

## New Hampshire Family Law – Jurisdiction and Service of Process

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

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### Custody Determination – Jurisdiction

#### 1. Initial Custody Determination – **NH Rev. St. Sec. 458-A:12**

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 or person acting as a 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 or person acting as a 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).

1. Temporary Emergency Jurisdiction relating to Child Custody – **NH Rev. St. Sec. 458-A:15** – 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.

1. Proceeding to Establish, Enforce, Modify Support Order or Determine Parentage – **NH Rev. St. Sec. 458A:12** – The requirements listed in A above are the exclusive jurisdictional basis for making a child-custody determination by a court of this state. Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child-custody determination.

1. Minimum Contacts Related to Martial Relationship. – **NH Rev. St. Sec. 510:4** – “Any person who is not an inhabitant of this state and who, in person or through an agent, transacts any business within this state, commits a tortious act within this state, or has the ownership, use, or possession of any real or personal property situated in this state submits himself, or his personal representative, to the jurisdiction of the courts of this state as to any cause of action arising from or growing out of the acts enumerated above.”

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

Before a child-custody determination is made under this chapter, notice and an opportunity to be heard in accordance with the standards of RSA 458-A:7 (see below) 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. **NH Rev. St. Sec. 458-A:16**

- I. 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.
- II. 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.
- III. Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

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

### **NH Rev. St. Sec. 5-C:24**

I. In the case of a child born in the state of New Hampshire whose paternity has not been established by means of an affidavit of paternity, the mother or the natural father may initiate a request for an acknowledgment of paternity.

II. The affidavit of paternity shall be completed and filed in accordance with RSA 5-C:25.

NH Rev. St. Sec. 460:29 I. The putative father of any child born out of wedlock may apply by a verified written petition filed in a special proceeding in the superior court of the county in which he resides, praying that such child be declared legitimate. The mother, if living and available, shall be a necessary party to the proceeding, and the full names of the father, mother and the child shall be set out in the petition. If it appears to the court that the petitioner is the father of the child, the court may thereupon declare and pronounce the child legitimated, and the full names of the father, mother and the child shall be set out in the court order decreeing legitimation of the child.

## **Paternity and Child Support Proceeding – Service/Notification Requirements**

Paternity is established in NH by a filing with the Department of Health and Human Services. The requirements for this filing are described above. If paternity is contested, a genetic test can be ordered. <https://www.dhhs.nh.gov/dcsc/paternity-support.htm>

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

### **1. NH Rev. St. Sec. 169-C:4**

I. The court shall have exclusive original jurisdiction over all proceedings alleging the abuse or neglect of a child.

II. The court may, with the consent of the child, retain jurisdiction over any child, who, prior to his or her eighteenth birthday, was found to be neglected or abused and who is attending school until such child

completes high school or until his or her twenty-first birthday, whichever occurs first; and the court is authorized to and shall make such orders relative to the support and maintenance of said child during the period after the child's eighteenth birthday as justice may require.

II-a. A child who has consented to the continued jurisdiction of the court pursuant to paragraph II, may revoke his or her consent and request that the case be closed. The revocation of consent and request to close a case shall be made in writing and filed with the court. Upon receipt of the request, the court shall forward copies to all parties of record at their last known address. If no party objects within 10 business days of the date the court forwarded copies of the request to the parties, the court shall accept the child's revocation of consent and shall close the case. If a party objects, the court may, after consideration of the objection, either grant the request and close the case without hearing or schedule the matter for hearing. If the matter is scheduled for hearing, the court shall accept the child's revocation of consent and close the case unless the court finds that immediate closure would create a risk of substantial harm to the child. If the court finds that immediate closure would create a risk of substantial harm to the child, the court shall continue the matter for a period not to exceed 30 days and direct that the department work with the child to develop an independent living plan which shall include referrals to appropriate services. If at the end of such period, the child still wishes to revoke his or her consent and to request that the case be closed, the court shall accept the revocation of consent and close the case.

III. When a custody award has been made pursuant to this chapter, said order shall not be modified or changed nor shall another order affecting the status of the child be issued by the superior court except on appeal under RSA 169-C:28.

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

### **NH Rev. St. Sec 169-C:8**

I. After a petition has been filed or an ex parte order issued, the court shall issue a summons to all persons named in the petition to be served by a law enforcement officer personally, or if personal service is not possible, at their usual place of abode. Such summons shall require the person or persons having custody or control of the child to appear personally, unless otherwise ordered, before the court at a time and place set for a preliminary hearing, which shall not be less than 24 hours nor more than 7 days after return of service of the petition.

II. A copy of the petition shall be attached to each summons or incorporated therein.

III. The summons shall contain a notice that the child shall have a guardian ad litem, appointed by the court. The summons shall also state as follows: "Parents and other individuals chargeable by law for the child's support and necessities may be liable for expenses incurred in this proceeding including the costs of certain evaluations and placements. RSA 186-C regarding children with disabilities grants children and their parents certain rights to services from school districts at public expense and to appeal school district decisions regarding services to be provided."

