

State court considerations for today's "notice and publication" environment: *Online variables & best practices*

(January 2024)

*This resource is a companion reference to the Trends in State Courts 2016 article **Alaska Court System Legal Notice Website: Declining readership reduces the effectiveness of publishing legal notices in print newspapers. Alaska's legal notice website offers a viable alternative for serving notice in lawsuits** and the **Pandemic Procedural Improvements that Courts Should Adopt Permanently** resource.*

Summary: Four reasons why state courts should consider publishing court notices on judicial websites, rather than traditionally relying on notice and publication by newspapers are detailed in this whitepaper. The reasons include (1) the rapid rate of disappearing newspapers, (2) slumping newspaper readership, (3) declining reading/view time spent on newspaper websites, and (4) the cost and access to justice barriers for the indigent.

Background: Why and when the public receives **notice** of court matters through newspaper **publication**

The due process right to "notice"

Interested parties in a court matter have a right to notice and an opportunity to present any objections before a final decision is made thanks to the Fourteenth Amendment's due process protections. ("No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law[.]")

Public and "constructive" notice through paid, newspaper legal notices or advertisements

While "personal" notice (or service) is always preferred, personal notice isn't always possible—especially when a person is missing or their whereabouts remain unknown after diligent inquiry.

A paid "legal notice" or "advertisement" published in a newspaper is possible when state law allows for "constructive notice" to be given. When allowed by state law (and perhaps a companion court rule), a court orders the publication of an order, citation, summons, or notice related to a judicial proceeding.

Going back to 1950, the Supreme Court of the United States has recognized the constitutional sufficiency of a legal notice published in a local newspaper when one's whereabouts are unknown. *Mullane v. Central Hanover Bank & Trust Co.*, **339 U.S. 306, 317** (1950). Even then, however, the Supreme Court was mindful of the impractical shortcomings through newspaper publication:

Chance alone brings to the attention of even a local resident an advertisement in small type inserted in the back pages of a newspaper, and if he makes his home outside the area of the newspaper's normal circulation the odds that the information will never reach him are large indeed.

The chance of actual notice is further reduced when, as here, the notice required does not even name those whose attention it is supposed to attract, and does not inform acquaintances who might call it to attention. **339 U.S. 306, 315** (1950).

Four due process challenges with today's newspaper-published notices

A decade ago, a subcommittee of Alaska's Civil Rules Committee reviewed all cases statewide where service by publication was made in 2010 and 2011. In only *three* cases could the defendant's participation be credited to effective notice by newspaper publication. Newspaper publishing costs were also studied. While the costs varied depending on notice length and individual paper fees, the costs always exceeded several hundred dollars.¹

*In only **three** cases of a two-year Alaska study could the defendant's participation be credited to effective notice by newspaper publication.*

Alaska's findings were not unusual.

Fast forward to today, it is clear that four acute challenges make the continued practice of "publishing" court notices through newspapers even more impractical than in the 1950 environment:

1. disappearing newspapers,
2. slumping newspaper readership,
3. declining reading/view time spent on newspaper websites, and
4. cost justification and access to justice barriers for the indigent.

1. Disappearing newspapers

When considering whether court notice by newspaper publication is a realistic due process assurance, judges and state legislative leaders must recognize how—in today's United States—residents in more than one-half of the counties have no (or limited) access to a reliable news source (either in print, digital, or broadcast format).

2023 saw 2.5 local newspapers closures per week according to *The State of the Local News* report published by the Medill Local News Initiative at Northwestern University.²

By the end of 2024, it's projected that the country will have lost one-third of its newspapers since 2005.³

