

Appendix S Use of Declaratory Judgments in Family Law Matters¹

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Courts across the United States have used declaratory judgments in a variety of family cases. State law authorizes the issuance of declaratory judgments in family law matters the majority of states.² The following list provides a summary of cases in which state courts issued declaratory judgments in family law related matters.³

Matters Related to Children

- **Child Custody**, such as the parents' and grandparents' right to have custody of the child⁴, the Department of Social Services' right to admit children to mental health facilities⁵, native tribes' concurrent jurisdiction to initiate Indian Child Welfare Act (ICWA) child custody proceedings⁶, the Department of Social Services' duty not to remove children from their mother's home without a timely petition⁷, the right of the state department of children to seize children from their parents⁸, and voiding of a divorce agreement which changed child custody.⁹
- **Rights of Parents and Grandparents**, in relation to the parents' constitutional rights during a child abuse investigation¹⁰, putative father's right to have his paternity and corresponding rights and duties determined¹¹, determination of a child's home state as the convenient forum to hear a petition to terminate parental rights¹², grandparents' and parents' visitation rights¹³, nullity of the

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² In California, declaratory judgments apply only to property rights. In Missouri, declaratory judgments are only applicable to persons with interests in deeds, wills and contracts. In New Hampshire, declaratory judgments apply to people claiming legal or equitable rights or title. Two states (Hawaii and Virginia) declaratory judgments are only available when the matter is contested.

³ This publication provides an overview of family law matters addressed in declaratory judgment cases. It can be useful to use this tool together with Appendix U: *SIJS and Declaratory Judgment Statutes State By-State* in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SPECIAL IMMIGRANT JUVENILE STATUS BENCH BOOK: A NATIONAL GUIDE TO BEST PRACTICES FOR JUDGES AND COURTS (2017) [hereinafter SIJS BENCH BOOK], <http://niwaplibrary.wcl.american.edu/pubs/appendix-u-state-by-state-declaratory-judgement-statutes-and-sijs-3/>; Appendix T: *Declaratory Judgment Case Law by Topic and State*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 1-27 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-t-declaratory-judgments-cases-bytopic-state/>.

⁴ *C.L. v. C.*, 1990 WL 34699 (Del.Fam.Ct. 1990); *Carter v. Nance*, 304 Ky. 256 (Ky.Ct.App. 1947); *In Re Marriage of McEvoy*, 414 N.W.2d 855 (Iowa Ct.App. 1987); *Smith v. Smith*, 140 W.Va. 298 (W.Va. 1954)

⁵ *D.L. v. Comm'r of Soc. Serv.*, 412 Mass. 558 (Mass. 1992)

⁶ *State of Alaska v. Native Vill. of Tanana*, 249 P.3d 734 (Alaska 2011)

⁷ *In Re Claudia E. v. J.E.*, 163 Cal.App.4th 627 (Cal.Ct.App. 2008)

⁸ *B. v. Ment*, 244 Conn. 296 (Conn. 1998)

⁹ *McManus v. Howard*, 569 So.2d 1213 (Miss. 1990)

¹⁰ *Morris v. Dearborne*, 69 F.Supp.2d 868 (E.D. Tex. 1999)

¹¹ *Kendrick v. Everheart*, 390 So.2d 53 (Fla. 1980); *Slawek v. Stroh*, 62 Wis.2d 295 (Wis. 1974); *Johannesen v. Pfeiffer*, 387 A.2d 1113 (Me. 1978)

¹² *Monk v. Pomberg*, 263 S.W.3d 199 (Tex.App. 2007)

¹³ *Mirto v. Bodine*, 29 Conn.Supp. 510 (Conn.Super.Ct. 1972); *Gardner v. Rothman*, 370 Mass. 79 (Mass. 1976)

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paternity judgment¹⁴, grandparents' right to notice and hearing in Child in Need of Aid (CINA) proceedings¹⁵, and rights of biological parents vis-à-vis the surrogate mother.¹⁶

