

Utah Family Law – Jurisdiction and Service of Process

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

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Custody Determination – Jurisdiction

Initial Custody Determination

Utah Code Ann. § 78B-13-201

- (1) Except as otherwise provided in Section 78B-13-204, 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), 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 Section 78B-13-207 or 78B-13-208; 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 Subsection (1)(a) or (b) 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 Section 78B-13-207 or 78B-13-208; or
 - (d) no state would have jurisdiction under Subsection (1)(a), (b), or (c).
- (2) Subsection (1) 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 neither necessary nor sufficient to make a child custody determination.

Temporary Emergency Jurisdiction

Utah Code Ann. § 78B-13-204

- (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 this chapter, and if no child custody proceeding has been commenced in a court of a state having jurisdiction under Sections 78B-13-201 through 78B-13-203, 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 Sections 78B-13-201 through 78B-13-203. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under Sections 78B-13-201 through 78B-13-203, a child custody determination made under this section becomes a final determination, if:

- (a) it so provides; and
- (b) 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 this chapter, or a child custody proceeding has been commenced in a court of a state having jurisdiction under Sections 78B-13201 through 78B-13-203, any order issued by a court of this state under this section shall specify in the order a period of time which the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under Sections 78B-13-201 through 78B-13-203. 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, or a child custody determination has been made, by a court of a state having jurisdiction under Sections 78B-13-201 through 78B-13-203, shall immediately communicate with the other court. A court of this state that is exercising jurisdiction pursuant to Sections 78B13-201 through 78B-13-203, upon being informed that a child custody proceeding has been commenced, 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. The purpose of the communication is to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

Custody Determination – Service/Notification Requirements

Utah Code Ann. § 78B-13-018

- (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 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.
- (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.
- (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

Utah Code Ann. § 78B-12-103

The district court shall have jurisdiction of all proceedings brought under the Utah Child Support Act.

Utah Code Ann. § 78B-12-104

The court shall retain jurisdiction to modify or vacate the order of support where justice requires.

Utah Code Ann. § 78B-12-107

An obligor present or resident in this state has the duty of support as defined in this chapter regardless of the presence or residence of the obligee.

Utah Code Ann. § 78B-14-201

[Basis for jurisdiction over non-resident]

- (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;
 - (g) the individual asserted parentage of a child in the putative father registry maintained in this state by the state registrar of vital records in the Department of Health pursuant to Title 78B, Chapter 6, Part 1, Utah Adoption Act; or
 - (h) there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.
- (2) The bases of personal jurisdiction set forth in Subsection (1) 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 Section 78B-14-611 are met, or, in the case of a foreign support order, unless the requirements of Section 78B-14-615 are met.

Utah Code Ann. § 78B-14-205

[Continuing jurisdiction to modify child support order]

- (1) 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:
- (a) 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
 - (b) 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.
- (2) 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:
- (a) 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
 - (b) its order is not the controlling order.
- (3) 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 the 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.
- (4) 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.
- (5) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

Utah Code Ann. § 78B-14-206

[Continuing jurisdiction to enforce child support order]

- (1) A tribunal of this state that has issued a child support order consistent with the law of this state may serve as an initiating tribunal to request a tribunal of another state to enforce:

- (a) the order if the order is the controlling order and has not been modified by a tribunal of another state that assumed jurisdiction pursuant to the Uniform Interstate Family Support Act; or
 - (b) a money judgment for arrears of support and interest on the order accrued before a determination that an order of a tribunal of another state is the controlling order.
- (2) A tribunal of this state having continuing jurisdiction over a support order may act as a responding tribunal to enforce the order.

