

## Iowa Family Law- Jurisdiction and Service of Process

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

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### **Custody Determination - Jurisdiction**

#### **I.C.A. § 598B.201 Initial Custody Determination**

1. Except as otherwise provided in section 598B.204, a court of this state has jurisdiction to make an initial child-custody determination only if any of the following applies:

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 “a”, 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 section 598B.207 or 598B.208 and both of the following apply:
3. 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.
4. Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships.
5. All courts having jurisdiction under paragraph “a” or “b” 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 598B.207 or 598B.208.
6. No court of any other state would have jurisdiction under the criteria specified in paragraph “a”, “b”, or “c”.
7. Subsection 1 is the exclusive jurisdictional basis for making a child-custody determination by a court of this state.
8. Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child-custody determination.

[Research note: This is the state’s adoption of the Uniform Child Custody and Jurisdiction Enforcement Act (“UCCJEA”). Many jurisdictions adopt this (or something similar)].

**I.C.A. § 598B.204 Temporary Emergency Jurisdiction**

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 chapter and a child-custody proceeding has not been commenced in a court of a state having jurisdiction under sections 598B.201 through 598B.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 sections 598B.201 through 598B.203. If a child-custody proceeding has not been or is not commenced in a court of a state having jurisdiction under sections 598B.201 through 598B.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.
3. 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 sections 598B.201 through 598B.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 sections 598B.201 through 598B.203. The order issued in
  - a. 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 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 sections 598B.201 through 598B.203, shall immediately communicate with the other court. A court of this state which is exercising jurisdiction pursuant to sections 598B.201 through 598B.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.
  - (1) the child has been abandoned; or
  - (2) it is necessary in an emergency to protect the child because:
    - (A) the child;
    - (B) the child's sibling; or
    - (C) the child's parent;

is subjected to or threatened with mistreatment or abuse.

(b) If:

- (1) there is no previous child custody determination that is entitled to be enforced under this article; and

(2) a child custody proceeding has not been commenced in a court of a state having jurisdiction under sections 1 through 3 of this chapter;

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 1 through 3 of this chapter.

[Research note: If the state has a temporary emergency jurisdiction provision like this, determine whether there is case law interpreting the provision, particularly as it relates to child abuse or neglect or to a parent that has been subjected to domestic violence].

### **Custody Determination – Service/Notification Requirements**

[Research note: As a general matter, state law will require that both natural parents be served, any adoptive parent, and person that has been actually caring for the child, and, in some instances, grandparents. For older children *under* the age of majority (18 or 21), there may be circumstances in which the child would need to be served].

### **Paternity and Child Support Proceeding – Jurisdiction**

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

#### **I.C.A. 252K.201. Bases for jurisdiction over nonresident**

1. In a proceeding to establish or enforce a support order or to determine parentage of a child, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if any of the following applies:
  - a. The individual is personally served with notice within this state.
  - b. The individual submits to the jurisdiction of this state by consent in a record, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction.
  - c. The individual resided with the child in this state.
  - d. The individual resided in this state and provided prenatal expenses or support for the child.
  - e. The child resides in this state as a result of the acts or directives of the individual.
  - f. The individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse.

g. The individual asserted parentage of a child in the declaration of paternity registry maintained in this state by the Iowa department of public health pursuant to section 144.12A or established paternity by affidavit under section 252A.3A.

h. There is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

2. The bases of personal jurisdiction set forth in subsection 1 or in any other law of this state may not be used to acquire personal jurisdiction for a tribunal of this state to modify a child support order of another state unless the requirements of section 252K.611 are met, or, in the case of a foreign support order, unless the requirements of section 252K.615 are met.

**I.C.A. 252K.205. Continuing, exclusive jurisdiction to modify child support order**

1. 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 controlling and any of the following applies:

a. 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.

b. Even if this state is not the residence of the obligor, the individual obligee, or the child for whose benefit the 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.

2. 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 any of the following applies:

a. 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.

b. Its order is not the controlling order.

3. 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.

4. 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.

5. 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**

See Paternity and Child Support Proceeding - Jurisdiction.

### **Child Abuse/Neglect Proceeding – Jurisdiction**

#### **I.C.A. 232.61. Jurisdiction**

1. The juvenile court shall have exclusive jurisdiction over proceedings under this chapter alleging that a child is a child in need of assistance.
2. In determining such jurisdiction the age and marital status of the child at the time the proceedings are initiated is controlling.