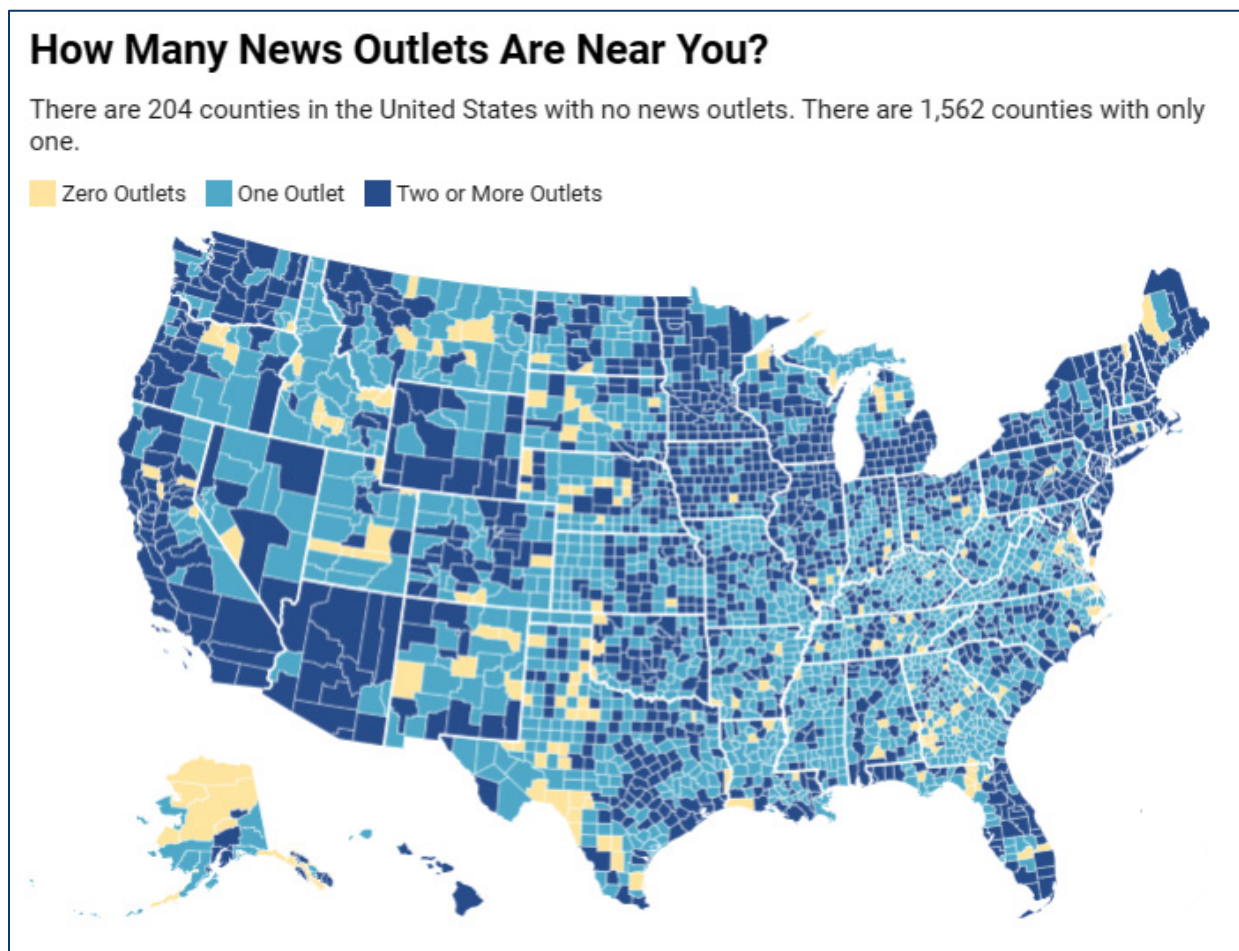


Figure 1: There are 204 counties in the United States with no news outlets. There are 1,562 counties with only one. Source: Medill Local News Initiative at Northwestern University.

2. Slumping newspaper readership

Back in 1950—when the Supreme Court constitutionally tolerated “probably futile” constructive court notice measures like newspaper publication in *Mullane v. Central Hanover Bank & Trust Co.*, **339 U.S. 306, 317** (1950)—U.S. daily newspapers enjoyed a nearly 54 million weekday circulation.⁴ Sunday circulation averaged 46.5 million.

2022’s estimated circulation was far lower: just under 20.9 million (each) for weekday and Sunday papers.⁵

In other words, the 2022 newspaper readership trends are less than half of what they were in 1950 (even though the United States population more than doubled from 151,325,798⁶ to 333,287,557.⁷

