

Oregon Family Law – Jurisdiction and Service of Process

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

Disclaimer: This Toolkit was developed under grant number SJI-20-E-005 from the State Justice Institute. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute. While the Jurisdiction and Service of Process Chart is a useful resource, it does not remove the responsibility of each and every lawyer to engage in original analysis and research.

Custody Determination – Jurisdiction

Initial Custody Determination **ORS 109.741**

(1) Except as otherwise provided in ORS 109.751, a court of this state has jurisdiction to make an initial child custody determination only if:

(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 subsection (1)(a) of this section, 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 ORS 109.761 or 109.764, and:

(A) 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

(B) Substantial evidence is available in this state concerning the child's care, protection, training and personal relationships;

(c) All courts having jurisdiction under subsection (1)(a) or (b) of this section 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 ORS 109.761 or 109.764; or

(d) No court of any other state would have jurisdiction under the criteria specified in subsection (1)(a), (b) or (c) of this section.

(2) Subsection (1) 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 ORS 109.751

(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 ORS 109.701 to 109.834 and a child custody proceeding has not been commenced in a court of a state having jurisdiction under ORS 109.741 to 109.747, 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 ORS 109.741 to 109.747. If a child custody

proceeding has not been or is not commenced in a court of a state having jurisdiction under ORS 109.741 to 109.747, a child custody determination made under this section becomes a final determination if the determination 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 ORS 109.701 to 109.834, or a child custody proceeding has been commenced in a court of a state having jurisdiction under ORS 109.741 to 109.747, 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 ORS 109.741 to 109.747. The order issued in 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 that 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 ORS 109.741 to 109.747, shall immediately communicate with the other court. A court of this state that is exercising jurisdiction under ORS 109.741 to 109.747, 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.

In determining whether a case presents an “emergency” necessitating the court’s exercise of temporary emergency jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), the proper focus is whether the child will be at immediate risk of harm upon return to the parent. See *State v. L.P.L.O.*, 280 Or App 292, 381 P3d 846 (2016)

Custody Determination – Service/Notification Requirements

ORS 109.754

(1) Before a child custody determination is made under ORS 109.701 to 109.834, notice and an opportunity to be heard in accordance with the standards of ORS 109.724 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.

(2) ORS 109.701 to 109.834 do not govern the enforceability of a child custody determination made without notice or an opportunity to be heard.

(3) The obligation to join a party and the right to intervene as a party in a child custody proceeding under ORS 109.701 to 109.834 are governed by the law of this state as in child custody proceedings between residents of this state.

ORS 109.724

(1) 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.

(2) 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. If service is made by mail, proof of service may be a receipt signed by the addressee or other evidence of delivery to the addressee.

(3) 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

***Bases for jurisdiction over nonresident* ORS 110.518**

(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:

(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; or
 - (g) There is any other basis consistent with the Constitutions of the State of Oregon and the United States for the exercise of personal jurisdiction.
- (2) The bases of personal jurisdiction set forth in subsection (1) of this section 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 ORS 110.632 are met or, in the case of a foreign support order, unless the requirements of ORS 110.639 are met.

Paternity and Child Support Proceeding – Service/Notification Requirements

ORS 109.125(5)

A person whose parentage of a child has been established under ORS 109.065 is a necessary party to proceedings initiated under this section unless the parentage has been disestablished before the proceedings are initiated.

ORS 109.065

- (1) Parentage may be established between a person and a child by:
 - (a) The person having given birth to the child;
 - (b) An un rebutted presumption of parentage under ORS 109.070;
 - (c) An adjudication of the person's maternity or paternity;
 - (d) Adoption of the child by the person;
 - (e) An effective acknowledgement of paternity by the man under ORS 109.070 or pursuant to the laws of another state, unless the acknowledgement has been rescinded or successfully challenged;
 - (f) Establishment of paternity by an administrative order issued pursuant to ORS chapter 416;
 - (g) Filiation proceedings; or
 - (h) Parentage being established or declared by another provision of law.
- (2) A person is the mother of a child to whom the person gives birth.

