provisions of section 232.91(2) provides an "unconditional right to intervene" has not been determined by the Iowa appellate courts. Rule 24 of the Federal Rules of Civil Procedure after which former Iowa Rule 75 was drafted may provide some insight.

d. CHINA DISPOSITIONAL HEARINGS

Following the entry of an order pursuant to section 232.96, the court shall, as soon as practicable, hold a dispositional hearing in order to determine what disposition should be made of the petition. Iowa Code Section 232.99.

No specific requirements for notice for the CHINA dispositional hearing are made and thus it would appear that Section 232.37(4) applies which allows notice of the dispositional hearing by ordinary mail or regular delivery.

e. REVIEW HEARINGS WITH RETENTION OF CUSTODY

The duration of any period of supervision or other terms or conditions shall be for an initial period of no more than twelve months and the court, at the expiration of that period, upon a hearing and for good cause shown, may make not more than two successive extensions of such supervision or other terms or conditions of up to twelve months each. Iowa Code Section 232.101(2).

Again no specific notice requirements are made for dispositional review hearings where the parents were allowed to retain custody of the child in the original disposition and ordinary mailed notice is sufficient.

f. REVIEW HEARINGS WHERE CUSTODY WAS TRANSFERRED

The court shall hold a periodic dispositional review hearing for each child in placement pursuant to this section in order to determine whether the child should be returned home, an extension of the placement should be made, a permanency hearing should be held, or a termination of the parent-child relationship proceeding should be instituted. . . . The initial dispositional review hearing shall not be waived or continued beyond six months after the date of the dispositional hearing. . . Subsequent dispositional review hearings shall not be waived or continued beyond twelve months after the date of the most recent dispositional review hearing. Iowa Code Section 232.102(8).

Again no specific notice requirement is made for the mandatory dispositional review hearings where the child's custody was transferred from the parents for placement elsewhere and ordinary mailed notice would appear appropriate.

Care must be taken that at review hearings under Section 232.102(8) only four actions are authorized by the court: to continue the present dispositional order, to return the child to the home from which the child was removed, to order a permanency hearing be held or to direct that a termination of parental rights petition be filed. A transfer of custody to a parent who was not the parent from whom the juvenile court took custody is not an action allowable at a review hearing under section 232.102(8). For such action to be taken notice of a modification hearing must be provided pursuant to section 232.103. In Interest of Blackledge, 304 N.W.2d 209, 213 (Iowa 1981). Neither can one finesse a change of "placement" from the department of human services to a non-custodial parent without notice and modification hearing pursuant to section 232.103. In Interest of Leehey, 317 N.W.2d 513, 515 (Iowa App. 1982). However, even where a parent does not receive personal service of notice of a modification hearing, that parent's actual knowledge of modification proceedings and active participation therein with counsel and without objection will waive the defect in notice. In Interest of J.F., 386 N.W.2d 149, 152 - 153 (Iowa App. 1986). It is often common for children involved in the juvenile court to have parents who have divorced and in whom joint custody is ordered in the dissolution but where primary physical placement of the child is with one parent. In such cases it is generally held that the "custodial" parent for purposes of the juvenile code is the parent with primary physical placement.

g. TERMINATION, MODIFICATION, AND VACATION HEARINGS

A hearing shall be held on a motion to terminate, or modify a dispositional order except that a hearing on a motion to terminate an order may be waived upon agreement by all parties. Reasonable notice of the hearing shall be given to the parties. Iowa Code Section 232.103(3).

Notice of a CHINA modification hearing may now be provided by ordinary mail. SF 458, Section 20, effective July 1, 2001, deleted the requirement for personal service or by substituted service either by certified mail or by publication or both for modification hearings.

SEE APPENDIX - FORM CH181 - Motion for Modification
 - FORM CH182 - Order Setting Hearing
 - FORM CH183 - Summons and Notice.

The modification may also be accomplished through a stipulation of all parties and waiver of hearing.

SEE APPENDIX - FORM CH185 -Waiver of Notice and Hearing Re: Modification
 - FORM CH186 - Modification Order upon Stipulation.

The court may not terminate a CHINA disposition absent notice and hearing or a stipulation of all parties.

SEE APPENDIX - FORM CH188 - Stipulation for Termination of Order
- FORM CH189 - Order Terminating Disposition Stipulation

Note, again that amendments to Section 232.37 deleted the provision for published notice which absence is thus incorporated by reference into Section 232.103(3). Thus it may be argued that notice may be dispensed with to a parent whose whereabouts are unknown and for who no last known address exists to which mailed notice may be sent.

h. PERMANENCY HEARINGS

The time for the initial permanency hearing for a child subject to out-of-home placement shall be the earlier of the following: (1) For a temporary removal order entered under section 232.78, 232.95, or 232.96, for a child who was removed without a court order under section 232.79, or for an order entered under section 232.102, for which the court has not waived reasonable efforts requirements, the permanency hearing shall be held within twelve months of the date the child was removed from the home. (2) For an order entered under section 232.102, for which the court has waived reasonable efforts requirements under section 232.102(11) the permanency hearing shall be held within thirty days of the date the requirements were waived.

