

Tennessee 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

Tenn. Code Ann. § 36-6-216 (2017)

a) Except as otherwise provided in § 36-6-219, a Tennessee court has jurisdiction to make an initial child custody determination only if:

- (1) Tennessee 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 (6) 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;
 - (2) A court of another state does not have jurisdiction under subdivision (a)(1), 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 §§ 36-6-221 or 36-6-222, and:
 - (A) The child and the child's parents, or the child and at least one (1) 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;
 - (3) All courts having jurisdiction under subdivision (a)(1) or (a)(2) 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 §§ 36-6-221 or 36-6-222; or
 - (4) No court of any other state would have jurisdiction under the criteria specified in subdivision (a)(1), (a)(2), or (a)(3).
- (b) Subsection (a) is the exclusive jurisdictional basis for making a child-custody determination by a court of this state.
- (c) 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

Tenn. Code Ann. § 36-6-219 (2017)

- (a) 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.
- (b) If there is no previous child custody determination that is entitled to be enforced under this part and a child custody proceeding has not been commenced in a court of a state having jurisdiction under §§ 36-6-216 -- 36-6-218, 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 §§ 36-6-216 -- 36-6-218. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under §§ 36-6-216 -

- 36-6-218, a child custody determination made under this section becomes a final determination, if it so provides and this state becomes the home state of the child.

(c) If there is a previous child custody determination that is entitled to be enforced under this part, or a child-custody proceeding has been commenced in a court of a state having jurisdiction under §§ 36-6-216 -36-6-218, 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 §§ 36-6-216 -- 36-6-218. 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.

(d) A court of this state which 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 §§ 36-6-216 -- 36-6-218, shall immediately communicate with the other court. A court of this state which is exercising jurisdiction pursuant to §§ 36-6-216 - 36-6-218, 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.

Authority Interpreting § 36-6-219

“As to the threat of mistreatment or abuse required for a Tennessee court to invoke temporary emergency jurisdiction over a child who is present in Tennessee, our Supreme Court has held that Tennessee Code Annotated § 36-6-219(a) ‘contemplates a threat of immediate mistreatment or abuse to the child.’

Hernandez v. Hernandez, No. W201801388COAR3CV, 2019 WL 3430534, at *8 (Tenn. Ct. App. July 30, 2019) (quoting Button v. Waite, 208 S.W.3d 366, 370 (Tenn. 2006)).

The alleged threat of mistreatment or abuse must be specifically alleged in the petition. P.E.K. v. J.M., 52 S.W.3d 653, 657-58 (Tenn. Ct. App. 2001) (“Without some factual allegation of specific threats to the child’s well-being, the court did not have any basis on which to enter a temporary emergency award.”).

In re Serenity W. M., No. E201401802COAR3JV, 2015 WL 4485466, at *6 (Tenn. Ct. App. July 23, 2015) (holding that trial court properly exercised emergency jurisdiction where petitioner asserted that the child’s mother had already lost custody of three other children and that Father had “a history of substance abuse and of convictions relating to serious harm to [a] minor child and has been ordered not to be around children.”).

Custody Determination – Service/Notification Requirements

Tenn. Code Ann. § 36-6-220 (2017)

(a) Before a child-custody determination is made under Part 2 of Chapter 6 of the Tennessee Code, notice and an opportunity to be heard in accordance with the standards of § 36-6-211 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.

(b) This part does not govern the enforceability of a child-custody determination made without notice or 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 part are governed by the law of this state as in child-custody proceedings between residents of this state.

Tenn. Code Ann. § 36-6-211 (2017)

(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 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.

(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.

Paternity and Child Support Proceeding – Jurisdiction

Tenn. Code Ann. § 36-5-2205

(a) A tribunal of this state that has issued a child support order consistent with the law of this state has and shall exercise continuing, exclusive jurisdiction to modify its child support order if the order is the controlling order and:

(1) At the time of the filing of a request for modification this state is the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or

(2) Even if this state is not the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued, the parties consent in a record or in open court that the tribunal of this state may continue to exercise jurisdiction to modify its order.

