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PART I: SCOPE AND OVERVIEW

JURISDICTION

§ 2.01 Scope

This chapter covers:

- The residency requirements to obtain a dissolution.
- The requirements for the court to exercise *in rem* jurisdiction.
- The requirements for the court to exercise *in personam* jurisdiction over the defendant.
- Who may be a party in a dissolution action.
- Whether the court has subject matter jurisdiction.
- Where a case may be brought.

- Who has standing to bring a dissolution action.
- Child custody jurisdiction.
- Jurisdiction for interstate family support orders.
- The requirements for filing a foreign matrimonial judgment.

§ 2.02 Objective and Strategy

This chapter will familiarize the practitioner with the principles of jurisdiction: *in rem*, *in personam*, subject matter, and venue. *In rem* jurisdiction concerns establishing the power to dispose of property within Connecticut and the power over the marriage *res*. This chapter will cover how personal jurisdiction is obtained, which is necessary for the issuance of orders to be binding personally on a party. It examines who may be parties to a dissolution action. Subject matter jurisdiction, or the power of the court to act, is discussed in this chapter. The venue where an action may be brought is addressed. Two federal acts, the Uniform Child Custody Jurisdiction and Enforcement Act and the Uniform Interstate Family Support Act are discussed in depth in this chapter. Finally, this chapter concludes with the requirements to file a foreign matrimonial judgment in Connecticut.

PART II: ESTABLISHING RESIDENCY

JURISDICTION

§ 2.03 CHECKLIST: Establishing Residency

2.03.1 Establishing Residency

- Distinguishing between domicile and residence:
 - To bring an action for dissolution of marriage, legal separation or annulment, one party must satisfy the residency requirements.
 - Residency has been interpreted to require domicile, which is where a person intends to make their home.
 - A person can only have one domicile that exists until it is abandoned and a new domicile obtained.
 - Domicile impacts personal and subject matter jurisdiction. **Authority:** Conn. Gen. Stat. § 46b-44(a); *In re Bachand*, 306 Conn. 37 (2012), *LaBow v. LaBow*, 171 Conn. 433 (1976), *Taylor v. Taylor*, 168 Conn. 619 (1975), *Rice v. Rice*, 134 Conn. 440 (1948), *Morgan v. Morgan*, 103 Conn. 189 (1925), and *Toth v. Toth*, 23 Conn. Supp. 161 (1962). **Discussion:** See § 2.04, *below*. See also § 2.05, *below*.
- Satisfying residency requirements:
 - Residency will be based upon one party satisfying one of the following requirements:
 - One party resided in Connecticut for more than one year prior to bringing the action.
 - One party will reside in Connecticut for more than one year prior to the dissolution, legal separation, or annulment entering.

- One party was domiciled in Connecticut at the time of the marriage and has returned with the intent of permanently remaining.
 - The cause for the breakdown of the marriage occurred after either party moved to Connecticut.
 - A party alleging residency based upon living in Connecticut for more than one year may move out of Connecticut during the dissolution action.
 - An attack on residency based upon living in Connecticut one year prior to the dissolution entering cannot be brought prior to the final hearing.
 - Those in the armed forces, for residency purposes, will be deemed to have lived in Connecticut during the time he or she is serving.
 - To satisfy residency based upon the cause of the dissolution arising after either party moved to Connecticut requires the party to be in Connecticut when the action is filed.
 - To base residency upon a party being domiciled in Connecticut at the time of the marriage and has returned to the State, requires proof of domicile at the time of the marriage and the intent to permanently remain in Connecticut must be shown.
 - Upon residency being established, either party may seek temporary orders. **Authority:** Conn. Gen. Stat. §§ 46b-44(b), 46b-44(c), and 46b-44(d); *LaBow v. LaBow*, 171 Conn. 433 (1976), *Baker v. Baker*, 166 Conn. 476 (1974), *Adame v. Adame*, 154 Conn. 389 (1966), *Allan v. Allan*, 132 Conn. 1 (1945), *Anderson v. Anderson*, 26 Conn. Supp. 490 (1967), *Bernardo v. Bernardo*, 12 Conn. Supp. 418 (1944), *Weinberg v. Weinberg*, 2003 Conn. Super. LEXIS 3516 (2003), and *Vadenais v. Vadenais*, 2003 Conn. Super. LEXIS 1676 (2003).
- Discussion:** See § 2.05, *below*. See also § 2.04, *below*.

§ 2.04 Distinguishing Between Domicile and Residence

A complaint for dissolution of marriage or for legal separation may be filed at any time after either party has established residence in Connecticut. Conn. Gen. Stat. § 46b-44(a). In order to obtain a decree dissolving a marriage or a legal separation, one party must meet the statutory residency requirements. Although the statute refers to residency, courts have interpreted the statute to require domicile. *Toth v. Toth*, 23 Conn. Supp. 161, 162–163 (1962). Domicile and residency are two separate legal standards. Residency implicates a place to live for a period of time, while domicile is where a person intends to make their home. *In re Bachand*, 306 Conn. 37, 44 (2012). For a more thorough discussion on residency requirements, see § 2.05[1], *below*.

The former domicile persists until a new domicile is acquired and the old domicile is abandoned. *Rice v. Rice*, 134 Conn. 440, 446 (1948) and *Morgan v. Morgan*, 103 Conn. 189, 196 (1925).

Domicile is different from residency because a person can have several places of residence, but is domiciled in only one place. *Bachand*, 306 Conn. at 44; *Taylor v. Taylor*, 168 Conn. 619, 621 (1975). Domicile “implies a nexus between person and place of such permanence as to control the creation of legal relations and responsibilities of the utmost significance.” *LaBow v. LaBow*, 171 Conn. 433, 437 (1976). The judicial power to grant a divorce is founded on domicile.

The domicile requirement in a dissolution of marriage action impacts both personal and subject matter jurisdiction. If one of the parties to the action is a domiciliary, then Connecticut’s nexus is sufficient to empower it to make judgments that are enforceable in other states by full

faith and credit and to combat attacks on its decrees by other states, provided the other party has notice of the action. *LaBow*, 171 Conn. at 436–437.

#Comment Begins

Strategic Point: Domicile may be proven by demonstrating where that party receives mail, votes, files taxes, lives for a majority of the year, registers motor vehicles, seeks medical treatment, or has a library card. Additionally, proof of where the children have and do attend school, participate in activities, and seek medical treatment may also be used to demonstrate a parent's domicile.

#Comment Ends

§ 2.05 Satisfying Residency Requirements

[1] Determining the Statutory Basis for Residency

In order for the court to have jurisdiction to dissolve the marriage, residency of at least one of the parties must be established. Residency may be based upon one of the following:

1. One of the parties has resided in the state of Connecticut for more than twelve months prior to the date of filing or will have resided in the state more than twelve months prior to the entry of the decree;
2. At the time of the marriage one party was a domiciliary of the State of Connecticut and returned to the state with the intent of permanently remaining; or
3. The cause for the dissolution arose after either party moved to this state.

Conn. Gen. Stat. § 46b-44(c). Residency establishes the ability of the court to dissolve the parties' marriage and serves as the first step in asserting personal jurisdiction.

Residency need not be based upon the plaintiff's own residency, but may be based upon the defendant's residency. *Anderson v. Anderson*, 26 Conn. Supp. 490, 493 (1967).

#Comment Begins

Strategic Point: In most cases, residency will not be an issue. However, it is important to establish at the first meeting with the client how long both of them have resided in Connecticut. If it appears that residency will be an issue, a determination must be made under which basis residency will be asserted and the facts which will support the residency requirement.

#Comment Ends

[2] Establishing Residency Based Upon Duration of Residency in Connecticut

Most dissolution actions allege either that a party has resided in Connecticut for the past twelve months or will reside in Connecticut for more than twelve months prior to the entry of the decree. When a party alleges residency based upon the twelve months prior to filing for the dissolution, a subsequent move out of Connecticut will not defeat jurisdiction. *Baker v. Baker*,

166 Conn. 476 (1974).

When the dissolution is based upon a party residing in Connecticut for more than twelve months prior to the date of the decree, a motion to dismiss challenging the residency requirement will fail because residency cannot be determined until the final hearing. *Weinberg v. Weinberg*, 2003 Conn. Super. LEXIS 3516 (2003) and *Vadenais v. Vadenais*, 2003 Conn. Super. LEXIS 1676 (2003).

A person in the armed forces or merchant marines who resided in Connecticut when entering into service will be deemed to have resided continuously in the state during the time he or she is serving. Conn. Gen. Stat. § 46b-44(d). The term “entry” refers to when the person enlisted or became commissioned in the armed forces or merchant marines, and such date is readily available from the service person’s personnel file.

#Comment Begins

Strategic Point: At the initial client interview, ascertain how long the parties have resided in Connecticut. If it is alleged that one party has resided in Connecticut for more than a year when that is in fact not the case, the action will be subject to dismissal for lack of personal jurisdiction.

#Comment Ends

[3] Establishing Residency Where a Party was Domiciled in Connecticut at the Time of the Marriage and Has Returned

There are two requirements to establish residency under this section. First, that the party was domiciled in Connecticut at the time of the marriage and has returned to Connecticut with the intention to permanently remain. Conn. Gen. Stat. § 46b-44(c). Accordingly, being domiciled in Connecticut as little as two days prior to the marriage and then moving out of state with the intention of residing in that other state, will defeat the residency requirement under the statute. *Bernardo v. Bernardo*, 12 Conn. Supp. 418 (1944). Secondly, it must be shown that the party has returned to Connecticut with the intent to remain, or establish his or her domicile. Therefore, the party’s previous domicile must be abandoned. *Adame v. Adame*, 154 Conn. 389 (1966). For a more thorough discussion on domicile, see § 2.04, above.

[4] Establishing Residency Based Upon the Cause for the Dissolution Arising After Either Party Moved to Connecticut

The fourth basis to assert jurisdiction is that the cause for the dissolution arose after either party moved to Connecticut. To satisfy this residency requirement, the party must be in Connecticut at the time the action is commenced. *Allan v. Allan*, 132 Conn. 1 (1945). Without a truly dramatic event demonstrating the breakdown of the marriage after the parties moved to Connecticut, this residency requirement will be difficult to prove. Additionally, if one party has moved back to Connecticut, the dissolution may be had on other grounds, such as on the basis of residence for the last twelve months or the twelve months prior to the granting of the decree.

[5] Entering Temporary Orders After Residency is Established in Connecticut

Upon either party establishing residency in Connecticut, the court may enter temporary custody, alimony, support or exclusive possession orders. Conn. Gen. Stat. § 46b-44(b) and *LaBow v. LaBow*, 171 Conn. 433, 438 (1976).

PART III: ESTABLISHING *IN REM* JURISDICTION

JURISDICTION

§ 2.06 CHECKLIST: Establishing *In Rem* Jurisdiction

2.06.1 Establishing *In Rem* Jurisdiction

- Establishing *in rem* jurisdiction:
 - *In rem* jurisdiction is the power over the marriage res and property located in Connecticut.
 - *In rem* jurisdiction is used when the court cannot assert personal jurisdiction over the defendant.
 - Any orders will not be binding personally on the defendant, but will affect property in Connecticut. **Authority:** Conn. Gen. Stat. §§ 46b-44(a) and 46b-44(b); *Robertson v. Robertson*, 164 Conn. 140 (1972), *Litvaitis v. Litvaitis*, 162 Conn. 540 (1972), *Perlstein v. Perlstein*, 152 Conn. 152 (1964), and *Bove v. Bove*, 77 Conn. App. 355 (2003). **Discussion:** See § 2.07, below.
- Effectuating *in rem* jurisdiction:
 - The property for which attachment is sought must be specifically referred to in the complaint.
 - Jurisdiction may also be attained by attaching the property with service by order of notice on the defendant. **Authority:** Conn. Gen. Stat. §§ 46b-82 and 52-284; *Hodge v. Hodge*, 178 Conn. 308 (1979), *Robertson v. Robertson*, 164 Conn. 140 (1972), and *Bove v. Bove*, 77 Conn. App. 355 (2003). **Discussion:** See § 2.08, below.

§ 2.07 Establishing *In Rem* Jurisdiction

In rem jurisdiction is the court's power to render orders over the marriage and property located in the state of Connecticut. *Bove v. Bove*, 77 Conn. App. 355 (2003). When the defendant is unable to be served and provided with notice of the action, the court may not enter a judgment personally binding on the defendant, but may only make orders dissolving the marriage and awarding property in Connecticut. *Robertson v. Robertson*, 164 Conn. 140, 143–144 (1972). The court's authority to dissolve a marriage is based upon jurisdiction over the marriage res. *Litvaitis v. Litvaitis*, 162 Conn. 540 (1972). The marriage res travels with each party's domicile, so a domiciliary of Connecticut may obtain a dissolution of marriage without the presence of his or her spouse. Conn. Gen. Stat. §§ 46b-44(a) and 46b-44(b). *Perlstein v. Perlstein*, 152 Conn. 152, 157 (1964).