IV. The summons shall also contain a description and explanation of the proceedings and a statement of the rights of the person or persons summoned, under this chapter, RSA 170-C, and under the rules of court.

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

### **NH Rev. St. Sec. 458:3**

In any proceedings for annulment for any cause whether under statute or under common law, the court shall have jurisdiction to declare an annulment of a marriage entered into in this state even though neither party has been at any time a resident herein.

### **NH Rev. St. Sec. 458:9**

All petitions initiated under RSA 168-A, RSA 458, and RSA 458-C shall be brought in the county in which either party lives and before the superior court; and notice thereof shall be given to the respondent as required by this section.

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

### **NH Rev. St. Sec. 458:9**

I. If the parties file a joint petition, the petition shall be filed at the appropriate court without further service or notice required.

II. An individual petition shall be filed with the appropriate court, together with the filing fee, by the petitioner. Upon the filing of a petition, the court shall issue orders of notice, attached to the petition, which the

petitioner shall then serve on the respondent as provided in this section:

(a) Service within the state shall be made either by:

(1) A sheriff, in hand or by leaving an attested copy of the petition, orders of notice, and an appearance form at the respondent's abode, within 25 days of receipt of orders of notice. The return of service shall state the street and number, or some other description, of the abode. The petitioner shall file the return of service with the court as proof of service.

(2) Certified mail, return receipt requested, restricted delivery, mailed within 7 days of receipt of orders of notice, signed by the addressee only. The petitioner shall file the return receipt with the court as proof of service.

(b) Service outside the state shall be made either by:

(1) An officer authorized to make service of process in the state where the respondent lives. Proof of out-of-state service shall be made by a return of the officer under oath, accompanied by an official certificate of his or her official character or authority. The petitioner shall file the return of service with the court as proof of service.

(2) Certified mail, return receipt requested, restricted delivery, signed by the addressee only. The petitioner shall file the return receipt with the court as proof of service.

II-a. In lieu of service as described in paragraph II, the court may, after issuing orders of notice, send notice to the respondent indicating that the petition has been filed and that the respondent or the respondent's attorney may accept service at the court within 10 days. If neither the respondent nor the attorney for the respondent accepts service at the court within 10 days as specified in the correspondence, the petition shall be forwarded to the petitioner for service in accordance with paragraph II.

III. When the residence of the respondent is not known, the petition shall state the respondent's last known post office address, and the name and post office address of some near relative of the respondent, if any is known to the petitioner, and otherwise the name and post office address of some friend of the respondent, such facts to be verified by the petitioner's personal affidavit filed with the petition. The petitioner shall file the petition with the court together with the name and address of a newspaper published in the city or town nearest to the respondent's last known address. Service shall then be ordered by publication in the newspaper, with publication to be completed not less than 15 days before the return date, and by certified mail addressed to the respondent, care of the relative or friend of the respondent, or otherwise as the court may order. Publication may be waived for good cause upon motion to the court.

## **Adoption Proceeding – Jurisdiction**

NH does not have a standalone adoption statute. Family Division has jurisdiction to handle adoption of children in abuse and neglect cases pursuant to NH Rev. St. Sec. 169-C, termination of parental rights cases pursuant to NH Rev. St. Sec. 170-C, and guardianships of the person of

minors. If the adoption does not arise from a case type listed above, the adoption is completing by filing in the local Probate Division.

<https://www.courts.state.nh.us/fdpp/adoption.htm>

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

See Adoption Proceeding Jurisdiction Section.

## **Domestic Violence – Jurisdiction**

### **NH Rev. St. Sec. 173-B:2**

#### Jurisdiction and Venue. –

I. The district division and the judicial branch family division of the circuit courts shall have concurrent jurisdiction over all proceedings under this chapter.

II. If the plaintiff has left the household or premises to avoid further abuse, the plaintiff shall have the option to commence proceedings pursuant to RSA 173-B:3 in the county or district where the plaintiff temporarily resides.

III. Proceedings under this chapter may be transferred to another court upon the motion of any party or of the court as the interests of justice or the convenience of the parties may require.

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

### **NH Rev. St. Sec. 173-B:8**

I. A copy of any order made under this chapter which prohibits any person from abusing another shall be promptly transmitted to the local law enforcement agency having jurisdiction to enforce such order. II. Temporary orders shall be promptly served on the defendant by a peace officer. Subsequent orders shall be sent to the defendant's last address of record. The defendant shall be responsible for informing the court of any changes of address. Law enforcement agencies shall establish procedures whereby a peace officer at the scene of an alleged violation of such an order may be informed of the existence and terms of such order. III. Any court-ordered changes or modifications of the order shall be effective upon issuance of such changes or modifications, and shall be mailed or otherwise provided to the appropriate local law enforcement agency and transmitted to the department of safety within 24 hours of the entry of such changes or modifications.

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