

New Jersey 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 – **NJ Stat Ann 2A:34-65**

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 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 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 – **NJ Stat Ann 2A:34-68** – 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 – **NJ Stat Ann 2A:34-67** – A court of this State may not modify a child custody determination made by a court of another state unless a court of this State has jurisdiction to make an initial determination under paragraph (1) or (2) of subsection a. of 2A:34-65 and:
 - a. the court of the other state determines it no longer has exclusive, continuing jurisdiction under 2A:34-66 or that a court of this State would be a more convenient forum under 2A:34-71; or
 - b. a court of this State or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state.

Custody Determination – Service/Notification Requirements

NJ Stat Ann 2A:34-69

- a. Before a child custody determination is made under this act, notice and an opportunity to be heard in accordance with the standards of 2A:34-60 (see below) shall 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.
- b. This act does not govern the enforceability of a child custody determination made without notice and an opportunity to be heard.
- c. The obligation to join a party and the right to intervene as a party in a child custody proceeding under this act are governed by the law of this State as in child custody proceedings between residents of this State.

NJ Stat Ann 2A:34-60

- a. 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 the service of process or by the law of the state in which the service is made. Notice shall be given in a manner reasonably calculated to give actual notice, but may be by publication if other means are not effective.
- b. 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.
- c. Notice is not required for the exercise of jurisdiction with respect to a person who submit to the jurisdiction of the court.

Paternity and Child Support Proceeding – Jurisdiction

NJ Rev Stat 9:17-46

- a. The Superior Court shall have jurisdiction over an action brought under this act. The action shall be joined with an action for divorce, annulment, separate maintenance or support.
- b. A person who has sexual intercourse in this State thereby submits to the jurisdiction of the courts of this State as to an action brought under this act with respect to a child who may have been conceived by that act of intercourse. In addition to any other method provided by law, personal jurisdiction may be acquired by service in accordance with the rules of the court.
- c. The action may be brought in the county in which the child or the alleged father resides or is found or, if the father is deceased, in which proceedings for probate of his estate have been or could be commenced.

Paternity and Child Support Proceeding – Service/Notification Requirements

NJ Rev Stat 9:17-49

- a. An action under this act is a civil action governed by the Rules Governing the Courts of the State of New Jersey.

Child Abuse/Neglect Proceeding – Jurisdiction

NJ Rev Stat 9:6-8.34

The following persons may originate a proceeding under this act:

- a. A parent or other person interested in the child.

- b. A duly authorized agency, association, society, institution or the division.
- c. A police officer.
- d. Any person having knowledge or information of a nature which convinces him that a child is abused or neglected.
- e. A person on the court's direction.
- f. The county prosecutor.
- g. In cases where a private individual is unwilling or reluctant to file a complaint, he may request the division to initiate a complaint in his stead.

Child Abuse/Neglect Proceeding – Service/Notification Requirements

NJ Rev Stat 9:6-8.19

- a. The Division of Child Protection and Permanency, shall immediately after the receipt of such report, and after making a determination to take the child into protective custody, shall serve or attempt to serve, written notice upon the parents or guardian that the said child has been taken into protective custody. The notice shall contain a statement of the maximum duration of the protective custody and the location of the child during protective custody.
- b. The parents or guardian of a child in protective custody may, upon request and in the reasonable discretion of the physician, director, or his designate, or appropriate official of the Division of Child Protection and Permanency, visit the child, provided that the life or health of the child will not be endangered by such visit.

NJ Rev Stat 9:6-8.19a

In any case in which the Division of Child Protection and Permanency accepts a child in its care or custody, the child's resource family parent or relative providing care for the child, as applicable, shall receive written notice of and an opportunity to be heard at any review or hearing held with respect to the child, but the resource family parent or relative shall not be made a party to the review or hearing solely on the basis of the notice and opportunity to be heard.

Divorce and Legal Separation – Jurisdiction

NJ Rev Stat 2A:34-8

The Superior Court shall have jurisdiction of all causes of divorce, dissolution of a civil union, bed and board divorce, legal separation from a partner in a civil union couple or nullity when either party is a bona fide resident of this State. The Superior Court shall have jurisdiction of an action for alimony and maintenance when the defendant is subject to the personal jurisdiction of the court, is a resident of this State, or has tangible or intangible real or personal property within the jurisdiction of the court. The Superior Court may afford incidental relief as in other cases of an equitable nature and by rule of court may determine the venue of matrimonial and civil union actions.

NJ Rev Stat 2A:34-10

Jurisdiction in actions for divorce, either absolute or from bed and board, and in actions for dissolution of a civil union or legal separation from a partner in a civil union couple may be acquired when process is served upon the defendant as prescribed by the rules of the Supreme Court, and

1. When, at the time the cause of action arose, either party was a bona fide resident of this State, and has continued so to be down to the time of the commencement of the action; except that no action for absolute divorce or dissolution of a civil union shall be commenced for any cause other than adultery, unless one of the parties has been for the 1 year next preceding the commencement of the action a bona fide resident of this State; or
2. When, since the cause of action arose, either party has become, and for at least 1 year next preceding the commencement of the action has continued to be, a bona fide resident of this State.