§ 2.08 Effectuating *In Rem* Jurisdiction

Since personal service over the defendant cannot be attained, in order to obtain jurisdiction over property, it must be attached. Actions *in rem* affect a person's pre-existing interest in a particular property, while quasi *in rem* actions use the property to satisfy a personal claim of the other party. *Hodge v. Hodge*, 178 Conn. 308, 313 (1979). If the property is referred to with specificity in the complaint, there is no need to attach the property to bring it within the jurisdiction of the court. *Hodge*, 178 Conn. at 320. Conversely, where a defendant is not a resident of Connecticut, but has real property in Connecticut, service may be effectuated to assert jurisdiction over the property by attaching the property and serving the action and attachment on

the defendant by order of notice. [Conn. Gen. Stat. § 52-284](#). Failure to provide notice to the defendant could lead to dismissal of the action. *Bove v. Bove*, 77 Conn. App. 355 (2003). Where this procedure is followed, the court, while not having personal jurisdiction over the defendant, will have jurisdiction to dispose of the property attached. *Robertson v. Robertson*, 164 Conn. 140 (1972).

#Comment Begins

Strategic Point: Very rarely will an action *in rem* or quasi *in rem* be pursued. In most instances, personal jurisdiction will be attainable over the defendant.

#Comment Ends#Comment Begins

Warning: Where an *in rem* action is pursued, the court may dissolve the marriage and award an interest in property in Connecticut. However, there can be no award of alimony, and failure to obtain an award of alimony at the time of the dissolution will bar an award in the future since alimony can only be ordered at the time of the dissolution. [Conn. Gen. Stat. § 46b-82](#). However, the court may make an award of alimony that is satisfied out of the property in Connecticut which is a quasi *in rem* action.

#Comment Ends

PART IV: EFFECTUATING SERVICE OF PROCESS

JURISDICTION

§ 2.09 CHECKLIST: Effectuating Service of Process

2.09.1 Effectuating Service of Process

- Serving process to effectuate jurisdiction:
 - The summons and complaint must be served twelve days prior to the return date and returned to court six days prior to the return date.
 - Service must be made by a proper officer. **Authority:** [Conn. Gen. Stat. §§ 46b-45, 46b-45\(a\), 46b-45\(b\), 52-45a, 52-46, 52-46a, 52-48, and 52-50](#); P.B. § 8-1. **Discussion:** See [§ 2.10, below](#). **Forms:** JD-FM-3—Summons, Family Actions, see [Chapter 20, § 20.02, below](#), JD-CL-12—Appearance, see [Chapter 20, § 20.37, below](#), and JD-FM-249—Certification of Waiver of Service of Process (Non-Adversarial Dissolution), see [Chapter 20, § 20.80, below](#).
- Serving process on residents of Connecticut:
 - When at all possible, service should be made in hand.
 - Abode service must be made at the usual place of abode of the defendant.
 - The papers must be served in such a manner and in such a place for abode service to assure that the defendant will receive notice.
 - An attorney who accepts service on behalf of a client must be expressly authorized to do so.
 - Service made by means other than personal service or abode service

must be done by order of notice.

- The complaint, for a defendant who is an inmate in a mental institution, must be served on the Commissioner of Administrative Services.

- If the complaint alleges that the cause for the dissolution of marriage is confinement for mental illness, the complaint must be served on the conservator and the Commissioner of Administrative Services.

- Enforcement or modification of child support may be made by in hand service, abode service, or service upon the defendant's employer.

Authority: Conn. Gen. Stat. §§ 46b-45(b), 46b-47(a), 52-54, 52-57(f), and 52-57(f)(1); *Hibner v. Bruening*, 78 Conn. App. 456 (2003), *Uyen Phan v. Delgado*, 41 Conn. Supp. 367 (1990), *Dunleavy v. Dunleavy*, 14 Conn. Supp. 321 (1946), *Fazzino v. Niemczyk*, 2004 Conn. Super. LEXIS 1225 (2004), *State Dept. of Social Services v. Butler*, 2000 Conn. Super. LEXIS 2061 (2000), and *Krom v. Krom*, 2003 Conn. Super. LEXIS 197 (2003); P.B. § 25-28. **Discussion:** See § 2.11, below. **Forms:** JD-FM-168—Order of Notice in Family Cases, see Chapter 20, § 20.17, below.

□ Serving process on non-residents of Connecticut:

- The best manner for service on a non-resident is in accordance with the laws of the jurisdiction in which the defendant is residing.

- Alternatively, the plaintiff must obtain an order of notice from the court for the service method on the defendant. **Authority:** Conn. Gen. Stat. §§ 46b-44, 46b-46(a), 46b-46(b), and 52-57a; *Cato v. Cato*, 226 Conn. 1 (1993), *Jones v. Jones*, 199 Conn. 287 (1986), and *Cashman v. Cashman*, 41 Conn. App. 382 (1996). **Discussion:** See § 2.12, below. **Forms:** JD-FM-167—Motion for Order of Notice in Family Cases, see Chapter 20, § 20.16, below.

□ Preparing orders of notice for post judgment motions:

- Post judgment motions are commenced with an order of notice or order to show cause.

- If the movant is seeking retroactivity for a motion for modification of alimony, it must be served on the opposing party. **Authority:** Conn. Gen. Stat. §§ 46b-86(a) and 52-50; *Shedrick v. Shedrick*, 32 Conn. App. 147 (1993); P.B. §§ 11-4 and 25-28(b). **Discussion:** See § 2.13, below. See also § 2.12, below.

□ Serving process in probate court matters:

- The probate court sends out notices to all interested parties.

- The court may make proper order for notice to be given to any nonresident or a resident requiring particular notice. **Authority:** Conn. Gen. Stat. §§ 45a-124 and 45a-125. **Discussion:** See § 2.14, below.

□ Who is authorized to serve process:

- State marshals may effectuate service in Connecticut and process orders of notice for non residents.

- For IV-D cases, service may be made by an investigator of the Commissioner of Administrative Services or the Commissioner of Social Services.

- A modification, contempt or wage withholding for support, in which the State of Connecticut is contributing to the support of the child may be served by an officer or investigator at the Department of Social Services or the Commissioner of Administrative Services.

- A support enforcement officer or support services investigator may make service for matters involving motions for modification, contempt or wage garnishment for support regarding health care benefits through

HUSKY. Authority: Conn. Gen. Stat. §§ 6-38a, 7-89, 17b-745, 46b-215, 52-50, 52-50(c), 52-50(d), and 52-56. **Discussion:** See § 2.15, *below*.

§ 2.10 Serving Process to Effectuate Jurisdiction

An action for annulment, legal separation, or dissolution of marriage is commenced by service on the defendant, and then filing the summons and complaint in the judicial district in which one of the parties resides. Conn. Gen. Stat. §§ 46b-45 and 52-45a, and Connecticut Practice Book (hereinafter “P.B.”) § 8-1. Commencing October 1, 2018, the service of any complaint must be accompanied by a blank appearance form. Conn. Gen. Stat. § 46b-45(a). The summons and complaint must be served on the defendant at least twelve days before the return date and filed in the Superior Court at least six days before the return date. Conn. Gen. Stat. §§ 52-46 and 52-46a. The return date, or the date by which the action is deemed to be pending in court, may be any Tuesday. Conn. Gen. Stat. § 52-48. Service of the summons and complaint must be made by a proper officer, who is a state marshal. Conn. Gen. Stat. § 52-50.

Service of process may be waived by the defendant upon executing the form for waiver of service of process and filing an appearance with the court. Only if both of these have happened, will service be waived. Conn. Gen. Stat., § 46b-45(b).

#Comment Begins

Forms: JD-FM-3—Summons, Family Actions, *see* Chapter 20, § 20.02, *below*; JD-CL-12—Appearance, *see* Chapter 20, § 20.37, *below*; and JD-FM-249—Certification of Waiver of Service of Process, *see* Chapter 20, § 20.80, *below*.

#Comment Ends

§ 2.11 Serving Process on Residents of Connecticut

A state marshal must serve a “true and attested” copy of the complaint or other pleading either upon the defendant personally (“in hand”) or by leaving it at the defendant’s usual residence (“abode service”). Conn. Gen. Stat. § 52-54.

#Comment Begins

Strategic Point: It is best to have in hand service upon the defendant because it is next to impossible for the defendant to claim he was never served. To aid the identification of the defendant, the marshal should be provided with a photograph of the person, a description of the defendant’s automobile, and other useful identifying information.

#Comment Ends

When in hand service is impossible, abode service should be made. Service must be made at the defendant’s usual place of abode, or it will not be effective. *Hibner v. Bruening*, 78 Conn. App. 456 (2003). While a marshal’s return of service is typically deemed conclusive, since he or she does not have personal knowledge of the defendant’s usual place of abode, the return of service may be challenged. *Uyen Phan v. Delgado*, 41 Conn. Supp. 367 (1990). Since the purpose of service is to provide actual notice, when making abode service, the papers must be left in such a place and in such a manner so that the defendant will actually receive the notice. *Krom v. Krom*, 2003 Conn. Super. LEXIS 197 (2003). Where the defendant disputes the officer’s return, the defendant has the burden of proving the sheriff’s return is incorrect. *Krom*, 2003 Conn. Super. LEXIS at 197. In addition, the papers must be served in a manner that will prevent them from

blowing away or otherwise not come within the defendant's knowledge. *Fazzino v. Niemczyk*, 2004 Conn. Super. LEXIS 1225 (2004).

#Comment Begins

Strategic Point: When abode service must be made, have the marshal photograph where the papers were left so that it can be demonstrated they were served at the proper abode and in a manner where they would not get lost.

#Comment Ends

In addition, a defendant may consent to his or her attorney accepting service of process. However, the defendant's attorney must be expressly authorized to accept service since this is not a statutorily authorized manner of service. *State Dept. of Social Services v. Butler*, 2000 Conn. Super. LEXIS 2061 (2000).

In the event that the whereabouts of the defendant are not exactly known in a certain town, the plaintiff can request an order of notice by publication in a local newspaper where the defendant was last known to have lived. P.B. § 25-28. This procedure is expensive because the notice has to be published several times. However, if the whereabouts of the defendant are truly unknown, notice by publication will fail as the method must be reasonably calculated to provide the defendant with notice. *Dunleavy v. Dunleavy*, 14 Conn. Supp. 321 (1946). Service by publication must be made by order of notice by the court. P.B. § 25-28.

If the defendant is an inmate of a mental institution in Connecticut, a copy of the complaint must be served on the Commissioner of Administrative Services personally or by registered or certified mail. Conn. Gen. Stat. § 46b-45(b). If the ground for the dissolution of marriage is confinement for mental illness, then a copy of the complaint must be served on the defendant, the conservator (if any), and on the Commissioner of Administrative Services by registered or certified mail. Conn. Gen. Stat. § 46b-47(a).

#Comment Begins

Warning: There has been much media coverage of courts ruling that service of process through social media, such as Facebook, can be proper service. Such a method for service of process has not yet been approved in Connecticut.

#Comment Ends

In connection with the establishment, enforcement, or modification of child support orders, and enforcement of garnishment orders, service of process may be made upon the defendant by in hand or abode service. Conn. Gen. Stat. § 52-54. If those procedures are unsuccessful, then service of process may be made by certified mail with return receipt on the defendant's employer. Conn. Gen. Stat. § 52-57(f)(1).

#Comment Begins

Forms: JD-FM-168—Order of Notice in Family Cases. See Chapter 20, § 20.17, *below*.

#Comment Ends

§ 2.12 Serving Process on Non-Residents of Connecticut

Where a party is not a resident of Connecticut, such that in hand or abode service may not be effectuated in Connecticut, other methods of service must be employed. The most ideal manner of service on a non-resident is in hand service in accordance with the rules of the jurisdiction in which the defendant resides. [Conn. Gen. Stat. § 52-57a](#) and [Cato v. Cato, 226 Conn. 1 \(1993\)](#). The other means to effectuate service is by seeking an order of notice from a court. [Conn. Gen. Stat. § 46b-46\(a\)](#). The order of notice will direct the manner in which the defendant is to be served and calculated to provide actual notice. [Conn. Gen. Stat. § 46b-46\(a\)](#). In the event the original means of service ordered was ineffective, a further order of notice may be sought from the court. [Conn. Gen. Stat. § 46b-46\(a\)](#). Where service is made in this manner, the court may not exercise personal jurisdiction for alimony and support purposes unless it finds that the defendant received actual notice and the party requesting alimony meets the residency requirements of [Conn. Gen. Stat. § 46b-44](#). [Conn. Gen. Stat. § 46b-46\(b\)](#). Service in accordance with this statute applies to motions for the modification of alimony and child support. [Jones v. Jones, 199 Conn. 287, 294 \(1986\)](#) and [Cashman v. Cashman, 41 Conn. App. 382, 387-388 \(1996\)](#). For a more thorough discussion on residency requirements, *see* § 2.05, *above*.

