

Colorado 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

CO St. § 14-13-201

(1) Except as otherwise provided in section 14-13-204, a court of this state has jurisdiction to make an initial child-custody determination only if:

(a) 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 one hundred eighty-two days 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;

(b) A court of another state does not have jurisdiction under a provision of law adopted by that state that is in substantial conformity with paragraph (a) of this subsection (1), 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 a provision of law adopted by that state that is in substantial conformity with section 14-13-207 or 14-13-208, and:

(I) 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; and

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

(c) All courts having jurisdiction under a provision of law adopted by that state that is in substantial conformity with paragraph (a) or (b) of this subsection (1) 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 a provision of law adopted by that state that is in substantial conformity with section 14-13-207 or 14-13-208; or

(d) No court of any other state would have jurisdiction under the criteria specified in a provision of law adopted by that state that is in substantial conformity with paragraph (a), (b), or (c) of this subsection (1).

(2) Subsection (1) of this section is the exclusive jurisdictional basis for making a child-custody determination by a court of this state.

(3) 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

CO St. § 14-13-204

(1) 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.

(2) If there is no previous child-custody determination that is entitled to be enforced under this article and a child-custody proceeding has not been commenced in a court of a state having jurisdiction under a provision of law adopted by that state that is in substantial conformity with sections 14-13-201 to 14-13-203, 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 a provision of law adopted by that state that is in substantial conformity with sections 14-13-201 to 14-13-203. If a child-custody proceeding has not been or is not commenced in a court of a state having jurisdiction under a provision of law adopted by that state that is in substantial conformity with

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sections 14-13201 to 14-13203, 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.

(3) If there is a previous child-custody determination that is entitled to be enforced under this article, or a child-custody proceeding has been commenced in a court of a state having jurisdiction under a provision of law adopted by that state that is in substantial conformity with sections 14-13-201 to 14-13-203, 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 a provision of law adopted by that state that is in substantial conformity with sections 14-13-201 to 14-13-203. 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.

(4) 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 a provision of law adopted by that state that is in substantial conformity with sections 14-13-201 to 14-13-203, shall immediately communicate with the other court. A court of this state that is exercising jurisdiction pursuant to sections 14-13-201 to 14-13-203, 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

CO St. § 14-13-205

(1) Before a child-custody determination is made under this article, notice and an opportunity to be heard in accordance with the standards of section 14-13-108 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.

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

(3) The obligation to join a party and the right to intervene as a party in a child-custody proceeding under this article 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

CO St. § 14-5-205

(a) A tribunal of this state that has issued a child support order consistent with the law of this state has and shall exercise continuing, exclusive jurisdiction to modify its child support order if the order is the controlling order and:

(1) At the time of the filing of a request for modification, this state is the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or

(2) Even if this state is not the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued, the parties consent in a record or in open court that the tribunal of this state may continue to exercise jurisdiction to modify its order.

(b) A tribunal of this state that has issued a child support order consistent with the law of this state may not exercise continuing, exclusive jurisdiction to modify the order if:

(1) All of the parties who are individuals file consent in a record with the tribunal of this state that a tribunal of another state that has jurisdiction over at least one of the parties who is an individual or that is located in the state of residence of the child may modify the order and assume continuing, exclusive jurisdiction; or

(2) Its order is not the controlling order.

(c) If a tribunal of another state has issued a child support order pursuant to the "Uniform Interstate Family Support Act", or a law substantially similar to that act, which modifies a child support order of a tribunal of this state, tribunals of this state shall recognize the continuing, exclusive jurisdiction of the tribunal of the other state.

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(d) A tribunal of this state that lacks continuing, exclusive jurisdiction to modify a child support order may serve as an initiating tribunal to request a tribunal of another state to modify a support order issued in that state.

(e) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

Paternity and Child Support Proceeding —Service/Notification Requirements
CO St. § 14-13-108

(1) Notice required for the exercise of jurisdiction when a person is outside this state may be given in a manner prescribed by the law of this state for service of process or by the law of the state in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.

(2) Proof of service may be made in the manner prescribed by the law of this state or by the law of the state in which the service is made.

(3) Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

Child Abuse/Neglect Proceeding —Jurisdiction
CO St. § 19-3-201

(1) (a) Except as provided in paragraph (b) of this subsection (1), all proceedings brought under this article shall be commenced in the county in which the child resides or is present.