(b) A tribunal of this state that has issued a child support order consistent with the law of this state may not exercise continuing, exclusive jurisdiction to modify the order if:

(1) All of the parties who are individuals file consent in a record with the tribunal of this state that a tribunal of another state that has jurisdiction over at least one of the parties who is an individual or that is located in the state of residence of the child may modify the order and assume continuing, exclusive jurisdiction; or

(2) Its order is not the controlling order.

(c) If a tribunal of another state has issued a child support order pursuant to the Uniform Interstate Family Support Act or a law substantially similar to that Act which modifies a child support order of a tribunal of this state, tribunals of this state shall recognize the continuing, exclusive jurisdiction of the tribunal of the other state.

(d) A tribunal of this state that lacks continuing, exclusive jurisdiction to modify a child support order may serve as an initiating tribunal to request a tribunal of another state to modify a support order issued in that state.

(e) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

Paternity and Child Support Proceeding – Service/Notification Requirements

Tenn. Code Ann. § 36-5-2605 (2016)

(a) When a support order or income-withholding order issued in another state or a foreign support order is registered, the registering tribunal of this state shall notify the non-registering party. The notice must be

accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(b) A notice must inform the non-registering party:

(1) That a registered support order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

(2) That a hearing to contest the validity or enforcement of the registered order must be requested within twenty (20) days after notice unless the registered order is under § 36-5-2707;

(3) That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages; and

(4) Of the amount of any alleged arrearages.

(c) If the registering party asserts that two (2) or more orders are in effect, a notice must also:

(1) Identify the two (2) or more orders and the order alleged by the registering party to be the controlling order and the consolidated arrears, if any;

(2) Notify the non-registering party of the right to a determination of which is the controlling order;

(3) State that the procedures provided in subsection (b) apply to the determination of which is the controlling order; and

(4) State that failure to contest the validity or enforcement of the order alleged to be the controlling order in a timely manner may result in confirmation that the order is the controlling order.

(d) Upon registration of an income-withholding order for enforcement, the support enforcement agency or the registering tribunal shall notify the obligor's employer pursuant to part 5 of this chapter.

Child Abuse/Neglect Proceeding – Jurisdiction

Tenn. Code Ann. § 36-1-114

A petition to terminate parental rights under Tenn. Code Ann. § 36-1-113 due to abuse, dependency, or neglect of a child as defined in Tenn. Code Ann. 37-1-102 may be brought:

(1) Where the petitioners reside;

(2) Where the child resides;

(3) Where, at the time the petition is filed, any respondent resides;

(4) In which is located any licensed child-placing agency or institution operated under the laws of this state having custody or guardianship of the child or to which the child has been surrendered as provided in this part;

(5) Where the child became subject to the care and control of a public or private child-caring or child-placing agency; or

(6) Where the child became subject to partial or complete guardianship or legal custody of the petitioners as provided in this part.

Child Abuse/Neglect Proceeding – Service/Notification Requirements

Tenn. Code Ann. § 36-1-113(d)(4)

The petition to terminate parental rights, if filed separately from an adoption petition, may be filed as provided in § 36-1-114. If the petition is filed in a court different from the court where there is a pending custody, dependency, neglect or abuse proceeding concerning a person whose parental rights are sought to be terminated in the petition, a notice of the filing of the petition, together with a copy of the petition, shall be sent by the petitioner to the court where the prior proceeding is pending. In addition, the petitioner filing a petition under this section shall comply with the requirements of § 36-1-117(e).

(e) Service of process of the petition shall be made as provided in § 36-1-117.

Tenn. Code Ann. § 36-1-117(e)

Any public or private agency that may have custody or complete or partial guardianship of the child and that has not given consent as provided under this part shall be made a defendant and given notice of the filing of the termination of parental or guardian rights petition filed under this part or under title 37, and shall be permitted to assert its rights to custody or guardianship of the child.

