

Florida Family Law- Jurisdiction and Service of Process

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Custody Determination -Jurisdiction

Initial Custody Determination

Fla. Stat. 61.503(8)

The UCCJEA provides four grounds for a court to make an initial child custody determination:

1. Florida is the child's home state.
2. The child has a significant connection to Florida.
3. Florida is the more appropriate forum.
4. No court of any other state would have jurisdiction on any of the three preceding bases.

These four grounds are not equal. The UCCJEA clarifies the priority of home state jurisdiction and does not allow states to recognize child custody determinations made by states that exercise initial subject-matter jurisdiction as a "'significant connection state' when a child has a home state."

Temporary Emergency Jurisdiction

Fla. Stat. 61.817(1)

A Florida court has temporary emergency jurisdiction to make a custody determination if the child is present in

Florida, provided that either:

1. The child has been abandoned, or
2. It is necessary in an emergency to protect the child because (a) the child or (b) a sibling of the child or (c) a parent of the child is subjected to or threatened with mistreatment or abuse.

The UCCJEA expands the definition of emergency to include mistreatment or abuse of a sibling or parent, but does not include neglect as a basis for the assumption of temporary emergency jurisdiction.

Custody Determination — Service/Notification Requirements

Fla. Fam. L.R.P. Rule 12.080

(b) A copy of all orders or judgments involving family law matters, except proceedings for injunctions for protection against domestic, repeat, dating, and sexual violence, and stalking, must be transmitted by the court or under its direction to all parties at the time of entry of the order or judgment.

(c) No service need be made on parties against whom a default has been entered, except, that:

1. Pleadings asserting new or additional claims against defaulted parties must be served in the manner provided for service of summons contained in rule 12.070.
2. Notice of final hearings or trials and court orders must be served on defaulted parties in the manner provided for service of pleadings and documents contained in Florida Rule of Judicial Administration 2.516. Final judgments must be served on defaulted parties as set forth in Florida Rule of Judicial Administration 2.516(h).

Paternity and Child Support Proceeding —Jurisdiction

Fla. Stat. §§61.13(1)(a)(2), 88.2051(1)(a)

The court initially entering an order requiring one or both parents to make child support payments has continuing jurisdiction after the entry of the initial order, as long as this state

remains the residence of either party or the child(ren), to modify the amount and terms and conditions of the child support payments if the modification is found by the court to be in

the best interests of the child; when the child reaches majority; if there is a substantial change in the circumstances of the parties; if §743.07(2), Florida Statutes, applies; or when a

child is emancipated, marries, joins the armed services, or dies.

Paternity and Child Support Proceeding —Service/Notification Requirements

Fla. Stat. §409.256

Respondents may be served by certified mail, restricted delivery, return receipt requested, or by service of process.

1. If person other than the addressee signs, the Department of Revenue shall attempt to contact the addressee by telephone to confirm receipt. If the Department of Revenue is unable to confirm, service is not complete and the Department of Revenue shall attempt personal service.
2. The Department of Revenue or an authorized agent may serve notice or order for genetic testing and execute affidavit of service.

Once the Department of Revenue commences an action by serving the respondent with the Notice of Proceeding to Establish Paternity by certified mail or by service of process, all further service is by regular mail. This includes notice that the Department of Revenue intends to seek child support in conjunction with the paternity action.

Child Abuse/Neglect Proceeding—Jurisdiction

Fla. Stat. 39.013

(1) The circuit court has exclusive original jurisdiction of all proceedings under this chapter, of a child voluntarily placed with a licensed child-caring agency, a licensed child-placing agency, or the department, and of the adoption of children whose parental rights have been terminated under this chapter. Jurisdiction attaches when the initial shelter petition, dependency petition, or termination of parental rights petition, or a petition for an injunction to prevent child abuse issued pursuant to s. 39.504, is filed or when a child is taken into the custody of the department. The circuit court may assume jurisdiction over any such proceeding regardless of whether the child was in the physical custody of both parents, was in the sole legal or physical custody of only one parent, caregiver, or some other person, or was not in the physical or legal custody of any person when the event or condition occurred that brought the child to the attention of the court. When the court obtains jurisdiction of any child who has been found to be dependent, the court shall retain jurisdiction, unless relinquished by its order, until the child reaches 21 years of age, or 22 years of age if the child has a disability, with the following exceptions:

- a) If a young adult chooses to leave foster care upon reaching 18 years of age.
- b) If a young adult does not meet the eligibility requirements to remain in foster care under s. 39.6251 or chooses to leave care under that section.
- c) If a young adult petitions the court at any time before his or her 19th birthday requesting the court's continued jurisdiction, the juvenile court may retain jurisdiction under this chapter for a period not to exceed 1 year following the young adult's 18th birthday for the purpose of determining whether appropriate services that were required to be provided to the young adult before reaching 18 years of age have been provided.