Child Abuse/Neglect Proceeding – Jurisdiction

ORS 419B.100

- (1) Except as otherwise provided in subsection (5) of this section and ORS 107.726, the juvenile court has exclusive original jurisdiction in any case involving a person who is under 18 years of age and:
 - (a) Who is beyond the control of the person's parents, guardian or other person having custody of the person;
 - (b) Whose behavior is such as to endanger the welfare of the person or of others;
 - (c) Whose condition or circumstances are such as to endanger the welfare of the person or of others;
 - (d) Who is dependent for care and support on a public or private child-caring agency that needs the services of the court in planning for the best interest of the person;
 - (e) Whose parents or any other person or persons having custody of the person have:
 - (A) Abandoned the person;

- (B) Failed to provide the person with the care or education required by law;
 - (C) Subjected the person to cruelty, depravity or unexplained physical injury; or
 - (D) Failed to provide the person with the care, guidance and protection necessary for the physical, mental or emotional well-being of the person;
 - (f) Who has run away from the home of the person;
 - (g) Who has filed a petition for emancipation pursuant to ORS 419B.550 to 419B.558; or
 - (h) Who is subject to an order entered under ORS 419C.411 (7)(a).
- (2) The court shall have jurisdiction under subsection (1) of this section even though the child is receiving adequate care from the person having physical custody of the child.
- (3) The provisions of subsection (1) of this section do not prevent a court of competent jurisdiction from entertaining a civil action or suit involving a child.
- (4) The court does not have further jurisdiction as provided in subsection (1) of this section after a minor has been emancipated pursuant to ORS 419B.550 to 419B.558.
- (5)(a) An Indian tribe has exclusive jurisdiction over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of the tribe, except where the jurisdiction is otherwise vested in the state by existing federal law.
- (b) Upon the petition of either parent, the Indian custodian or the Indian child's tribe, the juvenile court, absent good cause to the contrary and absent objection by either parent, shall transfer a proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, to the jurisdiction of the tribe.
- (c) The juvenile court shall give full faith and credit to the public acts, records and judicial proceedings of an Indian tribe applicable to an Indian child custody proceeding to the same extent that the juvenile court gives full faith and credit to the public acts, records and judicial proceedings of any other entity.
- ORS 419B.803
- (1) A juvenile court having subject matter jurisdiction has jurisdiction over:
- (a) A party, who has been served in the matter as provided in ORS 419B.812 to 419B.839 to the extent that prosecution of the action is not inconsistent with the Constitution of this state and the Constitution of the United States;
 - (b) A child under 12 years of age who is the subject of a petition filed pursuant to ORS 419B.100; and
 - (c) Any other party specified in ORS 419B.875 (1).
- (2) Juvenile court jurisdiction is subject to ORS 109.701 to 109.834.

Child Abuse/Neglect Proceeding – Service/Notification Requirements

ORS 419B.875

- (1)(a) Parties to proceedings in the juvenile court under ORS 419B.100 and 419B.500 are:
- (A) The child or ward;
 - (B) The parents or guardian of the child or ward;
 - (C) A putative father of the child or ward who has demonstrated a direct and significant commitment to the child or ward by assuming, or attempting to assume, responsibilities normally associated with parenthood, including but not limited to:
 - (i) Residing with the child or ward;
 - (ii) Contributing to the financial support of the child or ward; or
 - (iii) Establishing psychological ties with the child or ward;
 - (D) The state;
 - (E) The juvenile department;
 - (F) A court appointed special advocate, if appointed;
 - (G) The Department of Human Services or other child-caring agency if the agency has temporary custody of the child or ward; and

(H) The tribe in cases subject to the Indian Child Welfare Act if the tribe has intervened pursuant to the Indian Child Welfare Act.

(b) An intervenor who is granted intervention under ORS 419B.116 is a party to a proceeding under ORS 419B.100. An intervenor under this paragraph is not a party to a proceeding under ORS 419B.500.

(2) The rights of the parties include, but are not limited to:

(a) The right to notice of the proceeding and copies of the petitions, answers, motions and other papers;

(b) The right to appear with counsel and, except for intervenors under subsection (1)(b) of this section, to have counsel appointed as otherwise provided by law;

(c) The right to call witnesses, cross-examine witnesses and participate in hearings;

(d) The right of appeal; and

(e) The right to request a hearing.

(3) A putative father who satisfies the criteria set out in subsection (1)(a)(C) of this section shall be treated as a parent, as that term is used in this chapter and ORS chapters 419A and 419C, until the court confirms his parentage or finds that he is not the legal or biological parent of the child or ward.