#### **I.C.A. 232.72. Jurisdiction—transfer**

1. For the purposes of this division, the terms “department of human services”, “department”, or “county attorney” ordinarily refer to the service area or local office of the department of human services or of the county attorney's office serving the county in which the child's home is located.
2. If the person making a report of child abuse pursuant to this chapter does not know where the child's home is located, or if the child's home is not located in the service area where the health practitioner examines, attends, or treats the child, the report may be made to the department or to the local office serving the county where the person making the report resides or the county where the health practitioner examines, attends, or treats the child. These agencies shall promptly proceed as provided in section 232.71B, unless the matter is transferred as provided in this section.
3. If the child's home is located in a county not served by the office receiving the report, the department shall promptly transfer the matter by transmitting a copy of the report of injury and any other pertinent information to the office and the county attorney serving the other county. They shall promptly proceed as provided in section 232.71B.

[Research note: Child abuse or neglect could be called child welfare or dependency. State laws may govern the state's jurisdiction over the child in these proceedings, and dictate the persons that need to served (i.e., parents)].

## **Child Abuse/Neglect Proceeding – Service/Notification Requirements**

See Child Abuse/Neglect Proceeding - Jurisdiction Section.

## **Divorce and Legal Separation – Jurisdiction**

Dissolution of Marriage and Domestic Relations

### **I.C.A. 598.2. Jurisdiction and venue**

The district court has original jurisdiction of the subject matter of this chapter. Venue shall be in the county where either party resides.

### **I.C.A. §§ 598.6; 598.9**

To bring an action for dissolution of marriage, the petitioner must have been a resident of the State of Iowa for one year after deducting all absences from the state. If the period of residency is not fully proved, the action will be dismissed by the court.

[Research note: This will likely be set forth in the state Rules of Civil Procedure].

## **Divorce and Legal Separation – Service/Notification Requirements**

*Service of Divorce Proceedings: 2 Ia. Prac., Methods of Practice § 31:10*

The Rules permit several ways in which service of process may be done. If the defendant is physically located in Iowa and his whereabouts are known or can be ascertained, service must be made upon him by delivering a copy of the Original Notice and Petition personally wherever he may be found, or by leaving a copy thereof at his dwelling place or usual abode with any adult residing therein. The latter method of service should not be adopted if the person with whom it is to be left at the dwelling place is adversely interested in the subject matter of the suit. Thus if a wife were suing her husband for divorce, service could not be made by leaving a copy with her for the husband.

Personal service may be made on Respondent outside the state of Iowa, in the same manner as provided above. If personal service cannot be made upon the defendant within the state, constructive notice is proper which consists of the following:

1. Filing an affidavit in the case before any publication of the notice stating and showing that “personal service of the original notice and petition cannot be had or made on the defendant within the state of Iowa.”
2. Mailing a copy of the original notice and petition by ordinary mail addressed to the defendant at his last known address. (Affidavit must be made showing such mailing and

if no address is known or can be ascertained by diligent search, like affidavit must be made to excuse non-mailing.)

3. Publishing the original notice once each week for three consecutive weeks in a newspaper of general circulation in the county where the petition is filed, such newspaper to be selected and designated by plaintiff or his or her attorney. It would be well to designate this newspaper in the affidavit showing that service cannot be made personally upon defendant within the state of Iowa.

4. Filing proof of publication—such proof to be by affidavit of the publisher or one of its authorized employees. Personal service outside the state obviates the necessity of publication; likewise a sworn acceptance of service or a voluntary general appearance.

There is an important distinction between an original notice served personally and one served by publication. The original notice served personally requires the appearance of the defendant within 20 days after service of the notice and so states. The original notice served by publication must provide a definite and specific date upon which the defendant must appear which date must be set not earlier than 20 days after the date of the last publication of the notice.

#### **Rule 1.305. Personal service**

Original notices are “served” by delivering a copy to the proper person. Personal service may be made as follows:

1.305(1) Upon any individual who has attained majority and who has not been adjudged incompetent, either by taking the individual's signed, dated acknowledgment of service endorsed on the notice, or by serving the individual personally; or by serving, at the individual's dwelling house or usual place of abode, any person residing therein who is at least 18 years old, but if such place is a rooming house, hotel, club or apartment building, a copy may be delivered to such person who resides with the individual or is either a member of the individual's family or the manager or proprietor of such place; or upon the individual's spouse at a place other than the individual's dwelling house or usual place of abode if probable cause exists to believe that the spouse lives at the individual's dwelling house or usual place of abode.

1.305(2) Upon a minor by serving the minor's conservator or guardian, unless the notice is served on behalf of such conservator or guardian, or the minor's parent, or some person aged 18 years or more who has the minor's care and custody, or with whom the minor resides, or in whose service the minor is employed. Where the notice is served on behalf of one who is the conservator or guardian and the conservator or guardian is the only person who would be available upon whom service could be made, the court shall appoint, without prior notice to the ward, a guardian ad litem who shall be served and defend for the minor.

