

North Carolina Family Law – Jurisdiction and Service of Process

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

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Custody Determination - Jurisdiction

North Carolina Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA") governs when NC has jurisdiction to decide particular child custody issues. In North Carolina the UCCJEA is found under **N.C. Gen. Stat. § 50A** (<http://www.lrcvaw.org/laws/ncuccjea.pdf>). This Article does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

N.C. Gen. Stat. § 50A-103.

1. Initial Custody Determination – N.C. Gen. Stat. § 50A-201

(https://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_50A/GS_50A-201.html)

Permissible if:

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).

[Note: this can include termination of parental rights determination].

District and superior courts have original and concurrent jurisdiction. [G.S. 7A-240, 7A-242.] District court is the proper court for custody proceedings. [G.S. 7A-244; 50-13.5(h) (custody action shall be heard by district court judge).] (https://www.sog.unc.edu/sites/www.sog.unc.edu/files/Chapter-04_Bench-Book_2017.pdf at 4-3)

Subject matter jurisdiction is determined by the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), G.S. Chapter 50A (until Oct. 1, 1999, applicable statute was the Uniform Child Custody Jurisdiction Act (UCCJA)). Subject matter jurisdiction is determined at the time of filing.

Personal jurisdiction over a nonresident party is not required in a child custody proceeding. [G.S. 50A-201(c) (personal jurisdiction over a party or a child is not necessary to make a child-custody determination); *Shingledecker v. Shingledecker*, 103 N.C. App. 783, 407 S.E.2d 589 (1991) (citing *Hart v. Hart*, 74 N.C. App. 1, 327 S.E.2d 631 (1985)). See also *Coble v. Coble*, 229 N.C. 81, 47 S.E.2d 798 (1948) (child custody action is a proceeding in rem); cf. *In re Finnican*, 104 N.C. App. 157, 408 S.E.2d 742 (1991) (a nonresident defendant must have minimum contacts with North Carolina before a court

here may terminate the parent's rights), cert. denied, 330 N.C. 612, 413 S.E.2d 800 (1992), overruled in part on other grounds by Bryson v. Sullivan, 330 N.C. 644, 412 S.E.2d 327 (1992).]

1. Temporary Emergency Jurisdiction relating to Child Custody – See **N.C. Gen. Stat. § 50A-204** (https://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_50A/GS_50A-204.html) – 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

(https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_1A/GS_1A-1_Rule_5.pdf)
G.S. 1A-1, Rule 5.

Service – How made. – A pleading setting forth a counterclaim or cross claim shall be filed with the court and a copy thereof shall be served on the party against whom it is asserted or on the party's attorney of record as provided by this subsection. With respect to all pleadings subsequent to the original complaint and other papers required or permitted to be served, service shall be made upon the party's attorney of record and, if ordered by the court, also upon the party. If the party has no attorney of record, service shall be made upon the party. With respect to such other pleadings and papers, service with due return may be made in a manner provided for service and return of process in Rule 4.

Service under this subsection may also be made by one of the following methods:

(1) Upon a party's attorney of record: a. By delivering a copy to the attorney. Delivery of a copy within this sub-subdivision means handing it to the attorney, leaving it at the attorney's office with a partner or employee, or sending it to the attorney's office by a confirmed telefacsimile transmittal for receipt by 5:00 P.M. Eastern Time on a regular business day, as evidenced by a telefacsimile receipt confirmation. If receipt of delivery by telefacsimile is after 5:00 P.M., service will be deemed to have been completed on the next business day. b. By mailing a copy to the attorney's office.

(2) Upon a party:

a. By delivering a copy to the party. Delivery of a copy within this sub-subdivision means handing it to the party.

b. By mailing a copy to the party at the party's last known address or, if no address is known, by filing it with the clerk of court. Service by mail shall be complete upon deposit of the pleading or paper enclosed in a post-paid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service.