Paternity and Child Support Proceeding – Service/Notification Requirements

Utah Code Ann. § 78B-14-316

- (1) The physical presence of a nonresident party who is an individual in a tribunal of this state is not required for the establishment, enforcement, or modification of a support order or the rendition of a judgment determining parentage of a child.
- (2) An affidavit, a document substantially complying with federally mandated forms, or a document incorporated by reference in any of them, which would not be excluded under the hearsay rule if given in person, is admissible in evidence if given under penalty of perjury by a party or witness residing outside this state.
- (3) A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it and is admissible to show whether payments were made.
- (4) Copies of bills for testing for parentage of a child, and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least 10 days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary, and customary.
- (5) Documentary evidence transmitted from outside this state to a tribunal of this state by telephone, telecopier, or other electronic means that do not provide an original record may not be excluded from evidence on an objection based on the means of transmission.
- (6) In a proceeding under this chapter, a tribunal of this state shall permit a party or witness residing outside this state to be deposed or to testify under penalty of perjury by telephone, audiovisual means, or other electronic means at a designated tribunal or other location. A tribunal of this state shall cooperate with other tribunals in designating an appropriate location for the deposition or testimony.
- (7) If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.
- (8) A privilege against disclosure of communications between spouses does not apply in a proceeding under this chapter.
- (9) The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this chapter.
- (10) A voluntary acknowledgment of paternity, certified as a true copy, is admissible to establish parentage of the child.

Child Abuse/Neglect Proceeding – Jurisdiction

Utah Code Ann. § 78A-6-103

Except as otherwise provided by law, the juvenile court has exclusive original jurisdiction in proceedings concerning a child who is an abused child, neglected child, or dependent child, as those terms are defined in Section 78A-6-105.

Utah Code Ann. § 78A-6-104

The district court or other court has concurrent jurisdiction with the juvenile court in establishing paternity and ordering testing for the purposes of establishing paternity, in accordance with Title 78B, Chapter 15, Utah Uniform Parentage Act, with regard to proceedings initiated under Part 3, Abuse, Neglect, and Dependency Proceedings, or Part 5, Termination of Parental Rights Act.

Child Abuse/Neglect Proceeding – Service/Notification Requirements

Utah Code Ann. § 78A-6-310

- (1) Upon the filing of a petition pursuant to Section 78A-6-304, the petitioner shall cause the petition and notice to be served on:
 - (a) the guardian ad litem;
 - (b) both parents and any guardian of the child; and
 - (c) the child's foster parents.
- (2) The notice shall contain all of the following:
 - (a) the name and address of the person to whom the notice is directed;
 - (b) the date, time, and place of the hearing on the petition;
 - (c) the name of the child on whose behalf the petition has been brought;
 - (d) a statement that the parent or guardian to whom notice is given, and the child, are entitled to have an attorney present at the hearing on the petition, and that if the parent or guardian is indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be provided; and
 - (e) a statement that the parent or legal guardian is liable for the cost of support of the child in the protective custody, temporary custody, and custody of the division, and for legal counsel appointed for the parent or guardian under Subsection (2)(d), according to the parent's or guardian's financial ability.
- (3) Notice and a copy of the petition shall be served on all persons required to receive notice under Subsection (1) as soon as possible after the petition is filed and at least five days prior to the time set for the hearing.

Utah Code Ann. § 78A-6-317(1)

A child who is the subject of a juvenile court hearing, any person entitled to notice pursuant to Section 78A-6-306 or 78A-6-310, preadoptive parents, foster parents, and any relative providing care for the child, are:

- (a) entitled to notice of, and to be present at, each hearing and proceeding held under this part, including administrative reviews; and
- (b) have a right to be heard at each hearing and proceeding described in Subsection (1)(a).

Divorce and Legal Separation – Jurisdiction

Utah Code Ann. § 78B-13-201

- (1) Proceedings in divorce are commenced and conducted as provided by law for proceedings in civil causes, except as provided in this chapter.
- (2) The court may decree a dissolution of the marriage contract between the petitioner and respondent on the grounds specified in Subsection (3) in all cases where the petitioner or respondent has been an actual and bona fide resident of this state and of the county where the action is brought, or if members of the armed forces of the United States who are not legal

residents of this state, where the petitioner has been stationed in this state under military orders, for three months next prior to the commencement of the action.