Tenn. Code Ann. § 36-1-117(m)

(1) Service of process for adoption proceedings and termination proceedings in chancery and circuit courts pursuant to this part shall be made pursuant to the Tennessee Rules of Civil Procedure and the statutes governing substituted service.

(2) Service of process for proceedings to terminate parental rights in juvenile court shall be pursuant to the Tennessee Rules of Civil Procedure, unless a finding is made pursuant to Tennessee Rules of Juvenile Procedure Rule 1 that the interests of justice require otherwise, the statutory requirements of title 37, chapter 1, part 1, where not otherwise in conflict with this part, and the statutes governing substituted service.

(3) Any motion for an order for publication in these proceedings shall be accompanied by an affidavit of the petitioners or their legal counsel attesting, in detail, to all efforts to determine the identity and whereabouts of the parties against whom substituted service is sought.

Divorce and Legal Separation – Jurisdiction

Tenn. Code Ann. § 36-4-103

In all divorces sought because of irreconcilable differences between the parties, if the defendant is a nonresident, personal service may be effectuated by service upon the secretary of state pursuant to § 20-2-215.

Tenn. Code Ann. § 36-4-105

A bill or petition for divorce may be filed in the proper name of the complainant, in the chancery or circuit court or other court having divorce jurisdiction, in the county where the parties reside at the time of their separation, or in which the defendant resides, if a resident of the state; but if the defendant is a nonresident of the state or a convict, then in the county where the applicant resides.

Divorce and Legal Separation – Service/Notification Requirements

Tenn. Code Ann. § 20-2-15

(a) Service of process pursuant to § 20-2-214 [pertaining to jurisdiction of persons unavailable to personal service in state] shall be made by lodging, by the plaintiff or the plaintiff's attorney, the original summons and a copy certified by the clerk of the court in which the action is brought, with a fee of twenty dollars (\$20.00), with the secretary of state, who shall promptly send, postage prepaid, the certified copy by registered or certified return receipt mail to the defendant, along with a written notice that service was so made.

(b) In case it appears, either before or after the lodging of process as provided in subsection (a), that the nonresident is dead, then either original or alias process may issue directed to the personal representative of the nonresident deceased and shall be sent as provided in this section to the probate court of the county and state of the residence of the deceased at the time of the deceased's death. No appearance need be made nor shall judgment be taken against the personal representative until the lapse of sixty (60) days from the date of mailing the process to such probate court. The procedure for mailing such process and

proof of service of process shall be as provided in this section and in § 20-2-216 for the service upon living persons.

(c) The fee of twenty dollars (\$20.00) so paid by plaintiff, when fact of payment is endorsed on the original process by the secretary of state, shall be taxed as plaintiff's cost, to abide the judgment.

(d) In case delivery of process so made by registered or certified mail is refused by the addressee of the process, such refusal to be evidenced by appropriate notation of such fact by the postal authorities, such refusal shall be deemed the equivalent of delivery and adequately constitutes service.

Adoption Proceeding – Jurisdiction

Tenn. Code Ann. § 36-1-114

A petition for adoption may be filed in the county:

- (1) Where the petitioners reside;
- (2) Where the child resides;
- (3) Where, at the time the petition is filed, any respondent resides;
- (4) In which is located any licensed child-placing agency or institution operated under the laws of this state having custody or guardianship of the child or to which the child has been surrendered as provided in this part;
- (5) Where the child became subject to the care and control of a public or private child-caring or child-placing agency; or
- (6) Where the child became subject to partial or complete guardianship or legal custody of the petitioners as provided in this part.

Adoption Proceeding – Service/Notification Requirements

Tenn. Code Ann. § 36-1-117(a)

(a) Unless the legal parent or the guardian, or, as provided in subsections (b) and (c), the putative father of the child has surrendered parental or guardianship rights to the child, has executed a parental consent that has been confirmed by the court, has waived the person's rights pursuant to § 36-1-111(w) or (x), or unless the person's rights have been terminated by the order of a court of competent jurisdiction, the legal parents, guardian of the person of the child or of an adult, the biological mother, and the established father or putative father of the child must be made parties to the adoption proceeding or to a separate proceeding seeking the termination of those rights, and their rights to the child must be terminated by a court to authorize the court to order the adoption of the child or adult by other persons.

