

Arkansas Family Law – Jurisdiction and Service of Process

By Morgan, Lewis & Bockius LLP – March 31, 2021

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Custody Determination -Jurisdiction

Initial Custody Determination

AK 9-19-201

(a) Except as otherwise provided in 9-19-204, a court of this state has jurisdiction to make an initial child-custody determination only if:

(1) this state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six (6) months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;

(2) a court of another state does not have jurisdiction under subdivision (a)(1) of this section, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under 9-19-207 or 9-19-208, and:

(A) the child and the child's parents, or the child and at least one (1) parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and

(B) substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships;

(3) all courts having jurisdiction under subdivision (a)(1) or (2) of this section have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under 9-19-207 or 9-19-208; or

(4) no court of any other state would have jurisdiction under the criteria specified in subdivision (a)(1), (2), or (3) of this section.

(b) Subsection (a) of this section is the exclusive jurisdictional basis for making a child-custody determination by a court of this state.

(c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child-custody determination.

Temporary Emergency Jurisdiction

AK St. 9-19-204

(a) A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

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(b) If there is no previous child-custody determination that is entitled to be enforced under this chapter, and a child-custody proceeding has not been commenced in a court of a state having jurisdiction under 9-19-201 -- 9-19-203, a child-custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under 9-19-201 -- 9-19-203. If a child-custody proceeding has not been or is not commenced in a court of a state having jurisdiction under 9-19-201 -- 9-19-203, a child-custody determination made under this section becomes a final determination, if it so provides and this state becomes the home state of the child.

(c) If there is a previous child-custody determination that is entitled to be enforced under this chapter, or a child-custody proceeding has been commenced in a court of a state having jurisdiction under 9-19-201 -- 9-19-203, any order issued by a court of this state under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under 9-19-201 -- 9-19-203. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.

(d) A court of this state which has been asked to make a child-custody determination under this section, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of a state having jurisdiction under 9-19-201 -- 9-19-203, shall immediately communicate with the other court. A court of this state which is exercising jurisdiction pursuant to 9-19-201 9-19-203, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

Custody Determination — Service/Notification Requirements

AK St. 9-19-205. Notice -- Opportunity to be heard -- joinder.

(a) Before a child-custody determination is made under this chapter, notice and an opportunity to be heard in accordance with the standards of 9-19-108 must be given to all persons entitled to notice under the law of this state as in child-custody proceedings between residents of this state, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.

(b) This chapter does not govern the enforceability of a child-custody determination made without notice or an opportunity to be heard.

(c) The obligation to join a party and the right to intervene as a party in a child-custody proceeding under this chapter are governed by the law of this state as in child-custody proceedings between residents of this state.

Paternity and Child Support Proceeding —Jurisdiction

Proceeding to Establish, Enforce, Modify Support Order or Determine Parentage

AK St. 9-14-101

(a) Any person who establishes or acquires a marital domicile in this state, who contracts marriage in this state, or who becomes a resident of this state while legally married, and subsequently absents himself or herself from the state leaving a dependent natural or adopted child in this state and fails to support the child as required by the laws of this state, is deemed to have consented and submitted to the jurisdiction of the courts of this state as to any cause of action brought against that person for the support and maintenance of the child.

(b) In an action to establish paternity or to establish or enforce a child support obligation in regard to a child who is the subject of the action, a person is deemed to have consented and submitted to the jurisdiction of the courts of this state if any of the following circumstances exists:

(1) The person engaged in sexual intercourse with the child's mother in this state during the period of the child's conception or the affected child was conceived in this state;

(2) The person resides or has resided with the child in this state.

(c) Service of process upon any person who is deemed by this section to have consented and submitted to the jurisdiction of the courts of this state may be made pursuant to Rule 4 of the Arkansas Rules of Civil Procedure.

Paternity and Child Support Proceeding —Service/Notification Requirements

See Paternity and Child Support Proceeding—Jurisdiction Section.

Child Abuse/Neglect Proceeding—Jurisdiction

No independent statute for child abuse/neglect proceeding jurisdiction.

Child Abuse/Neglect Proceeding —Service/Notification Requirements

No independent statute for child abuse/neglect service/notification requirement.

Divorce and Legal Separation —Jurisdiction

AK. St. 9-12-303

(a) The proceedings shall be in the county where the complainant resides unless the complainant is a nonresident of the State of Arkansas and the defendant is a resident of the state, in which case the proceedings shall be in the county where the defendant resides and, in any event, the process may be directed to any county in the state.

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(b) In actions initiated by the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration or the Department of Human Services, proceedings may also be commenced in the county where the defendant resides.

(c) When a spouse initiates an action against the other spouse for an absolute divorce, divorce from bed and board, or separate maintenance, then the venue for the initial action shall also be the venue for any of the three

(3) named actions filed by the other spouse, regardless of the residency of the other spouse.

