

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

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

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### Custody Determination - Jurisdiction

Proceedings over which the family court has exclusive original jurisdiction: N.Y. FAMILY CT ACT § 115 (<https://www.nysenate.gov/legislation/laws/FCT/115>)

- (a)(i) abuse and neglect proceedings;
- (a)(ii) support proceedings;
- (a)(iii) proceedings to determine paternity and for the support of children born out-of-wedlock;
- (a)(iv) proceedings to permanently terminate parental rights to guardianship and custody of a child:

(A) by reason of permanent neglect,

(B) by reason of mental illness, intellectual disability and severe or repeated child abuse, and

(C) by reason of the death of one or both parents, where no guardian of the person of the child has been lawfully appointed, or by reason of abandonment of the child for a period of six months immediately prior to the filing of the petition, where a child is under the jurisdiction of the family court as a result of a placement in foster care by the family court, unless the court declines jurisdiction;

- (a)(v) proceedings concerning whether a person is in need of supervision, as set forth in article seven; and
- (a)(vi) proceedings concerning juvenile delinquency,
- (c) Proceedings where the family court has other jurisdiction:
  - proceedings concerning adoption and custody of children,
  - proceedings concerning destitute children,
  - proceedings concerning guardianship and custody of children by reason of the death of, or abandonment or surrender by, the parent or parents,
  - proceedings concerning standby guardianship and guardianship of the person, and
  - proceedings concerning the interstate compact on juveniles.

(e) The family court has concurrent jurisdiction with the criminal court over all family offenses as defined in article eight of this act.

The family court has exclusive original jurisdiction over the above proceedings but this does not limit or impair the jurisdiction of the supreme court. **N.Y. FAMILY CT ACT § 114**

### Initial Custody Determination

1. A court of New York has jurisdiction to make an initial child custody determination only if: **N.Y. DRL § 76(1)**

a) 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;

b) a court of another state does not have jurisdiction under paragraph (a) of this subdivision, 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, and:

- i. 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; and
- ii. substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships;

c) all courts having jurisdiction under paragraph (a) or (b) of this subdivision 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; or

d) no court of any other state would have jurisdiction under the criteria specified in paragraph (a), (b) or (c) of this subdivision.

2. Subdivision one of this section is the exclusive jurisdictional basis for making a child custody determination by a court of this state.

3. Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.

Temporary Emergency Jurisdiction relating to Child Custody – See N.Y. DRL § 76-C– 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, a sibling or parent of the child.

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

**N.Y. FAMILY CT ACT §427** (<https://codes.findlaw.com/ny/family-court-act/fct-sect-427.html>)

(a) Personal service of a summons and petition may be made by delivery of a true copy thereof to the person summoned at least eight days before the time stated therein for appearance; or by delivery of a true copy thereof to a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode of the person to be served and by mailing a true copy thereof to the person to be served at his last known residence at least eight days before the time stated in the summons for appearance; proof of service shall identify such person of suitable age and discretion and state the date, time and place of service.

(b) If after reasonable effort, personal service is not made, the court may at any stage in the proceedings make an order providing for substituted service in the manner provided for substituted service in the civil practice law and rules.

(c) In any case, whether or not service is attempted under subdivision (a) or (b) of this section, service of a summons and petition under this section may be effected by mail alone to the last known address of the person to be served. Service by mail alone shall be made at least eight days before the time stated in the summons for appearance. If service is by mail alone, the court will enter an order of support by default if there is proof satisfactory to the court that the respondent had actual notice of the commencement of the proceeding which may be established upon sufficient proof that the summons and petition were in fact mailed by certified mail and signed for at the respondent's correct street address or signed for at the post office. If service by certified mail at the respondent's correct street address cannot be accomplished, service pursuant to subdivisions one , two , three or four of section three hundred eight of the civil practice law and rules shall be deemed good and sufficient service.