Such permanency hearing may be held concurrently with a hearing under section 232.103 to review, modify, substitute, vacate, or terminate a dispositional order. Reasonable notice of a permanency hearing shall be provided to the parties. Iowa Code Section 232.104(1).

Ordinary mailed notice of a permanency hearing is now acceptable. SF 458, Section 21, effective July 1, 2001, deleted the requirement that notice of a permanency hearing must be served upon all necessary parties whether by personal service or by substituted service either by certified mail or by publication or both.

i. CAVEAT ON NOTICE OF MODIFICATION/PERMANENCY

The language in In Interest of R.E., 462 N.W.2d 723, 728 (Iowa App. 1990) by analogy makes a case for ordinary mailed or delivered notice. In R.E. the court upheld the dispensing with notice in a Chapter 232 termination hearing to a parent who could not be located. The Court found at page 726:

"The mother in this case had notice of the ongoing CHINA action. Indeed,

she was initially present at that proceeding. In the middle of that proceeding, she chose to disappear. She knew some dispositional action would be taken by the trial court in the CHINA action. The termination proceeding followed immediately after the CHINA action. The CHINA actions constituted the underlying basis for the termination. The termination was in effect merely the continuation and disposition of the CHINA action."

Modification and permanency hearings are not parts of new actions, but a continuation of the same action. To be required to personally serve or publish notice to parents who have previously failed to appear after proper initial notice and thus have taken no steps toward either regaining or gaining custody, appears futile and a waste of tax dollars.

j. PERMANENCY REVIEW AND MODIFICATION HEARINGS

Following the initial permanency hearing and the entry of a permanency order which places a child in the custody or guardianship of another person or agency, the court shall retain jurisdiction and annually review the order to ascertain whether the best interest of the child is being served. When the order places the child in the custody of the department for the purpose of long-term foster care placement in a facility, the review shall be in a hearing that shall not be waived or continued beyond twelve months after the initial permanency hearing or the last permanency review hearing. Any modification shall be accomplished through a hearing procedure following reasonable notice. . . . Iowa Code Section 232.104(6).

It appears that only those permanency orders under which the child is placed in foster group care [i.e., foster care placement in a facility] must be reviewed annually. Reviews may be made upon ordinary notice. If a permanency order is to be modified, "reasonable notice" must be provided.

4. TERMINATION OF PARENTAL RIGHTS - CHAPTER 232

(1) Persons listed in section 232.11(3) [i.e. the child, living parents, guardian, custodian, guardian ad litem of the child, petitioner, and person standing in the place of the parents of the child] shall be necessary parties to a termination of parent-child relationship proceedings and are entitled to receive notice and an opportunity to be heard, except that notice may be dispensed with in the case of any such person whose name or whereabouts the court determines is unknown and cannot be ascertained by reasonably diligent search. In addition to the persons who are necessary parties who may be parties under section 232.111, notice for any hearing under this division shall be provided to the child's foster parent, an individual providing preadoptive care for the child, or a relative providing care for the child.

(2) Prior to the service of notice on the necessary parties, the juvenile court shall appoint a guardian ad litem for a child if the child does not have a guardian or guardian ad litem or if the interest of the guardian or guardian ad litem conflict with the interest of the child. Such guardian ad litem shall be a necessary party under subsection 1.

(3) Notice under this section shall be served personally or shall be sent by restricted certified mail, whichever is determined by the court to be the most effective means of notification. Such notice shall be made according to the rules of civil procedure relating to an original notice where not inconsistent with the provisions of this section. Notice by personal delivery shall be served not less than seven days prior to the hearing on termination of parental rights. Notice by restricted certified mail shall be sent not less than fourteen days prior to the hearing on termination of parental rights. A notice by restricted certified mail which is refused by the necessary party given notice shall be sufficient notice to the party under this section. Iowa Code Section 232.112.

a. GENERALLY

Upon the filing of a Chapter 232 termination petition, the court sets the hearing, appoints a guardian ad litem for the child or confirms the appointment in the underlying CHINA case.

[SEE APPENDIX - FORM CH224 - Order Setting 232 Termination & GAL.](#)

A notice and a copy of the petition as well as the order is then served upon the necessary parties.