(b) A county department, guardian ad litem, or other person filing a petition for reinstatement of the parent-child legal relationship as set forth in section 19-3-612 must file the petition for the reinstatement of the parent-child legal relationship in the county or city and county that has legal custody of the child.

(1.5) For purposes of determining proper venue, a child who is placed in the legal custody of a county department shall be deemed for the entire period of placement to reside in the county in which the child's legal parent or guardian resides or is located, even if the child is physically residing in a foster care or residential facility located in another county. In such circumstance, if a child is placed out of the home, the court shall not transfer venue pursuant to subsection (2) of this section during the period of out-of-home placement to any county other than the county in which the child's legal parent or guardian resides or is located.

(2) When proceedings are commenced under this article in a county other than that of the child's residence, the court in which proceedings were initiated may, on its own motion or on the motion of any interested party, transfer the case to the court in the county where the child's legal parent or guardian resides or is located unless any of the following circumstances exist:

(a) The transfer would be detrimental to the best interests of the child;

(b) Adjudication has taken place and the case has not been continued pursuant to section 19-3-505 (5);

(c) The legal parent or guardian has a history of frequent moves unless there is evidence of stability in the most recent move indicating an intent to remain in the new residence for six or more months, such as the legal parent or guardian has signed a lease whose term is six or more months;

(d) The case is likely to be closed within three to six months;

(e) The transfer will disrupt continuity or provisions of services; or

(f) The case is an expedited permanency planning case, unless the requirements of subsection (3) of this section have been met. Pursuant to subsection (3) of this section, the presumption that a transfer of the proceedings is not in the child's best interest has been rebutted by a preponderance of the evidence.

(2.5) The county attorney of a county that files a motion to change venue pursuant to this section shall immediately provide notice of the motion to the proposed receiving county. Upon receipt of a motion to change venue, the court shall set a hearing to rule on the motion. The requesting county attorney shall provide fourteen days written notice of the hearing to the office of the county attorney in the proposed receiving county, who shall have a right to file responsive pleadings and appear at the hearing.

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(3) In a county designated pursuant to section 19-1-123, if the child is under six years of age at the time a petition is filed in accordance with section 19-3-501 (2), it shall be presumed that any transfer of proceedings pursuant to subsection (2) of this section without good cause shown that results in a delay in the judicial proceedings would be detrimental to the child's best interests. Such presumption may be rebutted by a preponderance of the evidence.

(4) (a) An order granting a change of venue and transferring jurisdiction to the court in the county in which the child resides shall be effective fifteen days after the transferring court signs the order. Within thirty days after

signing the order, the transferring court shall forward the court file, including originals or certified copies of all documents and reports, to the receiving court.

(b) The order granting a change of venue and transferring jurisdiction shall include:

(I) Notice to the receiving court of whether a respondent parent's counsel and the guardian ad litem appointed for the child will remain on the case. If a respondent parent's counsel or the guardian ad litem for the child will not remain on the case, the order shall inform the receiving court that the receiving court shall make a new appointment of counsel or guardian ad litem.

(II) Notice that the transferring court shall vacate any existing hearing date after the effective date of the order.

(5) When venue is transferred, as set forth in subsection (2) of this section, the receiving court shall proceed with the case as if the petition had been originally filed or adjudication had been originally made in that court. The receiving court shall hold an initial hearing in the case within thirty days after the effective date of the order granting a change of venue and transferring jurisdiction to the receiving court.

(6) A motion for change of venue shall be made in writing and shall include a certification by the moving party that the moving party has complied with all statutory requirements. The motion for change of venue shall be mailed to all parties and attorneys of record in the case and to the county attorney in the receiving county.

Child Abuse/Neglect Proceeding —Service/Notification Requirements **CO St. § 19-3-201**

(1) The state department shall prepare, with the assistance of the attorney general, on a standardized written form, a detailed informational notice of rights and remedies for families subject to the provisions of this article.