## Paternity and Child Support Proceeding – Jurisdiction

### 1. Proceeding to Establish, Enforce, Modify Support Order or Determine Parentage – N.Y. FAMILY CT ACT §580-201(a)

Jurisdiction permitted over non-resident individual if:

- (1) the individual is personally served with a summons and petition within this state;
- (2) the individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document or other action having the effect of waiving any contest to personal jurisdiction;
- (3) the individual resided with the child in this state;
- (4) the individual resided in this state and provided prenatal expenses or support for the child;
- (5) the child resides in this state as a result of the acts or directives of the individual;
- (6) the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;
- (7) the individual asserted parentage of a child in the putative father registry maintained in this state by the office of children and family services; 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 of Process - N.Y. FAMILY CT ACT §154 (<https://codes.findlaw.com/ny/family-court-act/ftc-sect-154.html>)

- (a) The family court may send process or other mandates in any matter in which it has jurisdiction into any county of the state for service or execution in like manner and with the same force and effect as similar process or mandates of county courts as provided by law.
- (b) In a proceeding to establish paternity or to establish, modify or enforce support, the court may send process without the state in the same manner and with the same effect as process sent within the state in the exercise of personal jurisdiction over any person subject to the jurisdiction of the court under section three hundred one or three hundred two of the civil practice law and rules or under section 580-201 of article five-B of the family court act, notwithstanding that such person is not a resident or domiciliary of the state.
- (c) In a proceeding arising under article four, five, six, eight or ten of this act in which an order of protection is sought or in which a violation of an order of protection is alleged, the court may send process without the state in the same manner and with the same effect as process sent within the state in the exercise of personal jurisdiction over any person, subject to the jurisdiction of the court under section three hundred one or three hundred two of the civil practice law and rules , notwithstanding that such person is not a resident or domiciliary of the state, so long as: (1) the act or acts giving rise to the application for issuance or enforcement of the order of protection occurred within the state; and (2) the applicant for the order of protection resides or is domiciled in the state or has substantial contacts in the state, including but not limited to, presence on a regular basis in the state. Upon good cause shown, the court may issue a temporary order of protection in accordance with article four, five, six, eight or ten of this act. Where personal jurisdiction over a non-resident or non-domiciliary respondent would not be obtainable but for this subdivision, the papers to be served shall include a conspicuous notice that the exercise of such jurisdiction is limited to the issue of the order of protection. Where service of a petition and summons upon a non-resident or non-domiciliary respondent is required, such service shall be made at least twenty days before the return date. Where service is effected on an out-of-state respondent and the respondent defaults by failing to appear, the court may on its own motion, or upon application of any party or the attorney for the child, proceed to a hearing with respect to issuance or enforcement of the

order of protection. Nothing in this section shall be construed to affect or alter the exercise of personal jurisdiction with respect to issues other than the order of protection.

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

1. Child Abuse/Neglect/Dependency Proceedings **N.Y. FAMILY CT ACT § 115 (a)(i)**  
(<https://www.nysenate.gov/legislation/laws/FCT/115>)

New York family court has exclusive original jurisdiction for abuse and neglect proceedings, as set forth in article ten.

**N.Y. Family CT Act §§ 1013-1017** (<http://ypdcrime.com/fca/fca-article10-part1.htm>)

- § 1013(a) states that the family court has exclusive original jurisdiction over proceedings under this article alleging the abuse or neglect of a child. The family court has jurisdiction over the proceedings even if a criminal court also has or may be exercising jurisdiction over the facts alleged in the petition or complaint.
- § 1013(b). In determining jurisdiction of the court, the age of the child at the time the proceedings are initiated is controlling.
- § 1013(c). The child need not be currently in the care or custody of the respondent if the court otherwise has jurisdiction over the matter. § 1013(d).
- § 1015(a) “Proceedings may be originated in the county in which the child resides or is domiciled at the time of the filing of the petition or in the county in which the person having custody of the child resides or is domiciled.
- § 1017 directs the placement of the child when the court determines that a child must be removed from his or her home.

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

Service of Process - N.Y. FAMILY CT ACT §154

(a) The family court may send process or other mandates in any matter in which it has jurisdiction into any county of the state for service or execution in like manner and with the same force and effect as similar process or mandates of county courts as provided by law.