(4) If no appeal from the judgment or order is pending, a putative father whom a court of competent jurisdiction has found not to be the child or ward's legal or biological parent or who has filed a petition for filiation that was dismissed is not a party under subsection (1) of this section.

(5)(a) A person granted rights of limited participation under ORS 419B.116 is not a party to a proceeding under ORS 419B.100 or 419B.500 but has only those rights specified in the order granting rights of limited participation.

(b) Persons moving for or granted rights of limited participation are not entitled to appointed counsel but may appear with retained counsel.

(6) If a foster parent, preadoptive parent or relative is currently providing care for a child or ward, the Department of Human Services shall give the foster parent, preadoptive parent or relative notice of a proceeding concerning the child or ward. A foster parent, preadoptive parent or relative providing care for a child or ward has the right to be heard at the proceeding. Except when allowed to intervene, the foster parent, preadoptive parent or relative providing care for the child or ward is not considered a party to the juvenile court proceeding solely because of notice and the right to be heard at the proceeding.

(7)(a) The Department of Human Services shall make diligent efforts to identify and obtain contact information for the grandparents of a child or ward committed to the department's custody. Except as provided in paragraph (b) of this subsection, when the department knows the identity of and has contact information for a grandparent, the department shall give the grandparent notice of a hearing concerning the child or ward. Upon a showing of good cause, the court may relieve the department of its responsibility to provide notice under this paragraph.

(b) If a grandparent of a child or ward is present at a hearing concerning the child or ward, and the court informs the grandparent of the date and time of a future hearing, the department is not required to give notice of the future hearing to the grandparent.

(c) If a grandparent is present at a hearing concerning a child or ward, the court shall give the grandparent an opportunity to be heard.

(d) The court's orders or judgments entered in proceedings under ORS 419B.185, 419B.310, 419B.325, 419B.449, 419B.476 and 419B.500 must include findings of the court as to whether the grandparent had notice of the hearing, attended the hearing and had an opportunity to be heard.

(e) Notwithstanding the provisions of this subsection, a grandparent is not a party to the juvenile court proceeding unless the grandparent has been granted rights of intervention under ORS 419B.116.

(f) As used in this subsection, "grandparent" means the legal parent of the child's or ward's legal parent, regardless of whether the parental rights of the child's or ward's legal parent have been terminated under

ORS 419B.500 to 419B.524.

(8) Interpreters for parties and persons granted rights of limited participation shall be appointed in the manner specified by ORS 45.275 and 45.285.

ORS 419B.819

(1) A court may make an order establishing permanent guardianship under ORS 419B.365 or terminating parental rights under ORS 419B.500, 419B.502, 419B.504, 419B.506 or 419B.508 only after service of summons and a true copy of the petition on the parent, as provided in ORS 419B.812, 419B.823, 419B.824, 419B.827, 419B.830 and 419B.833. A putative father who satisfies the criteria set out in ORS 419B.839 (1)(d) or 419B.875 (1)(a)(C) also must be served with summons and a true copy of the petition, unless a court of competent jurisdiction has found him not to be the child or ward's legal or biological father or he has filed a petition for filiation that was dismissed and no appeal of the judgment or order is pending.

Divorce and Legal Separation – Jurisdiction

ORS 107.075 *Jurisdiction; residency requirement*

- (1) If the marriage was solemnized in this state and either party is a resident of or domiciled in the state at the time the suit is commenced, a suit for its annulment or dissolution may be maintained where the ground alleged is one set forth in ORS 106.020 or 107.015.
- (2) When the marriage was not solemnized in this state or when any ground other than set forth in ORS 106.020 or 107.015 is alleged, at least one party must be a resident of or be domiciled in this state at the time the suit is commenced and continuously for a period of six months prior thereto.
- (3) In a suit for separation, one of the parties must be a resident of or domiciled in this state at the time the suit is commenced.
- (4) Residence or domicile under subsection (2) or (3) of this section is sufficient to give the court jurisdiction without regard to the place where the marriage was solemnized or where the cause of suit arose.

ORS 106.020 or 107.015 relate to prohibited marriages and grounds for annulment of marriage.

Divorce and Legal Separation – Service/Notification Requirements

ORS 107.087

Whenever a suit for dissolution, separation or annulment is initiated under ORS 107.085 and the child support rights of one of the parties or of a child of both of the parties have been assigned to the state, a true copy of the petition shall be served by mail or personal delivery on the Administrator of the Division of Child Support of the Department of Justice or on the branch office providing support services to the county in which the suit is filed.