Divorce and Legal Separation —Service/Notification Requirements

See Divorce and Legal Separation - Jurisdiction Section.

Adoption Proceeding — Jurisdiction

AK St. 9-9-205

(a) Jurisdiction of adoption of minors:

(1) The state shall possess jurisdiction over the adoption of a minor if the person seeking to adopt the child, or the child, is a resident of this state.

(2) For purposes of this subchapter:

(A) A child under the age of six (6) months shall be considered a resident of this state if the:

(i) Child's birth mother resided in Arkansas for more than four (4) months immediately preceding the birth of the child;

(ii) Child was born in this state or in any border city that adjoins the Arkansas state line or is separated only by a navigable river from an Arkansas city that adjoins the Arkansas state line; and

(iii) Child remains in this state until the interlocutory decree has been entered, or in the case of a nonresident adoptive family, upon the receipt of approval pursuant to the Interstate Compact on the Placement of Children, 9-29-201 et seq., the child and the prospective adoptive parents may go back to their state of residence and subsequently may return to Arkansas for a hearing on the petition for adoption;

(B) A child over the age of six (6) months shall be considered a resident of this state if the child:

(i) Has resided in this state for a period of six (6) months;

(ii) Currently resides in Arkansas; and

(iii) Is present in this state at the time the petition for adoption is filed and heard by a court having appropriate jurisdiction; and

(C) A person seeking to adopt is a resident of this state if the person:

(i) Occupies a dwelling within the state;

(ii) Has a present intent to remain within the state for a period of time; and

(iii) Manifests the genuineness of that intent by establishing an ongoing physical presence within the state together with indications that the person's presence within the state is something other than merely transitory in nature.

(3) (A) If the juvenile is the subject matter of an open case filed under the Arkansas Juvenile Code of 1989, 9-27301 et seq., the adoption petition shall be filed in that case.

(B) The circuit court shall retain jurisdiction to issue orders of adoption, interlocutory or final, when a juvenile is placed outside the State of Arkansas.

(b) Jurisdiction of adoption of adults: Physical presence of the petitioner or petitioners or the individual to be adopted shall be sufficient to confer subject matter jurisdiction.

(c) Venue:

(1) Proceedings for adoption must be brought in the county in which, at the time of filing or granting the petition, the petitioner or petitioners, or the individual to be adopted resides or is in military service or in which the agency having the care, custody, or control of the minor is located;

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(2) If the court finds in the interest of substantial justice that the matter should be heard in another forum, the court may transfer, stay, or dismiss the proceedings in whole or in part on any conditions that are just.

(d) The caption of a petition for adoption shall be styled substantially "In the matter of the Adoption..." The

person to be adopted shall be designated in the caption under the name by which he or she is to be known if the petition is granted.

(e) If the child is placed for adoption, any name by which the child was previously known may be disclosed in the petition, the notice of hearing, or in the decree of adoption.

(f) In the event the child dies during the time that the child is placed in the home of an adoptive parent or parents for the purpose of adoption, the court has the authority to enter a final decree of adoption after the child's death upon the request of the adoptive parent.

Adoption Proceeding — Service/Notification Requirements

See Adoption Proceeding - Jurisdiction Section.

Domestic Violence —Jurisdiction

AK St. 9-15-201

(a) All petitions under this chapter shall be verified.

(b) The petition shall be filed in the county where the petitioner resides, where the alleged incident of abuse occurred, or where the respondent may be served.

(c) (1) A petition for relief under this chapter may be filed in the circuit court.

(2) A petition for relief under this chapter may be filed in a pilot district court if the jurisdiction is established by the Supreme Court under Arkansas Constitution, Amendment 80, 7 and if the cases are assigned to the pilot district court through the Court Administrative Plan under the Arkansas Supreme Court Administrative Order No. 14.

(d) A petition may be filed by:

(1) Any adult family or household member on behalf of himself or herself;

(2) Any adult family or household member on behalf of another family or household member who is a minor, including a married minor;

(3) Any adult family or household member on behalf of another family or household member who has been adjudicated an incompetent; or

(4) An employee or volunteer of a domestic-violence shelter or program on behalf of a minor, including a married minor.

(e) (1) A petition for relief shall:

(A) Allege the existence of domestic abuse;

(B) Disclose the existence of any pending litigation between the parties; and

(C) Disclose any prior filings of a petition for an order of protection under this chapter.

(2) The petition shall be accompanied by an affidavit made under oath that states the specific facts and circumstances of the domestic abuse and the specific relief sought.

(f) The petition may be filed regardless of whether there is any pending litigation between the parties.

(g) A person's right to file a petition, or obtain relief hereunder shall not be affected by his or her leaving the

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residence or household to avoid abuse.

Domestic Violence— Service/Notification Requirements

See Domestic Violence -Jurisdiction Section.

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