

California 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

CA FAM § 3421

(a) Except as otherwise provided in Section 3424 , a court of this state has jurisdiction to make an initial child custody determination only if any of the following are true:

(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 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 paragraph (1), or a court of the home state of the child has declined to exercise jurisdiction on the grounds that this state is the more appropriate forum under Section 3427 or 3428 , and both of the following are true:

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

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

(3) All courts having jurisdiction under paragraph (1) or (2) 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 Section 3427 or 3428 .

(4) No court of any other state would have jurisdiction under the criteria specified in paragraph (1), (2), or (3).

(b) Subdivision (a) 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

CA FAM § 3424

(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.

(b) If there is no previous child custody determination that is entitled to be enforced under this part and a child custody proceeding has not been commenced in a court of a state having jurisdiction under Sections 3421 to 3423, inclusive, 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 Sections 3421 to

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3423, inclusive. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under Sections 3421 to 3423, inclusive, 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 part, or a child custody proceeding has been commenced in a court of a state having jurisdiction under Sections 3421 to 3423, inclusive, 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 Sections 3421 to 3423, inclusive. 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 that 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 Sections 3421 to 3423 , inclusive, shall immediately communicate with the other court. A court of this state which is exercising jurisdiction pursuant to Sections 3421 to 3423 , inclusive, 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.

(e) It is the intent of the Legislature in enacting subdivision (a) that the grounds on which a court may exercise temporary emergency jurisdiction be expanded. It is further the intent of the Legislature that these grounds include those that existed under Section 3403 of the Family Code as that section read on December 31, 1999, particularly including cases involving domestic violence.

Custody Determination — Service/Notification Requirements
CA FAM § 3425

(a) Before a child custody determination is made under this part, notice and an opportunity to be heard in accordance with the standards of Section 3408 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 part 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 part are governed by the law of this state as in child custody proceedings between residents of this state.

Paternity and Child Support Proceeding —Jurisdiction
CA FAM § 7620

(a) A person who has sexual intercourse or causes conception with the intent to become a legal parent by assisted reproduction in this state, or who enters into an assisted reproduction agreement for gestational carriers in this state, thereby submits to the jurisdiction of the courts of this state as to an action brought under this part with respect to a child who may have been conceived by that act of intercourse or assisted reproduction, or who may have been conceived as a result of that assisted reproduction agreement.

(b) If a child is conceived pursuant to an assisted reproduction agreement for gestational carriers, as defined in Section 7960 and as described in Section 7962 , the courts of this state shall have jurisdiction over a proceeding to determine parentage of the child if any of the following conditions is satisfied:

(1) One or more of the parties to the assisted reproduction agreement for gestational carriers resides in this state, or resided in this state at the time the assisted reproduction agreement for gestational carriers was executed.

(2) The medical procedures leading to conception, including in vitro fertilization or embryo transfer, or both, were carried out in this state.

(3) The child is born in this state.

(c) An action under this part shall be brought in one of the following:

(1) The county in which the child resides or is found.

(2) If the child is the subject of a pending or proposed adoption, any county in which a licensed California adoption agency to which the child has been relinquished or is proposed to be relinquished maintains an office.

(3) If the child is the subject of a pending or proposed adoption, the county in which an office of the department or a public adoption agency investigating the petition is located.

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(4) If the parent is deceased, the county in which proceedings for probate of the estate of the parent of the child have been or could be commenced.

(5) If the child was conceived pursuant to an assisted reproduction agreement for gestational carriers, any county described in subdivision (e) of Section 7962 .

Paternity and Child Support Proceeding —Service/Notification Requirements
CA FAM § 7630

(a) A child, the child's natural mother, a person presumed to be the child's parent under subdivision (a), (b), or (c) of Section 7611, an adoption agency to whom the child has been relinquished, or a prospective adoptive parent of the child may bring an action as follows:

(1) At any time for the purpose of declaring the existence of the parent and child relationship presumed under subdivision (a), (b), or (c) of Section 7611.