Divorce and Legal Separation – Service/Notification Requirements

There do not appear to be any specific service or notice rules under Chapter 3 of Title 30 of the Utah Code concerning “Divorce”—other than those set forth above in the general service rules.

Adoption Proceeding – Jurisdiction

Utah Code Ann. § 78B-6-105

- (1) Adoption proceedings shall be commenced by filing a petition with the clerk of the district court either:
 - (a) in the district where the prospective adoptive parent resides;
 - (b) if the prospective adoptive parent is not a resident of this state, in the district where:
 - (i) the adoptee was born;
 - (ii) the adoptee resides on the day on which the petition is filed; or
 - (iii) a parent of the proposed adoptee resides on the day on which the petition is filed; or
 - (c) with the juvenile court as provided in Subsection 78A-6-103(1).
- (2) All orders, decrees, agreements, and notices in the proceedings shall be filed with the clerk of the court where the adoption proceedings were commenced under Subsection (1).
- (3) A petition for adoption:
 - (a) may be filed before the birth of a child;
 - (b) may be filed before or after the adoptee is placed in the home of the petitioner for the purpose of adoption; and
 - (c) shall be filed no later than 30 days after the day on which the adoptee is placed in the home of the petitioners for the purpose of adoption, unless:
 - (i) the time for filing has been extended by the court; or
 - (ii) the adoption is arranged by a child-placing agency in which case the agency may extend the filing time.
- (4) (a) If a person whose consent for the adoption is required under Section 78B-6-120 or 78B-6-121 cannot be found within the state, the fact of the minor's presence within the state shall confer jurisdiction on the court in proceedings under this chapter as to such absent person, provided that due notice has been given in accordance with the Utah Rules of Civil Procedure.
 - (b) The notice may not include the name of:
 - (i) a prospective adoptive parent; or
 - (ii) an unmarried mother without her consent.
- (5) Service of notice as provided in Subsection (6) shall vest the court with jurisdiction over the person served in the same manner and to the same extent as if the person served was served personally within the state.
- (6) In the case of service outside the state, service completed not less than five days before the time set in the notice for appearance of the person served shall be sufficient to confer jurisdiction.
- (7) Computation of periods of time not otherwise set forth in this section shall be made in accordance with the Utah Rules of Civil Procedure.

Utah Code Ann. § 78B-6-112

- (1) A district court has jurisdiction to terminate parental rights in a child if the party who filed the petition is seeking to terminate parental rights in the child for the purpose of facilitating the adoption of the child.

- (2) A petition to terminate parental rights under this section may be:
 - (a) joined with a proceeding on an adoption petition; or
 - (b) filed as a separate proceeding before or after a petition to adopt the child is filed.
- (3) A court may enter a final order terminating parental rights before a final decree of adoption is entered.
- (4)(a) Nothing in this section limits the jurisdiction of a juvenile court relating to proceedings to terminate parental rights as described in Section 78A-6-103.
- (b) This section does not grant jurisdiction to a district court to terminate parental rights in a child if the child is under the jurisdiction of the juvenile court in a pending abuse, neglect, dependency, or termination of parental rights proceeding.
- (5) The district court may terminate an individual's parental rights in a child if:
 - (a) the individual executes a voluntary consent to adoption, or relinquishment for adoption, of the child, in accordance with:
 - (i) the requirements of this chapter; or
 - (ii) the laws of another state or country, if the consent is valid and irrevocable;
 - (b) the individual is an unmarried biological father who is not entitled to consent to adoption, or relinquishment for adoption, under Section 78B-6-120 or 78B-6-121;
 - (c) the individual:
 - (i) received notice of the adoption proceeding relating to the child under Section 78B-6-110; and
 - (ii) failed to file a motion for relief, under Subsection 78B-6-110(6), within 30 days after the day on which the individual was served with notice of the adoption proceeding;
 - (d) the court finds, under Section 78B-15-607, that the individual is not a parent of the child; or
 - (e) the individual's parental rights are terminated on grounds described in Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act, if terminating the individual's parental rights is in the best interests of the child.
- (6) The court shall appoint an indigent defense service provider, under Title 78B, Chapter 22, Indigent Defense Act, to represent a party who faces any action initiated by a private party under Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act or whose parental rights are subject to termination under this section.
- (7) If a county incurs expenses in providing indigent defense services to an indigent individual facing any action initiated by a private party under Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act or termination of parental rights under this section, the county may apply for reimbursement from the Utah Indigent Defense Commission under Section 78B-22-406.
- (8) A petition filed under this section is subject to the procedural requirements of this chapter.