[SEE APPENDIX - FORM CH222 - Chapter 232 Termination Petition](#)

- FORM CH225 - Notice

Note that the appointment of a guardian ad litem for the child in interest is made prior to service of notice on the necessary parties. This is in contrast to Rule 1.212 of the Iowa Rules of Civil Procedure and Iowa Code Section 633.118 [probate] which provides for the appointment of a guardian ad litem or an attorney only after the party is served with original notice and is found to be subject to Rule 1.211 for reason of being a minor against whom no judgment may be entered without a defense. Under Rule 1.305(2) of the Iowa Rules of Civil Procedure, in the case of a minor child in the custody of the Department of Human Services for placement in foster care where a Chapter 232 termination is sought, service of notice upon that child may be made upon the parent [though not the custodian], upon the child's foster parent [adult with whom the child resides], or upon the Department of Human Services [the custodian], or in the alternative upon the child's guardian ad litem if the termination petition is filed by the Department or is deemed filed by the Department by action of the County Attorney. If the true purpose of notice to the child, at least one of sufficient age to comprehend the action, is to give the child an opportunity to know of the pendency of the action, confer with counsel and present his or her position, the best notice would be one intended to be provided directly to the child at his or her residence in foster care or otherwise. Prompt action by the child's guardian ad litem in conferring with the child if service upon the child is made upon the guardian ad litem by substitution may also serve to provide the child proper notice and opportunity to be heard. Service on the child by means of service on a non-custodial parent or upon the Department will obviously not serve to give practical notice of the proceeding to the child.

The Court is to determine the most effective means of service, meaning personal service where the party resides in the state of Iowa and can be readily located. If the party resides outside the state of Iowa or within the state but is difficult to serve personally due to employment or other circumstances, restricted mailed notice may be more effective. Note that restricted delivery certified mail is required for notice of termination hearings. In contrast, only certified mail is required for notice of delinquency and CHINA adjudicatory and modification hearings. A return receipt is not required, but will obviously serve as better proof that appropriate notice was given and received. In the case of termination hearing, a notice by restricted mail which is refused by the necessary party is sufficient. Query does a refusal require affirmative action by the recipient to refuse the letter or is mere failure to either be at the address listed or to respond to the post office's notices, if any, suffice? If mailed notice is used, an Affidavit of Mailing should also be filed with attached thereto the certificate of certified, restricted delivery mail along with any return receipt requested along with the documents sent.

SEE APPENDIX - FORM CH226 - Affidavit of Mailing

b. SPECIAL CAVEAT ON FORMS OF MAILED NOTICE

Certified mail provides a mailing receipt, and a record of delivery is maintained at

the recipient's post office. A return receipt to provide the sender with proof of delivery can also be purchased for an additional fee. Certified mail service is available only for First-Class Mail. Certified mail is not available for international mail. United State Postal Service Publication 201, July 1992, "A Consumer's Directory of Postal Services and Products", page 18.

Restricted delivery means that the sender's mail is delivered only to the addressee or to someone authorized in writing to receive mail for the addressee. Restricted delivery is offered in connection with return receipt service and is available only for registered mail, certified mail, COD mail, and mail insured for more than \$50. Restricted delivery mail addressed to officials of government agencies, members of the legislative and judicial branches of federal and state governments, members of the diplomatic corps, minors, and individuals under guardianship can be delivered to an agent without written authorization from the addressee. Id. at page 22.

Return Receipts are the sender's proof of delivery. A return receipt can be purchased for mail which is sent COD or express Mail, is insured for more than \$50, or is registered or certified. The return receipt shows who signed for the item and the date it was delivered. For an additional fee, the sender can get the addressee's correct address of delivery or request restricted delivery service. Id. at 22.

c. DISPENSING WITH NOTICE

Section 232.112(1) allows the Court to dispense with notice to a necessary party whose name or whereabouts are unknown and cannot be ascertained by reasonably diligent search.

[SEE APPENDIX - FORM CH227 - Order Dispensing with Notice.](#)

The action by the court in dispensing with notice pursuant to section 232.112(1) was affirmed on both due process and equal protection challenge. In Interest of R.E., 462 N.W.2d 723, 728 (Iowa App. 1990). The court cited differences between chapter 232 and chapter 600A termination actions. It reasoned that a parent had more reason to be knowledgeable about the termination in a chapter 232 case due to the underlying child in need of assistance action and as such the termination was merely a continuation of the underlying CHINA case. Id. at 725 - 727. Published notice is not statutorily authorized for chapter 232 terminations. Query is published notice still better than no notice at all?

The court in R.E., supra, also discussed what constituted "the requisite diligence" on the part of the state to locate the parent. It found sufficient diligence in contacting various friends and acquaintances of the mother, as well as her former landlord, contacting the children's school, and checking with the post office, telephone company, an city directory, visiting various missions around town and requesting that they contact the department if the mother visited them. It lastly cited that even her own attorney was unable to provide any information as to the mother's whereabouts. Id. at 727.

5. FAMILY IN NEED OF ASSISTANCE

a. ADJUDICATION AND DISPOSITION

Upon the filing of a petition, the court shall fix a time for a hearing and give notice thereof to the child and the child's parent, guardian or custodian. Iowa Code Section 232.127(1). A parent without custody may petition the court to be made party to proceedings under this division. Iowa Code Section 232.127(2).