The notice requirement under [Conn. Gen. Stat. § 46b-46\(a\)](#) is permissive and not the only means to provide notice in light of [Conn. Gen. Stat. § 52-57a](#). [Cato v. Cato, 226 Conn. at 7-8](#). Thus, if service may be accomplished in accordance with the state's laws where service is made, an order of notice is not needed. [Cato, 226 Conn. at 9](#).

#Comment Begins

Strategic Point: Where the defendant resides out of state, the best practice is to have process served in accordance with the laws of the jurisdiction in which he or she resides. This will include in hand service. To effectuate in hand service, it is wise to contact local counsel to determine the rules of service to ensure proper compliance. Failure to do so may result in the defendant filing a motion to dismiss.

#Comment Ends#Comment Begins

Warning: Prior to January 1, 1996, [Conn. Gen. Stat. § 46b-46\(b\)](#) contained a third requirement for a court to obtain personal jurisdiction over a nonresident defendant, namely that Connecticut, immediately prior to and at the time of separation, was the domicile of both parties. Accordingly, any case referring to that requirement is not currently applicable and should be read with caution.

#Comment Ends#Comment Begins

Forms: JD-FM-167—Motion for Order of Notice in Family Actions, *see* [Chapter 20, § 20.16 below](#).

#Comment Ends

§ 2.13 Preparing Orders of Notice for Post Judgment Motions

In post judgment actions, since there is no summons and complaint to be served, such an action is commenced by an order of notice or order to show cause. P.B. §§ 11-4, 25-28(b). The avenues and means available for service are the same as for the initial service of process. For a more thorough discussion on the manner of service, *see* § 2.12, *above*.

Notice to and service upon the respondent is essential, especially if retroactivity for alimony and child support orders is sought. *Shedrick v. Shedrick*, 32 Conn. App. 147 (1993). A motion seeking retroactivity or to modify alimony or support must be served on the opposing party pursuant to Conn. Gen. Stat. § 52-50 by a state marshal or other authorized officer. Conn. Gen. Stat. § 46b-86(a). Failure to effectuate service in this manner will preclude any claim of retroactivity.

§ 2.14 Serving Process in Probate Court Matters

For actions filed in the probate court, the probate court sends notice to all interested parties. Conn. Gen. Stat. § 45a-124. The petitioner must provide the probate court with a list of the names and addresses of all parties and their interests in the matter or relationship to the respondent. Courts of probate may make any proper order for notice to be given to any nonresident or person absent from this state as well as to any person within the state to whom particular notice of any proceeding before such court is required by law. Conn. Gen. Stat. § 45a-125.

§ 2.15 Serving Process—Who is Authorized

State marshals may serve a defendant anywhere in Connecticut and process orders of notice for nonresident defendants. Conn. Gen. Stat. §§ 6-38a and 52-56. Constables are confined to service of process on defendants within their town of election. Conn. Gen. Stat. §§ 7-89 and 52-50.

Where a party is receiving state assistance or in an IV-D child support case, motions for modification, contempt and wage withholdings may be made by any investigator employed by the Commissioner of Administrative Services or the Commissioner of Social Services. Conn. Gen. Stat. § 52-50(c). Motions for modification, contempt, and wage withholdings in child support petitions and matters concerning health care coverage under Conn. Gen. Stat. §§ 17b-745 and 46b-215, may be made by a support enforcement officer or support services investigator of the Superior Court. Conn. Gen. Stat. § 52-50(d).

PART V: ESTABLISHING *IN PERSONAM* JURISDICTION

JURISDICTION

§ 2.16 CHECKLIST: Establishing *In Personam* Jurisdiction

2.16.1 Establishing *In Personam* Jurisdiction

- Obtaining personal jurisdiction and its purpose:
 - Personal jurisdiction may be obtained over one who is properly served, has consented to jurisdiction, or has waived any objection to jurisdiction.
 - If there is no personal jurisdiction, any orders entered requiring personal jurisdiction will be subject to collateral attack. **Authority:** *Yeong Gil Kim v. Magnotta*, 249 Conn. 94 (1999) and *Pinder v. Pinder*, 42 Conn. App. 254 (1996). **Discussion:** See § 2.17, below.
- Conferring personal jurisdiction by filing an appearance:
 - Filing an appearance will confer personal jurisdiction absent the successful prosecution of a motion to dismiss.

- A motion to dismiss must be filed within thirty days of the filing of the appearance; otherwise any contest to personal jurisdiction will be waived.
- A party's conduct in the case, including filing a motion or participating in the case, may constitute a general appearance, waiving the ability to contest jurisdiction. **Authority:** *Beardsley v. Beardsley*, 144 Conn. 725 (1957), *Pinder v. Pinder*, 42 Conn. App. 254 (1996), and *Anderson v. Anderson*, 26 Conn. Supp. 490 (1967); P.B. § 25-13. **Discussion:** See § 2.18, below. See also § 2.20, below. See also Chapter 4, § 4.09, below.

□ Asserting long arm jurisdiction:

- A defendant who is unable to be served in Connecticut must be provided with actual notice of satisfaction of Constitutional due process.
- Due process requires minimum contacts with Connecticut and that the exercise of jurisdiction does not “offend traditional notions of fair play and substantial justice.”

- Indicia of minimum contacts would include where tax returns are filed, motor vehicles registered, voting registration, school contracts, and receipt of mail.

- The reasonableness of a defendant being subject to the jurisdiction of Connecticut includes evaluating:

- The burden imposed on the defendant by Connecticut exercising jurisdiction.
- The interest of Connecticut in adjudicating the dispute.
- The interest of the plaintiff in obtaining relief that is convenient and effective.

- Judicial efficiency.
- The shared interests of the states in furthering substantive social policies. **Authority:** Conn. Gen. Stat. § 46b-46(b); *Panganiban v. Panganiban*, 54 Conn. App. 634 (1999), *Pomerantz v. Pomerantz*, 2009 Conn. Super. LEXIS 1003 (2009), *Monette v. Monette*, 2005 Conn. Super. LEXIS 3097 (2005), and *Sandeman v. Sandeman*, 1995 Conn. Super. LEXIS 255 (1995). **Discussion:** See § 2.19, below. See also § 2.12, above.

□ Contesting personal jurisdiction:

- Personal jurisdiction must be contested by filing a motion to dismiss within thirty days of the defendant filing his or her appearance.

- The motion to dismiss must be accompanied by a memorandum of law and appropriate affidavits.

- The plaintiff's objection to the motion to dismiss must be filed no less than five days prior to the motion being heard.

- Personal jurisdiction may be contested if the party was tricked into coming into Connecticut for purposes of service.

- The burden of proof is on the plaintiff to establish jurisdiction.

Authority: *Standard Tallow Corp. v. Jowdy*, 190 Conn. 48 (1983), *Gimbel v. Gimbel*, 147 Conn. 561 (1960), *Berzins v. Berzins*, 105 Conn. App. 648 (2008), and *Babouder v. Abdennur*, 41 Conn. Supp. 258 (1989); P.B. §§ 25-12(a), 25-13, and 25-13(a). **Discussion:** See § 2.20, below. See also Chapter 4, § 4.09, below.

□ Assessing the ability to enter orders with personal jurisdiction:

- A court may not enter orders personally binding a party over whom it does not have personal jurisdiction.

- Once the court obtains personal jurisdiction, it may enter orders personally binding on the defendant.

○ Such orders are entitled to full faith and credit, collateral estoppel, and *res judicata* status. **Authority:** *Ivey v. Ivey*, 183 Conn. 490 (1981) and *Gimbel v. Gimbel*, 147 Conn. 561 (1960). **Discussion:** See § 2.21, *below*.

§ 2.17 Obtaining and the Purpose of Personal Jurisdiction

Personal jurisdiction over a party is vital to the validity and execution of the court's orders. Without personal jurisdiction over a defendant, a judgment which issues orders binding personally on the defendant is voidable and subject to vacation or collateral attack. *Pinder v. Pinder*, 42 Conn. App. 254, 258 (1996). Jurisdiction over a party may be exercised when he or she has been properly served, has consented to jurisdiction, or has waived any objection to the exercise of personal jurisdiction. *Yeong Gil Kim v. Magnotta*, 249 Conn. 94, 101–102 (1999). Provided service is made properly, serving a defendant in Connecticut will confer personal jurisdiction.

§ 2.18 Conferring Personal Jurisdiction by Filing an Appearance

The filing of an appearance in a matter submits the party to the personal jurisdiction of the court, absent the filing of a successful motion to dismiss. P.B. § 25-13. Unless a motion to dismiss is filed within thirty days of the appearance, the defendant will have voluntarily waived his or her right to contest personal jurisdiction. A court has no jurisdiction to render a judgment *in personam* against a defendant in the absence of personal service within the state, unless he or she appears voluntarily or is properly served outside of the state of Connecticut. *Pinder v. Pinder*, 42 Conn. App. 254, 259 (1996) and *Anderson v. Anderson*, 26 Conn. Supp. 490, 493 (1967). For a more thorough discussion on filing a motion to dismiss, see § 2.20, *below* and Chapter 4, § 4.09, *below*.

Filing an appearance is not the only method of obtaining personal jurisdiction over an opponent. The conduct of a party may operate as a general appearance. Such conduct could include actions other than contesting jurisdiction, such as filing a motion in the case seeking an order of the court beneficial to the defendant or requests to be kept apprised of the litigation. *Beardsley v. Beardsley*, 144 Conn. 725, 730 (1957).

§ 2.19 Asserting Long Arm Jurisdiction

Where the defendant is not a resident of Connecticut, in order to assert personal jurisdiction he or she must have received actual notice, and the due process requirements must have been satisfied. Due process requires that the defendant have minimum contacts with Connecticut and that the exercise of jurisdiction will not “offend traditional notions of fair play and substantial justice.” *Panganiban v. Panganiban*, 54 Conn. App. 634, 639 (1999). To satisfy the first prong for personal jurisdiction over a nonresident defendant, he or she must have received actual notice of the pendency of the proceedings. Conn. Gen. Stat. § 46b-46(b). For a more thorough discussion on personal jurisdiction over a non-resident, see § 2.12, *above*.

In addition to the statutory requirements, the defendant must have minimum contacts or a nexus with Connecticut so as to justify why he or she is being hauled into court. *Panganiban*, 54 Conn. App. at 638–639. The due process test for personal jurisdiction requires two findings, minimum contacts and reasonableness in exercising jurisdiction. *Panganiban*, 54 Conn. at 639. For minimum contacts, the court must determine whether the defendant's contacts with Connecticut are sufficient so as to justify exercising personal jurisdiction. *Panganiban*, 54 Conn. App. at 639. Assessing contacts with Connecticut is a factually based determination. Such facts include whether defendant resides in Connecticut; where tax returns are filed; where motor

vehicles are registered; where he or she votes; whether any contracts for school in Connecticut have been signed; and where he or she receives mail. *Monette v. Monette*, 2005 Conn. Super LEXIS 3097 (2005) and *Sandeman v. Sandeman*, 1995 Conn. Super. LEXIS 255 (1995).

The second factor is an inquiry as to whether it is reasonable that the defendant be subject to the jurisdiction of the court. In this regard, the court must evaluate “(1) the burden that the exercise of jurisdiction will impose on the defendant; (2) the interests of the forum state in adjudicating the case; (3) the plaintiff’s interest in obtaining convenient and effective relief; (4) judicial efficiency; and (5) the shared interest of the states in furthering substantive social policies.” *Panganiban*, 54 Conn. App. at 639–640 (citations omitted). See also *Pomerantz v. Pomerantz*, 2009 Conn. Super LEXIS 1003 (2009) (it was not reasonable for a court to assert personal jurisdiction over a former husband where his only nexus to the state is that his former wife moved here after the divorce).

#Comment Begins

Strategic Point: When providing evidence regarding the reasonableness of the defendant being subject to the jurisdiction of the Connecticut court, it is similar to the showing required for asserting an inconvenient forum. It is best to proactively demonstrate why Connecticut is the better forum and why the state in which the defendant is residing is not an appropriate forum.

#Comment Ends

§ 2.20 Contesting Personal Jurisdiction

A defendant claiming that the court does not have personal jurisdiction may contest jurisdiction by filing a motion to dismiss. P.B. § 25-13. The motion to dismiss must be filed within thirty days of the filing of an appearance on behalf of the defendant. P.B. § 25-12(a). The motion to dismiss must be accompanied by a memorandum of law and the appropriate affidavits supporting the factual underpinnings of the motion. P.B. § 25-13(a). If the plaintiff objects to the motion to dismiss, he or she must file their memorandum of law and supporting affidavits within five days before the motion is to be heard. For a more thorough discussion on filing a motion to dismiss, see [Chapter 4](#), § 4.09, *below*.

Any attack on personal jurisdiction must be immediately decided by the court before the case can continue. *Gimbel v. Gimbel*, 147 Conn. 561, 566 (1960). If personal jurisdiction is not contested, any claimed lack of personal jurisdiction will be waived. *Berzins v. Berzins*, 105 Conn. App. 648 (2008).