(b) In a proceeding to establish paternity or to establish, modify or enforce support, the court may send process without the state in the same manner and with the same effect as process sent within the state in the exercise of personal jurisdiction over any person subject to the jurisdiction of the court under section three hundred one or three hundred two of the civil practice law and rules or under section 580-201 of article five-B of the family court act, notwithstanding that such person is not a resident or domiciliary of the state.

(c) In a proceeding arising under article four, five, six, eight or ten of this act in which an order of protection is sought or in which a violation of an order of protection is alleged, the court may send process without the state in the same manner and with the same effect as process sent within the state in the exercise of personal jurisdiction over any person, subject to the jurisdiction of the court under section three hundred one or three hundred two of the civil practice law and rules , notwithstanding that such person is not a resident or domiciliary of the state, so long as: (1) the act or acts giving rise to the application for issuance or enforcement of the order of protection occurred within the state; and (2) the applicant for the order of protection resides or is domiciled in the state or has substantial contacts in the state, including but not limited to, presence on a regular basis in the state. Upon good cause shown, the court may issue a temporary order of protection in accordance with article four, five, six, eight or ten of this act. Where personal jurisdiction over a non-resident or non-domiciliary respondent would not be obtainable but for this subdivision, the papers to be served shall include a conspicuous notice that the

exercise of such jurisdiction is limited to the issue of the order of protection. Where service of a petition and summons upon a non-resident or non-domiciliary respondent is required, such service shall be made at least twenty days before the return date. Where service is effected on an out-of-state respondent and the respondent defaults by failing to appear, the court may on its own motion, or upon application of any party or the attorney for the child, proceed to a hearing with respect to issuance or enforcement of the order of protection. Nothing in this section shall be construed to affect or alter the exercise of personal jurisdiction with respect to issues other than the order of protection.

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

### **N.Y. R. Civ. P. 302 (b)**

Personal jurisdiction over non-resident defendant in matrimonial actions or family court proceedings. - A court shall have jurisdiction over the respondent or defendant notwithstanding the fact that he or she no longer is a resident or domiciliary of this state, if the party seeking support is a resident of or domiciled in this state at the time such demand is made, provided that this state was the matrimonial domicile of the parties before their separation, or the defendant abandoned the plaintiff in this state, or the claim for support, alimony, maintenance, distributive awards or special relief in matrimonial actions accrued under the laws of this state or under an agreement executed in this state.

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

### **NY R. Civ. P. 308** (<https://codes.findlaw.com/ny/civil-practice-law-and-rules/cvp-sect-308.html>)

Personal service upon a natural person shall be made by any of the following methods:

1. by delivering the summons within the state to the person to be served; or
2. by delivering the summons within the state to a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode of the person to be served and by either mailing the summons to the person to be served at his or her last known residence or by mailing the summons by first class mail to the person to be served at his or her actual place of business in an envelope bearing the legend “personal and confidential” and not indicating on the outside thereof, by return address or otherwise, that the communication is from an attorney or concerns an action against the person to be served, such delivery and mailing to be effected within twenty days of each other; proof of such service shall be filed with the clerk of the court designated in the summons within twenty days of either such delivery or mailing, whichever is effected later; service shall be complete ten days after such filing; proof of service shall identify such person of suitable age and discretion and state the date, time and place of service, except in matrimonial actions where service hereunder may be made pursuant to an order made in accordance with the provisions of subdivision a of section two hundred thirty-two of the domestic relations law ;
3. by delivering the summons within the state to the agent for service of the person to be served as designated under rule 318 , except in matrimonial actions where service hereunder may be made pursuant to an order made in accordance with the provisions of subdivision a of section two hundred thirty-two of the domestic relations law ;
4. where service under paragraphs one and two cannot be made with due diligence, by affixing the summons to the door of either the actual place of business, dwelling place or usual place of abode within the state of the person to be served and by either mailing the summons to such person at his or her last known residence or by mailing the summons by first class mail to the person to be served at his or her actual place of business in an envelope bearing the legend “personal and confidential” and not indicating on the outside thereof, by return address or otherwise, that the

communication is from an attorney or concerns an action against the person to be served, such affixing and mailing to be effected within twenty days of each other; proof of such service shall be filed with the clerk of the court designated in the summons within twenty days of either such affixing or mailing, whichever is effected later; service shall be complete ten days after such filing, except in matrimonial actions where service hereunder may be made pursuant to an order made in accordance with the provisions of subdivision a of section two hundred thirty-two of the domestic relations law ;

