

## **I. INTRODUCTION**

- A. The UCCJEA enables courts of states and even foreign countries to work together to decide which court should determine a child’s custody when, as often happens, child custody actions are filed in two different states or countries. The UCCJEA establishes rules for determining which states or countries have jurisdiction to decide (and enforce) custody matters. The UCCJEA also establishes procedures by which courts may communicate to make sure that each knows what the other is doing and to enable the courts to make decisions and orders that are consistent with each other. The predecessor to the UCCJEA was the UCCJA, or Uniform Child Custody Jurisdiction Act, which was very similar to its successor the UCCJEA.
  
- B. The following is a simplified overview of how the UCCJEA works, viewing it from the perspective of an Oregon court. For simplicity’s sake, this overview uses terms such as “parental figure” where the statute may use more precise terms such as “parent” or “person acting as a parent.” This overview is intended to help the reader navigate the UCCJEA, but the reader must review the statute itself before deciding his or her case. A few case citations are included to assist with reasoning on certain topics. As always, it is a good idea to read the full cases involved as the summaries provided are very brief, other statutes are usually involved, and, as always in the family law arena, cases are very fact driven.

## **II. JURISDICTION TO MAKE AND MODIFY CHILD CUSTODY DETERMINATIONS**

- A. Key concepts include home state, child custody determination, child custody proceeding, initial determination and modification.
  - 1. A home state is where the child has lived with a parental figure all its life or the six months preceding the filing of the action, whichever is greater.

See *McCulley v. Bone* 160 Or App 24, 979 P 2d 779 (1999). (Holding that adoption proceedings are custody proceedings under UCCJA (forerunner to UCCJEA), finding that Oregon had jurisdiction under UCCJA to consider both Oregon adoption of Arkansas-born child and mother's withdrawal of consent.)

2. A child custody proceeding includes what you would expect (actions for dissolution, paternity) and a few things you would not expect (termination of parental rights, adoption, and domestic violence). It does not include enforcement of the Hague Convention, enforcement of a child custody determination or juvenile delinquency or emancipation.
3. A child custody determination includes judgments, decrees and orders providing for legal and physical custody and visitation and parenting time. It does not include support orders.

B. An initial determination is the first custody determination and a modification is a custody determination that is not the initial determination.

ORS 109.741

### III. INITIAL CUSTODY DETERMINATION

A. An Oregon court has jurisdiction to make an initial custody determination if:

1. Oregon is the home state (for example, child and parent have lived here six months before filing), or
2. Oregon was the home state within six months before commencement of the proceedings, and the child is gone but a parent remains in Oregon, (for example, child and parent lived here from January through July, parent still lives here, case filed in September).

B. No other state has jurisdiction under A (1) or (2) or another state is the home state but has declined to exercise jurisdiction (possible reasons are explained below) and (1) the child and at least a parental figure have significant ties to Oregon and substantial evidence about the child's care, protection and the like are available in Oregon for example, 12 year old child lived here with both parents from birth through age 10, mother and grandparents still live here, abundance of school and medical records here).

or

See *Marriage of Boss* 176 Or App 410, 31 P 3d 1116 (2001). (The Court of Appeals reversed a dismissal of a separation case in which the father filed and mother appeared in Oregon with proper jurisdiction; the parties had a failed reconciliation attempt; and mother had moved to New Hampshire with the children in the interim.)

- C. All states having jurisdiction under A or B decline to exercise jurisdiction and say that Oregon should have it. (For example, Indiana is home state but only because parent secreted child from other parent for last year, having left Oregon in middle of night during what was supposed to be weekend parenting time. Oregon has abundance of evidence regarding child, and Indiana has little - see inconvenient forum and unjustifiable conduct discussions below - and Indiana says Oregon should decide case).

or

- D. No other state would have jurisdiction under A, B, or C.

ORS 109.744

#### **IV. CONTINUING JURISDICTION**

- A. If Oregon has made a custody determination consistent within UCCJEA jurisdictional requirements it retains exclusive, continuing jurisdiction until an Oregon court determines that neither the child nor the child and a parental figure have a significant connection with Oregon and that substantial evidence about the child and its care is no longer available in Oregon. (For example, child and mother moved to Indiana five years ago, only father lives in Oregon, no child or mother contact with Oregon in last five years, child never attended school in Oregon).

or

ORS 109.744

- B. Any state's court determines that the child and parental figures no longer reside in Oregon. (For example, Indiana court determines that everyone has lived in Indiana for past five years).

