

Notice - 366.26 Hearings

(Revised 01/05/18)

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Forms

The following forms are referenced in this file:

- 04-52 Declaration of Due Diligence (CWS/CMS Court Section)
- JV 300 Parent/Relative Search Form (CWS/CMS Template)
- JV 300 Notice of Hearing on Selection of a Permanent Plan (CWS/CMS Court Section)
- JV 300sp Notice of Hearing on Selection of a Permanent Plan (Spanish) (CWS/CMS Template)
- JV 310 Proof of Service Under Section 366.26 of the Welfare And Institutions Code (CWS/CMS Court Section)
- JV 310sp Proof of Service Under Section 366.26 of the Welfare And Institutions Code (Spanish) (CWS/CMS Template)

Purpose of 366.26 notice

Selection and Implementation Hearings held pursuant to WIC 366.26 are for determining an appropriate permanent plan for a child. The possible permanent plans selected are adoption, tribal customary adoption in the case of an Indian child, legal guardianship, or placement with a fit and willing relative. The permanent plans of continued placement in a foster care for children under the age of 16 and Another Planned Permanent Living Arrangement (APPLA) for children over 16 years old are only selected when no other permanent plan is available. The agency is required to continue to work towards a more permanent plan.

Due to the possibility that a parent's rights can be terminated at a 366.26 hearing the notice requirements are very specific and must be followed.

Policy

In the majority of cases the agency will indicate on the formal notice that the recommendation is termination of parental rights. If the recommendation changes to a less permanent plan such as guardianship or APPLA re noticing the client is not required unless specifically ordered by the court.

The Court Officer or SW will make every attempt to personally serve the parent(s) the written notice at court when the hearing is set. If the parent or parents are not present at the hearing, the Permanency Placement Assessment Unit (PPAU) is responsible for providing notice for the original 366.26 Hearing only. However, if a SW has contact with a parent who needs to be noticed for the .26 hearing they should serve the notice, complete proof of service and forward the documents to PPAU.

When a parent's whereabouts are unknown, PPAU will conduct a search. Once located PPAU will notice the client. If they are unable to locate the client a Declaration of Due Diligence will be prepared by PPAU and submitted to the Court for the 366.26 Hearing.

If a client is incarcerated see Producing Incarcerated Parents .

Parties entitled to notice

Pursuant to WIC 294.(a) the following parties are entitled to notice:

- all mothers
- all fathers, presumed, biological and alleged
- child who is 10 years or older
- child's current caregiver
- any known sibling who is a subject of a dependency proceeding or a dependent and is 10 years old or older(including nonminor dependent siblings)
- the caregiver and attorney of any sibling who is a subject of a dependency proceeding
- the grandparents of the child if their address is known and the parent's whereabouts are unknown
- Tribal representative (required if it is an ICWA case)
- Conservator for any parent or the child
- All counsel of record.

It is also advisable to notice the CASA, if applicable.

Parties not entitled to notice

The following persons shall not be noticed of the hearing:

- a parent who has relinquished the child and the relinquishment has been accepted and filed with notice as required under Section 8700 of the Family Code
 - an alleged father who has denied paternity and executed a waiver of right to notice of further proceedings
 - a parent whose parental rights have been terminated.
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Recommendation to terminate parental rights

When the recommendation is to terminate parental rights and the whereabouts of the parent is known, then .26 notice may be given in any of the following:

- Personal service to the parent named in the notice
- Delivery to a competent person who is at least 18 years of age at the parent's usual place of residence or business, and followed up with a copy of the notice mailed by first-class mail to the place where the notice was delivered (substitute service)
- Notice may also be sent certified mail, return receipt requested. However, the parent must sign the receipt for the notice to be valid
- If the parent resides out of the United States, notice must be given by Foreign Mail, return receipt requested. (or personal service)
- If notice was provided and found proper by the court, notice for a continuance may be by first class mail to the last known address of the parent.

If the notice is preserved (kept valid) by the court, the individual does not have to be sent another notice for the continued hearing date.

Procedure for personal service of 366.26 notice

When the court sets a 366.26 hearing the Court Officer (if present) or SW is responsible for personally serving the parents if they are present. If the SW has contact with a parent at a later date that has not yet been noticed of the 366.26 hearing it is crucial that notice be done at that time.

The procedure to personally serve a parent is as follows:

Step	Action
1	<p>Complete the JV 300 or JV 300S (if client is Spanish speaking). The notice must be completed in the language identified by the parent on the language determination form unless a certified interpreter is present at the time the notice is served. The forms provided in Dependency Courtrooms are on carbon. Print on the form with three copies attached.</p> <ul style="list-style-type: none">• leave 1st heading blank• fill in 2nd heading - address of Courthouse where hearing is scheduled• case number = petition #• Notice to: Fill in client's name and address (do not list last known address)• Question 1 - Enter date, time and Dept # of the hearing• Question 2 - Enter the child(ren) name• Question 3 - Check box next to Social Worker. Check the box next to "a" even if the permanent plan has not been identified as adoption. (That way, we avoid having to re-notice if another plan had been selected, but it subsequently became adoption.)• Question 4 - Check Social Worker and "is not attached."• enter date, print name and sign as petitioner• make three copies if the form is not on carbon or the carbons are not legible.