5. in such manner as the court, upon motion without notice, directs, if service is impracticable under paragraphs one, two and four of this section.
6. For purposes of this section, “actual place of business” shall include any location that the defendant, through regular solicitation or advertisement, has held out as its place of business. NY R. Civ. P. 312-a (<https://codes.findlaw.com/ny/civil-practice-law-and-rules/cvp-sect-312-a.html>) Service by mail. As an alternative to the methods of personal service authorized by section 307, 308 , 310 , 311 or 312 of this article, a summons and complaint, or summons and notice, or notice of petition and petition may be served by the plaintiff or any other person by mailing to the person or entity to be served, by first class mail, postage prepaid, a copy of the summons and complaint, or summons and notice or notice of petition and petition, together with two copies of a statement of service by mail and acknowledgement of receipt in the form set forth in subdivision (d) of this section, with a return envelope, postage prepaid, addressed to the sender.

## **Adoption Proceeding – Jurisdiction**

The family court has other jurisdiction over proceedings concerning adoption and custody of children. **N.Y. FAMILY CT ACT § 115(c)** (<https://www.nysenate.gov/legislation/laws/FCT/115>)

The family court has original jurisdiction concurrent with the surrogate’s court over adoption proceedings under article seven of the domestic relations law. **N.Y. FAMILY CT ACT § 641** (<http://ypdcrime.com/fca/fca-article6-part2.htm>)

Whose consent required. **N.Y. Domestic Relations Law § 110** (<https://www.nysenate.gov/legislation/laws/DOM/111>):

1. Consent to adoption shall be required as follows:  
Of the adoptive child, if over fourteen years of age;
2. Of the parents or surviving parent, whether adult or infant, of a child conceived or born in wedlock;
3. Of the mother, whether adult or infant, of a child born out of wedlock;
4. Of the father, whether adult or infant, of a child born out-of-wedlock and placed with the adoptive parents more than six months after birth, but only if such father shall have maintained substantial and continuous or repeated contact with the child. A father, whether adult or infant, of a child born out-of-wedlock, who openly lived with the child for a period of six months within the one year period immediately preceding the placement of the child for adoption and who during such period openly held himself out to be the father of such child.
5. Of the father, whether adult or infant, of a child born out-of-wedlock who is under the age of six months at the time he is placed for adoption, but only if: (i) such father openly lived with the child or the child’s mother for a continuous period of six months immediately preceding the placement of the child for adoption; and (ii) such father openly held himself out to be the father of such child during such period; and (iii) such father paid a fair and reasonable sum, in accordance with his means, for the medical, hospital and nursing expenses incurred in connection with the mother’s pregnancy or with the birth of the child.

6. Of any person or authorized agency having lawful custody of the adoptive child.

- The consent shall not be required of a parent or of any other person having custody of the child: who evinces an intent to forego his or her parental or custodial rights and obligations as manifested by his or her failure for a period of six months to visit the child and communicate with the child or person having legal custody of the child, although able to do so; or
  1. who has surrendered the child to an authorized agency; or
  2. for whose child a guardian has been appointed; or
  3. who, by reason of mental illness or intellectual disability, is presently and for the foreseeable future unable to provide proper care for the child; or
  4. who has executed an instrument, which shall be irrevocable, denying the paternity of the child.
    - (a) Notice of the proposed adoption shall be given to a person whose consent to adoption is required pursuant to subdivision one and who has not already provided such consent.
    - Where the adoptive child is over the age of eighteen years the consents specified in paragraphs (b), (c) and (d) of subdivision one of this section shall not be required.