Paternity and Child Support Proceeding – Jurisdiction

1. Proceeding to Establish, Enforce, Modify Support Order or Determine Parentage – N.C. Gen. Stat. § 52C-a. 2-201 (https://ncleg.net/EnactedLegislation/Statutes/PDF/ByChapter/Chapter_52C.pdf)

2. In a proceeding to establish or enforce a support order or to determine parentage of a child, a tribunal of a. this State may exercise personal jurisdiction over a nonresident individual or the individual's guardian or

b. conservator if:

c. The individual is personally served with a summons and complaint within this State;

3. 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;

4. The individual resided with the child in this State;

5. The individual resided in this State and provided prenatal expenses or support for the child;

6. The child resides in this State as a result of the acts or directives of the individual;
7. The individual engaged in sexual intercourse in this State and the child may have been conceived by that act of intercourse; or
8. There is any other basis consistent with the constitutions of this State and the United States for the exercise of personal jurisdiction.

Paternity and Child Support Proceeding – Service/Notification Requirements

Service Requirements

(https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_1A/GS_1A-1,_Rule_5.pdf)

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Child Abuse/Neglect Proceeding – Jurisdiction

N.C. Gen. Stat. § 7B-101 defines “court” as the “district court division of the General Court of Justice.”

(<https://codes.findlaw.com/nc/chapter-7b-juvenile-code/nc-gen-st-sect-7b-101.html>)

Jurisdiction

N.C. Gen. Stat. § 7B-200 (<https://codes.findlaw.com/nc/chapter-7b-juvenile-code/nc-gen-st-sect-7b-200.html>) deals with jurisdiction. This section states that:

1. The court has exclusive, original jurisdiction over any case involving a juvenile who is alleged to be abused, neglected, or dependent. This jurisdiction does not extend to cases involving adult defendants alleged to be guilty of abuse or neglect.

The court also has exclusive original jurisdiction of the following proceedings:

- (3) Proceedings to determine whether a juvenile should be emancipated.
- (4) Proceedings to terminate parental rights.
- (4a) Proceedings for reinstatement of parental rights.

(5) Proceedings to review the placement of a juvenile in foster care pursuant to an agreement between the juvenile's parents or guardian and a county department of social services.

(b) The court shall have jurisdiction over the parent, guardian, custodian, or caretaker of a juvenile who has been adjudicated abused, neglected, or dependent, provided the parent, guardian, custodian, or caretaker has (i) been properly served with summons (ii) waived service of process, or (iii) automatically become a party pursuant to G.S. 7B-401.1(c) or (d).

Venue

N.C. Gen Stat. § 7B-400 (<https://codes.findlaw.com/nc/chapter-7b-juvenile-code/nc-gen-st-sect-7b-400.html>) deals with venue. This section states that:

(a) A proceeding in which a juvenile is alleged to be abused, neglected, or dependent may be commenced in the judicial district in which the juvenile resides or is present at the time the petition is filed. If a regional social services department includes counties in more than one judicial district, the department shall file in the judicial district where the child resides or was present when the report required by G.S. 7B-301 was received.

Child Abuse/Neglect Proceeding – Service/Notification Requirements

N.C. Gen Stat. § 7B-407 (<https://codes.findlaw.com/nc/chapter-7b-juvenile-code/nc-gen-st-sect-7b-407.html>) deals with service. This section states that:

The summons shall be served under N.C. Gen Stat. § 1A-1, Rule 4, upon the parent, guardian, custodian, or caretaker, not less than five days prior to the date of the scheduled hearing. The time for service may be waived in the discretion of the court.

If service by publication under N.C. Gen Stat. § 1A-1, Rule 4(j1), or service in a foreign country under N.C. Gen Stat. § 1A-1, Rule 4(j3), is required, the cost of the service by publication shall be advanced by the petitioner and may be charged as court costs as the court may direct.

N.C. Gen Stat. § 1A-1, Rule 4

(https://www.ncleg.net/EnactedLegislation/Statutes/PDF/ByChapter/Chapter_1A.pdf) (j)(1)(a) allows for service by delivering a copy of the summons and of the complaint to the natural person or by leaving copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, (b) delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute (c) mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the party to be served, and delivering to the addressee, or (e) mailing a copy of the summons and of the complaint by signature confirmation as provided by the United States Postal Service, addressed to the party to be served, and delivering to the addressee.