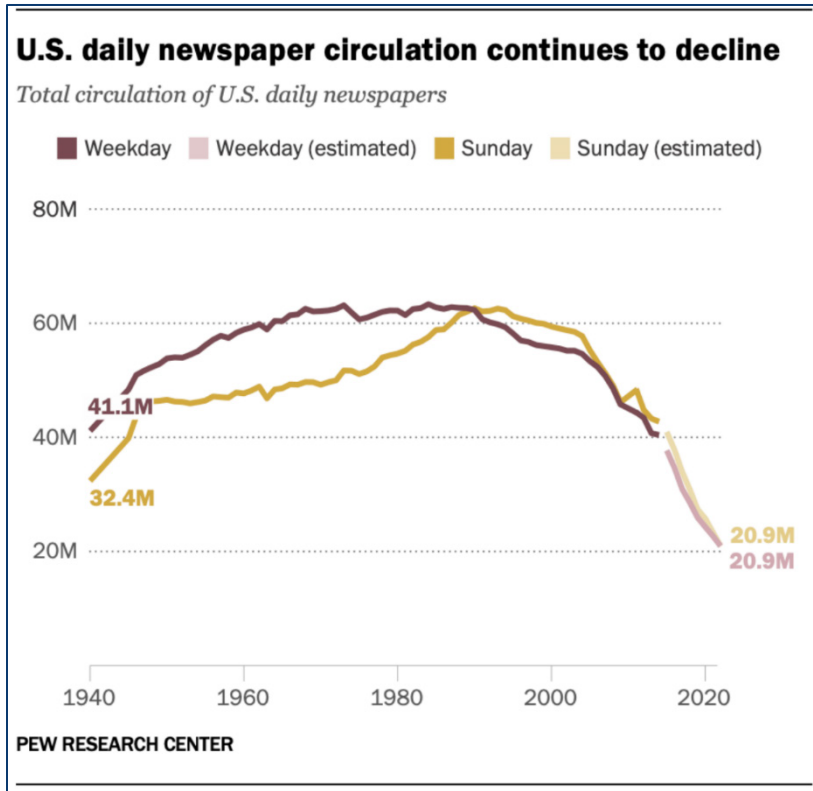


Figure 2: U.S. daily newspaper circulation continues to decline. Source: Pew Research Center

	1950	2022	Percent change
U.S. daily newspaper circulation (est.)	Weekday 53,829,000 Sunday 46,582,000	Weekday 20,943,023 Sunday 20,943,889	- 38.90% - 44.96%
U.S. population	151,325,798	333,287,557	+ 220.24%

In 2022, weekday newspaper circulation was down 8% from the year before and 32% from five years earlier.⁸

3. Declining “view time” spent on newspaper websites

Some may assume—in good faith—that there is no need for concern about the steep decline of newspapers or traditional readership since people are simply choosing to read their news online and thus will learn of legal notices that way.

Research data, however, does *not* support that online-reading assumption.

The Pew Research Center has tracked the average minutes one spends during an online visit to the top 50 U.S. newspapers by circulation since the fourth quarter of 2014.

In Q4 2022, the average minutes per visit was just under 1 minute and 30 seconds—a drastic 43% *decline* from Q4 2014 when the average visit was just over 2 minutes and 30 seconds.⁹

4. Litigant-paid newspaper ads for legal notices are expensive and an access-to-justice barrier for the indigent

Given (1) the trending decline in the number of U.S. newspapers, (2) the trending decline in newspaper readership, and (3) that online newspaper readers may be only spending 90 seconds on a newspaper website, it is fair to question whether state laws and court rules can justify continuing to force litigants to pay for expensive and often unseen newspaper legal notices.

Local Michigan courts will begin paying for the published newspaper ads in name-change matters when there is a court fee waiver.

Under a court rule change that went into effect on January 1, 2024, Michigan trial courts will pay the newspaper publication costs in a name-change proceeding:

- (a) if traditional court filing fees have already been waived,
- (b) when publication is required by law, and
- (c) when publication is not otherwise waived (because it would place the petitioner or another individual in physical danger or increase the likelihood of such danger or because publication or the availability of a record of the proceeding

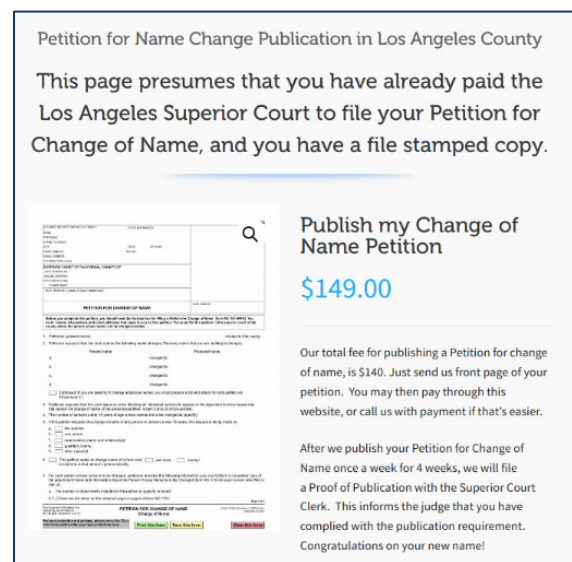


Figure 3: A local newspaper ad outlining how to purchase a \$149 newspaper ad to publish a name change petition filed in the Los Angeles Superior Court.