Adoption Order from foreign country or jurisdiction **N.Y. Domestic Relations Law**

**§111-C** (<https://www.nysenate.gov/legislation/laws/DOM/111-C>):

1. A final judgment of adoption granted by a judicial, administrative or executive body of a jurisdiction or country other than the United States shall have the same force and effect in this state as that given to a judgment of adoption entered by a court of competent jurisdiction of New York state, without additional proceedings or documentation provided:

either adopting parent is a resident of this state; and the validity of the foreign adoption has been verified by the granting of an IR-3, IH-3, or a successor immigrant visa, for the child by the United States Citizenship and Immigration Services.

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

### Service of Process - N.Y. FAMILY CT ACT §154

(a) The family court may send process or other mandates in any matter in which it has jurisdiction into any county of the state for service or execution in like manner and with the same force and effect as similar process or mandates of county courts as provided by law.

(b) In a proceeding to establish paternity or to establish, modify or enforce support, the court may send process without the state in the same manner and with the same effect as process sent within the state in the exercise of personal jurisdiction over any person subject to the jurisdiction of the court under section three hundred one or three hundred two of the civil practice law and rules or under section 580-201 of article five-B of the family court act, notwithstanding that such person is not a resident or domiciliary of the state.

(c) In a proceeding arising under article four, five, six, eight or ten of this act in which an order of protection is sought or in which a violation of an order of protection is alleged, the court may send process without the state in the same manner and with the same effect as process sent within the state in the exercise of personal jurisdiction over any person, subject to the jurisdiction of the court under section three hundred one or three hundred two of the civil practice law and rules , notwithstanding that such person is not a resident or domiciliary of the state, so long as: (1) the act or acts giving rise to the application for issuance or enforcement of the order of protection occurred within the state; and (2) the applicant for the order of protection resides or is domiciled in the state or has substantial contacts in the state, including but not limited to, presence on a regular basis in the state. Upon good cause shown, the court may issue a temporary order of protection in accordance with article four, five, six, eight or ten of this act. Where personal jurisdiction over a non-resident or non-domiciliary respondent would not be

obtainable but for this subdivision, the papers to be served shall include a conspicuous notice that the exercise of such jurisdiction is limited to the issue of the order of protection. Where service of a petition and summons upon a non-resident or non-domiciliary respondent is required, such service shall be made at least twenty days before the return date. Where service is effected on an out-of-state respondent and the respondent defaults by failing to appear, the court may on its own motion, or upon application of any party or the attorney for the child, proceed to a hearing with respect to issuance or enforcement of the order of protection. Nothing in this section shall be construed to affect or alter the exercise of personal jurisdiction with respect to issues other than the order of protection.

## **Domestic Violence – Jurisdiction**

Jurisdiction - N.Y. FAMILY CT ACT § 812 (<http://ypdcrime.com/fca/fca-article8-part1.htm>)

The family court and the criminal courts shall have concurrent jurisdiction over any proceeding which would constitute disorderly conduct, harassment in the first and second degree, aggravated harassment in the second degree, sexual misconduct, forcible touching, sexual abuse in the second and third degree, stalking in the first-fourth degrees, criminal mischief, menacing in the second and third degrees, reckless endangerment, criminal obstruction of breathing or blood circulation, strangulation in the first or second degree, assault in the second or third degree, attempted assault, identity theft in the first-third degrees, grand larceny in the third or fourth degree, or coercion in the second degree.

You may ask the district attorney or a law enforcement officer to file a criminal complaint. You also have the right to file a petition in the family court when a family offense has been committed against you. Either court may issue an order of protection from conduct constituting a family offense which could include, among other provisions, and order for the respondent or defendant to stay away from you or your children. Id.