- **Rights of an Illegitimate Child**, specifically his right to inherit from his putative father.¹⁷
- **Child Support**, specifically the obligation/right to pay for child support¹⁸ upon change of custody¹⁹, duty to pay for child's school tuition²⁰, determination of the amount of monthly child support obligation under a divorce decree²¹, a father's non-entitlement to discharge his child-support arrears²², nullity of a judgment which modified a child support order²³, a mother's entitlement to welfare assistance for her unborn child²⁴, deduction of child care costs from the claimant's income²⁵, modifiable nature of a child support award²⁶, father's obligation to reimburse child birth medical expenses²⁷, and entitlement to child support enforcement services.²⁸
- **Foster Care**, where the courts were asked to determine a county's liability to pay for foster care in case of placement in existing county program or in state-approved private institution²⁹, and a foster child's constitutional right to be safe and not be removed from his foster parents' home.³⁰
- **Child Adoption**, pertaining to the prohibition of the biological parents' adoption of their own children,³¹ and the obligation of adopted child's parent to reimburse county for the cost of care for the child in an out-of-home placement.³²
- **Juvenile Delinquency**, enforcing the state law prohibition on housing dependent children in a juvenile detention facility with delinquent children³³.
- **Immigrant Child/Parent**, such as the determination of an orphaned immigrant juvenile's dependent status for having no parent or legal custodian while living within the state borders³⁴, child immigrant's right to petition for status as a special immigrant juvenile (SIJ),³⁵

¹⁴ *Schaff v. Schaff*, 446 N.W.2d 28 (N.D. 1989)

¹⁵ *Jacob v. State of Alaska*, 177 P.3d 1181 (Alaska 2008)

¹⁶ *Doe v. Doe*, 15 Va.App. 242 (Va.Ct.App. 1992)

¹⁷ *In Re Estate of Glover*, 470 A.2d 743 (D.C. 1983)

¹⁸ *Garcia v. Garcia*, 789 N.E.2d 993 (Ind.Ct.App. 2003), *Wornkey v. Wornkey*, 12 Kan.App.2d 506 (Kan.Ct.App. 1988); *C.L. v. C.*, 1990 WL 34699 (Del.Fam.Ct. 1990)

¹⁹ *Weaver v. Jones*, 260 Ga. 493 (Ga. 1990)

²⁰ *Hardman v. Hardman*, 295 Ga. 732 (Ga. 2014)

²¹ *Acevedo v. Kim*, 284 Ga. 629 (Ga. 2008)

²² *Grays v. Arkansas Office of Child Support Enforcement*, 375 Ark. 38 (Ark. 2008)

²³ *Spicer v. Spicer*, 62 So.3d 798 (La.Ct.App. 2011)

²⁴ *Filipo v. Chang*, 62 Haw. 626 (Haw. 1980)

²⁵ *D'Ewart v. Neibauer*, 228 Mont. 335 (Mont. 1987)

²⁶ *Schaff v. Schaff*, 446 N.W.2d 28 (N.D. 1989)

²⁷ *K.D.R. v. D.E.S.*, 637 S.W.2d 691 (Mo. 1982)

²⁸ *Howe v. Ellenbecker*, 774 F.Supp. 1224 (D.S.D. 1991)

²⁹ *Wayne Cnty. v. State of Mich.*, 202 Mich.App. 530 (Mich.Ct.App. 1993)

³⁰ *Orsi v. Senatore*, 31 Conn.App. 400 (Conn.App.Ct. 1993)

³¹ *Peregood v. Cosmides*, 663 So.2d 665 (Fla.Dist.Ct.App. 1995); *Green v. Sollenberger*, 338 Md. 118 (Md. 1995)

³² *Cnty. of Ramsey v. Wilson*, 526 N.W.2d 384 (Minn.Ct.App. 1995)

³³ *Coal. To Save Our Kids v. Dep't of Pub. Welfare*, 745 A.2d 82 (Pa.Comm. Ct. 2000)