could place the petitioner or another individual at risk of unlawful retaliation or discrimination).¹⁰

In its written comment supporting the court rule change, the State Bar of Michigan Board of Commissioners outlined the access-to-justice barrier created by the publication costs traditionally required of litigants:

. . . the cost of publication is at times a significant barrier for indigent individuals seeking name changes.

Financial barriers of this kind are rightly understood as an access to justice issue.

The Court has rightly recognized as much by providing for the waiver of fees in Rule 2.002 and the Board believes that the cost of publication should be treated similarly.¹¹

Texas has adopted a different access-to-justice approach to address newspaper publishing costs for the indigent.

Texas waives required newspaper publication when financially burdensome.

It will be later explained how Texas created a Court Notices Website for citations by publication and other public or legal notices in 2019.

Newspaper publication (*on top of* a notice being posted on the Court Notices Website) is still required by the Texas court rules *unless* the requesting party is indigent, or the publication cost is more than \$200 per week:

(2) When Newspaper Publication Not Required. The citation need not be published in a newspaper if:

(A) the party requesting citation files a Statement of Inability to Afford Payment of Court Costs under Rule 145;

(B) the total cost of the required publication exceeds \$200 each week or an amount set by the Supreme Court, whichever is greater; or

(C) the county in which the publication is required does not have any newspaper published, printed, or generally circulated in the county. **Tex. R. Civ. P. 116(b).**

Considerations about newspaper association hosted legal notice websites

Around 16 states now require newspapers that qualify to publish paid notices to publish those same notices on their website or their state press association's statewide public notice website. [Alabama, Colorado, Florida, Illinois, Indiana, Maine, Massachusetts, Michigan, Minnesota, Nebraska, North Dakota, Ohio, South Dakota, Tennessee, Utah, and Wisconsin.]

The state laws require that the online notices must also be freely accessible to the public. Appendix A is an attempted snapshot of how public notices can now be searched/viewed online (whether by newspaper through traditional publication orders or court hosting).

Simultaneous publication on newspaper association-hosted legal notice websites should not be presumed to be a problem-solving development, however. Whether the paid legal notices appear in a print or digital newspaper, the four acute challenges of "publishing" court notices through newspapers remain:

- (1) disappearing newspapers,
- (2) slumping newspaper readership,
- (3) declining reading/view time spent on newspaper websites, and
- (4) cost justification and access to justice barriers for the indigent.

(On top of these existing complications, the National Center for State Courts has not identified examples of courts that have linked newspaper-associated online legal notice sites to a trial court website.)

The continuing notice-by-publication challenges, however, *do* explain why some state courts are breaking away from notice-by-newspaper publication practice.

South Dakota § 17-2-1 Notices to be published in legal newspaper—Affidavit of publication—Online notice.

All legal and other official notices must be published in a legal newspaper as described in this chapter. When any legal notice is required by law to be published in any newspaper, the newspaper publishing the notice shall place the notice on a statewide website, established and maintained as a repository for such notices by an organization representing a majority of South Dakota newspapers.

The newspaper shall include a prominent link to the statewide website on the newspaper's website homepage or post all public notices to the newspaper's website in a manner that is accessible and free to the public, if the newspaper maintains a website. The affidavit of publication must state that the newspaper is a legal newspaper. The affidavit is prima facie evidence of that fact. Each affidavit of publication must state in plain terms the fees charged.

Instead of publication by a newspaper, can due process be better, more efficiently, and cost-effectively served by legal notices posted on court websites?

The Alaska and Connecticut court systems have been pioneers in moving court notices from newspapers to court websites.