Personal jurisdiction may be contested if a defendant is decoyed, tricked, or enticed to come within the court’s jurisdiction in order to be served. *Babouder v. Abdennur*, 41 Conn. Supp. 258, 262 (1989). This rule does not apply if the defendant enters the state on his own volition, despite whatever subsequent trickery is used to serve him or her. *Babouder*, 41 Conn. Supp. at 262.

The plaintiff bears the burden of establishing facts pertaining to personal jurisdiction when the defendant is contesting the court’s power over him or her. *Standard Tallow Corp. v. Jowdy*, 190 Conn. 48, 54 (1983). Accordingly, the plaintiff must be able to provide proof to the court which would satisfy the deficiency in personal jurisdiction alleged by the defendant.

#Comment Begins

Strategic Point: If the defendant resides outside of Connecticut, the plaintiff should assemble

documents which show the defendant's connection to Connecticut. These documents could include paystubs, bills, checking account statements, tax returns, and motor vehicle registrations. In addition, demonstration of any trips, business conducted, or residency in Connecticut can also be used to counter a claimed lack of personal jurisdiction.

#Comment Ends

§ 2.21 Assessing the Ability to Enter Orders with Personal Jurisdiction

Obtaining *in personam* jurisdiction is required for a court to enter financial orders which are personally binding against a party. *Gimbel v. Gimbel*, 147 Conn. 561, 564 (1960). Once personal jurisdiction is established, the court has full power to make financial orders binding on both parties, including property division, alimony, child support, and counsel fees. *Gimbel*, 147 Conn. at 564. Orders made against a person, who was given notice of the action and an opportunity to be heard, are entitled to full faith and credit, collateral estoppel effect, and *res judicata* status by courts in other jurisdictions. *Ivey v. Ivey*, 183 Conn. 490, 493 (1981).

PART VI: DETERMINING THE PARTIES TO DISSOLUTION, PATERNITY AND CUSTODY ACTIONS

JURISDICTION

§ 2.22 CHECKLIST: Determining the Parties to Dissolution, Paternity and Custody Actions

2.22.1 Determining the Parties to Dissolution, Paternity and Custody Actions

- Establishing standing:
 - Standing implicates the court's subject matter jurisdiction.
 - To have standing it must be demonstrated that the party has a real interest or legal or equitable right in the subject matter of the controversy.
 - Without standing, the court may not entertain the action. **Authority:** *Weidenbacher v. Duclos*, 234 Conn. 51 (1995). **Discussion:** See § 2.23, *below*.
- Bringing a dissolution action by spouses or a paternity action by a parent:
 - Either spouse may bring a dissolution action against the other.
 - An alleged genetic parent can establish parentage through the probate court.
 - The parentage determinations in IV-D cases shall be filed in the family support magistrate division.
 - Other claims for parentage, except uncontested petitions and through gestational or surrogacy agreements are brought in the Superior Court.
 - If the mother is pregnant during the dissolution action and there is a dispute as to the paternity of the child, this dispute may be determined by the superior court. **Authority:** Conn. Gen. Stat. §§ 46b-42, 46b-45a, and 46b-172a; P.A. 21-15 §§ 5,6 and 23. **Discussion:** See § 2.24, *below*.
- Bringing a dissolution action by Native American tribe members:

- The five tribes recognized in Connecticut—Schaghticoke, Paucatuck Eastern Pequot, Mashantucket Pequot, Mohegan, and Golden Hill Paugussett—may sue and be sued in Connecticut courts, including dissolution actions. **Authority:** Conn. Gen. Stat. §§ 46b-59a(a) and 47-59a(b).

Discussion: See § 2.25, below.

- Assessing the role of minors in family actions:

- Minors may bring a dissolution action of his or her own marriage.
- Minors are not a party to the dissolution action of his or her parents.
- Where a father claims paternity of a child, the child shall be made a party to the action. **Authority:** Conn. Gen. Stat. §§ 46b-43, 46b-54, and 46b-172a(c); P.A. 21-15, Sec. 11; P.B. § 25-62. **Discussion:** See § 2.26, below.

- Bringing a dissolution action on behalf of an incompetent person:

- A conservator appointed in probate court may bring a dissolution action on behalf of his or her ward.
- Attorneys have an ethical obligation to protect a client who is impaired, including seeking the appointment of a conservator. **Authority:** Conn. Gen. Stat. §§ 45a-623 and 45a-645; *Luster v. Luster*, 128 Conn. App. 259 (2011); Professional Rules of Conduct, Rule 1.14(b). **Discussion:** See § 2.27, below.

- Making the Attorney General or Town Clerk a party:

- Where a spouse or child is receiving state assistance, the Attorney General must be made a party to the action.
- Where the spouse or child is receiving municipal assistance, the Town Clerk must be made a party. **Authority:** Conn. Gen. Stat. § 46b-55; P.B. § 25-2(b). **Discussion:** See § 2.28, below.

- Intervening in visitation and custody actions:

- Intervention in both custody and visitation actions requires that the intervenor demonstrate a parent-like relationship with the child.
- In custody actions, the intervening party must demonstrate that it would be injurious or damaging for the child to remain in the custody of his or her parent.
- In visitation actions, the intervening party must demonstrate a real and substantial harm to the child should the visitation be denied.
- An individual claiming to be a presumptive or defect apparently intervene in an action where parentage is being adjudicated. **Authority:** Conn. Gen. Stat. §§ 46b-57 and 46b-459; *Fish v. Fish*, 285 Conn. 24 (2008) and *Roth v. Weston*, 259 Conn. 202 (2002). **Discussion:** See § 2.29[1], below. See also Chapter 8, §§ 8.10–8.12, below.

- Assessing intervention and joinder in financial actions:

- Intervention will be allowed when:
 - A motion to intervene is timely filed.
 - The intervenor has a direct and substantial interest in the subject matter of the litigation.
 - The intervenor's interest may be impaired if he or she is not permitted to intervene in the dissolution action.
 - The parties to the dissolution action will not adequately protect the interests of the intervenor.

- A third party will be joined into the dissolution action if needed for a proper resolution of the issues in the dissolution. **Authority:** Conn. Gen. Stat. §§ 52-70 and 52-107; *Molitor v. Molitor*, 184 Conn. 530 (1981), *Clark v.*

Clark, 115 Conn. App. 500 (2009), *Gaudio v. Gaudio*, 23 Conn. App. 287 (1990), *Aarestrup v. Harwood-Aarestrup*, 49 Conn. Supp. 219 (2005), and *Venuti v. Venuti*, 36 Conn. Supp. 56 (1979). **Discussion:** See § 2.29[2], *below*.

§ 2.23 Establishing Standing

Standing implicates the court's subject matter jurisdiction. *Weidenbacher v. Duclos*, 234 Conn. 51 (1995). In order to have standing, the individual must have "some real interest in the cause of action, or a legal or equitable right title or interest in the subject matter of the controversy." *Weidenbacher*, 234 Conn. at 62. Without standing, the court does not have jurisdiction to entertain the action. *Weidenbacher*, 234 Conn. at 61.

§ 2.24 Bringing a Dissolution Action by Spouses or a Paternity Action by a Parent

Either spouse may bring an action for an annulment, legal separation, or dissolution of marriage against the other. Conn. Gen. Stat. § 46b-42. Any alleged genetic parent seeking to establish parentage shall be filed in the probate court. P.A. 21-15 § 5(a)(1). Any action for a determination of parentage by an IV-D agency shall be filed with the family support magistrate decision. P.A. 21-15 § 5(a)(4). With the exception of uncontested petitions for orders of parentage made pursuant to the assisted reproductive technology statutes or to a valid gestational or genetic surrogacy agreement, all of which are to be brought in the probate court, all other claims of parentage are adjudicated in the Superior Court. P.A. 21-15 § 5(a). Such claims may be brought by: the person giving birth to the child, except under the terms of the gestational or genetic surrogacy agreement; a presumptive parent; or an individual claiming to be a de facto parent. P.A. 21-15 § 6). Standing to bring an action to adjudicate parentage is not dependent on there being only one presently existing legal parent; more than two people may be adjudicated a parent of a child. P.A. 21-15 § 23. A person claiming to be the father of a child may make a claim of paternity in probate court. Conn. Gen. Stat. § 46b-172a. If the mother is pregnant during the dissolution action and there is a disagreement as to whether the husband is the father, the superior court may determine paternity after a hearing. Conn. Gen. Stat. § 46b-45a.

§ 2.25 Bringing a Dissolution Action by Native American Tribe Members

Connecticut recognizes five resident Native American Indian tribes: Schaghticoke, Paucatuck Eastern Pequot, Mashantucket Pequot, Mohegan, and Golden Hill Paugussett. Conn. Gen. Stat. § 47-59a(b). All resident Indians of the recognized tribes are full citizens of Connecticut and can sue and be sued in Connecticut courts, including actions for dissolution of marriage, annulment, and legal separation. Conn. Gen. Stat. § 47-59a(a).

§ 2.26 Assessing the Role of Minors in Family Actions

Minors may bring dissolution actions in their own name if they are married. Conn. Gen. Stat. § 46b-43. However, in the context of a custody action in which custody of a minor child is being determined, the child is not a party, but may be represented by a guardian *ad litem* and/or an attorney for the minor child. Conn. Gen. Stat. § 46b-54 and P.B. § 25-62. Conversely, with regard to a putative father's claim of paternity, the child shall be made a party to the action in the probate court and represented by a guardian *ad litem*. Conn. Gen. Stat. § 46b-172a(c). A minor child is a permissive, but not a necessary, party to a proceeding to adjudicate parentage. P.A. 21-15, Sec. 11.

§ 2.27 Bringing a Dissolution on Behalf of Incompetent Persons

A mentally incompetent person may have a conservator of the estate appointed to oversee his or her finances through a voluntary or involuntary conservatorship proceeding in the probate court. [Conn. Gen. Stat. §§ 45a-623 and 45a-645](#). Such a conservator is given certain authority, one of which is the ability to pursue civil litigation, including a dissolution of marriage on behalf of his or her ward. [Luster v. Luster, 128 Conn. App. 259 \(2011\)](#). A conserved person cannot maintain a civil action in his or her own name, except in limited circumstances. Accordingly, the conservator can maintain an action in the name of his or her ward, so that the ward is not deprived access to the courts. [Luster, 128 Conn. App. at 271–272, 275](#).

#Comment Begins

Strategic Point: If a client has a mental capacity issue, his or her attorney has an ethical obligation to take action to protect that client, which would include seeking the appointment of a conservator. Professional Rules of Conduct, Rule 1.14(b).

#Comment Ends

§ 2.28 Making the Attorney General or Town Clerk a Party

In a dissolution of marriage action where either spouse or a child is receiving state assistance, the Connecticut Attorney General must be added as a party. [Conn. Gen. Stat. § 46b-55](#) and P.B. § 25-2(b). If either spouse or a child is receiving municipal assistance, the Town Clerk for the town providing assistance must be made a party to the action. P.B. § 25-2(b). The purpose of this provision is to ensure the financial interests of the state and town, who have provided support, are protected.

§ 2.29 Evaluating the Necessity of Joinder and Third Parties in Dissolution Actions

[1] Intervening in Visitation and Custody Actions

Third parties may seek to intervene in a dissolution of marriage action to assert custody or visitation claims concerning minor children. [Conn. Gen. Stat. § 46b-57](#). [Fish v. Fish, 285 Conn. 24 \(2008\)](#). When seeking to intervene in custody and visitation actions, the intervenor must demonstrate a parent-like relationship with the child. [Fish, 285 Conn. at 44](#). For intervention in a custody action, it must be demonstrated that the child's remaining in the custody of his or her parent would be clearly injurious or damaging. [Fish, 285 Conn. at 56](#). In a visitation action, real and substantial harm, should the visitation be denied, must be demonstrated by the intervenor. [Roth v. Weston, 259 Conn. 202, 229 \(2002\)](#). For a more thorough discussion on third-party intervention, see [Chapter 8, §§ 8.10–8.12, below](#).

Any individual who has a claim as a presumptive or de facto parent may intervene in any action where there is an adjudication of parentage, including dissolution of marriage actions. Any individual who is a presumptive parent must be provided notice of any action in which the court will adjudicate parentage. [Conn. Gen. Stat. § 46b-459](#).

[2] Intervening and Joinder in Financial Actions

It is extremely difficult for a third party to intervene in a dissolution action regarding finances, as typically the third party is seeking to preserve a right which he or she has in an asset or debt which may be at issue in the dissolution. The mere fact that someone has an interest in

property owned by either party, does not always support intervention by that third party as of right. *Clark v. Clark*, 115 Conn. App. 500 (2009). To permit intervention, the court must find:

1. The motion to intervene is filed timely.
2. The subject matter of the litigation is one in which the proposed intervenor has a direct and substantial interest.
3. Without the participation of the proposed intervenor, his or her interest may be impaired by the dissolution action.
4. Either party will not adequately protect the interests of the proposed intervenor.

Clark v. Clark, 115 Conn. App. at 504.