If a petition for special immigrant juvenile status and an application for adjustment of status have been filed on behalf of a foster child and the petition and application have not been granted by the time the child reaches 18 years of age, the court may retain jurisdiction over the dependency case solely for the purpose of allowing the continued consideration of the petition and application by federal authorities. Review hearings for the child shall be set solely for the purpose of determining the status of the petition and application. The court's jurisdiction terminates upon the final decision of the federal authorities. Retention of jurisdiction in this instance does not affect the services available to a young adult under s. 409.1451. The court may not retain jurisdiction of the case after the immigrant child's 22nd birthday.

Child Abuse/Neglect Proceeding — Service/Notification Requirements

Fla. Stat. 39.502

(1) Unless parental rights have been terminated, all parents must be notified of all proceedings or hearings involving the child. Notice in cases involving shelter hearings and hearings resulting from medical emergencies must be that most likely to result in actual notice to the parents. In all other dependency proceedings, notice must be provided in accordance with subsections (4)-(9), except when a relative requests notification pursuant to s. 39.301(14)(b), in which case notice shall be provided pursuant to subsection (19).

(2) Personal appearance of any person in a hearing before the court obviates the necessity of serving process on that person.

- (3) Upon the filing of a petition containing allegations of facts which, if true, would establish that the child is a dependent child, and upon the request of the petitioner, the clerk or deputy clerk shall issue a summons.
- (4) The summons shall require the person on whom it is served to appear for a hearing at a time and place specified, not less than 72 hours after service of the summons. A copy of the petition shall be attached to the summons.
- (5) The summons shall be directed to, and shall be served upon, all parties other than the petitioner.
- (6) It is the duty of the petitioner or moving party to notify all participants and parties known to the petitioner or moving party of all hearings subsequent to the initial hearing unless notice is contained in prior court orders and these orders were provided to the participant or party. Proof of notice or provision of orders may be provided by certified mail with a signed return receipt.
- (7) Service of the summons and service of pleadings, papers, and notices subsequent to the summons on persons outside this state must be made pursuant to s. 61.509.
- (8) It is not necessary to the validity of a proceeding covered by this part that the parents be present if their identity or residence is unknown after a diligent search has been made, but in this event the petitioner shall file an affidavit of diligent search prepared by the person who made the search and inquiry, and the court may appoint a guardian ad litem for the child.
- (9) When an affidavit of diligent search has been filed under subsection (8), the petitioner shall continue to search for and attempt to serve the person sought until excused from further search by the court. The petitioner shall report on the results of the search at each court hearing until the person is identified or located or further search is excused by the court.
- (10) Service by publication shall not be required for dependency hearings and the failure to serve a party or give notice to a participant shall not affect the validity of an order of adjudication or disposition if the court finds that the petitioner has completed a diligent search for that party.
- (11) Upon the application of a party or the petitioner, the clerk or deputy clerk shall issue, and the court on its own motion may issue, subpoenas requiring attendance and testimony of witnesses and production of records, documents, and other tangible objects at any hearing.
- (12) All process and orders issued by the court shall be served or executed as other process and orders of the circuit court and, in addition, may be served or executed by authorized agents of the department or the guardian ad litem.
- (13) Subpoenas may be served within the state by any person over 18 years of age who is not a party to the proceeding and, in addition, may be served by authorized agents of the department or the guardian ad litem.
- (14) No fee shall be paid for service of any process or other papers by an agent of the department or the guardian ad litem. If any process, orders, or any other papers are served or executed by any sheriff, the sheriff's fees shall be paid by the county.
- (15) A party who is identified as a person who has a mental illness or a developmental disability must be informed by the court of the availability of advocacy services through the department, the Arc of Florida,

or other appropriate mental health or developmental disability advocacy groups and encouraged to seek such services.