Alaska

Alaska courts launched their free legal notice website in 2015 and changed their default service method for absent defendants from publication in a print newspaper to an online posting to the court’s legal notice website. (The study and findings of Alaska’s subcommittee are summarized in the *Trends in State Courts 2016* article **Alaska Court System Legal Notice Website: Declining readership reduces the effectiveness of publishing legal notices in print newspapers. Alaska’s legal notice website offers a viable alternative for serving notice in lawsuits.**)

Alaska court officials created the legal notice website with existing court resources and no additional expenses. <https://courts.alaska.gov/notices/index.htm>¹²

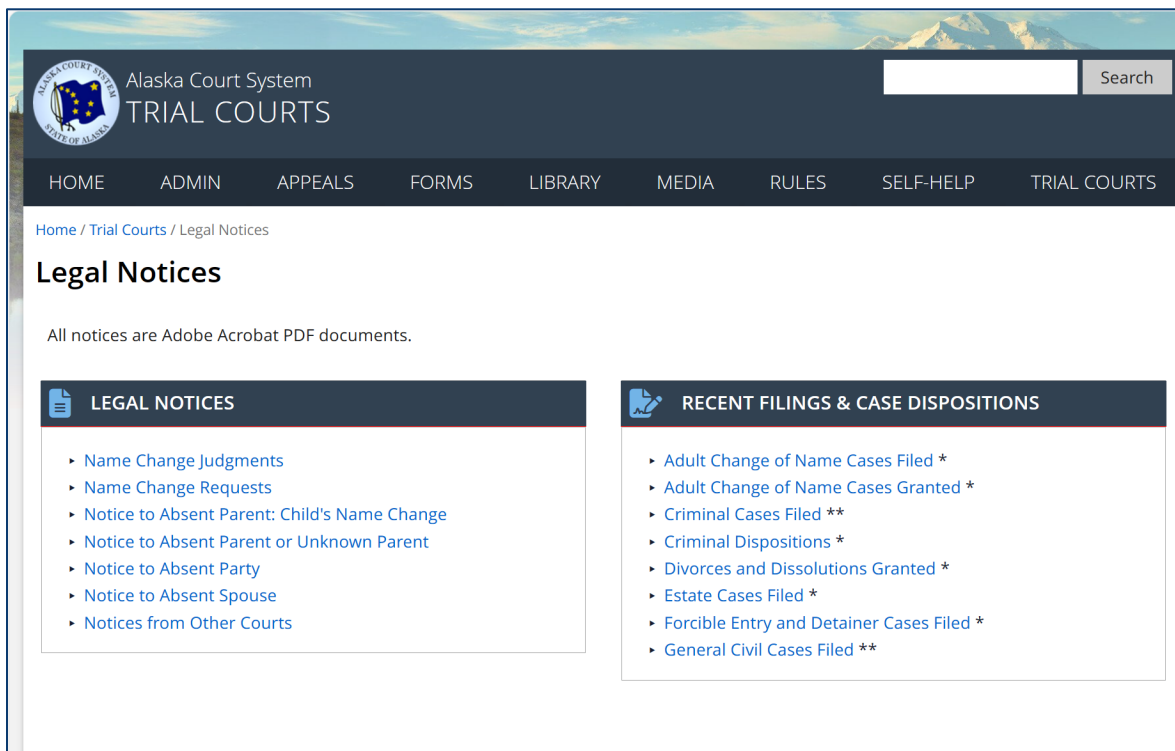


Figure 4: Alaska Court System Legal Notices home page

Connecticut launched its (free) court notice webpage on the Judicial Branch’s website on January 2, 2020 [<https://civlinquiry.jud.ct.gov/LegalNoticeList.aspx>].¹³

The screenshot shows the 'Superior Court Case Look-up' page. The main heading is 'Superior Court Legal Notices'. Below this, there is a table of legal notices with columns for Party To Be Notified, Case Name, Docket Number, Court Location, Notice Start Date, and Notice Expiration Date.

Party To Be Notified	Case Name	Docket Number	Court Location	Notice Start Date	Notice Expiration Date
BIEN-AIME, MOLINA View Legal Notice	BIEN-AIME, DIDRE V. BIEN-AIME, MOLINA	FBT-FA-23-5051700-S	Bridgeport JD	11/14/2023	11/28/2023
COLON, EDWARD View Legal Notice	FIGUEROA, YESENIA V. COLON, EDWARD		Bridgeport JD	11/16/2023	11/30/2023
DAVIS, LISA L. View Legal Notice	DAVIS, GARY P. V. DAVIS, LISA L.		Bridgeport JD	11/22/2023	12/6/2023
DAVIS, ROBERT View Legal Notice	ROBINSON, ANCELLA V. DAVIS, ROBERT		Bridgeport JD	11/14/2023	11/28/2023
FINLEY, LEE F. View Legal Notice	BANK OF AMERICA, N.A. V. FINLEY, LEE F., ET AL.	UWY-CV-23-6073224-S	Waterbury JD	11/21/2023	12/5/2023
GARCIA, HUGO View Legal Notice	MALDONADO, LUZ V. V. GARCIA, HUGO		Meriden JD	11/27/2023	12/11/2023
GARNER, RHAKEEM C. View Legal Notice	GARNER, REBEKAH R. V. GARNER, RHAKEEM C.		Danbury JD	11/16/2023	11/30/2023