Adoption Proceeding – Service/Notification Requirements

Utah Code Ann. § 78B-6-110

- (1) (a) An unmarried biological father, by virtue of the fact that he has engaged in a sexual relationship with a woman:
 - (i) is considered to be on notice that a pregnancy and an adoption proceeding regarding the child may occur; and
 - (ii) has a duty to protect his own rights and interests.
- (b) An unmarried biological father is entitled to actual notice of a birth or an adoption proceeding with regard to his child only as provided in this section or Section 78B-6-110.5.
- (2) Notice of an adoption proceeding shall be served on each of the following persons:
 - (a) any person or agency whose consent or relinquishment is required under Section 78B-6-120 or 78B6121, unless that right has been terminated by:

- (i) waiver;
- (ii) relinquishment;
- (iii) actual or implied consent; or
- (iv) judicial action;
- (b) any person who has initiated a paternity proceeding and filed notice of that action with the state registrar of vital statistics within the Department of Health, in accordance with Subsection (3);
- (c) any legally appointed custodian or guardian of the adoptee;
- (d) the petitioner's spouse, if any, only if the petitioner's spouse has not joined in the petition;
- (e) the adoptee's spouse, if any;
- (f) any person who, prior to the time the mother executes her consent for adoption or relinquishes the child for adoption, is recorded on the birth certificate as the child's father, with the knowledge and consent of the mother;
- (g) a person who is:
 - (i) openly living in the same household with the child at the time the consent is executed or relinquishment made; and
 - (ii) holding himself out to be the child's father; and
- (h) any person who is married to the child's mother at the time she executes her consent to the adoption or relinquishes the child for adoption, unless the court finds that the mother's spouse is not the child's father under Section 78B-15-607.
- (3) (a) In order to preserve any right to notice, an unmarried biological father shall, consistent with Subsection (3)(d):
 - (i) initiate proceedings in a district court of Utah to establish paternity under Title 78B, Chapter 15, Utah Uniform Parentage Act; and
 - (ii) file a notice of commencement of the proceedings described in Subsection (3)(a)(i) with the office of vital statistics within the Department of Health.
- (b) If the unmarried, biological father does not know the county in which the birth mother resides, he may initiate his action in any county, subject to a change in trial pursuant to Section 78B-3-307.
- (c) The Department of Health shall provide forms for the purpose of filing the notice described in Subsection (3)(a)(ii), and make those forms available in the office of the county health department in each county.
- (d) When the state registrar of vital statistics receives a completed form, the registrar shall:
 - (i) record the date and time the form was received; and
 - (ii) immediately enter the information provided by the unmarried biological father in the confidential registry established by Subsection 78B-6-121(3)(c).
- (e) The action and notice described in Subsection (3)(a):
 - (i) may be filed before or after the child's birth; and
 - (ii) shall be filed prior to the mother's:
 - (A) execution of consent to adoption of the child; or
 - (B) relinquishment of the child for adoption.
- (4) Notice provided in accordance with this section need not disclose the name of the mother of the child who is the subject of an adoption proceeding.
- (5) The notice required by this section:
 - (a) may be served at any time after the petition for adoption is filed, but may not be served on a birth mother before she has given birth to the child who is the subject of the petition for adoption;
 - (b) shall be served at least 30 days prior to the final dispositional hearing;
 - (c) shall specifically state that the person served shall fulfill the requirements of Subsection (6)(a) within 30 days after the day on which the person receives service if the person intends to intervene in or contest the adoption;

