

Tab 16:

**Unwinding the Uniform Child Custody and Enforcement Act**

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**UNWINDING THE UNIFORM CHILD CUSTODY  
JURISDICTION AND ENFORCEMENT ACT (UCCJEA)**

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**What We Hope You Will  
Understand**

- How Uniform Child Custody Act (UCCJA) and Federal Parental Kidnapping Prevention Act (PKPA) led to UCCJEA;
- How to determine what state has initial child custody jurisdiction and when it terminates;
- When to apply the provision for inconvenient forum;
- How to determine what state can modify an initial custody order;
- When to apply for emergency jurisdiction, particularly in domestic violence cases;
- Registration and Enforcement of another State's Orders.

**History of UCCJEA  
[UCCJA]**

- What is a Uniform Act?
- Uniform Child Custody Jurisdiction Act (UCCJA) proposed and made law in 1968, and adopted by every State in U.S. by 1981.
- What was its purpose?
  - Prohibit parental interstate kidnapping and forum shopping.

**History of UCCJEA  
[UCCJA]**

- What were its principles?
  - Establish jurisdiction over child custody case in one state;
  - Protect custody order from modification in another state so long as that state has jurisdiction.

**History of UCCJEA  
[PKPA]**

- In 1980, Congress enacted the Parental Kidnapping Prevention Act (PKPA) 28 U.S.C. § 1738A to address the contradictory applications of UCCJA in different states; it preempts the UCCJA.
- PKPA, not really kidnapping act, but determines which custody orders are entitled to full faith and credit by the court of another state.

**History of UCCJEA  
[UCCJA and PKPA]**

“The relationship between the two statutes became ‘technical enough to delight a medieval property lawyer.’” (citation omitted) UCCJEA (1997), National Conference of Commissioners on Uniform State Law (NCCUSL), p. 5.

(<http://www.law.upenn.edu/bll/archives/ulc/uccjea/final1997act.htm>)

## History of UCCJEA [UCCJEA]

- UCCJEA addresses problems with UCCJA and PKPA:
  - Clarifies priority of home state;
  - Clarifies continuing exclusive jurisdiction;
  - Clarifies application of emergency jurisdiction;
  - Adds and clarifies enforcement provisions;
  - Clarifies types of cases covered;
  - Strips references to "best interests."
  - Clarifies other inconsistencies and omissions.

## What is child custody jurisdiction?

Some basic concepts:

**It is subject matter jurisdiction.** "Subject matter jurisdiction [concerning UCCJEA] either exists or it does not exist at the time the action is commenced and cannot be conferred by stipulation, consent, waiver or estoppel."

*IRMO Sareen (2008) 153 Cal.App.4th 371,*

**It is not personal jurisdiction.** A custody case can proceed as long as responding party has been provided notice and an opportunity to respond, regardless of obtaining personal jurisdiction. F.C. §§ 3408, 3409.

## Proceedings

- **Proceedings covered:** "Child custody proceeding" means proceeding in which legal custody, physical custody, or visitation is at issue. Proceedings include: dissolution of marriage, legal separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, DVPA. F.C. §3402(d)  
*NOTE: DVPA may be problematic.*
- **Commencement of Proceedings:** the filing of the first pleading in a proceeding. F.C. 3402(e)

## NOTICE REQUIRED TO EXERCISE JURISDICTION (F.C. 3408)

- Notice 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 service is made.
- Notice must be in a manner reasonably calculated to give actual notice, i.e. notice and opportunity to respond (publication OK)
- No notice required for person who submits to jurisdiction.

## UCCJEA Declaration Form: Family Law and DVPA (F.C. 3429)

- It may not seem important, but it may be. Think carefully about completing it:
  - Make sure it reflects all the time child was with your client;
  - Don't include any other third parties who could detract from you client's parental role;
  - This may be an important document, and filling it out sloppily may come back to bite you.

*Note: If allegations of DV or child abuse, address of victim is confidential.*

## Initial Jurisdiction

F.C. 3421

1. Home state (priority);
2. Significant connection (*NB: Only in cases in which a child has no home State or the home State declines to exercise jurisdiction may another court invoke the significant connection test.*);
3. More appropriate forum;
4. Vacuum jurisdiction.

