

District of Columbia 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

D.C. Code Ann. § 16-4602.01(a)

Subject Matter Jurisdiction exists where:

- (1) State is child's home state (at commencement of proceeding or six months prior and child is absent but at least one parent resides); or
 - (2) court of another state does not have jurisdiction under paragraph (1) or court of home state of child declines jurisdiction and (A) child and at least one parent has significant connection to State; (B) substantial evidence is available re: child's care, protection, training and personal relationships; or
 - (3) all courts having jurisdiction under (1) and (2) declined to exercise jurisdiction based on this forum being most convenient;
 - (4) no court of any other state would have jurisdiction under (1), (2), or (3).
- (b) Subsection (a) of this section is the exclusive jurisdictional basis for making a child-custody determination by a court of the District.
- (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

D.C. Code Ann. § 16-4602.04.

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.

Custody Determination – Service/Notification Requirements

Custody Determination – Service of Process

D.C. Code Ann. § 16-4603.09

The petition and order must be served upon respondent and any person who has physical custody of the child by any method authorized for the service of complaints under the rules for domestic relations proceedings adopted by the Board of Judges of the Superior Court of the District of Columbia.

D.C. Code Ann. § 16-4603.11

Emergency Custody Determination – Service of Process

- (a) Upon the filing of a petition seeking enforcement of a child-custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is imminently likely to suffer serious physical harm or be removed from the District.
- (b) If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be removed from the District, it may issue a warrant to take physical custody of the child.

Paternity and Child Support Proceeding – Jurisdiction
D.C. Code Ann. § 16-1006 - Jurisdiction

A petitioner may file a petition for protection under this subchapter if:

- (1) The petitioner resides, lives, works, or attends school in the District of Columbia;
- (2) The petitioner is under the legal custody of a District government agency; or
- (3) The underlying offense occurred in the District of Columbia.

D.C. Code Ann. § 16-2342 (a) – Who May Bring a Complaint

A proceeding to determine parentage may be brought by the District of Columbia, a person whose parentage of the child is to be adjudicated, a child's mother, putative father, guardian, legal or physical custodian, the IV-D agency, the person whose parentage is to be determined, if an adult, or a licensed child-placing agency.

Paternity and Child Support Proceeding – Service/Notification Requirements

D.C. Code Ann. § 16-2357 - Notice

- (a) When a motion to terminate the parent and child relationship is filed, a judge shall promptly set a time for an adjudicatory hearing and shall cause notice thereof to be given to all parties.
- (b) A judge shall direct the issuance to and personal service upon the child's parent of a summons together with a copy of the motion to terminate the parent and child relationship.
- (c) When it is appropriate to the proper disposition of the case, a judge may direct the service of a summons upon other persons.
- (d) If a personal service under this section cannot be effected, then notice shall be made constructively pursuant to rules of the Superior Court of the District of Columbia.

D.C. Code Ann. § 16-2356

Parties to a proceeding for the termination of the parent and child relationship shall be the child, the parent of the named child, and the agency having the legal custody of the child. The judge may at his or her discretion, name on his or her own motion or in response to a motion for joinder or intervention, join additional parties to a proceeding to terminate the parent and child relationship.

Child Abuse/Neglect Proceeding – Jurisdiction

D.C. Code Ann. § 16-2301 – Definitions

The term “Division” means the Family Division of the Superior Court of the District of Columbia.

D.C. Code Ann. § 16-2303 (a) – Jurisdiction

For purposes of this subchapter, jurisdiction obtained by the Division in the case of a child shall be retained by it until the child becomes twenty-one years of age, unless jurisdiction is terminated before that time.