It is rare that any motion to intervene will be granted. A mortgagee will not typically be able to intervene, as the mortgagee's legal title to the property will not be affected by a divorce. *Clark*, 115 Conn. App. at 504. However, if a third-party claims an ownership interest in an asset that is subject to division in the dissolution, such that his or her interest may be impaired, a motion to intervene may be granted. *Aarestrup v. Harwood-Aarestrup*, 49 Conn. Supp. 219 (2005).

Joinder, on the other hand, is where a litigant seeks to join a third party into the dissolution action to allow the proper resolution of the finances, usually the property division. Conn. Gen. Stat. § 52-107. Joinder is permitted where it will not prejudice the rights of the litigants. If the issues cannot be fully resolved without the joinder of a third party, he or she may be directed by the court to be brought in as a party. Conn. Gen. Stat. § 52-70. Where such joinder will delay the resolution of the action, joinder is properly denied. *Venuti v. Venuti*, 36 Conn. Supp. 56 (1979).

Joinder may be required, where marital property has been fraudulently conveyed to a third party, to protect the court's ability to equitably divide the assets, as the disposition of the assets will affect the interests of the third party. *Molitor v. Molitor*, 184 Conn. 530 (1981) and *Gaudio v. Gaudio*, 23 Conn. App. 287 (1990).

#Comment Begins

Strategic Point: When seeking to join a party to a dissolution action, it must be demonstrated to the court why this particular third party must be joined. A fraudulent conveyance or other reason for the joinder will need to be proven at the time the motion is heard. Thus, prior to bringing the motion for joinder, the deposition of the proposed third party should be taken to obtain the proof necessary to demonstrate the propriety of the motion to join the third party.

#Comment Ends

PART VII: DETERMINING SUBJECT MATTER JURISDICTION

JURISDICTION

§ 2.30 CHECKLIST: Determining Subject Matter Jurisdiction

2.30.1 Determining Subject Matter Jurisdiction

- Assessing statutory provisions for subject matter jurisdiction:
 - Subject matter jurisdiction is the authority for the court to decide the matter in dispute.
 - The superior court has original jurisdiction over dissolution of marriage, annulment, and legal separations.
 - Provided the subject matter of the controversy is within those enumerated in [Conn. Gen. Stat. § 46b-1](#), the court will have subject matter jurisdiction.
 - A motion to dismiss is not the proper vehicle to contest a motion for modification filed on a non-modifiable order. **Authority:** [Conn. Gen. Stat. §§ 46b-1 and 46b-42](#); [Amodio v. Amodio](#), 247 Conn. 724 (1999) and [Temlock v. Temlock](#), 95 Conn. App. 505 (2006). **Discussion:** See § 2.31, *below*.
- Contesting subject matter jurisdiction:
 - Subject matter should be contested within thirty days of the defendant filing an appearance.
 - However, subject matter may be raised at any time.
 - A lack of subject matter jurisdiction may not be waived by the parties nor conferred on the court. **Authority:** [Sousa v. Sousa](#), 322 Conn. 757 (2017), [LaBow v. LaBow](#), 171 Conn. 433 (1976), [Foster v. Smith](#), 91 Conn. App. 528 (2005), and [Arseniadis v. Arseniadis](#), 2 Conn. App. 239 (1984); P.B. §§ 25-12 and 25-13(a). **Discussion:** See § 2.32, *below*, see also Chapter 17, § 17.36, *below*.
- Asserting the prior pending action doctrine:
 - A prior pending action is an action between the same parties concerning the same subject matter.
 - A prior pending action in the same state may result in the dismissal of one of the actions.
 - A prior pending action in two different states may result in an order staying the parties from proceeding with one of the actions.
 - A motion to dismiss must be brought within thirty days of the defendant filing an appearance. **Authority:** [Gaudio v. Gaudio](#), 23 Conn. App. 287 (1990), [Sauter v. Sauter](#), 4 Conn. App. 581 (1985), and [Babouder v. Abdennur](#), 41 Conn. Supp. 258 (1989); P.B. §§ 9-5, 10-30, and 25-13. **Discussion:** See § 2.33, *below*.
- Reserving jurisdiction by the court:
 - The court may reserve jurisdiction to resolve one portion of a dissolution case prior to resolving other portions of a dissolution.
 - In reserving jurisdiction or bifurcating the issues, care must be taken to ensure that the parties may come back to court for further orders.
 - The court may reserve jurisdiction to implement property division orders. **Authority:** [Conn. Gen. Stat. § 46b-56c](#); [Bender v. Bender](#), 258 Conn. 733 (2001), [Ross v. Ross](#), 172 Conn. 269 (1977), [Marshall v. Marshall](#), 119 Conn. App. 120 (2010), [Stahl v. Bayliss](#), 98 Conn. App. 63 (2006), [Bee v. Bee](#), 79 Conn. App. 783 (2003), and [Rosato v. Rosato](#), 77 Conn. App. 9 (2003). **Discussion:** See § 2.34, *below*.

§ 2.31 Assessing Statutory Provisions for Subject Matter Jurisdiction

Subject matter jurisdiction involves the authority of a court to act on a type of case brought before it. *Amodio v. Amodio*, 247 Conn. 724, 727 (1999). Where it must be decided whether a court has subject matter jurisdiction, every presumption favoring jurisdiction is afforded. *Temlock v. Temlock*, 95 Conn. App. 505, 519 (2006).

The superior court is the court of original jurisdiction for dissolution of marriage, annulment, and legal separation actions. Conn. Gen. Stat. § 46b-1 and Conn. Gen. Stat. § 46b-42. Conn. Gen. Stat. § 46b-1 sets forth a list of areas over which the Superior Court has jurisdiction. Provided the action brought comes under the purview of one of these enumerated areas, the court will have subject matter jurisdiction. *Amodio*, 247 Conn. at 729–730.

#Comment Begins

Strategic Point: A claim that the court lacks subject matter jurisdiction over a motion to modify alimony or support, because the order is non-modifiable, cannot be raised in a motion to dismiss. Since the court has the power to hear motions for modification, it has subject matter jurisdiction over the issue.

#Comment Ends

§ 2.32 Contesting Subject Matter Jurisdiction

Any attack on subject matter jurisdiction should be made by a defendant within thirty days of filing an appearance. P.B. § 25-12. A motion to dismiss shall be filed with a memorandum of law and accompanying affidavits of fact not evident on the record. P.B. § 25-13(a). The lack of subject matter jurisdiction cannot be waived by the parties. *LaBow v. LaBow*, 171 Conn. 433, 440 (1976). Since subject matter jurisdiction cannot be waived, it may be raised at any time, including more than thirty days after the filing of an appearance, and the court must determine if it has subject matter jurisdiction. *LaBow*, 171 Conn. at 440 and *Foster v. Smith*, 91 Conn. App. 528, 536 (2005). A collateral attack claiming lack of subject matter jurisdiction for an agreement which has been fully executed may succeed if it is entirely obvious that the court did not have subject matter jurisdiction when entering the original order. *Sousa v. Sousa*, 322 Conn. 757 (2017). For a more thorough discussion of collateral attacks, see Chapter 17, § 17.36, below.

The parties to an action cannot consent to the court exercising power over an issue where there is no subject matter jurisdiction. *Arseniadis v. Arseniadis*, 2 Conn. App. 239, 242 (1984). If a court acts without the subject matter jurisdiction to do so, the judgment may be opened and set aside at any time. *Arseniadis*, 2 Conn. App. at 242. The parties by agreement cannot confer subject matter jurisdiction on the court.

§ 2.33 Asserting the Prior Pending Action Doctrine

When each party starts a dissolution action in a different state or in different venues in Connecticut, over the same matter in controversy, the doctrine of “prior pending action” must be considered to determine which action should survive or proceed. The pendency of a prior action, concerning the same subject matter between the same parties, as grounds for dismissal, is valid only where the actions are pending in the same jurisdiction. *Sauter v. Sauter*, 4 Conn. App. 581, 584 (1985). Where the two actions are pending in different states, the court may order the second action to be stayed pending resolution on the first action. *Sauter*, 4 Conn. App. at 584. Thus, the plaintiff in the foreign suit, who is the defendant in the Connecticut suit, should file a motion to stay the Connecticut proceedings pending the resolution of the foreign action. In considering

whether to grant a stay, the court will determine the opportunity in the foreign suit to obtain similar relief as that of the Connecticut suit. It will also consider whether the foreign suit was brought to thwart the Connecticut action. *Sauter*, 4 Conn. App. at 585. If the court of the foreign state or country is unable to order similar relief, the court may deny a motion to dismiss the Connecticut lawsuit. *Babouder v. Abdennur*, 41 Conn. Supp. 258 (1989).

When a motion to dismiss is brought for two actions pending in Connecticut, it must be brought within thirty days of the defendant filing his or her appearance. *Gaudio v. Gaudio*, 23 Conn. App. 287, 294–295 (1990). Failure to do so will be a waiver. However, a motion to stay one of the actions from proceeding may be brought at any time. An alternative remedy is to consolidate actions filed in the same jurisdiction. P.B. § 9-5.

#Comment Begins

Strategic Point: If the two cases are pending in Connecticut, filing a motion to dismiss the action brought by the opposing side should be done as soon as possible after service in that action is made. Generally, where a choice has been made between two venues, that choice is based upon which venue will be most advantageous to that particular client. Accordingly, the motion to dismiss may serve to protect that venue choice. If a motion to consolidate is filed, the court has the ability to consolidate the actions in either judicial district and the jurisdictional advantage may be lost.

#Comment Ends#Comment Begins

Warning: P.B. § 10-30, addressing motions to dismiss in the civil context, eliminated this remedy for a filing in an improper venue. However, this revision was not made to the family practice book section for a motion to dismiss. P.B. § 25-13.

#Comment Ends

§ 2.34 Reserving Jurisdiction by the Court

A reservation of jurisdiction occurs where certain issues in a dissolution case are resolved, but others cannot be resolved, such that the court reserves jurisdiction over the remaining outstanding issues. *Bender v. Bender*, 258 Conn. 733 (2001). A second purpose for reserving jurisdiction is to permit the court to enter orders implementing a property division, since property divisions are not subject to modification. *Marshall v. Marshall*, 119 Conn. App. 120, 134 (2010).

#Comment Begins

Strategic Point: While courts always have the authority to issue orders effectuating its judgment, reserving jurisdiction on certain issues over which there may be problems in implementing the intent of the agreement will allow the court to make additional orders which would technically be considered a modification, but allow the underlying intent to be achieved.

#Comment Ends

One typical manner in which a court may reserve jurisdiction is when dividing pension or other retirement plans on a “when, as and if” basis, i.e., when they vest or mature. *Bender*, 258 Conn. at 754. Additionally, a court may reserve jurisdiction to make orders effectuating the intent of a judgment on property issues, which are non-modifiable. *Marshall*, 119 Conn. App. at 134. Oftentimes this will occur with respect to the sale of an asset, such as real estate. By allowing the court to retain jurisdiction, depending upon the circumstances arising post judgment, the court

can craft orders to implement the decision, which would not be deemed a modification of a property division. The reservation of superior court jurisdiction is required in connection with the determination of post-majority support for education orders. [Conn. Gen. Stat. § 46b-56c](#).

Retaining or reserving jurisdiction over an issue must be done at the time the judgment is entered. If there is no direction for continuing or reserved jurisdiction, then a court is without power to make any orders which would be deemed a modification of a property division. *See Rosato v. Rosato*, 77 Conn. App. 9, 14 (2003) (court's authority to divide the property of the parties, pursuant to [Conn. Gen. Stat. § 46b-81](#), must be exercised at the time that it renders judgment dissolving the marriage) and *Bee v. Bee*, 79 Conn. App. 783 (2003) (court retained jurisdiction post-judgment to ensure that its orders were effectuated by the parties).

A party may request a “bifurcation” in cases where it is deemed important to enter certain orders immediately without a total resolution on all issues. *Ross v. Ross*, 172 Conn. 269 (1977). However, care must be taken in reserving jurisdiction for later determinations so that it is clear that the parties intend for certain orders to be entered at a later time, such as alimony in the event the parties dissolve the marriage prior to resolving the financial issues.

#Comment Begins

Strategic Point: One common area which may be resolved prior to the financial orders is custody. Many custody agreements will indicate that they are intended to be final orders. However, at the time of the dissolution the orders must be reaffirmed as being in the best interests of the minor children. *Stahl v. Bayliss*, 98 Conn. App. 63 (2006).

#Comment Ends#Comment Begins

Warning: The reservation of jurisdiction is not a device to have a piecemeal resolution of the case. It should only be used sparingly and in limited instances.

#Comment Ends

PART VIII: DETERMINING THE PROPER VENUE

JURISDICTION

§ 2.35 CHECKLIST: Determining the Proper Venue

2.35.1 Determining the Proper Venue

- Bringing cases to the proper court:
 - If both parties reside in Connecticut, the action may be brought in the judicial district where either of them reside.
 - If only one party lives in Connecticut, the action must be brought in the judicial district where the Connecticut resident resides.
 - In certain towns, there is a choice of judicial districts in which actions may be brought. **Authority:** [Conn. Gen. Stat. §§ 46b-1 and 51-345\(a\)\(3\)](#).
Discussion: See § 2.36, below.
- Determining remedies when a case is filed in the wrong venue:

- The issue of venue is raised in a motion to dismiss.
- However, the court will rarely dismiss the action, but will rather transfer the case to the proper venue. **Authority:** [Conn. Gen. Stat. §§ 51-347b and 51-351](#); P.B. §§ 10-30, 12-1, and 25-13(a). **Discussion:** See § 2.37, *below*.