How do they fit together? UCCJEA provides pecking order.  
F.C. 3421(a)

### Initial Jurisdiction [Home State Priority]

- **HOME STATE HAS PRIORITY:**
    - Home State means the State in which a child lived with a parent or a person acting as a parent for at least 6 consecutive months immediately before the commencement of a child custody proceeding;
    - child less than 6 months old: the State in which the child lived from birth with parent or person acting as a parent;
    - A temporary absence of parent or person acting as parent counts as part of the period.
- F.C. §§ 3402(g), 3421(1)

### Initial Jurisdiction [Person Acting as a Parent]

- "Person Acting as a Parent" is new to UCCJEA and is defined as:
    - person, other than parent, who has physical custody of the child or has had physical custody for a period of six consecutive months, including temporary absence, within one year immediately before the commencement of a child custody proceeding, and has been awarded legal custody by a court or claims a right to legal custody under the law of this state.
- F.C. 3402(m)

### Initial Jurisdiction (F.C. §3421) [Bases for Jurisdiction: home state]

(Except as provided for as Emergency Jurisdiction (F.C. 3424))

CA court has initial jurisdiction:

1. CA is the home state of the child when proceeding is filed or was home of child within 6 months of proceeding being filed and one parent remains in state even after child has been removed;

(Continued)

### Initial Jurisdiction [Bases for Jurisdiction: Significant Connection]

2. No home state or another state is home state and has declined to exercise home state jurisdiction on the grounds that CA is a more appropriate forum because:
  - a. Home state is an inconvenient forum (F.C. 3427), or
  - b. Petitioner's unjustifiable conduct (F.C. 3428); and both of the following are true:
    1. The child and the child's parents, or the child and at least one parent or person acting as a parent, have a **significant connection** with this state other than mere physical presence (F.C. 3421(A));
    2. **Substantial evidence** is available in this state concerning the child's care, protection, training, and personal relationship (F.C. 3421(B)).

(continued)

### Initial Jurisdiction [Bases for Jurisdiction: More Appropriate Forum]

3. All court's having jurisdiction based on home state or significant connection have declined to exercise it because CA is the more appropriate forum to determine custody based on inconvenient forum or unjustifiable conduct.

(continued)

### Initial Jurisdiction [Bases for Jurisdiction: Vacuum Jurisdiction]

4. No other court would have jurisdiction under any other bases; home state trumps all others; physical presence or personal jurisdiction over a party or child is not necessary or sufficient to make a child custody determination.

### **Inconvenient Forum: A Basis to Decline Jurisdiction (F.C. §3427)**

The issue of inconvenient forum may be raised on a motion of a party, the court's own motion, or request of another court. A court that has jurisdiction may decline to exercise it at any time upon determining that the court of another state is more appropriate forum. F.C. §3427(a)

*Practice Pointer: Motions for inconvenient forum must be brought before the state that has jurisdiction. The CA court may ask (or may not), but I wouldn't count on the CA judge making your argument. This is a hard argument unless your client returns to the home state, and then it is still difficult.*

(continued)

### **Inconvenient Forum: A Basis to Decline Jurisdiction F.C. §3427**

Factors the Court may consider:

1. Whether DV has occurred and is likely to continue in the future and which state could best protect the parties and the child.

*Stoneman v. Drollinger, 2003 MT 25 [Montana Supreme Court reversed lower court's refusal to decline jurisdiction for relocated victim of domestic violence. "A finding of domestic violence authorizes a court to yield jurisdiction to another state if the victim could be better protected"...and if the other factors don't militate against transfer.]*

2. How long has the child resided in another state;

(continued)

### **Inconvenient Forum: A Basis to Decline Jurisdiction (F.C. §3427)**

Factors the Court may consider:

3. What is the distance between the states;
4. What are the parties financial circumstances;
5. Have the parties reached an agreement as to jurisdiction?
6. What is the nature and location of the evidence sought?
7. Which court could decide the matter most expeditiously?
8. How familiar is each court with the facts and circumstances of pending custody litigation?