(2) The notice prepared pursuant to subsection (1) of this section shall be supplied to all social service and law enforcement agencies in the state and shall be delivered to all parents and families from whom children are removed under court order or by law enforcement personnel, along with a copy of the court order directing removal of the child or children from the home. In addition to the notification on the court order, the informational notice shall contain a statement as to the cause of the removal of the child or children. The notice shall also contain disclosure of the availability of the conflict resolution process to persons who are the subject of any child abuse or neglect report and to the parents, Indian custodians, guardian, or legal custodian of a child who is the subject of any child abuse or neglect report. The standardized written notice form prepared pursuant to subsection (1) of this section shall also include a notification of rights of the parents, Indian custodians, guardians, or legal custodians of Indian children under the federal "Indian Child Welfare Act", 25 U.S.C. sec. 1901, et seq.

(3) The notice prepared pursuant to subsection (1) of this section shall be available for public inspection at a review and comment hearing prior to its adoption.

Divorce and Legal Separation —Jurisdiction **CO St. § 14-10-106.5**

(1) Any person who enters into a civil union in Colorado pursuant to article 15 of this title consents to the jurisdiction of the courts of Colorado for the purpose of any action relating to a civil union even if one or both parties cease to reside in this state. In a matter seeking a dissolution, legal separation, or declaration of invalidity of a civil union, the court shall follow the procedures that are set forth in this article for dissolution, legal separation, or declaration of invalidity. The provisions of this article and any case law construing this article apply to the dissolution, legal separation, or declaration of invalidity of a civil union.

(2) The court shall follow the laws of Colorado in a matter filed in Colorado that is seeking a dissolution, legal separation, or invalidity of a civil union that was entered into in another jurisdiction.

Divorce and Legal Separation —Service/Notification Requirements **CO St. § 14-10-107**

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- (1) All proceedings under this article shall be commenced in the manner provided by the Colorado rules of civil procedure.
- (2) The petition in a proceeding for dissolution of marriage or legal separation shall allege that the marriage is irretrievably broken and shall set forth:
 - (a) The residence of each party and the length of residence in this state;

- (b) The date and place of the marriage;
- (c) The date on which the parties separated;
- (d) The names, ages, and addresses of any living children of the marriage and whether the wife is pregnant;
- (e) Any arrangements as to the allocation of parental responsibilities with respect to the children of the marriage and support of the children and the maintenance of a spouse;
- (f) The relief sought; and
- (g) A written acknowledgment by the petitioner and the co-petitioner, if any, that he or she has received a copy of, has read, and understands the terms of the automatic temporary injunction required by paragraph (b) of subsection (4) of this section.

(2.5) Upon the filing of a petition for dissolution of marriage or legal separation pursuant to this article, each party shall provide to the court, in the manner prescribed by the court, his or her social security number and the social security number of each child named in the petition pursuant to paragraph (d) of subsection (2) of this section.

(3) Either or both parties to the marriage may initiate the proceeding. In addition, a legal guardian, with court approval pursuant to section 15-14-3 15.5, C.R.S., or a conservator, with court approval pursuant to section 1514-425.5, C.R.S., may initiate the proceeding. If a legal guardian or conservator initiates the proceeding, the legal guardian or conservator shall receive notice in the same manner as the parties to the proceeding.

(4) (a) Upon the commencement of a proceeding by one of the parties, or by a legal guardian or conservator of one of the parties, the other party shall be personally served in the manner provided by the Colorado rules of civil procedure, and he or she may file a response in accordance with such rules; except that, upon motion verified by the oath of the party commencing the proceeding or of someone in his or her behalf for an order of publication stating the facts authorizing such service, and showing the efforts, if any, that have been made to obtain personal service within this state, and giving the address or last-known address of each person to be served or stating that his or her address and last-known address are unknown, the court shall hear the motion ex parte and, if satisfied that due diligence has been used to obtain personal service within this state or that efforts to obtain the same would have been to no avail, shall order one publication of a consolidated notice in a newspaper published or having general circulation in the county in which the proceeding is filed, notwithstanding the provisions of article 70 of title 24, C.R.S. A consolidated notice shall be published at least once during a calendar month and shall list the proceedings filed subsequent to those named in the previously published consolidated notice, stating as to each proceeding the names of the parties, the action number, the nature of the action, that a copy of the petition and summons may be obtained from the clerk of the court during regular business hours, and that default judgment may be entered against that party upon whom service is made by such notice if he or she fails to appear or file a response within thirty-five days after the date of publication. Costs of publication of a consolidated notice may be assessed pro rata to each of the proceedings named in the notice; except that, if a party is indigent or otherwise unable to pay such publication costs, the costs shall be paid by the court from funds appropriated for the purpose. Service shall be complete upon such publication, and a response or appearance by the party served by publication under this subsection (4) shall be made within thirty-five days thereafter, or default judgment may be entered. No later than the day of publication, the clerk of the court shall also post for thirty-five consecutive days a copy of the process on a bulletin board in his or her office and may post it on the website of the district court in which the case was filed and shall mail a copy of the process to the other party at his or her last-known address, and shall place in the file of the proceeding his or her certificate of posting and mailing. Proof of publication of the consolidated notice shall be by placing in the file a copy of the affidavit of publication, certified by the clerk of the court to be a true and correct copy of the original affidavit on file in the clerk's office.