Procedure for personal service of 366.26 notice (cont.)

Step	Action
2	<p>Complete the JV 310 (If at court, the form is on carbon so when completing print on the first page and have three copies attached. If not a carbon, make three copies.)</p> <ul style="list-style-type: none"> • fill in 1st heading - SW's office address • fill in 2nd heading - address of Courthouse where hearing is scheduled • case number = petition # • write the client's name in 1a • check the appropriate relationship box in 1b • Once client has been served, check 2a, enter date and time and write in location where service occurred, in blank space above time • in #3 enter office address.
3	<ul style="list-style-type: none"> • Personally give client copy of the JV 300 or JV300sp. Each client must be served individually - you cannot use one form for both parents. • Verbally inform client of the hearing date, time and place. • Advise them to talk with their attorney if they have questions or concerns.
4	<ul style="list-style-type: none"> • Complete the JV 310 by entering date and time, print name and sign
5	<ul style="list-style-type: none"> • As mentioned, the JV 300 and JV 310 are on carbon so there should be three copies left after the parent has been served. • If the copies are poor and hard to read, it may be necessary to make copies. • If service is done at court, give a copy of each form to the court clerk. • Give or send one copy of each form to County Counsel and place the other two in the case file. If the case has already been transferred to PPAU, send copy to PPAU.

PPAU responsibilities for .26 Notice

PPAU is responsible for any notice for a 366.26 Hearing which was not completed at when the 366.26 Hearing was set. The unit performs the following tasks related to .26 Notice:

- Confirm names of the child and parents from the child's birth certificate, petition and other case information. All known AKAs must be listed.
- Order paternity declarations from CDSS.
- Complete the ".26 Noticing Log" form.
- Review the case for any additional parent search information and the identification of possible fathers.
- Review the case for ICWA findings and any defective notice issues.
- Ensure the parent search for Due Diligence is current within the last three months.
- Prepare notices.

PPAU responsibilities for .26 Notice (cont.)

- Personally serve the notices or complete and submit Orders to Produce for parent’s in State Prisons and Camps.
- Arrange with the assistance of County Counsel to notice parents who reside out of county.
- Begin and/or continue parent searches.
- Complete Additional Information Reports (Court Report Addendum) to the court on any noticing problems.
- If the parent is located, the PPAU SW will notice the parent and forward the documents to the assigned SW.
- If the parents still cannot be located after a thorough search has been completed, the PPAU will:
 - Complete a Declaration of Due Diligence, and attach a request for an Order to Publish. (**NOTE:** The Order to Publish must be sent to County Counsel at minimum 100 days prior to the .26 Hearing.) An order to serve the party’s attorney of record can also be submitted if the parent has counsel.
 - Send a copy of the Declaration with the Order to Publish request to County Counsel, who sets up the publication service.

366.26 notice when parents live outside of San Diego County

If the parent lives within California but outside of San Diego County, PPAU will notify County Counsel, who in turn will request that a process server personally serve the parent.

If the parent lives outside of California, PPAU will either follow the above procedure, or will send notice via Certified Mail Return Receipt Requested - Restricted Delivery. “Restricted Delivery” means that only the person it is addressed to may sign for it.

366.26 notice when parents are incarcerated

With the exception of Federal and Military Prisons, the Agency is responsible for noticing incarcerated parents. For the specific instructions see Producing Incarcerated Parents.

Parent’s whereabouts unknown

A diligent parent search (see Parent Searches) must be conducted to locate an absent parent. If after a search, the parent still cannot be located, the PPAU SW will prepare a Declaration of Due Diligence Report.

If	Then
A search results in locating the parent	PPAU SW will notice the parent. If it is less than 45 days prior to the hearing the parent will be asked to sign a waiver. The waiver will be submitted with the proof of notice.
Parent cannot be located, but child’s grandparents address is known	PPAU will submit the Due Diligence Report to Court and will notice the child’s grandparents by first class mail.

Parent's whereabouts unknown (cont.)

If the...	Then the...
Parent cannot be located, but has counsel	PPAU SW will complete and submit a Declaration of Due Diligence to the Court. Once a conformed copy is received by the PPAU SW, that SW will serve the parent's attorney by certified mail, return receipt requested.
Parent cannot be located and recommendation is termination of parental rights.	<p>PPAU SW will complete a Declaration of Due Diligence. County Counsel will file the Declaration with the court within 75 days of the hearing date and request publication.</p> <p>NOTE: County Counsel will arrange for publication. Publication must be completed at least 30 days before the date of the hearing.</p>
Parent cannot be located and recommendation is guardianship, placement with a fit and willing relative, continued foster care or APPLA	PPAU SW will complete and submit a Declaration of Due Diligence Report, publication is not required.