§ 2.36 Bringing Cases to the Proper Court

The superior court has jurisdiction over actions for dissolutions of marriage, annulments, and legal separations, together with any attendant relief. [Conn. Gen. Stat. § 46b-1](#). If both parties are Connecticut residents, the complaint may be filed in the judicial district where either of them resides. [Conn. Gen. Stat. § 51-345\(a\)\(3\)](#). If only one of them resides in the State of Connecticut, then the action must be brought in the judicial district in which the resident resides. [Conn. Gen. Stat. § 51-345\(a\)\(3\)](#). However, there are certain towns in which actions may be filed in one of two judicial districts:

1. Residents of Manchester, East Windsor, South Windsor or Enfield may bring the action in Hartford or Tolland. [Conn. Gen. Stat. § 51-345\(a\)\(3\)\(A\)](#).
2. Residents of Plymouth may bring the action in New Britain or Waterbury. [Conn. Gen. Stat. § 51-345\(a\)\(3\)\(B\)](#).
3. Residents of Bethany, Milford, West Haven or Woodbridge may bring the action in New Haven or Ansonia-Milford. [Conn. Gen. Stat. § 51-345\(a\)\(3\)\(C\)](#).
4. Residents of Southbury may bring the action in Ansonia-Milford or Waterbury. [Conn. Gen. Stat. § 51-345\(a\)\(3\)\(D\)](#).
5. Residents of Darien, Greenwich, New Canaan, Norwalk, Stamford, Weston, Westport or Wilton may bring the action in Stamford-Norwalk or Bridgeport. [Conn. Gen. Stat. § 51-345\(a\)\(3\)\(E\)](#). ~~However, the judicial branch has determined that effective September 6, 2022 until further notice that in any new dissolution filing where one or both parties live in Norwalk or Westport, those actions will be transferred to Bridgeport.~~
6. Residents of Watertown or Woodbury may bring the action in Waterbury or Litchfield. [Conn. Gen. Stat. § 51-345\(a\)\(3\)\(F\)](#).
7. Residents of Avon, Canton, Farmington, or Simsbury, ~~Newington, Rocky Hill or Wethersfield~~ may bring the action in Hartford or New Britain. [Conn. Gen. Stat. §§ 51-345\(a\)\(3\)\(G\) and 51-345\(a\)\(3\)\(H\)](#).
8. Residents of Cromwell may bring the action in Hartford or Middlesex. [Conn. Gen. Stat. § 51-345\(a\)\(3\)\(I\)](#).
9. Residents of New Milford may bring the action in Danbury or Litchfield. [Conn. Gen. Stat. § 51-345\(a\)\(3\)\(J\)](#).
10. Residents of Windham or Ashford may bring the action in Windham or Tolland.
[Conn. Gen. Stat. § 51-345\(a\)\(3\)\(K\)](#).

#Comment Begins

Strategic Point: When deciding in which judicial district the case is to be returned, when there is the option of more than one judicial district, determine which would be more favorable to the case, whether by virtue of the judge or efficiency with which cases are handled.

#Comment Ends

§ 2.37 Determining Remedies When a Case is Filed in the Wrong Venue

Improper venue is raised is through a motion to dismiss. P.B. § 25-13(a). However, dismissal of the action rarely, if ever, happens, primarily because an action cannot fail if it was returned to an improper location. [Conn. Gen. Stat. § 51-351](#). The remedy instead is to transfer the case to the proper venue, which may be done by motion or *sua sponte* by the court. [Conn. Gen. Stat. § 51-347b](#) and P.B. § 12-1.

#Comment Begins

Warning: P.B. § 10-30, addressing motions to dismiss in the civil context, eliminated this remedy for a filing in an improper venue. However, this revision was not made to the family practice book section for a motion to dismiss. P.B. § 25-13.

#Comment Ends#Comment Begins

Strategic Point: In post judgment matters, it is possible that both parties have moved outside of the judicial district in which the original action was brought. A motion to transfer the case to the judicial district in which one of the parties is currently residing should be filed, absent compelling circumstances requiring the case to remain in the original venue.

#Comment Ends

PART IX: APPLYING THE UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT (UCCJEA)

JURISDICTION

§ 2.38 CHECKLIST: Applying the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)

2.38.1 Applying the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)

- Establishing jurisdiction under the UCCJEA:
 - Establishing jurisdiction under the UCCJEA is done in the following order of primacy:
 - Home state jurisdiction at the time the proceedings commenced.
 - Connecticut was the child's home state within six months of the proceedings commencing.

- No other state has home state jurisdiction.
 - A state which has home state jurisdiction has declined to exercise jurisdiction because the child and a parent has a significant connection with Connecticut.
 - All other states have declined to exercise jurisdiction because Connecticut is the more appropriate forum.
 - No other state would have jurisdiction.
 - A custody proceeding is any proceeding where custody and visitation are at issue.
 - For purposes of determining jurisdiction, the commencement date, which is when the petition is filed, is the operative date.
 - If a defendant is not properly served, the action will not be deemed to have commenced.
 - A state under the UCCJEA includes any of the United States, Washington D.C., Puerto Rico, the U.S. Virgin Islands, or any territory of the United States. **Authority:** Conn. Gen. Stat. §§ 46b-115–46b-115jj, 46b-115, 46b-115a, 46b-115a(5), 46b-115a(15), and 46b-115k(a); *Temlock v. Temlock*, 95 Conn. App. 505 (2006) and *Martineau v. Shelnut*, 2007 Conn. Super. LEXIS 3149 (2007). **Discussion:** See § 2.39, below.
- Determining home state jurisdiction:
- Home state is where the child and a parent has lived for six months prior to the commencement of the custody proceedings.
 - The six months of residency must be continuous, although temporary absences are permitted.
 - A child under six months of age will have his or her home state where the child and a parent have lived since the child's birth.
 - The time to measure home state jurisdiction is the six months immediately preceding the filing of the custody petition. **Authority:** Conn. Gen. Stat. § 46b-115a(7) and *Coyt v. Valdez*, 2011 Conn. Super. LEXIS 1655 (2011). **Discussion:** See § 2.40, below.
- Determining significant connections with the State:
- The significant connections test applies when there is no home state.
 - The child and at least one parent must have a significant connection with Connecticut beyond mere presence.
 - There is substantial evidence in Connecticut as to the care, protection, training, and personal relationship of the child.
 - In declining jurisdiction, the court is to consider the factors to be assessed under an inconvenient forum analysis.
 - The court may decline jurisdiction if a party engages in unjustifiable conduct unless all parties agree that Connecticut should exercise jurisdiction. **Authority:** Conn. Gen. Stat. §§ 46b-115k(a)(3) and 46b-115r; *Downs v. Downs*, 2009 Conn. Super. LEXIS 2364 (2009) and *Arrigoni v. Arrigoni*, 2009 Conn. Super. LEXIS 2996 (2009). **Discussion:** See § 2.41, below. See also § 2.44, below.
- Determining jurisdiction when the child's home state has declined to exercise jurisdiction:
- A state with significant connections must also have declined jurisdiction.
 - The other jurisdiction must have found:
 - That it is an inconvenient forum.
 - The child and one or both parents have a significant connection

within Connecticut that is more than just their physical presence.

- Connecticut has substantial evidence of the child's care, training, protection, and personal relationships.

- In declining jurisdiction, the court is to have considered the factors to be assessed under an inconvenient forum analysis.

- In declining jurisdiction, the other court may consider whether a party engaged in unjustifiable conduct. **Authority:** Conn. Gen. Stat. §§ 46b-115k(a)(4), 46b-115k(a)(5), 46b-115q, and 46b-115r. **Discussion:** See § 2.42, *below*. See also § 2.44, *below*.

- Determining that no other court has jurisdiction:

- There would need to be a finding that no other state is the child's home state and that there are no significant contacts with any other jurisdiction.

- Employment of this factor for jurisdiction will be very rare. **Authority:** Conn. Gen. Stat. § 46b-115k(a)(6). **Discussion:** See § 2.43, *below*.

- Declining jurisdiction based upon an inconvenient forum:

- A court with jurisdiction may decline to exercise it if it determines it is an inconvenient forum, after considering the following:

- Whether family violence has occurred and will it occur in the future. If so, which jurisdiction can best protect the child and parties.

- How long the child has resided outside of Connecticut.

- The distance between the court which would assume jurisdiction and Connecticut.

- The financial circumstances of the parties.

- Whether the parties made an agreement as to which state would assume jurisdiction.

- Where and what type of evidence exists which is needed to resolve the issues.

- The ability of the court to resolve the case expeditiously and the necessary procedures to present evidence.

- The familiarity of the two courts with the facts and issues in the case.

Authority: Conn. Gen. Stat. § 46b-115q(b) and *Reyes v. Ortiz*, 2009 Conn. Super. LEXIS 1048 (2009). **Discussion:** See § 2.44, *below*.

- Determining if there are simultaneous proceedings and resolving which court should assume jurisdiction:

- Connecticut will not exercise jurisdiction, absent an emergency or the prior action being stayed or dismissed, when an action has been commenced in another jurisdiction.

- The Connecticut court must communicate with the court of the other state if there are simultaneous proceedings. **Authority:** Conn. Gen. Stat. §§ 46b-115h, 46b-115p(a), 46b-115p(b), and 46b-115p(c). **Discussion:** See § 2.45, *below*.

- Continuing exclusive jurisdiction:

- Where Connecticut has made a child custody determination, it will retain jurisdiction until it or a court of another state determines that the child and parents do not reside in Connecticut.

- Where Connecticut has made a child custody determination, it will retain jurisdiction until it finds:

- Connecticut is no longer the home state of the child;

- The child does not have a significant relationship with a parent who continues to reside in Connecticut; and

- Connecticut no longer has substantial evidence as to the child's care, protection, training, and personal relationships. **Authority:** Conn. Gen. Stat. § 46b-115l(a); *In Re: Natalie S*, 325 Conn. 833 (2017), *DeAlmedia-Kennedy v. Kennedy*, 207 Conn. App. 244 (2021), *Barcomb v. Barcomb*, 2014 Conn. Super. LEXIS 131 (Jan. 15, 2014), *McKibben v. Bellaflares*, 2012 Conn. Super. LEXIS 591 (2012) and *McNamara v. McNamara*, 2006 Conn. Super. LEXIS 233 (2006). **Discussion:** See § 2.46, below.

- Modifying the custody determination of another state:

- Connecticut may not modify the custody determination made by another state unless it has home state or significant connection jurisdiction and one of the following applies:

- The other state has determined it does not have exclusive, continuing jurisdiction.

- The other state finds Connecticut to be a more convenient forum.

- The other state or Connecticut find that the child and parents do not reside in the other state.

- The court may also modify the custody determination if:

- The child and a parent reside in Connecticut.

- The child has been or is under a threat of being abused or mistreated by a person who resides in the state which would have jurisdiction.

- It is in the child's best interest that Connecticut modify the order.

Authority: Conn. Gen. Stat. §§ 46b-115m(a) and 46b-115m(b); *Guillory v. Francks*, 2002 Conn. Super. LEXIS 628 (2002). **Discussion:** See § 2.47, below.

- Asserting temporary emergency jurisdiction:

- Connecticut may exercise temporary emergency jurisdiction if a child has been abandoned or the child, sibling or parent has been or is under the threat of being abused or mistreated.

- When no other proceedings have been brought in another state, the temporary emergency order will continue until such time as a state with jurisdiction makes an order.

- If another state has jurisdiction, Connecticut will specify a period during which the emergency order is valid so that the other jurisdiction can make an order. **Authority:** Conn. Gen. Stat. §§ 46b-115n, 46b-115n(a), 46b-115n(b), 46b-115n(c), and 46b-115n(d). **Discussion:** See § 2.48, below.

- Providing notice of the proceedings:

- Notice must be provided by one of four methods:

- In hand service.

- In accordance with the rules of the jurisdiction in which the defendant resides.

- Certified mail.

- As directed by the court, including by publication. **Authority:** Conn. Gen. Stat. § 46b-115g(a). **Discussion:** See § 2.49, below.

- Applying the UCCJEA to Native Americans:

- Native Americans subject to the Indian Child Welfare Act are not subject to the provisions of the UCCJEA. **Authority:** 25 U.S.C. § 1901; Conn. Gen. Stat. § 46b-115c. **Discussion:** See § 2.50, below.