Order or Protection or Temporary Order of Protection N.Y. Domestic Relations Law § 252 (<https://codes.findlaw.com/ny/domestic-relations-law/dom-sect-252.html>)

1. In an action for divorce, separation or annulment or in an action to declare the nullity of a void marriage in the supreme court, the supreme court or the family court shall entertain an application for an order of protection or temporary order of protection by either party. Such an order may require any party: to stay away from the home, school, business or place of employment of the child, other parent or any other party, and to stay away from any other specific location designated by the court.
1. A valid order of protection or temporary order of protection issued by a court of competent jurisdiction in another state, territorial or tribal jurisdiction shall be accorded full faith and credit and enforced as if it were issued by a court within the state for as long as the order remains in effect in the issuing jurisdiction. An order issued by a court of competent jurisdiction in another state, territorial or tribal jurisdiction shall be deemed valid if: the issuing court had personal jurisdiction over the parties and over the subject matter under the law of the issuing jurisdiction;
2. (ii) the person against whom the order was issued had reasonable notice and an opportunity to be heard prior to issuance of the order; provided, however, that if the order was a temporary order of protection issued in the absence of such person, that notice had been given and that an opportunity to be heard had been provided within a reasonable period of time after the issuance of the order; and
3. in the case of orders of protection or temporary orders of protection issued against both a petitioner and respondent, the order or portion thereof sought to be enforced was supported by: (A) a pleading requesting such order, including, but not limited to, a petition, cross-petition or counterclaim; and (B) a judicial finding that the requesting party is entitled to the issuance of the order, which may result from a judicial finding of fact, judicial acceptance of an admission by the party against whom the order was

issued or judicial finding that the party against whom the order was issued had given knowing, intelligent and voluntary consent to its issuance.

An order of protection or temporary order of protection issued by a court of competent jurisdiction in another state, territorial or tribal jurisdiction, accompanied by a sworn affidavit that upon information and belief such order is in effect as written and has not been vacated or modified, may be filed without fee with the clerk of the court, who shall transmit information regarding such order to the statewide registry of orders of protection and warrants; provided, however, that such filing and registry entry shall not be required for enforcement of the order.

Venue - N.Y. FAMILY CT ACT § 812 (<http://ypdcrime.com/fca/fca-article8-part1.htm>)

The above proceedings may be originated in the county in which the acts referred to in the petition allegedly occurred or in which the family or household resides or in which any party resides.

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

### Service of Process - N.Y. FAMILY CT ACT §154

(a) The family court may send process or other mandates in any matter in which it has jurisdiction into any county of the state for service or execution in like manner and with the same force and effect as similar process or mandates of county courts as provided by law.

(b) In a proceeding to establish paternity or to establish, modify or enforce support, the court may send process without the state in the same manner and with the same effect as process sent within the state in the exercise of personal jurisdiction over any person subject to the jurisdiction of the court under section three hundred one or three hundred two of the civil practice law and rules or under section 580-201 of article five-B of the family court act, notwithstanding that such person is not a resident or domiciliary of the state.

(c) In a proceeding arising under article four, five, six, eight or ten of this act in which an order of protection is sought or in which a violation of an order of protection is alleged, the court may send process without the state in the same manner and with the same effect as process sent within the state in the exercise of personal jurisdiction over any person, subject to the jurisdiction of the court under section three hundred one or three hundred two of the civil practice law and rules , notwithstanding that such person is not a resident or domiciliary of the state, so long as: (1) the act or acts giving rise to the application for issuance or enforcement of the order of protection occurred within the state; and (2) the applicant for the order of protection resides or is domiciled in the state or has substantial contacts in the state, including but not limited to, presence on a regular basis in the state. Upon good cause shown, the court may issue a temporary order of protection in accordance with article four, five, six, eight or ten of this act. Where personal jurisdiction over a non-resident or non-domiciliary respondent would not be obtainable but for this subdivision, the papers to be served shall include a conspicuous notice that the exercise of such jurisdiction is limited to the issue of the order of protection. Where service of a petition and summons upon a non-resident or non-domiciliary respondent is required, such service shall be made at least twenty days before the return date. Where service is effected on an out-of-state respondent and the respondent defaults by failing to appear, the court may on its own motion, or upon application of any party or the attorney for the child, proceed to a hearing with respect to issuance or enforcement of the order of protection. Nothing in this section shall be construed to affect or alter the exercise of personal jurisdiction with respect to issues other than the order of protection.