(16) If the party to whom an order is directed is present or represented at the final hearing, service of the order is not required.

(17) The parent or legal custodian of the child, the attorney for the department, the guardian ad litem, the foster or preadoptive parents, and all other parties and participants shall be given reasonable notice of all proceedings and hearings provided for under this part. All foster or preadoptive parents must be provided with at least 72 hours' notice, verbally or in writing, of all proceedings or hearings relating to children in their care or children they are seeking to adopt to ensure the ability to provide input to the court.

(18) In all proceedings under this part, the court shall provide to the parent or legal custodian of the child, at the conclusion of any hearing, a written notice containing the date of the next scheduled hearing. The court shall also include the date of the next hearing in any order issued by the court.

(19) In all proceedings and hearings under this chapter, the attorney for the department shall notify, orally or in writing, a relative requesting notification pursuant to s. 39.301(14)(b) of the date, time, and location of such proceedings and hearings, and notify the relative that he or she has the right to attend all subsequent proceedings and hearings, to submit reports to the court, and to speak to the court regarding the child, if the relative so desires. The court has the discretion to release the attorney for the department from notifying a relative who requested notification pursuant to s. 39.301(14)(b) if the relative's involvement is determined to be impeding the dependency process or detrimental to the child's well-being.

Divorce and Legal Separation — Jurisdiction

No independent statute identified.

Divorce and Legal Separation — Service/Notification Requirements

No independent statute identified.

Adoption Proceeding — Jurisdiction

Fla. Stat. 63.102

A petition for adoption or for a declaratory statement as to the adoption contract must be filed in the county where the petition for termination of parental rights was filed or granted or where the adoption entity is located. The circuit court in this state shall retain jurisdiction over the matter until a final judgment is entered on the adoption, either within or outside the state. The Uniform Child Custody Jurisdiction and Enforcement Act does not apply until a final judgment is entered on the adoption.

Adoption Proceeding — Service/Notification Requirements

Fla. Stat. 63.062

(5) A person who signs a consent to adoption or an affidavit of nonpaternity must be given reasonable notice of his or her right to select a person who does not have an employment, professional, or personal relationship with the adoption entity or the prospective adoptive parents to be present when the consent to adoption or affidavit of nonpaternity is executed and to sign the consent or affidavit as a witness.

(6) The petitioner must make good faith and diligent efforts as provided under s. 63.088 to notify, and obtain written consent from, the persons required to consent to adoption under this section.

(7) If parental rights to the minor have previously been terminated, the adoption entity with which the minor has been placed for subsequent adoption may provide consent to the adoption. In such case, no other consent is required. The consent of the department shall be waived upon a determination by the court that such consent is being unreasonably withheld and if the petitioner has filed with the court a favorable preliminary adoptive home study as required under s. 63.092.

(8) A petition to adopt an adult may be granted if:

- a. Written consent to adoption has been executed by the adult and the adult's spouse, if any, unless the spouse's consent is waived by the court for good cause. Written notice of the final hearing on the adoption has been provided to the parents, if any, or proof of service of process has been filed, showing notice has been served on the parents as provided in this chapter.

Domestic Violence —Jurisdiction

Fla. Stat. 741.30

(1) There is created a cause of action for an injunction for protection against domestic violence.

(1)(d) A person's right to petition for an injunction shall not be affected by such person having left a residence or household to avoid domestic violence.

(1)(k) Notwithstanding any provision of chapter 47, a petition for an injunction for protection against domestic violence may be filed in the circuit where the petitioner currently or temporarily resides, where the respondent resides, or where the domestic violence occurred. There is no minimum requirement of residency to petition for an injunction for protection.

Domestic Violence— Service/Notification Requirements

Fla. Stat. 741.30(4)

The respondent must be personally served with a copy of the petition, financial affidavit, uniform child custody jurisdiction and enforcement act affidavit, if any, notice of hearing, and temporary injunction, if any, prior to the hearing.

Personal service by a law enforcement agency is required and the clerk of the court must furnish a copy of the petition for an injunction for protection against domestic violence, financial affidavit (if support is sought), temporary injunction (if one has been entered), and notice of hearing to the appropriate sheriff or law enforcement agency of the county where the respondent resides or can be found expeditious service of process.