N.C. Gen Stat. § 1A-1, Rule 4(j3) allows for service upon the State by personally delivering a copy of the summons and of the complaint to the Attorney General or to a deputy or assistant attorney general; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General or to a deputy or assistant attorney general; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the Attorney General or to a deputy or assistant attorney general, delivering to the addressee, and obtaining a delivery receipt. As used in this subdivision, "delivery receipt" includes an electronic or facsimile receipt.

Divorce and Legal Separation – Jurisdiction

No independent statute identified.

Divorce and Legal Separation – Service/Notification Requirements

No independent statute identified.

Adoption Proceeding – Jurisdiction

N.C. Gen Stat. § 48-2-100 (<https://codes.findlaw.com/nc/chapter-48-adoptions/nc-gen-st-sect-48-2-100.html>)

- (a) Adoption shall be by a special proceeding before the clerk of superior court.
- (b) Except as provided in subsection (c) of this section, jurisdiction over adoption proceedings commenced under this Chapter exists if, at the commencement of the proceeding:
 - (1) The adoptee has lived in this State for at least the six consecutive months immediately preceding the filing of the petition or from birth;
 - (2) The prospective adoptive parent has lived in or been domiciled in this State for at least the six consecutive months immediately preceding the filing of the petition; or
 - (3) An agency licensed by this State or a county department of social services in this State has legal custody of the adoptee.

N.C. Gen Stat. § 48-2-100 (c) Pending Proceedings in other jurisdictions: The courts of this State shall not exercise jurisdiction under this Chapter if at the time the petition for adoption is filed, a court of any other state is exercising jurisdiction substantially in conformity with the Uniform Child-Custody Jurisdiction and Enforcement Act, Article 2 of Chapter 50A of the General Statutes. However, this subsection shall not apply if prior to the decree of adoption being granted, the court of the other state dismisses its proceeding or releases its exclusive, continuing jurisdiction.

Adoption Proceeding – Service/Notification Requirements

§ 48-2-402. Manner of service.

- (a) Service of the notice required under G.S. 48-2-401 must be made as provided by G.S. 1A-1, Rule 4, for service of process.
- (b) In the event that the identity of a biological or possible biological parent cannot be ascertained and notice is required, the parent or possible parent shall be served by publication pursuant to G.S. 1A-1, Rule 4 (j1). The time for response shall be the time provided in the rule. The words "In re Doe" may be substituted for the title of the action in the notice as long as the notice contains the correct docket number. The notice shall be directed to "the unknown father [or mother] of" the adoptee, and the adoptee shall be described by sex, date of birth, and place of birth. The notice shall contain any information known to the petitioner that would allow an unknown parent or possible parent to identify himself or herself as the individual being addressed, such as the approximate date and place of conception, any name by which the other biological parent was known to the unknown parent or possible parent, and any fact about the unknown parent or possible parent known to or believed by the other biological parent. The notice shall also state that any parental rights the unknown parent or possible parent may have will be terminated upon entry of the order of adoption.
- (c) In an agency placement under Article 3 of this Chapter, the agency or other proper person shall file a petition to terminate the parental rights of an unknown parent or possible parent instead of serving notice under subsection (b) of this section, and the court shall stay any adoption

proceeding already filed, except that nothing in this subsection shall require that the agency or other proper person file a petition to terminate the parental rights of any known or possible parent who has been served notice as provided under G.S. 1A-1, Rule 4(j)(1) of the Rules of Civil Procedure. (1949, c. 300; 1957, c. 778, s. 5; 1969, c. 911, s. 6; 1971, c. 1093, s. 13; 1973, c. 1354, s. 5; 1983, c. 30; c. 454, ss. 2, 6; 1995, c. 457, s. 2; 2001-150, s. 4.)

§ 48-2-403. Notice of proceedings by clerk.

No later than five days after a petition is filed, the clerk of the court shall mail or otherwise deliver notice of the adoption proceeding to any agency that has undertaken but not yet completed a preplacement assessment and any agency ordered to make a report to the court pursuant to Part 5 of this Article. (1995, c. 457, s. 2; 1997-215, s. 3.)

§ 48-2-404. Notice of proceedings by court to alleged father.