(2) For the purpose of declaring the nonexistence of the parent and child relationship presumed under subdivision (a), (b), or (c) of Section 7611 only if the action is brought within a reasonable time after obtaining knowledge of relevant facts. After the presumption has been rebutted, parentage of the child by another person may be determined in the same action, if that person has been made a party.

(b) Any interested party may bring an action at any time for the purpose of determining the existence or nonexistence of the parent and child relationship presumed under subdivision (d) or (f) of Section 7611.

(c) Except as to cases coming within Chapter 1 (commencing with Section 7540) of Part 2, an action to determine the existence of the parent and child relationship may be brought by the child, a personal representative of the child, the Department of Child Support Services, a presumed parent or the personal representative or a parent of that presumed parent if that parent has died or is a minor, or, in cases in which the natural mother is the only presumed parent or an action under Section 300 of the Welfare and Institutions Code or adoption is pending, a man alleged or alleging himself to be the father or the personal representative or a parent of the alleged father if the alleged father has died or is a minor.

(d)(1) If a proceeding has been filed under Chapter 2 (commencing with Section 7820) of Part 4, an action under subdivision (a) or (b) shall be consolidated with that proceeding. The parental rights of the presumed parent shall be determined as set forth in Sections 7820 to 7829, inclusive.

(2) If a proceeding pursuant to Section 7662 has been filed under Chapter 5 (commencing with Section 7660), an action under subdivision (c) shall be consolidated with that proceeding. The parental rights of the alleged natural father shall be determined as set forth in Section 7664.

(3) The consolidated action under paragraph (1) or (2) shall be heard in the court in which the proceeding under Section 7662 or Chapter 2 (commencing with Section 7820) of Part 4 is filed, unless the court finds, by clear and convincing evidence, that transferring the action to the other court poses a substantial hardship to the petitioner. Mere inconvenience does not constitute a sufficient basis for a finding of substantial hardship. If the court determines there is a substantial hardship, the consolidated action shall be heard in the court in which the parentage action is filed.

(e)(1) If any prospective adoptive parent who has physical custody of the child, any licensed California adoption agency that has legal custody of the child or to which the mother proposes to relinquish the child for adoption, or any person whom the mother has designated as the prospective adoptive parent in a written statement executed before a hospital social worker, an adoption service provider, an adoption agency representative, or a notary public, has not been joined as a party to an action to determine the existence of a parent and child relationship under subdivision (a), (b), or (c), or an action for custody by the alleged natural father, the court shall join the prospective adoptive parent or licensed California adoption agency as a party upon application or on its own motion, without the necessity of a motion for joinder. A joined party shall not be required to pay a fee in connection with this action.

(2) If a person brings an action to determine parentage and custody of a child who he or she has reason to believe is in the physical or legal custody of an adoption agency, or of one or more persons other than the child's parent who are prospective adoptive parents, he or she shall serve his or her entire pleading on, and give notice of all proceedings to, the adoption agency or the prospective adoptive parents, or both.

(f) A party to an assisted reproduction agreement may bring an action at any time to establish a parent and child relationship consistent with the intent expressed in that assisted reproduction agreement.

(g)(1) In an action to determine the existence of the parent and child relationship brought pursuant to subdivision (b), if the child's other parent has died and there are no existing court orders or pending court actions involving custody or guardianship of the child, then the persons having physical custody of the child shall be served with notice of the

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proceeding at least 15 days prior to the hearing, either by mail or in any manner authorized by the court. If any person identified as having physical custody of the child cannot be located, the court shall prescribe the manner of giving notice.

(2) If known to the person bringing the parentage action, relatives within the second degree of the child shall be given notice of the proceeding at least 15 days prior to the hearing, either by mail or in any manner authorized

by the court. If a person identified as a relative of the second degree of the child cannot be located, or his or her whereabouts are unknown or cannot be ascertained, the court shall prescribe the manner of giving notice, or shall dispense with giving notice to that person.