### **Unjustifiable Conduct: A Basis to Decline Jurisdiction (F.C. §3428)**

If a court has jurisdiction because petitioner has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless one of the following is true:

1. The parents have agreed to jurisdiction;
2. A home state court declines jurisdiction based on Inconvenient Forum.
3. No other state has jurisdiction.

F.C. §3428(a)(1-3)

*Practice Pointer: We could not find a case of a court not taking jurisdiction on this basis squarely on point. However, there are 2 CA cases where courts were reversed for declining to exercise home state jurisdiction. A long shot. (continued)*

### **Unjustifiable Conduct: A Basis to Decline Jurisdiction (F.C. §3428)**

(continued)

**NOTE:** The court shall not consider unjustifiable conduct if evidence that the taking or retention of child was a result of DV as defined by 6211. F.C. §3428(d)

*Haywood v. Superior Court (2000) 77 Cal.App4th 949, 956-957 [actions sufficient to constitute "unjustifiable conduct" are limited to "wrongful child taking" in violation of an existing court order.]*

### **Initial Jurisdiction [Continuing Exclusive Jurisdiction (F.C. §3422)]**

When does exclusive continuing jurisdiction end?

Exclusive Continuing Jurisdiction continues until:

1. Court determines that there is no longer significant connection with this state and that substantial evidence is no longer available in this state re: child's care, protection, training and personal relationships; (continued)

**Initial Jurisdiction  
[Continuing Exclusive Jurisdiction  
(F.C. §3422)]**

(Continued)

When Does exclusive continuing Jurisdiction End?

2. Court determines parents and child no longer reside in State; A court may then modify the order only if it has jurisdiction under F.C. §3421 (See also F.C. §3423 re jurisdiction to modify orders of another state)

**Simultaneous Proceedings in  
Other States (F.C. §3426)**

(Except as Provided in F.C. § 3424)

- If a custody proceeding has been commenced in another state having jurisdiction substantially in conformity with the UCCJEA, (unless other court's proceedings have been terminated or stayed or other court has declined jurisdiction), **this court shall stay its proceeding and communicate with the court of the other state.** F.C. §3426(a)

(continued)

**Simultaneous Proceedings in  
Other States (F.C. §3426)**

Unless the other court of the state having jurisdiction does not decline jurisdiction because this state is the more appropriate forum, this state must dismiss the proceeding. F.C. §3426(b)

**Communication with Other  
Court: How Does It Work?  
(F.C. §3410)**

- A court of this state may communicate with a court in another state concerning a child custody proceeding;
- The court may allow parties to participate; if the parties do not participate in the communication, the parties must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made; (Continued)

**Communication with Other  
Court: How Does It Work?  
(F.C. §3410)**

(continued)

- The court does not have to keep a record on schedules, calendars, court records and such things, but a record must be made of other communications and parties must be given access;
- Record means tangible medium, electronically stored, or other retrievable medium in perceivable form.

**HYP0 #1  
Initial Jurisdiction**

Mother has 4 children, 2 by the same father. The children are 4 and 6 years of age. Father used to live in California, but moved to New Mexico 2 years ago. Recently, Mother became ill and fell on hard times; She is very low income. She and father decide that the children will live with father in NM for one year, and return to CA to start school in August of 2008. Mother and father go to a notary who writes up an agreement they both sign. Father refuses to return the children, and tells mother there is nothing she can do. Neither party has filed any proceedings. Mother is fearful that father is drinking again and may not be taking care of the kids. *Is there a home state? Which state? What would you advise her? If Mother had come to you before she sent the children to NM, what would you have advised her?*

**HYPO #2**  
**Initial Jurisdiction**

A two year old child born and raised in Colorado is taken by his mother to CA before either parent filed for custody. The left-behind father files for custody within 3-months of the mother's move. Mother waits 6 months and files for custody in CA, and serves father. What do you advise mother?

What if father had failed to file within 6-months believing he couldn't because child was in Nevada?

**Hypo #3**  
**Initial jurisdiction**

A mother and her son visit her parents in California, and it is more beautiful than she remembers. Her marriage is faltering. She decides to stay and not return to Iowa. The family has been living in Iowa for 4 years. After 2 months, mother files for custody in California saying she has significant connection. She comes to you before any proceeding; what do you tell her?