D.C. Code Ann. § 16-2320 (a) – Jurisdiction

If a child is found to be neglected, the Division exercising juvenile jurisdiction shall also have jurisdiction over any natural person who is a parent or caretaker of the child to secure the parent or caretaker's full cooperation and assistance in the entire rehabilitative process

Child Abuse/Neglect Proceeding – Service/Notification Requirements

D.C. Code Ann. § 16-2306 (a)

If delinquency or need of supervision is alleged, a summons, together with a copy of the petition, shall be served upon the child and upon his spouse (if any) and his parent, guardian, or other custodian. If neglect is alleged, the summons, together with a copy of the petition, shall be served on the parent, guardian, or other custodian of the child named in the petition. Where appropriate to the proper disposition of the case, the Division may direct service of summonses upon other persons. A summons issued pursuant to this section shall advise the parties of the right to counsel as provided in section 16-2304.

Divorce and Legal Separation – Jurisdiction

D.C. Code Ann. § 16-902 – Jurisdiction Requirements

Except as provided in subsection (b) of this section, no action for divorce or legal separation shall be maintainable unless one of the parties to the marriage has been a bona fide resident of the District of Columbia for at least 6 months next preceding the commencement of the action.

(b)

(1) An action for divorce or legal separation by persons of the same gender, even if neither party to the marriage is a bona fide resident of the District of Columbia at the time the action is commenced, shall be maintainable if the following apply:

(A) The marriage was performed in the District of Columbia; and

(B) Neither party to the marriage resides in a jurisdiction that will maintain an action for divorce or legal separation.

(2) It shall be a rebuttable presumption that a jurisdiction will not maintain an action for divorce or legal separation if the jurisdiction does not recognize the marriage.

(3) Any action for divorce or legal separation as provided by this subsection, including any accompanying petition for alimony, assignment and equitable distribution of property, pendente lite relief, or child custody determination if the District has jurisdiction under § 16-4602.01 or § 16.4602.03, shall be adjudicated in accordance with the laws of the District of Columbia.

(c) No action for annulment of a marriage performed outside the District of Columbia or for affirmance of any marriage shall be maintainable unless one of the parties is a bona fide resident of the District of Columbia at the time of the commencement of the action.

(d) The residence of the parties to an action for annulment of a marriage performed in the District of Columbia shall not be considered in determining whether the action shall be maintainable.

(e) If a member of the armed forces of the United States resides in the District of Columbia for a continuous period of 6 months during his or her period of military service, he or she shall be deemed to reside in the District of Columbia for purposes of this section only.

Divorce and Legal Separation – Service/Notification Requirements **DC R DOM REL Rule 4(a)(1)**

A summons must:

- (A) name the court and the parties;
- (B) be directed to the defendant;
- (C) state the name and address of the plaintiff's attorney or, if unrepresented, of the plaintiff;
- (D) state the time within which the defendant must file a response to the complaint and appear in court;
- (E) notify the defendant that a failure to file a response to the complaint and to appear at any scheduled hearing will result in a default judgment against the defendant for the relief demanded in the complaint;
- (F) be signed by the clerk; and
- (G) bear the court's seal.

DC R DOM REL Rule 4(b)

At the time the complaint is filed, the clerk must issue a summons for each defendant named in the complaint and must provide to the plaintiff or the plaintiff's agent a copy of each summons for service of process in accordance with Rule 4(c).

DC R DOM REL Rule 4 (c) Serving a Summons and Complaint.

(1) In General. A summons must be served with a copy of the complaint and any scheduling or other order directed to the parties at the time of filing. The plaintiff is responsible for having the summons, complaint, and any order directed to the parties at the time of filing served within the time allowed by Rule 4(i) and for furnishing the necessary copies to the person who makes service.

(2) Methods of Service. Service of the summons, complaint, and any order must be made in one of the following ways:

- (A) by any competent person who is at least 18 years of age and not a party:
 - (i) delivering a copy of each to an individual personally; or
 - (ii) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there;
- (B) by mailing a copy of each to the person to be served by registered or certified mail, return receipt requested;
- (C) by mailing a copy of each by first-class mail, postage prepaid, to the person to be served, together with two copies of a Notice and Acknowledgment conforming substantially to the form maintained by the clerk's office and a return envelope, postage prepaid, addressed to the sender, and unless good cause is shown for not doing so, the court must order the party served to pay the costs incurred in securing an alternative method of service authorized by this rule if the person served does not complete and return, within 21 days after mailing, the Notice and Acknowledgment of receipt of the summons;
- (D) by the Metropolitan Police Department;
- (E) by a United States marshal or deputy marshal;
- (F) in any manner authorized by Rule 4(f);
- (G) in any other manner authorized by statute; or
- (H) by any other method to which the person to be served consents in writing, with an acknowledgement that the person:
 - (i) received the summons, complaint, and any order;
 - (ii) understands that the person must answer the complaint within 21 days after signing the consent; and
 - (iii) understands that judgment by default may be entered against the person if the person fails to answer the complaint within that time.

Adoption Proceeding – Service/Notification Requirements **D.C. Code Ann. § 16-301**

The Superior Court of the District of Columbia has jurisdiction over adoption proceedings when:

- (1) petitioner is a legal resident of the District of Columbia;
- (2) petitioner has actually resided in the District for at least one year next preceding the filing of the petition;

(3) the child to be adopted is in the legal care, custody, or control of the Mayor or a child-placing agency licensed under the laws of the District; or

(4) the child to be adopted was born in the District of Columbia.

Note: Jurisdiction applies retroactively to all children born in the District of Columbia on or after July 18, 2009 (See D.C. Code Ann. § 16-301(c))

Adoption Proceeding – Service/Notification Requirements

D.C. Code Ann. § 16-306 - Notice

(a) Except as provided by subsection (b) of this section, due notice of pending adoption proceedings shall be given to each person whose consent is necessary thereto, immediately upon the filing of a petition. The notice shall be given by summons, by registered letter sent to the addressee only, or otherwise as ordered by the court.

(b) A party who formally gives his consent to the proposed adoption, as provided by this chapter, thereby waives the requirement of notice to him pursuant to this section.

D.C. Code Ann. § 16-304 (b) - Consent

Consent to a proposed adoption of a person under eighteen years of age is necessary:

(1) from the prospective adoptee, if he is fourteen years of age or over; and also,

(2) in accordance with the provisions of any one of the following paragraphs:

(A) from both parents, if they are both alive; or

(B) from the living parent of the prospective adoptee, if one of the parents is dead; or

(C) from the court-appointed guardian of the prospective adoptee; or

(D) from a licensed child-placing agency or the Mayor in case the parental rights of the parent or parents have been terminated by a court of competent jurisdiction or by a release of parental rights to the Mayor or licensed child-placing agency, based upon consents obtained in accordance with subparagraphs (A) through (C) of this paragraph, and the prospective adoptee has been lawfully placed under the care and custody of the agency or the Mayor; or

(E) from the Mayor in any situation not otherwise provided for by this subsection.

Domestic Violence – Jurisdiction

D.C. Code Ann. § 16-1006 – Jurisdiction

A petitioner may file a petition for protection under this subchapter if:

(1) The petitioner resides, lives, works, or attends school in the District of Columbia;

(2) The petitioner is under the legal custody of a District government agency; or

(3) The underlying offense occurred in the District of Columbia.

Domestic Violence– Service/Notification Requirements

D.C. Code Ann. § 16-1004 – Service Process

(d) Pursuant to the Rules of the Superior Court of the District of Columbia, the respondent, and in cases where the respondent is a minor, the respondent's custodial parent, guardian, or custodian, shall be served with notice of the hearing and an order to appear, a copy of the petition, and a temporary protection order, if entered. The court may also cause notice to be served on others whose presence at the hearing is necessary to the proper disposition of the matter.

(e) If a minor has filed a petition for civil protection without a parent, guardian, or custodian, and if the minor is residing with a parent, guardian, or custodian, the court shall send a copy of any order issued pursuant to subsection (b)(1) of this section and notice of the hearing to that parent, guardian, or custodian, unless, in the discretion of the court, notification of that parent, guardian, or custodian would be contrary to the best interests of the minor. If the court does not send notice to the parent, guardian, or custodian with whom the minor resides, the court may, in its discretion, send notice to any other parent, guardian, custodian, or other appropriate adult.

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