The language in Section 232.127(2) appears to indicate that a non-custodial parent is not a necessary party to the action but may petition to intervene. Such a reading appears consistent with the purposes of Division V. The definition of "parent" in Section 232.2(39) is "a biological mother or father of a child but does not include mother or father whose parental rights have been terminated." Thus a non-custodial parent is a parent for purposes of Chapter 232 and as such the implication provided from the language in section 232.127(2) appears in contradiction. Note that while Section 232.126 provides for the appointment of either counsel or a guardian ad litem for the child, the person appointed is not a necessary party upon whom notice must be served. Again the practicalities require at least ordinary mailed notice to the guardian ad litem or attorney for the child. Section 232.126 further provides for the appointment of a special advocate to act as guardian ad litem and in such case provides specifically that such person be entitled to receive notice of all depositions hearing, and trial proceedings. There is no requirement for a bifurcated adjudicatory and dispositional hearing and they may be held jointly. Iowa Code Section 232.127(5). In such case no additional notice of the dispositional hearing appears necessary.

No specific requirements for notice are given and thus it is assumed that the normal rules of civil procedure for the service of an original notice are applicable. Prior to enactment of the modern Iowa juvenile code, the court was to prescribe manner and timing of service of notice of juvenile actions. The Iowa Supreme Court stated that at least twenty days prior notice should be given where there existed non-resident parties. It held that seven days prior notice to a resident custodian [grandmother] was not sufficient in the case of a non-resident parent whose whereabouts are known. Stubbs v. Hammond, 135 N.W.2d 540, 543 (Iowa 1965). The rules of civil procedure normally allow a person served personally twenty days prior notice. See Rule 1.311(2), Iowa Rules of Civil Procedure. Thus where the court is required to set the time for hearing without specific guidance from the juvenile code, allowing at least twenty days prior to adjudicatory hearings may be required and at a minimum prudent action.

6. VOLUNTARY FOSTER PLACEMENTS

a. INITIAL DETERMINATION

Upon the filing of a petition, the court shall fix a time for an initial determination hearing and give notice of the hearing to the child's parent, guardian, or custodian, counsel or guardian ad litem, and the department. Iowa Code Section 232.182(1).

A parent who does not have custody of the child may petition the court to be made a party to the proceedings under this division. Iowa Code Section 232.182(2).

Section 232.179 provides that upon the filing of the petition, the court shall appoint a guardian ad litem to represent the best interest of the child. Section 232.182(1) makes the guardian ad litem a necessary party entitled to notice of the voluntary placement hearings. Again section 232.182(2) indicates that while a non-custodial parent is not a necessary party to this action, they may petition to intervene. Again see Section 232.2(39) for the definition of parent which includes non-custodial parents. No specific notice provisions are given and thus service in the form of an original notice [See Rule 1.305 et seq.] appears appropriate. The amount of prior notice is not spelled out and thus it would appear that the time requirements would again be governed by the rules of civil procedure. Rule 1.303 of the Iowa Rules of Civil Procedure provides as follows:

(1) Unless otherwise provided, the defendant, respondent, or other party shall serve, and within a reasonable time thereafter file, a motion or answer on or within twenty days after the service of the original notice and petition upon such party. date of last publication. (2) Any statute of Iowa which specifically requires response by a particular party, or in a particular action, within a specified time, shall govern the time for serving, and within a reasonable time thereafter filing, a motion or answer in such cases. (3) A defendant, respondent, or other party served in a manner prescribed by an order of court, shall serve, and within a reasonable time thereafter file, a motion or answer on or before the date fixed. (4) A defendant, respondent, or other party served by publication or publication and mailing shall serve, and within a reasonable time thereafter file, a motion or answer on or before the date fixed in the notice as published, which date shall not be less than twenty days after the date of last publication. (5) A defendant, respondent or other party served by mail under R.C.P. 1.306 [necessary minimum contacts - long arm jurisdiction] shall serve, and within a reasonable time thereafter file, a motion or answer on or before the date fixed in the notice as mailed, which shall not be less than sixty days following the date of mailing. Rule 1.303, I.R.C.P.

Where the court fixes the time of hearing, it must allow for a reasonable time for the parties to appear. It has been held that twenty (20) days is an adequate and comports with due process considerations. Stubbs v. Hammond, 135 N.W.2d 540 (Iowa 1965), former Rule 60.1(b), I.R.Civ.P.

b. DISPOSITIONAL AND REVIEW HEARINGS

Following an entry of an initial determination order pursuant to section 232.182, the court shall hold a dispositional hearing in order to determine the future status of the child based on the child's best interests. Notice of the hearing shall be given to the child and the child's parent, guardian, or custodian, and the department. The dispositional hearing shall be held within twelve months of the date the child was placed in foster care. Iowa Code Section 232.183(1) and (2).