Tenn. Code Ann. § 36-1-117(m)

- (1) Service of process for adoption proceedings in chancery and circuit courts pursuant to this part shall be made pursuant to the Tennessee Rules of Civil Procedure and the statutes governing substituted service.
- (3) Any motion for an order for publication in these proceedings shall be accompanied by an affidavit of the petitioners or their legal counsel attesting, in detail, to all efforts to determine the identity and whereabouts of the parties against whom substituted service is sought.

Domestic Violence – Jurisdiction

Tenn. Code Ann. § 36-3-602

A petition for protection in connection with alleged domestic abuse shall be:

- (1) in the county in which the respondent resides; or

(2) in the county in which the alleged domestic abuse occurred.

If, however, the respondent is not a resident of Tennessee, the petition may be filed in the county where the petitioner resides.

Domestic Violence– Service/Notification Requirements

Tenn. Code Ann. § 36-3-605

(a) Upon the filing of a petition under this part, the courts may immediately, for good cause shown, issue an ex parte order of protection. An immediate and present danger of abuse to the petitioner shall constitute good cause for purposes of this section.

(b) Within fifteen (15) days of service of such order on the respondent under this part, a hearing shall be held, at which time the court shall either dissolve any ex parte order that has been issued, or shall, if the petitioner has proved the allegation of domestic abuse, stalking or sexual assault by a preponderance of the evidence, extend the order of protection for a definite period of time, not to exceed one (1) year

(c) The court shall cause a copy of the petition and notice of the date set for the hearing on such petition, as well as a copy of any ex parte order of protection, to be served upon the respondent at least five (5) days prior to such hearing. An ex parte order issued pursuant to this part shall be personally served upon the respondent. However, if the respondent is not a resident of Tennessee, the ex parte order shall be served pursuant to §§ 202-215 and 20-2-216. Such notice shall advise the respondent that the respondent may be represented by counsel. In every case, unless the court finds that the action would create a threat of serious harm to the minor, when a petitioner is under eighteen (18) years of age, a copy of the petition, notice of hearing and any ex parte order of protection shall also be served on the parents of the minor child, or in the event that the parents are not living together and jointly caring for the child, upon the primary residential parent, pursuant to the requirements of this section.

Tenn. Code Ann. § 20-2-15

(a) Service of process pursuant to § 20-2-214 [pertaining to jurisdiction of persons unavailable to personal service in state] shall be made by lodging, by the plaintiff or the plaintiff's attorney, the original summons and a copy certified by the clerk of the court in which the action is brought, with a fee of twenty dollars (\$20.00), with the secretary of state, who shall promptly send, postage prepaid, the certified copy by registered or certified return receipt mail to the defendant, along with a written notice that service was so made.

(b) In case it appears, either before or after the lodging of process as provided in subsection (a), that the nonresident is dead, then either original or alias process may issue directed to the personal representative of the nonresident deceased and shall be sent as provided in this section to the probate court of the county and state of the residence of the deceased at the time of the deceased's death. No appearance need be made nor shall judgment be taken against the personal representative until the lapse of sixty (60) days from the date of mailing the process to such probate court. The procedure for mailing such process and proof of service of process shall be as provided in this section and in § 20-2-216 for the service upon living persons.

(c) The fee of twenty dollars (\$20.00) so paid by plaintiff, when fact of payment is endorsed on the original process by the secretary of state, shall be taxed as plaintiff's cost, to abide the judgment.

(d) In case delivery of process so made by registered or certified mail is refused by the addressee of the process, such refusal to be evidenced by appropriate notation of such fact by the postal authorities, such refusal shall be deemed the equivalent of delivery and adequately constitutes service.