**HYPO #4**  
**Initial Jurisdiction**

Mother and father are married and have one 7 year old son. They lived in NY until December 2006 when mother moved to Los Angeles to be closer to her family after her marriage broke down. Father filed for divorce in NY in April 2007 asking for sole custody of their child, but did not serve the petition on mother because they were getting along pretty well. Father visited his son in CA for a week every 3 months, and his son came to NY for Christmas vacation. In April 2008, Mother filed for dissolution of marriage in CA seeking custody of their son and served father in May 2008. Father served mother with the NY action in June 2008. *Is there a home state? Which state? What would you advise Mother to do?*

**Temporary Emergency Jurisdiction**

**(F.C. §3424(a))**

CA Does Not Have Home State Jurisdiction under F.C. 3421;

The Basis for CA to Take Temporary Emergency Jurisdiction:

1. Child is present in state[,] and the child has been abandoned or it is necessary in any emergency to protect the child because the child, or sibling or parent of the child, is subjected to, or threatened with, mistreatment or abuse.

*In Re Nada R* (2001) 89 Cal.App.4<sup>th</sup> 1166 ["Emergency" has been interpreted as a situation in which child is in immediate risk of danger if returned to a parent's care.]

**Temporary Emergency Jurisdiction**

**(F.C. §3424(b))**

Temporary emergency jurisdiction order may ripen into final order if no other action commenced in home state and order sets out conditions;

*Practice Pointer: This result is unlikely. It is more likely service of emergency jurisdiction order will trigger commencement of action in home state!*

**Temporary Emergency Jurisdiction**

**(F.C. §3424(d))**

A court issuing an emergency jurisdiction order must, upon finding out there is an order in another state, contact the court of that other 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."

**Temporary Emergency  
Jurisdiction  
(F.C. §3424(c))**

If there is an action filed in another state, any order issued by court in this state under this section must specify a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction. The order remains in effect until the new order is obtained or period expires.

**Temporary Emergency  
Jurisdiction  
F.C. §3424(e)**

"It is the intent of the Legislature...that the grounds on which the court may exercise temporary emergency jurisdiction be expanded" and include those that existed under the UCCJA §3403 on 12/31/99, particularly including cases involving domestic violence."

**HYPO #5**

Victim of domestic violence has just arrived from NY where she has been in an abusive relationship with her husband. She has her 5 year old son in tow and tells you that she is afraid if she returns she will be in danger. Her husband is very possessive of their son, and she is afraid he will take him from her. She mentions that they have been fighting in court for the last year over custody. She doesn't have a copy of the order, but remembers what it says. They share custody even though she has primary physical custody. She begs you to help her obtain a restraining order, protect her son, and stop the father's contact. She is crying and very upset, and says that she finally left and no one will help her. *What can you do for her?*

**Enforcement of Orders:  
Recognition of Another State's  
Orders**

Family Code §3443(a): a court of this state shall recognize and enforce another state's orders if the court "exercised jurisdiction in substantial conformity with the UCCJEA and was made under factual circumstances meeting the jurisdictional standards of the UCCJEA.

**Enforcement of Orders:  
Recognition of Another State's Visitation  
Orders (F.C. §3444)**

A court of this state that does not have jurisdiction of modify another's court's orders may issue a temporary order enforcing a visitation schedule or modifying an order that is not specific, but the modification is only temporary until an order is obtained in state with continuing jurisdiction.

**Enforcement of Orders:  
Registration of Another State's Order  
(F.C. §3445)**

Family Code §3445 sets out specific scheme to register other state's orders in this state.  
Once registered, respondent must contest within 20 days. Failure to contest will confirm order and this state must enforce it.

**Enforcement of Orders: Effect of Custody  
Determination in Foreign Country  
(F.C.3405)**

F.C. 3405(a): A court of this state shall treat a foreign country as if it were a state of the United States.

F.C. 3405(b): A child custody order made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of the UCCJEA must be recognized and enforced.

F. C. 3405(c): A court of this state need not enforce the order if "the child custody law of a foreign country violates fundamental principles of human rights."