With respect to each child whose placement was approved pursuant to subsection 5, the court shall continue to hold periodic dispositional hearings. The hearings shall not be waived or continued beyond twelve months following the last dispositional hearing. After a dispositional hearing, the court shall enter one of the dispositional orders authorized under subsection 5. Iowa Code Section 232.183(6).

No specific notice requirements are made for the disposition and review hearings in voluntary placement cases and thus it would appear that ordinary mailed or delivered notice should be made pursuant to Rule 1.416 of the Rules of Civil Procedure.

7. CHAPTER 600A TERMINATION OF PARENTAL RIGHTS

A termination of parental rights under this chapter shall, unless provided otherwise in this section, be ordered only after notice has been served on all necessary parties and those parties have been given an opportunity to be heard before the juvenile court except that notice need not be served on the petitioner or on any necessary party who is spouse of the petitioner. "Necessary party" means any person whose name, residence, and domicile are required to be included on the petition under section 600A.5(3)(a) & (b) [child, living parents, guardian, custodian, guardian ad litem, petitioner, & person standing in the place of the parents] and any putative father who files a declaration of paternity in accordance with section 144.12A, or any unknown putative father, if any, except a biological parent who has been convicted of having sexually abused the other biological parent while not cohabiting with that parent as husband and wife, thereby producing the birth of the child who is the subject of the termination proceedings. Iowa Code Section 600A.6(1).

Prior to the service of notice on the necessary parties, the juvenile court shall appoint a guardian ad litem for a minor child if the child does not have a guardian or if the interest of the guardian conflict with the interest of the child. Such guardian ad litem shall be a necessary party under subsection 1 of this section. Iowa Code Section 600A.6(2) [unnumbered paragraph 1].

Notice under this section may be served personally or constructively, as specified under subsections 4, 5 and 6. This notice shall state:

- a. The time and place of the hearing on termination of parental rights.
- b. A clear statement of the purpose of the action and hearing.

Iowa Code Section 600A.6(3).

A necessary party whose identity and location or address is known shall be served in accordance with rule of civil procedure 1.305 or sent by certified mail restricted delivery, whichever is determined to be the most effective means of notification. Such notice shall be served according to the rules of civil procedure relating to an original notice where not inconsistent with the provisions of this section. Notice pursuant to rule of civil procedure 1.305 shall be served not less than seven days prior to the hearing on termination of parental rights. Notice by certified mail restricted delivery shall be sent not less than fourteen days prior to the hearing on termination of parental rights. A notice by certified mail restricted delivery which is refused by the necessary party being noticed shall be sufficient notice to that party under this section. Acceptance of notice by the necessary party shall satisfy the requirements of this subsection. Iowa Code Section 600A.6(4).

A necessary party whose identity is known but whose location address is unknown or all unknown putative fathers, if any shall be served by published notice in the form provided in this subsection. If the identity of a necessary party is known but the location of the necessary party is unknown, notice by publication shall also include the name of the necessary party. The child's actual or expected date of birth and place of birth shall also be stated in the notice. Notice by publication shall be served according to the rules of civil procedure relating to an original notice where not inconsistent with the provisions of this sections. Notice by publication shall be published once a week for two consecutive weeks in a medium which is reasonably expected to provide notice to the necessary party, the last publication to be not less than three days prior to the hearing on termination of parental rights. The notice shall be substantially in the following form:

TO: _____ (OR) ALL PUTATIVE FATHERS OF A CHILD (EXPECTED TO BE) BORN ON THE ___ DAY OF _____, ____, IN _____, IOWA.

You are notified that there is now on file in the office of the clerk of court for ___ county, a petition in case number ____, which prays for at termination of your parent-child relationship to a child (expected to be) born on the ___ day of ____, _____. For further details contact the clerk's office. The petitioner's attorney is _____.

You are notified that there will be a hearing on the petition to terminate parental rights before the Iowa District Court for _____ County, at the Courthouse in _____, Iowa, at _____ M. on the ___ day of _____, _____.

CLERK OF THE ABOVE COURT

Iowa Code Section 600A.6(5) [as amended].

Proof of service of notice in the manner prescribed shall be filed with the juvenile court prior to the hearing on termination of parental rights. Iowa Code Section 600A.6(6).

Upon the filing of a chapter 600A termination petition, the court sets hearing and appoints a guardian ad litem for the child.

SEE APPENDIX - FORM 600A1 - Petition 600A Termination
- FORM 600A3 - Order Setting Hearing and Appointing GAL
- FORM 600A6 -Original Notice

The Petition, Order, and Notice is then served upon the necessary parties.

Termination proceedings under Chapters 232 and 600A use the same basic notice requirements with the exception that special provision is made for notice to putative and unknown fathers under chapter 600A. For unknown parents or those whose whereabouts are unknown, notice by publication is not only authorized it is required.