See *Marriage of Snow* 156 Or App 161, 965 P 2d 459 (1998). (Oregon does not have jurisdiction to modify child custody provision of Oregon separation where children and both parents moved to Montana more than six months before motion to modify and mother has filed for dissolution in Montana.) See, also, *Marriage of Medill* 179 Or App 630, 40 P3d 1087 (2002). (In this case, the Oregon Court retained contempt enforcement authority, but lacked jurisdiction to modify the initial child custody determination, where the children and Mother had always resided in Germany though the mother had acquiesced in an Oregon dissolution, and the children had only visited in Oregon.)

## V. MODIFICATION

- A. If Oregon loses continuing jurisdiction (and remember, that requires a court determination of facts, not just the existence of facts) Oregon may modify its determination only if, when the motion to modify is filed, Oregon then meets the jurisdictional requirements to modify a child custody determination.
- B. Oregon meets these requirements only if Oregon has jurisdiction to make an initial custody determination under either of the first two jurisdictional criteria mentioned in *Marriage of Snow* and *Marriage of Medill* (for example, the child and mother return to Oregon and live here at least six months before mother files for modification) and:
  - 1. The other state determines that it no longer has continuing exclusive jurisdiction or determines that Oregon would be a more convenient forum ; or
  - 2. The Oregon court or the other state's court determine that the child and the parental figures no longer reside in the other state (for example, the Indiana court determines that mother and child moved to Oregon a year ago and father moved to Canada 18 months ago).

## VI. EMERGENCY JURISDICTION

- A. ORS 109.751 provides for temporary emergency jurisdiction. The statute will not be summarized here. Read it and beware that, under some circumstances, a temporary jurisdiction order can become a final determination.
- B. The statute requires immediate communication between states if another state is involved.

## VII. COMMUNICATION

- A. When it becomes apparent that more than one state may have jurisdiction, the courts of the states must communicate. This is usually the most satisfying aspect of addressing a case under the UCCJEA. While the parents may fight bitterly, the judges invariably cooperate to provide a resolution that minimizes trauma to the child while promoting a quick and fair disposition of the issues.
- B. If the courts discuss substantive issues, this must be recorded and made available to the parties. Audio taped telephone conferences work and allow for give and take between the judges as they discuss the case. Email also works. Email messages are easier to record and make available to the parties. However, there is less give and take and the judges' spelling errors cannot hide behind an audio tape or bad handwriting. The courts may allow parties to participate in this communication but are not required to do so. If the parties do not participate in the communication, they must be given the opportunity to present facts and legal arguments before the courts decide jurisdiction.
- C. Typically, both judges will have examined their files and will have a grasp of at least the claimed chronology, if not the real chronology. In many cases, this will enable the judges to predict which court will eventually determine the case. Then one of the courts (although nothing prohibits both courts from having a simultaneous hearing via telephone hookup) will conduct a hearing to determine if that court should accept or decline to make the custody determination. Because being the first to file is important (see simultaneous proceeding discussion, below) often the court in which the first action is filed will conduct the first hearing to determine whether it wishes to decline jurisdiction on inconvenient forum or bad conduct grounds. Consequently, the decision often follows a contested hearing in which inconvenient forum and bad conduct issues can be explored.
  - 1. ORS 109.734 allows for one court to take testimony for the other - for example, the Oregon court is conducting a hearing but wants testimony from a witness in Indiana.
  - 2. ORS 109.737 provides for further cooperation and file sharing between courts.

ORS 109.767 requires an abundance of information to be provided with the first pleading.

## VIII. DECIDING WHICH STATE WILL DETERMINE CUSTODY

A. ORS 109.757 controls simultaneous proceedings - that is, where actions have been filed in more than one state. Even if Oregon has jurisdiction, Oregon may not exercise its jurisdiction if, when the Oregon proceeding is commenced, another proceeding has already been commenced in another state having jurisdiction "substantially" in conformity with the UCCJEA. So, being first in time is important. However, if the other state declines to exercise jurisdiction, Oregon may proceed to make a determination. So, being first in time is not determinative.