If, at any time in the proceeding, it appears to the court that there is an alleged father of a minor adoptee as described in G.S. 48-2-401(c)(3) who has not been given notice, the court shall require notice of the proceeding to be given to him pursuant to G.S. 48-2-402. (1995, c. 457, s. 2.)

§ 48-2-405. Rights of persons entitled to notice.

Except as provided in G.S. 48-2-206(c), 48-2-206(d), and 48-2-207(d), a person entitled to notice whose consent is not required may appear and present evidence only as to whether the adoption is in the best interest of the adoptee. (1995, c. 457, s. 2; 2005-166, s. 6.)

§ 48-2-406. Waiver of notice; effect.

- (a) If notice is required under this Part, it may be waived in open court by the person entitled to receive it or by an agent authorized by that person; it may also be waived at any time in a writing signed by the person entitled to receive the notice.
- (b) A person who has executed a consent or relinquishment or otherwise waived notice is not a necessary party and, except as provided in subsection (c) of this section, is not entitled to appear in any subsequent proceeding related to the petition.
- (c) A parent who has executed a consent or relinquishment may appear in the adoption proceeding for the limited purpose of moving to set aside the consent or relinquishment on the grounds that it was obtained by fraud or duress. (1949, c. 300; 1957, c. 778, s. 5; 1969, c. 911, s. 6; 1971, c. 1093, s. 13; 1973, c. 1354, s. 5; 1983, c. 30; c. 454, ss. 2, 6; 1995, c. 457, s. 2.)

§ 48-2-407. Filing proof of service.

Proof of service of notice on each person entitled to receive notice under this Part, or a certified copy of each waiver of notice, must be filed with the court before the hearing on the adoption begins. (1995, c. 457, s. 2.)

Domestic Violence – Jurisdiction

1. Domestic Violence Protection Order - N.C. Gen Stat. § 50B-2

(https://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByChapter/Chapter_50B.html)

Who may file:

Any person residing in this State may seek relief under this Chapter by filing a civil action or by filing a motion in any existing action filed under Chapter 50 of the General Statutes alleging acts of domestic violence against himself or herself or a minor child who resides with or is in the custody of such person. Any aggrieved party entitled to relief under this Chapter may file a civil action and proceed pro se, without the assistance of legal counsel.

Jurisdiction

The district court division of the General Court of Justice shall have original jurisdiction over actions instituted under this Chapter. Any action for a domestic violence protective order requires that a summons be issued and served.

Civil No-Contact Order - Order - N.C. Gen Stat. § 50C

(https://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByChapter/Chapter_50C.html)

Who may file - N.C. Gen Stat. § 50C-2

(a) An action is commenced by filing a verified complaint for a civil no-contact order in district court or by filing a motion in any existing civil action, by any of the following:

- (1) A person who is a victim of unlawful conduct that occurs in this State.
- (2) A competent adult who resides in this State on behalf of a minor child or an incompetent adult who is a victim of unlawful conduct that occurs in this State.

Jurisdiction

N.C. Gen Stat. § 50C-2

(c) An action may be filed in any county permitted under G.S. 1-82 or where the unlawful conduct took place.

Venue

N.C. Gen Stat. § 1-82

(https://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_1/GS_1-82.html)

An action must be tried in the county in which the plaintiffs or the defendants, or any of them, reside at its commencement, or if none of the defendants reside in the State, then in the county in which the plaintiffs, or any of them, reside; and if none of the parties reside in the State, then the action may be tried in any county which the plaintiff designates in the plaintiff's summons and complaint, subject to the power of the court to change the place of trial, in the cases provided by statute; provided that any person who has resided on or been stationed in a United States Army, Navy, Marine Corps, Coast Guard, or Air Force installation or reservation within this State for a period of one (1) year or more next preceding the institution of an action shall be deemed a resident of the county within which such installation or reservation, or part thereof, is situated and of any county adjacent to such county where such person stationed at such installation or reservation lives in such adjacent county, for the purposes of this section. The term person shall include military personnel and the spouses and dependents of such personnel.

Domestic Violence– Service/Notification Requirements

Service Requirements

(https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_1A/GS_1A-1,_Rule_5.pdf)

G.S. 1A-1, Rule 5.

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