SEE APPENDIX - FORM 600A4- Order for Published Notice [Known]
- FORM 600A5 - Order for Published Notice [Unknown]
- FORM 600A7 - Notice for Publication 600A Termination.

Notice to a necessary party may not be dispensed with in chapter 600A terminations.

8. INDIAN CHILD WELFARE ACT

In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determine, such notice shall be given to the Secretary [of the Interior] in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights preceding shall be held until at least twenty-five days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary; provided that the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding. 25 U.S.C. Section 1912(a).

Note that the notice provisions of the Indian Child Welfare Act apply only in the case of an involuntary proceeding in contrast to a "voluntary" proceeding wherein the parent or Indian custodian voluntarily consents to the foster care placement or to termination of parental rights. Section 1913 has certain requirements for such voluntary proceedings, however.

Any notice directed to the **Secretary of the Interior** should be addressed as follows: Honorable Gale A. Norton, Secretary of the Interior, Room #6156 Interior Building, 1849 "C" Street N.W., Washington, D.C. 20240, ATTN: Bureau of Indian Affairs, Division of Social Services MS 310-S1B.

Compliance with the notice provisions of the Indian Child Welfare Act are jurisdictional. The provisions of the act are to be strictly construed and applied. Proper notice under the acts requires an affidavit of mailing verifying what was mailed, a copy of the mailing being attached, along with a copy of the certified mail receipt. The notice to the tribe must include a notice of their right to intervene. Notice may be required to be given to more than one tribe if the child is eligible for membership in more than one tribe and has not been accepted as a member of either tribe. In the Interest of J.W., 498 N.W.2d 417 (Iowa App. 1993). The determination of whether the child is an Indian child is one for the tribe to decide and not for the state court. In Re Junious M., 193 Cal. Rptr. 40, 43, 144 Cal. App. 3d 786, 793 (1st Dist. 1983). It has been affirmed upon appeal, however, that the state court must have some evidence of the child's eligibility for membership in a tribe. More than the mere allegation of the parent is necessary for the act to apply and notice be required to the tribe and /or secretary. In Interest of J.R. [Ct. App. 1994, Bl. Hwk Co. unreported].

Registered mail return receipt requested as required by the Indian Child Welfare Act is the most secure option offered by the Postal Service. It is designed to provide added protection for valuable and important mail. Insurance may be purchased on domestic registered mail up to \$25,000 at the option of the mailer. Return receipt and restricted delivery services are available for additional fees. Registered articles are placed under tight security from the point of mailing to the delivery office. First-Class or Priority Mail postage is required on domestic registered mail. United States Postal Service Publication 201, supra at page 21.

Iowa Code Section 232B.6(2) requires the child's tribe to be notified within three business days of a **temporary removal** by registered mail, return receipt requested. The notice is to include a copy of the court order, the petition, and statement informing the tribe of the right to intervene. Any application for temporary removal or a CINA petition involving an Indian child must be accompanied by (a) an affidavit containing the names, tribal affiliations, and addresses of the Indian child, child's parents and Indian custodians; (b) specific and detailed account of the circumstances supporting the removal of the child; and (c) all reports of public and private agencies involved in the removal and filed with the court.

B. MANDATORY HEARINGS IN JUVENILE CASES

1. DELINQUENCY CASES

- a. **DETENTION HEARINGS.** Required within 24 hours of detention.
SHELTER CARE HEARINGS. Required within 48 hours of shelter.

A hearing shall be held within forty-eight hours, excluding Saturdays, Sundays, and legal holidays, of the time of the child's admission to a shelter care facility, and within twenty four hours, excluding Saturdays, Sundays, and holidays, of the time of a child's admission to a detention facility. If the hearing is not held within the time specified, the child shall be released from shelter care or detention.

Prior to the hearing a petition shall be filed, except where the child is already under the supervision of a juvenile court under a prior judgment.

If the child is placed in a detention facility in a county other than the county in which the child resides or in which the delinquent act allegedly occurred but which is within the same judicial district, the hearing may take place in the county in which the detention facility is located. the child shall appear in person at the hearing required by this subsection. Iowa Code Section 232.44(1).

- b. **DETENTION/SHELTER REVIEW.** Required within 7 days of hearing.

If a child held in shelter care or detention by court order has not been released after a detention hearing or has not appeared at an adjudicatory hearing before the expiration of the order of detention, an additional hearing shall automatically be scheduled for the next court day following the expiration of the order. The child, the child's counsel, the child's guardian ad litem, and the child's parent, guardian or custodian shall be notified of this hearing not less than twenty-four hours before the hearing is scheduled to take place. The hearing required by this section may be held by telephone conference call. Iowa Code Section 232.44(7).

c. DISPOSITIONAL REVIEW. Required within 12 months.