B. The other state may decline because Oregon is a more convenient forum ( for example, the family with a 12 year old child has lived in Indiana for past 9 months but mother returned to Oregon at recent separation from father and all previous school records, plus extended families on both sides are in Oregon) or because a person seeking to invoke jurisdiction has engaged in unjustifiable conduct (for example, father secreted the child out of Oregon a year ago and has kept him hidden in Indiana for the past year).

1. These statutes have laundry lists of factors the court must take into account in determining convenience of forum and conduct. The most important point for the Oregon judge and lawyer to bear in mind is that the technical application of time and residence rules will not necessarily determine where a case will be heard. Not rewarding a parent's bad conduct (thereby discouraging one parent secreting a child from the other) and allowing the court most able to make an efficient, fair custody determination to actually do so will often decide which state exercises jurisdiction.

ORS 109.761 - Inconvenient forum

ORS 109.764 - Unjustifiable conduct

ORS 109.764(3).

2. The inconvenient forum statute provides that “the court shall allow the parties to submit information and shall consider all relevant factors” in making the determination of convenience of forum. This does not appear to require a contested hearing. The unjustifiable conduct statute does not address how the court should obtain information in order to make its decision. Contested hearings would certainly satisfy both statutes. The court may require a party found to have engaged in unjustifiable conduct to pay fees and expenses.

ORS 109.757

- C. The state not exercising jurisdiction will stay or terminate its proceedings.

ORS 109.757(3)

1. Frequently, UCCJEA cases arise where a parent in Oregon seeks to modify another state’s child custody determination and a parent in the other state seeks to enforce that state’s child custody determination in that state. When an Oregon court faces a proceeding to modify another court’s child custody determination, the Oregon court must determine if there is an enforcement action pending in the other state. If so, the Oregon court may stay the Oregon proceeding pending action by the other state, enjoin the parties from proceeding with the enforcement action or proceed with the modification in Oregon under whatever conditions the Oregon court finds appropriate.

## **IX. ENFORCEMENT**

ORS 109.774 to 109.827

- A. The provisions regarding enforcement of child custody determinations apply not only to the states but also to countries under the Hague Convention on the Civil Aspects of International Child Abduction. An order under the latter may be enforced just like a child custody determination from Indiana.

ORS 109.784

1. In an enforcement proceeding, even if Oregon does not have jurisdiction to modify an Indiana child custody determination, Oregon may issue temporary orders enforcing the Indiana determination, even non-specific parenting time provisions.

ORS 109.791

2. If an Oregon court enforces an Indiana determination, the Oregon court may use remedies provided by Oregon law.

3. The Indiana child custody determination can be registered in Oregon, with or without an accompanying motion to enforce.
  - a. The reader should consult the statute for the required notices for registration and for contesting the registration.
  - b. Notably, there is a 21 day provision regarding contesting the registration. The statute provides for a hearing.

B. ORS 109.794 dovetails with ORS 109.757(3). It provides for communication between courts where one court has an enforcement action pending and the other has a modification action pending. The enforcement proceeding continues unless the enforcing court stays or dismisses the enforcement proceedings.

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D. Absent an emergency custody order under ORS 109.751, a petitioner in an enforcement proceeding is not granted immediate physical custody until the respondent has had an opportunity to show that

1. The child custody determination has not been properly registered;
2. Was granted without substantial jurisdiction;
3. Has been stayed or modified; or
4. Was obtained without proper notice.

E. The same statute provides that spousal privilege and immunity may not be asserted in an action under ORS 109.741 to 109.771.

- F. Under ORS 109.807, a petitioner may obtain a warrant for immediate physical custody upon a showing (verified application and testimony) of probable cause that the child is imminently likely to suffer serious physical harm or be removed from the state. (Compare to ORS 107.097 and 107.139, Oregon's emergency ex-parte custody statutes, which do not mention imminent removal from Oregon as a ground for relief.)
- G. ORS 109.811 authorizes a court to award attorney fees, costs and expenses.