Figure 5: Connecticut Judicial Branch Legal Notices home page

The **Delaware** Courts host family-court-related notices on its website. [<https://courts.delaware.gov/family/notices.aspx>]

The screenshot shows the 'Family Court Legal Notices' landing page on the Delaware Courts website. It features a navigation menu with options like Courts, eServices, Forms, Rules, Calendars, Opinions, and Self-Help. The main heading is 'Family Court Legal Notices' with a 'View all notices' button. Below the heading, there is a list of notice categories: CUSTODY, DIVORCE, GUARDIANSHIP, PROTECTION FROM ABUSE, TERMINATION OF PARENTAL RIGHTS, VISITATION, and OTHER.

Figure 6: Delaware Courts Family Court Legal Notices landing page

And, lastly, the **Texas** judiciary has approached online legal notices in a hybrid fashion: still requiring newspaper publication (with some exceptions) *and* hosting an online legal notice website.

The Texas Online Public Information-Courts (TOPICs) portal was developed after the 2019 enactment of state law and companion court rules. Notice entries are text-based, and matters can be searched by name, cause number, court/county, and status.

<https://topics.txcourts.gov/CitationsPublic>

Texas Online Public Information - Courts (TOPICs)

Home / Citation and Notices

Search for Citations and Notices

Name: Calvin | Cause Number: | Court/County: | Status: | Clear Filters

Click on + in the below citations/notices to view more details.

Show 10 entries

Name	Cause Number	Court/County	Status	
CALVIN N. HALL, SR., MARGARET M. HALL, MONUMENT FINANCIAL SERVICES, INC.	CV23-01041	42nd District Court - Coleman County(Coleman)	Active	View
Leonard H. Dance, Tanya J. Dance, Louis Calvin Satchel, Callie Jo Satchel	DC30-TX2022-1667	30th District Court - Wichita County(Wichita)	Active	View
Unknown Heirs at Law of Calvin YeungSing Fu Yeung	119135-CV	149th District Court - Brazoria County(Brazoria)	Return Issued	View
THE UNKNOWN HEIRS OF THE ESTATE OF MCALVIN JONES, JR.	125135	Jefferson County Court(Jefferson)	Return Issued	View

Figure 7: Texas Online Public Information-Courts (TOPICs) search page

Accepted, legal notice best practices

State courts considering hosting a legal notice webpage or site would benefit from incorporating several of the best practices encouraged by the Public Notice Resource Center:¹⁴

- Public notices should be readable and accessible. Both Alaska and Connecticut created their online legal notice features to be indexed and searchable by Internet search engines.
- The public's attention should be directed to the notices—including quick access to web links and indexing for easy searching.
- Consider enhanced services like special electronic notifications.
- Make archived notices (proof of publication) reasonably available to the public

And like with all online-published .pdf files, courts should ensure that the content can be “read” by optical character recognition technology. In other words, the posted notices are not simply image scans of court documents.¹⁵

Conclusion

Over a decade ago, the Alaska judiciary diligently studied the “system” of traditional notice by newspaper publication, including its (in)effectiveness and cost to litigants.

States that are comfortable maintaining their status-quo practices should first undertake a similar systems-effectiveness review. Stakeholders will have great interest in answers to these questions:

- In how many cases during a defined study period can the defendant's (or interested party's) participation be credited to effective notice by newspaper publication?
- What are the current newspaper publishing costs (and any related publishing affidavit fees) that litigants are expected to pay?
- What are any financial access to justice barriers (and how can they be eliminated)?

Considering everything, all options should be on the table. “All options” should include courts moving away from paid newspaper-published legal notices and instead adopting self-published legal notices on court websites.