The court shall hold a periodic dispositional review hearing for each child in placement pursuant to section 232.52(2)(d) or (e), to determine the future disposition status of the child. The hearings shall not be waived or continued beyond twelve months after the last dispositional hearing or dispositional review hearing. Iowa Code Section 232.50(2).

d. PERMANENCY. Permanency hearings are required within 12 months of the child's placement in foster care or within 30 days of a finding of aggravated circumstances in cases where the court has made a finding that continuation of the child in the child's home is contrary to the child's welfare. SF 458, Section 10. Iowa Code Section 232.58(1).

2. CHILD IN NEED OF ASSISTANCE PROCEEDINGS

a. TEMPORARY REMOVAL. Required within 10 days of removal.

At any time after the petition is filed any person who may file a petition under section 232.87 may apply for, or the court on its own motion may order, a hearing to determine whether the child should be temporarily removed from home. Where the child is in the custody of a person other than the child's parent, guardian or custodian as the result of action taken pursuant to section 232.78 or 232.79, the court shall hold a hearing to determine whether the temporary removal should be continued. Iowa Code Section 232.95(1).

b. TEMPORARY REMOVAL REVIEW. Required within six months.

If the court orders the child removed from the home pursuant to Iowa Code Section 232.95(2)(a), the court shall hold a hearing to review the removal order within six months unless a dispositional hearing pursuant to section 232.99 has been held. Iowa Code Section 232.95(4).

Whenever a child has been removed pursuant to section 232.78 or section 232.79, a hearing under section 232.95 shall be held within ten (10) days of such removal. Rule 8.12, Iowa Rules of Juvenile Procedure.

c. INITIAL DISPOSITIONAL REVIEW

The court shall hold a periodic dispositional review hearing for each child in placement pursuant to this section in order to determine whether the child should be returned home, an extension of the placement should be made, a permanency hearing should be held, or a termination of the parent-child relationship proceeding should be instituted. . . . The initial dispositional review hearing shall not be waived or continued beyond six months after the date of the dispositional hearing. Iowa Code Section 232.102(8)(a).

d. SUBSEQUENT DISPOSITIONAL REVIEWS

[See above] . . . Subsequent dispositional review hearings shall not be waived or continued beyond twelve months after the date of the most recent dispositional review hearing. Iowa Code section 232.102(8)(b).

e. PERMANENCY HEARING

The time for the initial permanency hearing for a child subject to out-of-home placement shall be the earlier of the following: (1) For a temporary removal order entered under section 232.78, 232.95, or 232.96, for a child who was removed without a court order under section 232.79, or for an order entered under section 232.102, for which the court has not waived reasonable efforts requirements, the permanency hearing shall be held within twelve months of the date the child was removed from the home; (2) For an order entered under section 232.102 for which the court has waived reasonable efforts requirements under section 232.102(11), the permanency hearing shall be held within thirty days of the date the requirements were waived. Iowa Code Section 232.104.

f. PERMANENCY REVIEW HEARINGS

Following the entry of the initial permanency hearing and the entry of a permanency order which places a child in the custody or guardianship of another person or agency, the court shall retain jurisdiction and annually review the order to ascertain whether the best interest of the child is being served. When the order places the child in the custody of the department for the purpose of long-term foster care placement in a facility, the review shall be in a hearing that shall not be waived or continued beyond twelve months after the initial permanency hearing or the last permanency review hearing. Any modification shall be accomplished through a hearing procedure following reasonable notice. During the hearing, all relevant and material evidence shall be admitted and procedural due process shall be provided to all parties. Iowa Code Section 232.104(6).

g. TERMINATION REVIEW

(1) PRIOR TO ADOPTIVE PLACEMENT

The guardian of each child whose guardianship and custody has been transferred under subsection 3 and who has not been placed for adoption shall file a written report with the court every six months concerning the child's placement. The court shall hold a hearing to review the placement at intervals not to exceed six months after the date of the termination of parental rights or the last placement review hearing. Iowa Code Section 232.117(6).

(2) AFTER ADOPTIVE PLACEMENT

The guardian of each child whose guardianship and custody has been transferred under subsection 3 and who has been placed for adoption and whose adoption has not been finalized shall file a written report with the court every six months concerning the child's placement. The court shall hold a hearing to review the placement at intervals not to exceed twelve months after the date of the adoptive placement or the last placement review hearing. Iowa Code Section 232.117(7).

3. VOLUNTARY FOSTER CARE PLACEMENTS

a. DISPOSITIONAL HEARING

The dispositional hearing shall be held within twelve months of the date the child was placed in foster care. Iowa Code Section 232.183(2).

b. DISPOSITIONAL REVIEW HEARINGS

With respect to each child whose placement was approved pursuant to subsection 5, the court shall continue to hold periodic dispositional hearings. The hearings shall not be waived or continued beyond twelve months following the last dispositional hearing. After a dispositional hearing, the court shall enter one of the dispositional orders authorized under subsection 5. Iowa Code Section 232.183(6).