³⁴ *F.L.M. v. Dep't of Children and Families*, 912 So.2d 1264 (Fla.Dist.Ct.App. 2005)

³⁵ *Gao v. Jenifer*, 185 F.3d 548 (6th Cir. 1999)

determination of citizenship of a child of an immigrant and a U.S. citizen,³⁶ and prior to 1996 immigration law amendments that ended this practice staying of a deportation order issued against the child's immigrant parents.³⁷

Matters Related to Marriage and Divorce

- **Premarital Agreement**, regarding issues of its validity³⁸, scope, and application.³⁹
- **Marriage**, particularly its nullification⁴⁰ and existence⁴¹, one's marital status⁴², and a ward's competence to marry his girlfriend.⁴³
- **Divorce**, involving issues that include: voiding a divorce judgment⁴⁴, assigning liability for community debts⁴⁵, the husband's obligation to pay alimony⁴⁶, and ex-husband's presumptive paternity despite a contrary finding under a divorce decree.⁴⁷
- **Property**, including: courts determining the amount of mortgage due on a marital home⁴⁸, allowing marital debts to be satisfied by marital assets granted through arbitration⁴⁹, declaring stock options as marital property⁵⁰, declaring one's property rights in his former marital residence⁵¹, barring support and health insurance coverage⁵², including account receivables in the guardian's inventory,⁵³ and declaring other marital or partnership property rights.⁵⁴

³⁶ *Rios v. Civiletti*, 571 F.Supp. 218 (D.P.R. 1983)

³⁷ *On the Petition of Amoury for Declaratory Judgment*, 307 F.Supp. 213 (S.D.N.Y. 1969) (The role state courts played in issuing Judicial Recommendations Against Deportation (JRAD) that had the effect of stopping federal immigration authorities from deporting an individual was statutorily eliminated by Congress from federal immigration laws as part of the Immigration Act of 1990 104 Stat. 5050. See also *Padilla v. Kentucky*, 559 U.S. 356 (2010).

³⁸ *Schwartz v. Schwartz*, 183 P.3d 552 (Colo. 2008)

³⁹ *In re Marriage of Best*, 228 Ill.2d 107 (Ill. 2008)

⁴⁰ *McCombs v. Haley*, 13 Neb.App. 729 (Neb.Ct.App. 2005)

⁴¹ *Ellehaf v. Tarraf*, 2006 WL 736561 (Mich.Ct.App. 2006)

⁴² *Cardosanto v. Cardosanto*, 14 Misc.2d 498 (N.Y.Sup.Ct. 1957)

⁴³ *In the Matter of the Guardianship of O'Brien*, 847 N.W.2d 710 (Minn.Ct.App. 2014)

⁴⁴ *Waite v. Waite*, 891 So.2d 341 (Ala.Civ.App. 2004)

⁴⁵ *Srock, Jr. v. Srock*, 11 Ariz.App. 483 (Ariz.Ct.App. 1970)

⁴⁶ *Randlett v. Randlett*, 401 A.2d 1008 (Me. 1979)

⁴⁷ *Clark v. Edens*, 254 P.3d 672 (Okla. 2011)

⁴⁸ *Wilmore v. Wilmore*, 91 So.3d 701 (Ala.Civ.App. 2012)

⁴⁹ *Russell Piccoli P.L.C. v. O'Donnell*, 237 Ariz. 43 (Ariz.Ct.App. 2015)

⁵⁰ *Pianalto v. Pianalto*, 2010 Ark. App. 80 (Ark.Ct.App. 2010)

⁵¹ *Foster v. Schorr*, 139 Idaho 563 (Idaho 2003)

⁵² *In re Marriage of Best*, 228 Ill.2d 107 (Ill. 2008)

⁵³ *In Re Guardianship of Maurer*, 108 Ohio App.3d 354 (Ohio Ct.App. 1995)

⁵⁴ *Warren v. Warren*, 94 Nev. 309 (Nev. 1978)