Adoption Proceeding – Jurisdiction

ORS 109.309(4)(a)

(4)(a) Notwithstanding ORS 109.741 and 109.744, a court of this state has jurisdiction over the adoption of a minor child if, immediately prior to the filing of a petition for adoption:

- (A) The minor child resided in this state for at least six consecutive months including periods of temporary absence;
- (B) One parent or another person, who is not an adoption agency, consenting to the adoption as required under ORS 109.321 (1) resided in this state for at least six consecutive months including periods of temporary absence;
- (C) The prospective adoptive parent resided in this state for at least six consecutive months including periods of temporary absence and substantial evidence is available in this state concerning the present or future care of the minor child;

(D) It appears that no court of another state would have jurisdiction under circumstances substantially in accordance with subparagraphs (A) to (C) of this paragraph; or

(E) A court of another state has declined to exercise jurisdiction on the grounds that this state is a more appropriate forum to hear a petition for adoption of the minor child and it is in the best interests of the minor child that a court of this state assume jurisdiction.

(b) As used in paragraph (a) of this subsection, “periods of temporary absence” means periods of absence of not more than a total of 30 days in the prior six consecutive months.

Adoption Proceeding – Service/Notification Requirements

ORS 109.315(5)(a)

(5)(a) Within 30 days after being filed with the court, the petitioner shall serve copies of the petition, the documents filed as exhibits under subsection (3) of this section and the Adoption Summary and Segregated Information Statement described in ORS 109.317, including any amendments and exhibits attached to the statement, on the Director of Human Services by either registered or certified mail with return receipt or personal service.

(b) In the case of an adoption in which one of the child's parents retains parental rights as established under ORS 109.065, the petitioner shall also serve the petition by either registered or certified mail with return receipt or personal service:

(A) On all persons whose consent to the adoption is required under ORS 109.321 unless the person's written consent is filed with the court; and

(B) On the parents of the party whose parental rights would be terminated, if the names and addresses are known or may be readily ascertained by the petitioner.

(c) When a parent of the child is deceased or incapacitated, the petitioner shall also serve the petition on the parents of the deceased or incapacitated parent, if the names and addresses are known or may be readily ascertained by the petitioner. As used in this paragraph:

(A) “Incapacitated” means a condition in which a person's ability to receive and evaluate information effectively or to communicate decisions is impaired to such an extent that the person lacks the capacity to meet the essential requirements for the person's physical health or safety.

(B) “Meet the essential requirements for the person's physical health or safety” means those actions necessary to provide health care, food, shelter, clothing, personal hygiene and other care without which serious physical injury or illness is likely to occur.

(d) Service required by this subsection may be waived by the court for good cause.

ORS 109.321

(1) Except as provided in ORS 109.323 to 109.329, consent in writing to the adoption of a minor child pursuant to

a petition filed under ORS 109.309 is required to be given by the following:

(a) The parents of the child, or the survivor of them.

(b) The guardian of the child, if the child has no living parent.

(c) The next of kin in this state, if the child has no living parent and no guardian.

(d) Some suitable person appointed by the court to act in the proceeding as next friend of the child to give or withhold consent, if the child has no living parent and no guardian or next of kin qualified to consent.

Domestic Violence – Jurisdiction

Family Abuse Prevention Act **ORS 107.710-107.735**

ORS 107.710

(1) Any person who has been the victim of abuse within the preceding 180 days may petition the circuit court for relief under ORS 107.700 to 107.735, if the person is in imminent danger of further abuse from the abuser. The person may seek relief by filing a petition with the circuit court alleging that the person is in imminent danger of abuse from the respondent, that the person has been the victim of abuse committed by the respondent within the 180 days preceding the filing of the petition and particularly describing the nature of the abuse and the dates thereof. The abuse must have occurred not more than 180 days before the filing of the petition. The petition must include allegations made under oath or affirmation or a declaration under penalty of perjury. The circuit court shall have jurisdiction over all proceedings under ORS 107.700 to 107.735.

Domestic Violence– Service/Notification Requirements

ORS § 107.718

The respondent shall be served.

© 2021 - Morgan, Lewis and Bockius LLP