Appendix A

Snapshot of searching/viewing public notice online (whether by newspaper through traditional publication orders or court hosting)

Alabama	Idaho	Missouri	Pennsylvania
Alaska (court)	Illinois	Montana	Rhode Island
Arizona	Indiana	Nebraska	South Carolina
Arkansas	Iowa	Nevada	South Dakota
California	Kansas	New Hampshire	Tennessee
Colorado	Kentucky	New Jersey	Texas (court)
Connecticut (court)	Louisiana	New Mexico	Utah
Delaware (family court)	Maine	New York	Vermont
Delaware (newspaper)	Maryland	North Carolina	Virginia
District of Columbia	Massachusetts	North Dakota	Washington
Florida	Michigan	Ohio	West Virginia
Georgia	Minnesota	Oklahoma	Wisconsin
Hawaii	Mississippi	Oregon	Wyoming

Suggested citation: L. Shemka, Z. Zarnow. State court considerations for today’s “notice and publication” environment: Online variables & best practices. [Williamsburg, VA: National Center for State Courts, 2024]

Endnotes:

- ¹ Alyce Roberts and Stacey Marz, *Alaska Court System Legal Notice Website: Declining readership reduces the effectiveness of publishing legal notices in print newspapers. Alaska's legal notice website offers a viable alternative for serving notice in lawsuits*. Trends in State Courts 2016 (National Center for State Courts 2016). <https://perma.cc/KF2P-RELE>
- ² Angela Fu, *US lost more than two local newspapers a week this year, new Medill report finds: Over half of counties in the US now have just one or no local news outlets*, Poynter (November 16, 2023). <https://perma.cc/FK99-NHAW>
- ³ Penelope Muse Abernathy, *Executive Summary: The State of Local News, The 2023 Report*, Northwestern Medill Local News Initiative (November 16, 2023). <https://perma.cc/L7GJ-EC9D>
- ⁴ Pew Research Center, *Newspapers Fact Sheet* (November 10, 2023). <https://perma.cc/N4WN-65HA>
- ⁵ *Id.* Michael Lipka and Elisa Shearer, *Audiences are declining for traditional news media in the U.S.—with some exceptions*, Pew Research Center (November 28, 2023). <https://perma.cc/TZ52-G4WY>
- ⁶ United States Census, *Historical Population Change Data (1910–2020)*, <https://perma.cc/LJ4V-67X9>
- ⁷ United States Census, *Quick Facts: United States Population Estimates July 1, 2022*. <https://perma.cc/CW57-ZS34>
- ⁸ Michael Lipka and Elisa Shearer, *Audiences are declining for traditional news media in the U.S.—with some exceptions*, Pew Research Center (November 28, 2023). <https://perma.cc/TZ52-G4WY>
- ⁹ Pew Research Center, *Newspapers Fact Sheet* (November 10, 2023). <https://perma.cc/N4WN-65HA>
- ¹⁰ Michigan Supreme Court ADM File No. 2023-05, November 29, 2023 order amending MCR 3.613. <https://perma.cc/BR7J-H6S4>
- ¹¹ Peter Cunningham, State Bar of Michigan Executive Director in letter to Michigan Supreme Court in support of ADM File No. 2023-05: Proposed Amendment of 3.613 of the Michigan Court Rules (July 31, 2023). <https://perma.cc/WF22-476S>

¹² Alaska Court System Online Legal Notices overview (undated) published by Volaris Group. <https://perma.cc/3VLC-PD5A>

¹³ Connecticut Judicial Branch press advisory, *Electronic Publication of Orders of Notice in Civil and Family Cases* (December 17, 2019). <https://perma.cc/GWA9-2NXC>

The Judicial Branch has created a Legal Notices page on the Judicial Branch website for orders of notice by publication issued by the court in civil and family cases. This new web page will be available January 2, 2020.

Historically, such notices have been ordered to be published in a newspaper. The new Legal Notices webpage will allow parties, when ordered by the court, to send their orders of notice to the Judicial Branch for publication on the Judicial Branch's website at no cost. Names published on the Legal Notices webpage will be searchable online. It is expected that this will save a great deal of time and expense, and provide greater accuracy and broader notice than newspaper publication.

¹⁴ *Best Practices for Public Notice*, Public Notice Resource Center (September 2016). <https://perma.cc/2WYC-NA5L>

¹⁵ *17 avoidable pain points when authoring and electronically publishing local court rules (and orders)*, National Center for State Courts (March 2022) <https://perma.cc/S5QV-Q9AX>