§ 2.39 Establishing Jurisdiction Under the UCCJEA

The Uniform Child Custody Jurisdiction and Enforcement Act (hereinafter “UCCJEA”) is codified in [Conn. Gen. Stat. §§ 46b-115 through 46b-115jj](#). The UCCJEA sets forth the criteria over which child custody jurisdiction for an initial determination is asserted in order of primacy:

1. The child’s home state was Connecticut at the time the child custody proceeding commenced;
2. The child’s home state, within six months of the child custody proceeding commencing, was Connecticut; the child is absent from the state but at least one of the parents continues to reside in Connecticut;
3. No other state has jurisdiction under 1 and 2 above, the child and at least one parent have a “significant connection” with Connecticut other than physical presence, and there is substantial evidence as to the child’s “care, protection, training and personal relationships” in Connecticut;
4. Although another state may be the child’s home state, that state has declined to exercise jurisdiction in favor of Connecticut because the child and one parent have a significant connection with Connecticut;
5. All other courts have declined to exercise jurisdiction because Connecticut is the more appropriate forum; or
6. No other state would have jurisdiction.

[Conn. Gen. Stat. § 46b-115k\(a\)\(1\)–\(6\)](#).

Jurisdiction is defined in terms of child custody proceedings, which is any proceeding where visitation or custody is at issue. [Conn. Gen. Stat. § 46b-115a](#). The commencement date, which is when the first pleading is filed, is the date used for purposes of determining jurisdiction. [Conn. Gen. Stat. § 46b-115a\(5\)](#). An action will not be deemed to have commenced where the defendant has not been served with the custody petition. [Martineau v. Shelnut, 2007 Conn. Super. LEXIS 3149 \(2007\)](#). In addition, a state under the UCCJEA includes any of the United States, Washington D.C., Puerto Rico, the U.S. Virgin Islands, or any United States territory. [Conn. Gen. Stat. § 46b-115a\(15\)](#). A state does not include a foreign country. [Temlock v. Temlock, 95 Conn. App. 505 \(2006\)](#).

#Comment Begins

Warning: The precursor to the UCCJEA was the Uniform Child Custody Jurisdiction Act (hereinafter “UCCJA”). The basis upon which jurisdiction was determined under the UCCJA is different than the UCCJEA. When researching cases on this issue, attention should be paid to whether the case was decided based on the UCCJEA or UCCJA.

#Comment Ends

§ 2.40 Determining Home State Jurisdiction

Home state is where the child and a parent or person acting as a parent has lived for six months prior to the custody proceeding commencing. [Conn. Gen. Stat. § 46b-115a\(7\)](#). The residency in the state must be continuous, although temporary absences are permitted. [Conn. Gen. Stat. § 46b-115a\(7\)](#). Additionally, for a child under the age of six months, the home state will be where the child and a parent have lived since the child's birth. [Conn. Gen. Stat. § 46b-115a\(7\)](#). A party cannot defend against a motion to dismiss by claiming that at the time the motion to dismiss is filed the child has resided in Connecticut for more than six months, when at the time the proceedings commenced the child had resided in Connecticut for less than six months. [Coyt v. Valdez, 2011 Conn. Super. LEXIS 1655 \(2011\)](#).

§ 2.41 Determining Significant Connections with the State

If there is no home state under which jurisdiction may be based, the second basis for determining jurisdiction is predicated upon significant connections with Connecticut. [Conn. Gen. Stat. § 46b-115k\(a\)\(3\)](#) and [Arrigoni v. Arrigoni, 2009 Conn. Super. LEXIS 2996 \(2009\)](#). To satisfy this jurisdiction basis it must be shown that:

1. No other state may assert home state jurisdiction;
2. The child and one or both parents have a significant connection with Connecticut, beyond being physically present in the state; and
3. Connecticut has substantial evidence as to the child's "care, protection, training and personal relationships."

[Conn. Gen. Stat. § 46b-115k\(a\)\(3\)](#). The significant connection test will apply where there have been frequent moves in the months preceding the custody petition, such that the child has not resided in a jurisdiction for more than six months and, therefore, no state will have home state jurisdiction. The court will then analyze the significant connections to Connecticut to determine if it is appropriate to exercise jurisdiction. [Downs v. Downs, 2009 Conn. Super. LEXIS 2364 \(2009\)](#).

#Comment Begins

Strategic Point: Evidence of a parent's significant connections with Connecticut may be demonstrated by showing how long the parent and child lived in Connecticut, presence of treating doctors, employment, involvement in organizations, involvement in a child's school, and the presence of extended family. When proving substantial evidence regarding the child, the following should be considered: school registration and report cards, pediatrician and hospital records, involvement with religious groups, sports teams, boy scouts and girl scouts, music or dance activities, and extracurricular activities. Additionally, evidence as to why it would be inappropriate for another state to assert jurisdiction should be demonstrated by juxtaposition.

#Comment Ends

§ 2.42 Determining Jurisdiction When the Child's Home State Has Declined to Exercise Jurisdiction

Connecticut will assume jurisdiction over a child custody matter in the case where the

child's home state or a state with significant connections has declined to exercise jurisdiction based upon Connecticut being the more appropriate forum. [Conn. Gen. Stat. §§ 46b-115k\(a\)\(4\) and 46b-115k\(a\)\(5\)](#).

When the child's home state declines to exercise jurisdiction, there must be a finding by another jurisdiction that:

1. The home state is an inconvenient forum or there has been unjustified conduct;
2. The child or one or both parents has a significant connection with Connecticut, beyond being physically present; and
3. Connecticut has substantial evidence as to the child's "care, protection, training and personal relationships."

[Conn. Gen. Stat. § 46b-115k\(a\)\(4\)](#).

Secondly, jurisdiction may be based upon another state, which had jurisdiction under any of the prior statutory sections, finding that Connecticut is a better forum applying an inconvenient forum analysis or unjustifiable conduct. [Conn. Gen. Stat. § 46b-115k\(a\)\(5\)](#). Accordingly, the primary difference between asserting jurisdiction under these two statutory provisions, compared to the significant connections test, is a finding that the other state is an inconvenient forum. For a thorough discussion on the factors to be assessed in determining an inconvenient forum, *see* [§ 2.44, below](#).

Jurisdiction must be declined where a party, who otherwise would be under Connecticut's jurisdiction, has engaged in "unjustifiable conduct," unless both parents acquiesce to Connecticut's jurisdiction or any other state otherwise having jurisdiction believes that Connecticut is the more appropriate forum. [Conn. Gen. Stat. § 46b-115r](#). There are no reported Connecticut cases defining "unjustifiable conduct" within the meaning of this statute.

§ 2.43 Determining That No Other Court Has Jurisdiction

The final method, absent emergency jurisdiction, by which a court may assert jurisdiction is when no other forum would have jurisdiction under any of the prior jurisdictional bases. [Conn. Gen. Stat. § 46b-115\(a\)\(6\)](#). It is unlikely that this section would be employed since virtually all custody proceedings would have jurisdiction based upon home state or the significant connections test.

§ 2.44 Declining Jurisdiction Based Upon Inconvenient Forum

In declining jurisdiction on the basis of inconvenient forum, the court must consider all relevant factors, including:

1. Family violence and the likelihood of future occurrence, and which state could best protect the child and the parties.
2. How long the child has lived outside of Connecticut.

3. The physical distance between the Connecticut court and the court in the other state that could assume jurisdiction.
4. The parties' financial circumstances.
5. The existence of any agreement of the parties specifying which state should have jurisdiction.
6. Where and what evidence is required to resolve the litigation, including the child's testimony.
7. The ability of each court to decide the issue expeditiously.
8. Each court's familiarity with the facts and issues in the case.

Conn. Gen. Stat. § 46b-115q(b).

#Comment Begins

Strategic Point: When assessing a claim based upon an inconvenient forum, the focus should be on where the relevant evidence regarding the issues is located. An inconvenient forum can be proven by demonstrating which forum is convenient. It is easier to prove which jurisdiction may have certain information in the context of which jurisdiction does not have the particular information.

#Comment Ends

§ 2.45 Determining Whether There Are Simultaneous Proceedings and Resolving Which Court Should Assume Jurisdiction

If a child custody action has already been commenced in another state at the time an action is started in Connecticut, the Connecticut court will not exercise jurisdiction unless emergency jurisdiction must be exercised or if the prior out-of-state action is stayed or terminated. Conn. Gen. Stat. § 46b-115p(a).

If an action has been commenced in Connecticut, the court must inquire whether there is any other proceeding in any other state. If there is an action in another state, the Connecticut court must communicate with the other state's court to resolve which court should assert jurisdiction. Conn. Gen. Stat. §§ 46b-115p(b) and 46b-115h. Likewise, in a modification proceeding, the court must determine whether there is an enforcement proceeding in any other state. Conn. Gen. Stat. § 46b-115p(c). If an enforcement proceeding is pending in another state, the court may stay the Connecticut proceedings, enjoin the parties from proceeding with the other action, or proceed with modification. Conn. Gen. Stat. § 46b-115p(c).

§ 2.46 Continuing Exclusive Jurisdiction

A Connecticut court, which has made a child custody determination, has exclusive, continuing jurisdiction until:

1. A Connecticut court or court of another state determines that the child, parents, and those acting as a parent do not presently reside in Connecticut; or
2. A Connecticut court determines:
 - a. That Connecticut is not the home state of the child;
 - b. The child no longer has a significant relationship with a parent or one acting as a parent who continues to reside in Connecticut; and
 - c. Connecticut no longer has substantial evidence concerning the child's care, protection, training, and personal relationships.

Conn. Gen. Stat. § 46b-115l(a).

Key language within the statute for determining continuing exclusive jurisdiction is that it must be a child custody proceeding. Accordingly, if the court asserts jurisdiction over a neglect petition and a subsequent custody action is brought, the neglect petition does not give rise to continuing exclusive jurisdiction because it is not a child custody determination. *In Re: Natalie S.*, 325 Conn. 833 (2017).

The determination of whether Connecticut retains continuing exclusive jurisdiction when the child is no longer residing in the state, will primarily depend upon whether there is substantial evidence concerning the child in Connecticut. *McNamara v. McNamara*, 2006 Conn. Super. LEXIS 233 (2006). Continuing exclusive jurisdiction ends the moment all members of the family no longer reside in Connecticut, even if one of the parents subsequently moves back to Connecticut. *DeAlmedia-Kennedy v. Kennedy*, 207 Conn. App. 244 (2021). When combined with the duration of time away from Connecticut, a lack of relationship with the parent who continues to reside in Connecticut will likely cause the court to decline to exercise jurisdiction due to a lack of substantial evidence. *McKibben v. Bellaflares*, 2012 Conn. Super. LEXIS 591 (2012). Despite finding that Connecticut retains continuing jurisdiction, the court may still determine that another jurisdiction is more appropriate to decide the custody issues due to the residence of the child and one of the parents. In those cases, it would be improper to dismiss the action and preferable to stay the proceedings to allow the filing of a motion in the state in which the child is then residing. *Barcomb v. Barcomb*, 2014 Conn. Super. LEXIS 131 (Jan. 15, 2014).

#Comment Begins

Strategic Point: When faced with the issue of proving or contesting the existence of substantial evidence in Connecticut, it should be done by a comparison of the evidence available in Connecticut versus the jurisdiction in which the child is currently residing. There may be certain issues, such as educational special needs, which may be dispositive of the controversy before the court. Special attention should be paid to those issues.

#Comment Ends

§ 2.47 Modifying the Custody Determination of Another State

Connecticut may not modify a child custody determination made by another state's court unless Connecticut would have home state or significant connection jurisdiction and one of the

following is applicable:

1. The other state court has determined it no longer has exclusive, continuing jurisdiction.
2. The other state court finds that Connecticut would be a more convenient forum.
3. The other state court or the Connecticut court determines that the child, the child's parents, or persons acting as parents, do not reside in the other state.

[Conn. Gen. Stat. § 46b-115m\(a\).](#)

Connecticut may modify a child custody determination, however, if:

1. The child with a parent resides in Connecticut.
2. The child has been or is under a threat of being abused or mistreated by a person who resides in the other state that would have jurisdiction.
3. It is in the child's best interests to have custody modified in Connecticut.

[Conn. Gen. Stat. § 46b-115m\(b\).](#)

When looking at the ability to modify another court's order under this section, the primary focus is on the last two criteria. Firstly, there must be an allegation that abuse or mistreatment has occurred or is threatened. Certainly, if the Department of Children and Families is involved, that will strengthen a claim for assertion of jurisdiction. [Guillory v. Francks, 2002 Conn. Super. LEXIS 628 \(2002\)](#). Secondly, the best interest standard is primarily focused on whether the child's best interests are being served by the other court. If they are, the Connecticut court will not exercise jurisdiction. [Guillory, 2002 Conn. Super. LEXIS at 628](#).

§ 2.48 Asserting Temporary Emergency Jurisdiction

A Connecticut court can assert temporary emergency jurisdiction if the child is present in Connecticut and has either been abandoned or the child, parent or a sibling "has been or is under a threat of being, abused or mistreated." [Conn. Gen. Stat. § 46b-115n\(a\)](#). If there is no previous or pending child custody determination, an emergency child custody determination remains in effect until an order is obtained from a court of a state having either initial child custody jurisdiction, exclusive continuing jurisdiction, or modification jurisdiction. [Conn. Gen. Stat. § 46b-115n\(b\)](#). Such an emergency child custody determination shall be a final determination if:

1. No other child custody proceeding has been commenced in a state having initial child custody jurisdiction, exclusive continuing jurisdiction, or modification jurisdiction;
2. Connecticut has become the home state of the child; and
3. "The child custody determination provides that it is a final determination."

