

WHOSE CASE IS THIS, ANYWAY?

How to Tackle Jurisdiction and Placement Issues in Interstate Child Welfare Cases

September 21-23, 2010

A Navigation Guide to the MCCJA, PKPA, ICPC and ICWA

Massachusetts Court Improvement Program
Supreme Judicial Court
John Adams Courthouse
Boston, MA 02108

MASSACHUSETTS CHILD CUSTODY JURISDICTION ACT (“MCCJA”)

M.G.L. c. 209B – All statutory citation references are sections of this chapter

Why: One court at a time – No Dueling Jurisdiction

No Race to Judgment

No Race to the Courthouse

Where: Massachusetts only (with Vermont, one of two jurisdictions where
The Uniform Child Custody Jurisdiction Enforcement Act, “UCCJEA,” is still not enacted)

What: Jurisdiction to decide care and custody of a child with multi-state connections

10 Easy Questions to Navigate the MCCJA

References Box

M.G.L. c. 209B

Umina v. Malbica, 27 Mass. App. Ct. 351 (1989)

Care and Protection of Vivian, 420 Mass. 879 (1995)

Guardianship of Zeke, 422 Mass. 438 (1996)

Adoption of Yvette, 71 Mass. App. Ct. 327 (2008)

Adoption of Felicity, 08-P-692, April 16, 2009

- 1. **Is this a custody proceeding?** §1
 - Care and Protection
 - CRA (Child Requiring Assistance)
 - Guardianship
 - Domestic Relations
- 2. **Where has child lived (lawfully) preceding 6 months?**
 - If here, you probably have jurisdiction §2(a)(1)
 - “Home state” is where child lived for the last six months preceding filing. §1
 - Home state has jurisdiction priority in most cases.
 - Massachusetts has jurisdiction if:
 - a) Massachusetts is child’s “home state;” or
 - b) Massachusetts had been child’s home state within six months of the filing; and
 - c) child was wrongfully removed or retained; and
 - d) “parent” lives in Massachusetts. §2(a)(1)
 - Includes guardian or other person acting as a parent. §2(a)(1)
- 3. **Is it in best interest for this state to assume jurisdiction?** §2(a)(2)
 - If so, you might have jurisdiction
 - a) Only if no other state claims jurisdiction; and
 - b) Only if this state has significant contacts and evidence.
- 4. **Is there a “void”?** §2(a)(4)
 - If so, you have jurisdiction, provided:
 - a) No other state has/wants jurisdiction; and
 - b) Best interest for this state to assume jurisdiction.
- 5. **Are there exigent circumstances?** §2(a)(3)
 - If so, you might have jurisdiction, provided:
 - a) Child was abandoned here; or
 - b) Child is here and it is necessary to protect the child because child has been subjected to or threatened with mistreatment or abuse.
 - If another state claims home state jurisdiction, this state has emergency jurisdiction only. §2(a)(3)(3) (Emergency jurisdiction is temporary.)
 - **NOTE:** PKPA’s definition of “emergency” controls and its standard for abuse is more stringent than MCCJA (M.G.L. 209B). See PKPA navigation card.

- 6. **Is a custody proceeding pending elsewhere?** §2(d)
 - If yes, no jurisdiction in Massachusetts,
 - a) Except, temporary jurisdiction to protect child from mistreatment/abuse, or
 - b) Other court stays or dismisses.
- 7. **Is there an existing order?** §2(e)
 - If so, that Court has priority jurisdiction to modify.
 - This state must consider who remains in issuing state and whether that state wants to retain jurisdiction.
 - Register a certified copy of order with clerk of court. §12
- 8. **Who gets notice?** §5(a)
 - Serve everyone: parents; past guardians; whoever has acted as parent
 - Except in emergency
 - Appearances and travel expenses may be ordered.
- 9. **Is this state an inconvenient forum?** §7
 - If yes, state may defer.
 - Was another state a recent home state?
 - Where is the evidence? Where are the witnesses?
 - What agreements have the parties made?
 - Does competing state have closer connection?
 - Two-step analysis required, See *Umina*, 27 MAC at 355
 - a) Does court have jurisdiction?
 - b) Should court exercise jurisdiction?
- 10. **What procedures may Court employ?**
 - Courts may talk to each other §7(c)
 - Hearings in other states §10 (Certified transcripts admissible)
 - Orders to appear here in Massachusetts §8
 - Orders to appear outside Massachusetts §§9, 10
 - Out-of-state investigations §10
 - In-state investigations for out-of state proceedings §11
 - In-state evidentiary hearings for out-of-state cases §11(b)
 - Return of child to another state, unless return is unsafe §11(b)