- (d) shall state the consequences, described in Subsection (6)(b), for failure of a person to file a motion for relief within 30 days after the day on which the person is served with notice of an adoption proceeding;
 - (e) is not required to include, nor be accompanied by, a summons or a copy of the petition for adoption;
 - (f) shall state where the person may obtain a copy of the petition for adoption; and
 - (g) shall indicate the right to the appointment of counsel for a party whom the court determines is indigent and at risk of losing the party's parental rights.
- (6) (a) A person who has been served with notice of an adoption proceeding and who wishes to contest the adoption shall file a motion to intervene in the adoption proceeding:
- (i) within 30 days after the day on which the person was served with notice of the adoption proceeding;
 - (ii) setting forth specific relief sought; and
 - (iii) accompanied by a memorandum specifying the factual and legal grounds upon which the motion is based.
- (b) A person who fails to fully and strictly comply with all of the requirements described in Subsection (6)(a) within 30 days after the day on which the person was served with notice of the adoption proceeding:
- (i) waives any right to further notice in connection with the adoption;
 - (ii) forfeits all rights in relation to the adoptee; and
 - (iii) is barred from thereafter bringing or maintaining any action to assert any interest in the adoptee.
- (7) Service of notice under this section shall be made as follows:
- (a) (i) Subject to Subsection (5)(e), service on a person whose consent is necessary under Section 78B-6120 or 78B-6-121 shall be in accordance with the provisions of the Utah Rules of Civil Procedure.
 - (ii) If service of a person described in Subsection (7)(a)(i) is by publication, the court shall designate the content of the notice regarding the identity of the parties.
 - (iii) The notice described in this Subsection (7)(a) may not include the name of a person seeking to adopt the adoptee.
 - (b) (i) Except as provided in Subsection (7)(b)(ii) to any other person for whom notice is required under this section, service by certified mail, return receipt requested, is sufficient.
 - (ii) If the service described in Subsection (7)(b)(i) cannot be completed after two attempts, the court may issue an order providing for service by publication, posting, or by any other manner of service.
- (c) Notice to a person who has initiated a paternity proceeding and filed notice of that action with the state registrar of vital statistics in the Department of Health in accordance with the requirements of Subsection (3), shall be served by certified mail, return receipt requested, at the last address filed with the registrar.
- (8) The notice required by this section may be waived in writing by the person entitled to receive notice.
- (9) Proof of service of notice on all persons for whom notice is required by this section shall be filed with the court before the final dispositional hearing on the adoption.
- (10) Notwithstanding any other provision of law, neither the notice of an adoption proceeding nor any process in that proceeding is required to contain the name of the person or persons seeking to adopt the adoptee.
- (11) Except as to those persons whose consent to an adoption is required under Section 78B-6-120 or 78B-6121, the sole purpose of notice under this section is to enable the person served to:
- (a) intervene in the adoption; and
 - (b) present evidence to the court relevant to the best interest of the child.

Domestic Violence – Jurisdiction

Utah Code Ann. § 78B-7-104

[Cohabitant Abuse Act]

- (1) The district court has jurisdiction of any action brought under this chapter.
- (2) An action brought pursuant to this chapter shall be filed in the county where either party resides or in which the action complained of took place.

Domestic Violence– Service/Notification Requirements

Utah Code Ann. § 78B-7-106

- (1) If it appears from a petition for an order for protection or a petition to modify an order for protection that domestic violence or abuse has occurred, that there is a substantial likelihood domestic violence or abuse will occur, or that a modification of an order for protection is required, a court may:
 - (a) without notice, immediately issue an order for protection ex parte or modify an order for protection ex parte as it considers necessary to protect the petitioner and all parties named to be protected in the petition; or
 - (b) upon notice, issue an order for protection or modify an order after a hearing, regardless of whether the respondent appears.

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