1.305(3) Upon any person adjudged incompetent but not confined in a state hospital for the mentally ill, by serving the conservator or guardian, unless the notice is served on behalf of such

conservator or guardian, or that person's spouse, or some person aged 18 years or more who has that person's care and custody, or with whom that person resides. When the notice is served on behalf of one who is the conservator or guardian and the conservator or guardian is the only person who would be available upon whom service could be made, the court shall appoint without prior notice to the ward a guardian ad litem who shall be served and defend for the incompetent person.

1.305(4) Any person confined in a county care facility, or in any state hospital for the mentally ill, or any patient in the State University of Iowa hospital or its psychopathic ward, or any patient or inmate of any institution in

the control of a director of a division of the department of human services or department of corrections or of the United States, may be served by the official in charge of such institution or that official's assistant. Proof of such service may be made by the certificate of such official, if the institution is in Iowa, or that official's affidavit if it is out of Iowa.

1.305(5) If any defendant, respondent, or other party is a patient in any state or federal hospital for the mentally ill, in or out of Iowa, or has been adjudged incompetent and is confined to a county care facility, the official in charge of such institution or the official's assistant shall accept service on the party's behalf, if in the official's or assistant's opinion direct service on the party would cause injury, which shall be stated in the acceptance.

1.305(6) Upon a partnership, or an association suable under a common name, or a corporation, by serving any present or acting or last known officer thereof, or any general or managing agent, or any agent or person now authorized by appointment or by law to receive service of original notice, or on the general partner of a partnership.

1.305(7) If the action, whether against an individual, corporation, partnership or other association suable under a common name, arises out of or is connected with the business of any office or agency maintained by the defendant in a county other than where the principal resides, by serving any agent or clerk employed in such office or agency.

1.305(8) Upon any city by serving its mayor or clerk.

1.305(9) Upon any county by serving its auditor or the chair of its board of supervisors.

1.305(10) Upon any school district, school township or school corporation by serving its president or secretary.

1.305(11) Upon the state, where made a party pursuant to statutory consent or authorization for suit in the manner provided by any applicable statute.



1.305(12) Upon any individual, corporation, partnership or association suable under a common name, either as provided in these rules, as provided by any consent to service or in accordance with any applicable statute.

1.305(13) Upon a governmental board, commission or agency, by serving its presiding officer, clerk or secretary.

1.305(14) If service cannot be made by any of the methods provided by this rule, any defendant may be served as provided by court order, consistent with due process of law.

### **Adoption Proceeding – Jurisdiction**

#### **I.C.A. § 600.3 Commencement of adoption action--jurisdiction--forum non conveniens**

1. An action for the adoption of any natural person shall be commenced by the filing of an adoption petition, as prescribed in section 600.5, in the juvenile court or court of the county in which an adult person to be adopted is domiciled or resides, or in the juvenile court or court of the county in which the guardian of a minor person to be adopted or the petitioner is domiciled or resides.

2. a. An adoption petition shall not be filed until a termination of parental rights has been accomplished except in the following cases:

- (1) No termination of parental rights is required if the person to be adopted is an adult.
- (2) If the stepparent of the child to be adopted is the adoption petitioner, the parent-child relationship between the child and the parent who is not the spouse of the petitioner may be terminated as part of the adoption proceeding by the filing of that parent's consent to the adoption.
- (3) A termination of parental rights order is not required prior to the filing of an adoption petition if the adoption is a standby adoption as defined in section 600.14A.

b. For the purposes of this subsection, a consent to adopt recognized by the juvenile courts or courts of another jurisdiction in the United States and obtained from a resident of that jurisdiction shall be accepted in this state in lieu of a termination of parental rights proceeding.

c. Any adoption proceeding pending on or completed prior to July 1, 1978, is hereby legalized and validated to the extent that it is consistent with this subsection.

3. If upon filing of the adoption petition or at any later time in the adoption action the juvenile court or court

finds that in the interest of substantial justice the adoption action should be conducted in another juvenile court or court, it may transfer, stay, or dismiss the adoption action on any conditions that are just.

4. An adoption petition shall be limited to the adoption of one natural person.

### **Adoption Proceeding – Service/Notification Requirements**

See Adoption Proceeding Jurisdiction Section.

### **Domestic Violence – Jurisdiction**

#### **I.C.A. § 236.7 Procedure**

1. A proceeding under this chapter shall be held in accordance with the rules of civil procedure, except as otherwise set forth in this chapter and in chapter 664A, and is in addition to any other civil or criminal remedy.

2. The plaintiff's right to relief under this chapter is not affected by leaving the residence or household to avoid domestic abuse.

### **Domestic Violence– Service/Notification Requirements**

See Domestic Violence - Jurisdiction Section.

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