4. FEDERAL LAW RE: MANDATORY HEARINGS

[The states are not eligible for federal funding for foster care/adoption] unless the state has implemented and is operating to the satisfaction of the Secretary - . . . a case review system (as defined in section 675(5) of this title) for each child receiving foster care under the supervision of the State . . . 42 U.S.C. Section 627(a)(2)(b).

The term "case review system" means a procedure for assuring that -

(A) each child has a case plan

(B) the status of each child is reviewed periodically but no less frequently than once every six months by either a court or by administrative review (as defined in paragraph (6)) in order to determine the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, and to project a likely date by which the child may be returned to the home or placed for adoption or legal guardianship.

(C) with respect to each such child, procedural safeguards will be applied, among other things to assure each child in foster care under the supervision of the State of a permanency hearing to be held, in a family or juvenile court or another court (including a tribal court) or competent jurisdiction, or by an administrative body appointed or approved by the court, no later than twelve months after the date the child is considered to have entered foster care (as determined in subparagraph (F)) (and not less frequently than every 12 months thereafter during the continuation of foster care), which hearing shall determine the future status of the child (including but not limited to, whether the child should be returned to the parent, should be continued foster care for a specified period, should be placed for adoption, or should (because of the child's special needs or circumstances) be continued in foster care on a permanent or long-term basis) and, in the case of a child described in subparagraph (A)(ii) whether the out-of-State placement continues to be appropriate and in the best interests of the child, and in the case of a child who has attained age 16, the services needed to assist the child to make the transition from foster care to independent living; and procedural safeguards shall also be applied with respect to parental rights pertaining to the removal of the child from the home of his parents, to a change in the child's placement, and to any determination affecting visitation privileges of parents; and

(F) a child shall be considered to have entered foster care on the earlier of - (i) the date of the first judicial finding that the child has been subjected to child abuse or neglect; or (ii) the date that is 60 days after the date on which the child is removed from the home. 42 U.S.C. Section 675(5).

5. CAVEAT ON WAIVER OF TIMELINESS

It is generally held that absent a statute or rule to the contrary, a party may waive a right given by the constitution or statute. Note that certain of the dispositional review provisions, such as Sections 232.102(8) and 232.104(6) indicate that hearings may not be waived or continued beyond a certain time period. In the absence of such statutory prohibitions, waivers appear possible in juvenile proceedings. Waiver in the context of a waiver of right to remain or silent or the right to counsel must be made "voluntarily, knowingly, and intelligently". U. S. v. Miranda, 385 U.S. 890, 87 S.Ct. 11, 17 L.Ed.2d 121 (1966). In determining whether a waiver is so made, the court is to consider the totality of the circumstances and may consider the following factors: the party's age, education, intelligence, background, experience, and conduct. Where a child is giving up a right to

hearing or time period for a hearing, the opportunity for the child to consult with counsel and his/her parents is essential. If an parent is asked to waive a right such as a right to hearing regarding custody, their opportunity to consult with counsel is relevant. If a waiver is made, how is it documented ? Often time only permits a telephone call from the child's or parent's attorney or confirmation from a social worker or juvenile court officer that all parties have waived a right to a hearing or time period for hearing. A written waiver is preferable which provides the party an explanation of the right they are giving up and any potential consequences. Such writing should be discussed by the party with counsel and counsel execute the document as well as the party.

JUVENILE NOTICE - QUICK REFERENCE

Hearing	Prior Notice	Form of Notice					
		Teleph	Personal	Ord Mail	Certif Mail	Restr Del	Reg Mail Publ
DELINQUENCY							
Detention	12 hours	X					
Shelter Care	24 hours	X					
Det/Shel Rev	24 hours	X		X			
Waiver	5 days		X		X		
Examination	5 days			X			
Adjudication	5 days		X		X		3X
Disposition	5 days			X			
Review	5 days			X			
Modification	5 days			X			
Permanency	5 days			X			
CHINA							
Shelter	24 hours	X					
Temp Rem	n/a	X		X			
Temp Rem Rv	n/a			X			
Examination	5 days			X			
Adjudication	5 days		X		X		3X
Disposition	5 days			X			
Review	5 days			X			
Modification	5 days			X			
Permanency	5 days			X			
Termination	7/ 14* days		X			X*	Disp+
TPR Rev	n/a			X			
FINA							
Adj & Disp	n/a		X				
Disp Review	n/a			X			
VOL FOSTER CARE							
Initial Determ	n/a		X				
Disposition	n/a			X			
Review	n/a			X			
600A TPR							
Termination	7/ 14*/ 3** days		X			X*	2X**
Vacate TPR	n/a		X				
INDIAN CHILD WELFARE							
Tribe/ Sec Interior	25-45 days						X
Temp Rem	3 days						X
Abortion Waiver	12 hours	X					