(b) (I) Upon the filing of a petition for dissolution of marriage or legal separation by the petitioner or copetitioner or by a legal guardian or conservator on behalf of one of the parties and upon personal service of the petition and summons on the respondent or upon waiver and acceptance of service by the respondent, a temporary injunction shall be in effect against both parties until the final decree is entered or the petition is dismissed or until further order of the court:

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(A) Restraining both parties from transferring, encumbering, concealing, or in any way disposing of, without the consent of the other party or an order of the court, any marital property, except in the usual course of business or for the necessities of life and requiring each party to notify the other party of any proposed extraordinary expenditures and to account to the court for all extraordinary expenditures made after the injunction is in effect;

(B) Enjoining both parties from molesting or disturbing the peace of the other party;

(C) Restraining both parties from removing the minor child or children of the parties, if any, from the state without the consent of the other party or an order of the court; and

(D) Restraining both parties, without at least fourteen days' advance notification and the written consent of the other party or an order of the court, from canceling, modifying, terminating, or allowing to lapse for nonpayment of premiums, any policy of health insurance, homeowner's or renter's insurance, or automobile insurance that provides coverage to either of the parties or the minor children or any policy of life insurance that names either of the parties or the minor children as a beneficiary.

(II) The provisions of the injunction shall be printed upon the summons and the petition and the injunction shall become an order of the court upon fulfillment of the requirements of subparagraph (I) of this paragraph (b). However, nothing in this paragraph (b) shall preclude either party from applying to the court for further temporary orders, an expanded temporary injunction, or modification or revocation under section 14-10-108.

(III) The summons shall contain the following advisements:

(A) That a request for genetic tests shall not prejudice the requesting party in matters concerning allocation of parental responsibilities pursuant to section 14-10-124 (15); and

(B) That, if genetic tests are not obtained prior to a legal establishment of paternity and submitted into evidence prior to the entry of the legal final decree of dissolution, the genetic tests may not be allowed into evidence at a later date.

(4.1) With regard to the automatic, temporary injunction that becomes effective in accordance with paragraph (b) of subsection (4) of this section when a petition for dissolution of marriage or legal separation is filed and served, whenever there is exhibited by the respondent to any duly authorized peace officer as described in section 16-2.5-101, C.R.S., a copy of the petition and summons duly filed and issued pursuant to this section, or, in the case of the petitioner, a copy of the petition and summons duly filed and issued pursuant to this section, together with a certified copy of the affidavit of service of process or a certified copy of the waiver and acceptance of service, and the peace officer has cause to believe that a violation of that part of the automatic, temporary injunction which enjoins both parties from molesting the other party has occurred, such peace officer shall use every reasonable means to enforce that part of the injunction against the petitioner or respondent. A peace officer shall not be held civilly or criminally liable for his or her action pursuant to this subsection (4.1) if the action is in good faith and without malice.

(5) Defenses to divorce and legal separation existing prior to January 1, 1972, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are hereby abolished.

(6) All issues raised by these proceedings shall be resolved by the court sitting without a jury.

Adoption Proceeding — Jurisdiction

CO St. § 19-5-204

A petition for adoption shall be filed in the county of residence of the petitioner or in the county in which the placement agency is located.

Adoption Proceeding — Service/Notification Requirements

See Adoption Proceeding - Jurisdiction Section.

Domestic Violence — Jurisdiction

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No independent statute for domestic violence proceeding.

Domestic Violence—Service/Notification Requirements

No independent statute for domestic violence proceeding.

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