(3) Proof of notice pursuant to this subdivision shall be filed with the court before the proceeding to determine the existence of the parent and child relationship is heard.

Child Abuse/Neglect Proceeding—Jurisdiction

No independent statute for Child Abuse/Neglect Proceeding.

Child Abuse/Neglect Proceeding — Service/Notification Requirements

No independent statute for Child Abuse/Neglect Proceeding.

Divorce and Legal Separation —Jurisdiction

CA FAM § 7620

When service of summons on a spouse is made pursuant to Section 415.50 of the Code of Civil Procedure , the court, without the aid of attachment or the appointment of a receiver, shall have and may exercise the same jurisdiction over:

(a) The community real property of the spouse so served situated in this state as it has or may exercise over the community real property of a spouse who is personally served with process within this state.

(b) The quasi-community real property of the spouse so served situated in this state as it has or may exercise over the quasi-community real property of a spouse who is personally served with process within this state.

Divorce and Legal Separation —Service/Notification Requirements

CA CIV PRO § 415.50

(a) A summons may be served by publication if upon affidavit it appears to the satisfaction of the court in which the action is pending that the party to be served cannot with reasonable diligence be served in another manner specified in this article and that either:

(1) A cause of action exists against the party upon whom service is to be made or he or she is a necessary or proper party to the action.

(2) The party to be served has or claims an interest in real or personal property in this state that is subject to the jurisdiction of the court or the relief demanded in the action consists wholly or in part in excluding the party from any interest in the property.

(b) The court shall order the summons to be published in a named newspaper, published in this state, that is most likely to give actual notice to the party to be served. If the party to be served resides or is located out of this state, the court may also order the summons to be published in a named newspaper outside this state that is most likely to give actual notice to that party. The order shall direct that a copy of the summons, the complaint, and the order for publication be forthwith mailed to the party if his or her address is ascertained before expiration of the time prescribed for publication of the summons. Except as otherwise provided by statute, the publication shall be made as provided by Section 6064 of the Government Code unless the court, in its discretion, orders publication for a longer period.

(c) Service of a summons in this manner is deemed complete as provided in Section 6064 of the Government Code.

(d) Notwithstanding an order for publication of the summons, a summons may be served in another manner authorized by this chapter, in which event the service shall supersede any published summons.

(e) As a condition of establishing that the party to be served cannot with reasonable diligence be served in another manner specified in this article, the court may not require that a search be conducted of public databases where access by a registered process server to residential addresses is prohibited by law or by published policy of the agency providing the database, including, but not limited to, voter registration rolls and records of the Department of Motor Vehicles.

Adoption Proceeding — Jurisdiction

CA FAM § 8609.5

An adoption request for the adoption of a nondependent minor may be filed with the court in the county in which one of the following applies:

(a) The petitioner resides.

(b) The child was born or resides at the time of filing.

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- (c) An office of the agency that placed the child for adoption is located.
- (d) An office of the department or a public adoption agency that is investigating the petition is located.
- (e) The county in which a placing birth parent or parents resided when the adoptive placement agreement, consent, or relinquishment was signed.
- (f) The county in which a placing birth parent or parents resided when the petition was filed.
- (g) The county in which the child was freed for adoption.



Adoption Proceeding — Service/Notification Requirements

See Adoption Proceeding - Jurisdiction Section.

Domestic Violence —Jurisdiction

CA FAM § 8609.5

- (a) An order under this part may be granted to any person described in Section 6211, including a minor pursuant to subdivision (b) of Section 372 of the Code of Civil Procedure.
- (b) The right to petition for relief shall not be denied because the petitioner has vacated the household to avoid abuse, and in the case of a marital relationship, notwithstanding that a petition for dissolution of marriage, for nullity of marriage, or for legal separation of the parties has not been filed.
- (c) The length of time since the most recent act of abuse is not, by itself, determinative. The court shall consider

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the totality of the circumstances in determining whether to grant or deny a petition for relief.

Domestic Violence— Service/Notification Requirements

See Domestic Violence -Jurisdiction Section.

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