Divorce and Legal Separation – Service/Notification Requirements

NJ Rev Stat 2A:34-60

- a. 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 the service of process or by the law of the state in which the service is made. Notice shall be given in a manner reasonably calculated to give actual notice, but may be by publication if other means are not effective.
- b. 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.
- c. Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

Adoption Proceeding – Jurisdiction

NJ Rev Stat 9:3-42

An action for adoption shall be instituted in the Superior Court, Chancery Division, Family Part of the county in which the prospective parent resides, or in the county where the child resided immediately prior to placement for adoption, or if the child is less than three months of age, the county in which the child was born; except that whenever the child to be adopted has been received into the home of a prospective parent from an approved agency, the action may be instituted in the Superior Court, Chancery Division, Family Part of any county in which the approved agency has an office.

Adoption Proceeding – Service/Notification Requirements

NJ Rev Stat 9:3-39.1

- a. A person, firm, partnership, corporation, association, or agency shall not place, offer to place, or materially assist in the placement of any child for adoption in New Jersey unless . . . (c) Written notice shall be given to the birth parent, except one who cannot be identified or located prior to the placement of the child for adoption, and the adoptive parent that the decision not to place the child for adoption or the return of the child to the birth parent cannot be conditioned upon reimbursement of expenses by the birth parent to the adoptive parent, and that payments by the adoptive parent are non-refundable. Provision of such notice shall be confirmed in a written document signed by the birth parent and adoptive parent in separate documents which shall be acknowledged in this State pursuant to section 1 of P.L.1991, c.308 (R.S.46:14-2.1) or acknowledged in another state or country pursuant to section 1 of P.L.1991, c.308 (R.S.46:14-6.1), a copy of which shall be provided to the birth parent, and the agency conducting the adoption complaint investigation pursuant to section 12 of P.L.1977, c.367 (C.9:3-48), and shall be filed with the court prior to termination of parental rights.

Domestic Violence – Jurisdiction

NJ Rev Stat 2C:25-28

a. A victim may file a complaint alleging the commission of an act of domestic violence with the Family Part of the Chancery Division of the Superior Court in conformity with the Rules of Court. The court shall not dismiss any complaint or delay disposition of a case because the victim has left the residence to avoid further incidents of domestic violence. Filing a complaint pursuant to this section shall not prevent the filing of a criminal complaint for the same act. On weekends, holidays and other times when the court is closed, a victim may file a complaint before a judge of the Family Part of the Chancery Division of the Superior Court or a municipal court judge who shall be assigned to accept complaints and issue emergency, ex parte relief in the form of temporary restraining orders pursuant to this act.

A plaintiff may apply for relief under this section in a court having jurisdiction over the place where the alleged act of domestic violence occurred, where the defendant resides, or where the plaintiff resides or is sheltered, and the court shall follow the same procedures applicable to other emergency applications. Criminal complaints filed pursuant to this act shall be investigated and prosecuted in the jurisdiction where the offense is alleged to have occurred. Contempt complaints filed pursuant to N.J.S.2C:29-9 shall be prosecuted in the county where the contempt is alleged to have been committed and a copy of the contempt complaint shall be forwarded to the court that issued the order alleged to have been violated.

b. The court shall waive any requirement that the petitioner's place of residence appear on the complaint.

c. The clerk of the court, or other person designated by the court, shall assist the parties in completing any forms necessary for the filing of a summons, complaint, answer or other pleading.

d. Summons and complaint forms shall be readily available at the clerk's office, at the municipal courts and at municipal and State police stations.

f. A plaintiff may seek emergency, ex parte relief in the nature of a temporary restraining order. A municipal court judge or a judge of the Family Part of the Chancery Division of the Superior Court may enter an ex parte order when necessary to protect the life, health or well-being of a victim on whose behalf the relief is sought.

Domestic Violence– Service/Notification Requirements

NJ Rev Stat 2C:25-28

l. An order granting emergency relief, together with the complaint or complaints, shall immediately be forwarded to the appropriate law enforcement agency for service on the defendant, and to the police of the municipality in which the plaintiff resides or is sheltered, and shall immediately be served upon the defendant by the police, except that an order issued during regular court hours may be forwarded to the sheriff for immediate service upon the defendant in accordance with the Rules of Court. If personal service cannot be effected upon the defendant, the court may order other appropriate substituted service. At no time shall the plaintiff be asked or required to serve any order on the defendant.

n. Notice of temporary restraining orders issued pursuant to this section shall be sent by the clerk of the court or other person designated by the court to the appropriate chiefs of police, members of the State Police and any other appropriate law enforcement agency or court.

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