Conn. Gen. Stat. § 46b-115n(b).

However, if a court of another state has jurisdiction, Connecticut may enter a temporary emergency order which will specify the period of time for which it is valid. Conn. Gen. Stat. § 46b-115n(c). The time period for the validity of the temporary order shall be of sufficient duration as to permit the court of the state which has jurisdiction to enter an order. Conn. Gen. Stat. § 46b-115n(c).

If the court learns that a child custody proceeding has been commenced in a court with jurisdiction, the Connecticut court must contact the other court and may make orders to resolve the emergency or to protect the child's or parent's safety. Conn. Gen. Stat. § 46b-115n(d).

§ 2.49 Providing Notice of the Proceedings

Notice must be provided to nonresident defendants in UCCJEA by one of four methods:

1. Personal in hand service;
2. In accordance with the rules of the jurisdiction where the defendant lives;
3. Notice by mail, return receipt requested; or
4. As directed by the court, including publication.

Conn. Gen. Stat. § 46b-115g(a).

#Comment Begins

Warning: If service is to be made by mail, it must still be done by a marshal authorized to serve process. The proof of service will be the signed receipt. However, if the receipt is signed by someone other than the named party, there may be questions as to whether assertion of jurisdiction has been properly made.

#Comment Ends

§ 2.50 Applying the UCCJEA to Native Americans

If a Native American or Indian child is subject to the Indian Child Welfare Act, 25 U.S.C. § 1901 *et seq.*, then that child is not subject to the UCCJEA. Conn. Gen. Stat. § 46b-115c. The Indian Child Welfare Act was enacted to reduce the number of Native American children being removed from their homes, native culture, and tribal reservations.

PART X: APPLYING THE UNIFORM INTERSTATE FAMILY SUPPORT ACT

JURISDICTION

§ 2.51 CHECKLIST: Applying the Uniform Interstate Family Support Act

2.51.1 Applying the Uniform Interstate Family Support Act

- Asserting jurisdiction over nonresidents:
 - Jurisdiction may be asserted over a non-resident when:
 - Personal service is made in Connecticut.
 - Connecticut jurisdiction is consented to by filing an appearance or failure to raise a jurisdictional defect.
 - The individual resided in Connecticut with the child.
 - The individual resided in Connecticut and paid for prenatal expenses or support for the child.
 - The individual directed or took actions which resulted in the child residing in Connecticut.
 - The child was likely conceived in Connecticut.
 - There is any other basis to assert jurisdiction, consistent with constitutional principles. **Authority:** Conn. Gen. Stat. §§ 46b-303, 46b-311(a), 46b-311(b), 36b-386, and 46b-388. **Discussion:** See § 2.52, below.
- Establishing support orders when there are simultaneous proceedings in another state:
 - If a petition is filed in Connecticut after having been filed in another state, Connecticut will exercise jurisdiction if:
 - The Connecticut pleading is filed prior to the time expiring for challenging jurisdiction in the other state;
 - The jurisdiction of the other state has been timely challenged; and
 - Connecticut is the child's home state.
 - If a petition is filed in Connecticut before having been filed in another state, Connecticut will not exercise jurisdiction if:
 - The other petition is filed prior to the time expiring to challenge jurisdiction in Connecticut;
 - Connecticut's jurisdiction has been timely challenged; and
 - The other state is the child's home state. **Authority:** Conn. Gen. Stat. §§ 46b-314(a) and 46b-314(b). **Discussion:** See § 2.53, below.
- Continuing exclusive jurisdiction:
 - Connecticut will retain continuing exclusive jurisdiction for modification purposes if the Connecticut order is the controlling support order and:
 - At the time the modification is filed, Connecticut is the residence of the payor, recipient, or the child who benefits from the order; or
 - The parties' consent that Connecticut may continue to exercise jurisdiction despite the payor, recipient, and child not residing in Connecticut.
 - Connecticut may not exercise continuing exclusive jurisdiction if:
 - The parties consent to another state exercising jurisdiction, or
 - The Connecticut order is not the controlling order. **Authority:** *Hornblower v. Hornblower*, 151 Conn. App. 332 (2014), Conn. Gen. Stat. §§ 46b-315(a), 46b-315(b) and 46b-315(e). **Discussion:** See § 2.54, below.

§ 2.52 Asserting Jurisdiction over Nonresidents

Actions brought under the Uniform Interstate Family Support Act (hereinafter “UIFSA”) must be brought in a tribunal which is defined as the superior court or family support magistrate. [Conn. Gen. Stat. § 46b-303](#).

In an action to determine support, determine paternity, or enforce a support order, Connecticut may exercise jurisdiction over a non-resident in the following instances:

1. Personal service is made in Connecticut.
2. There is consent to jurisdiction by filing an appearance or by filing a responsive document that would waive any claim to a jurisdictional defect.
3. The defendant resided in Connecticut with the child.
4. The defendant resided in Connecticut and paid for prenatal expenses or support for the child.
5. The defendant, by his or her acts or directives, has caused the child to reside in Connecticut.
6. The defendant and the other parent had sexual intercourse in Connecticut and the child may have been conceived as a result.
7. Jurisdiction will be found where there is any other basis for personal jurisdiction consistent with the Connecticut and United States Constitutions.

[Conn. Gen. Stat. § 46b-311\(a\)](#). While the last provision seems broad, it is apparent that the “minimum contacts” standard applies to protect the due process rights of the nonresident defendant.

If the court is modifying an order of another state or foreign country, the court will not acquire jurisdiction over a respondent merely because the requirement of [Conn. Gen. Stat. § 46b-311\(a\)](#) are met, but must also comply with the provisions of [Conn. Gen. Stat. §§ 46b-386](#) or [46b-388](#). [Conn. Gen. Stat. § 46b-311\(b\)](#). If the parties reside in Connecticut and the child does not reside in the state which issued the order, then Connecticut may modify the order. [Conn. Gen. Stat. § 46b-388](#). However, if both parties do not reside in Connecticut or if the child resides in the issuing state, Connecticut may modify an order of child support if the following are found by the court:

1. Neither of the parties nor the child resides in the issuing state;
2. A non-resident petition seeks modification; and
3. The respondent is subject to the personal jurisdiction of Connecticut;

OR

4. The child resides in Connecticut, or a party is subject to personal jurisdiction in Connecticut and all parties file a consent for Connecticut to modify the order and assume continuing, exclusive jurisdiction.

Conn. Gen. Stat. § 46b-386.

#Comment Begins

Warning: Public Act 15-71 modified the UIFSA statute, changing the statute numbers and certain provisions. Care should be taken when reviewing case law on UIFSA to ensure that the provisions have remained consistent from the time the decision until the time the case is utilized as precedent.

#Comment Ends

§ 2.53 Establishing Support Orders When There Are Simultaneous Proceedings in Another State

If a petition is filed in Connecticut subsequent to a similar petition or pleading in another state, Connecticut will exercise jurisdiction over the matter only if:

1. The Connecticut pleading is filed before the expiration of time for filing a responsive pleading challenging jurisdiction of the other state;
2. The other state's jurisdiction is timely challenged by the contesting party; and
3. Connecticut is the child's home state.

Conn. Gen. Stat. § 46b-314(a).

Conversely, Connecticut will not exercise jurisdiction where a petition is filed in another state after the Connecticut petition is filed if:

1. The other petition is filed before the expiration of the time allowed in Connecticut for filing a responsive pleading challenging Connecticut's jurisdiction;
2. Connecticut's jurisdiction is timely challenged by a party; and
3. The other state is the child's home state.

Conn. Gen. Stat. § 46b-314(b).

§ 2.54 Continuing Exclusive Jurisdiction

The Connecticut family support magistrate division and the superior court will retain

continuing exclusive jurisdiction to modify a child support order it issues provided that the order is the controlling support order; and

1. At the time of the filing for the modification, Connecticut is the state of residence of the payor, recipient or the child who benefits from the order; or
2. The parties consent in open court that Connecticut may continue to exercise jurisdiction to modify the child support order, despite child and support payer and recipient no longer reside in Connecticut.

Conn. Gen. Stat. § 46b-315(a). A temporary support order issued *ex parte* will not create continuing exclusive jurisdiction. Conn. Gen. Stat. § 46b-315(e). A party cannot escape exercise of personal jurisdiction by moving out of state. *Hornblower v. Hornblower*, 151 Conn. App. 332 (2014).

Connecticut may not exercise continuing exclusive jurisdiction if:

1. All the parties file a consent to another state's jurisdiction; or
2. The order is not the controlling order.

Conn. Gen. Stat. § 46b-315(b). If Connecticut no longer has exclusive jurisdiction, it may request another state to modify the support order. Conn. Gen. Stat. § 46b-315(d).

PART XI: DOMESTICATING AND ENFORCING FOREIGN MATRIMONIAL JUDGMENTS

JURISDICTION

§ 2.55 CHECKLIST: Domesticating and Enforcing Foreign Matrimonial Judgments

2.55.1 Domesticating and Enforcing Foreign Matrimonial Judgments

- Domesticating a foreign judgment:
 - Judgments of another state may be registered and enforced in Connecticut.
 - To register a judgment, the following must occur:
 - A certified copy of the judgment must be filed. There must be a certification that the judgment is final and has not been modified, altered, amended, set aside or vacated. Additionally, it must be stated that the enforcement of the judgment has not been stayed or suspended.
 - The certificate must list the full name and last known address of the other party to the judgment and the name and address of the court which rendered the initial judgment.

- The respondent must be notified by registered mail at his or her last known address, or by personal service of the filing of the foreign judgment within five days of its filing.
- No action may be taken to enforce the foreign matrimonial judgment for twenty days after filing.
 - The judgment will not be enforced if the respondent files an affidavit that the judgment is not a final judgment due to an appeal or the imminent filing of an appeal. **Authority:** *Conn. Gen. Stat. §§ 46b-71(a), 46b-71(b), 46b-72, and 46b-73(a).* **Discussion:** See § 2.56, below.
- Asserting comity for judgments of foreign countries:
 - Foreign judgments are not entitled to full faith and credit.
 - Comity will not be given to a foreign judgment where due process was denied, the judgment was obtained fraudulently, the judgment offends Connecticut's public policy, or the foreign court did not have jurisdiction.
 - Comity will be given to a foreign judgment procured in an impartial proceeding where there was no prejudice by the courts or law.
 - Comity will be denied where a dissolution is entered in a jurisdiction in which neither party was a domiciliary. **Authority:** *Litvaitis v. Litvaitis*, 162 Conn. 540 (1972), *Juma v. Aomo*, 143 Conn. App. 51 (2013), and *Zitkene v. Zitkus*, 140 Conn. App. 856 (2013). **Discussion:** See § 2.57, below.

§ 2.56 Domesticating a Foreign Judgment

In the event the parties obtained a final judgment in another state in the United States, that judgment may be registered in Connecticut and enforced in a like manner as any other Connecticut judgment. *Conn. Gen. Stat. § 46b-71(b).*

In order to register or domesticate a foreign matrimonial judgment, the following steps must be taken:

1. The certified copy of the foreign matrimonial judgment must be filed with a certification that such judgment is final, has not been modified, altered, amended, set aside or vacated and that the enforcement of such judgment has not been stayed or suspended. *Conn. Gen. Stat. § 46b-71(a).* Typically the party seeking to domesticate the judgment accomplishes this certification through an affidavit.
2. The certificate must list the full name and last known address of the other party to such judgment and the name and address of the court in the foreign state that rendered such judgment. *Conn. Gen. Stat. § 46b-71(a).*
3. Within five days after the filing of the foreign judgment and certificate, the respondent party must be notified of the filing of such foreign matrimonial judgment by registered mail at his or her last known address or by personal service. *Conn. Gen. Stat. § 46b-72.*
4. For a period of twenty days from filing, no steps shall be taken to enforce or execute the judgment until proof of service has been filed with the court. *Conn. Gen. Stat. § 46b-72.*

#Comment Begins

Strategic Point: Although the statute allows for service by registered mail, personal service is preferable to eliminate any question of actual notice which would delay enforcement or modification proceedings.

#Comment Ends

The foreign matrimonial judgment will not be enforced if a party files an affidavit with the court indicating that the judgment is not final due to a pending or imminent appeal until such time as the appeal is resolved. [Conn. Gen. Stat. § 46b-73\(a\)](#).

§ 2.57 Asserting Comity for Judgments of Foreign Countries

Full faith and credit does not apply to judgments obtained in foreign countries, and Connecticut courts are not required by federal law to enforce orders from a foreign country. [Litvaitis v. Litvaitis](#), 162 Conn. 540, 544 (1972). Since judgments from foreign courts may not be registered as a foreign matrimonial judgment, the only means by which they may be enforced is by comity. Comity is granted to foreign judgments with “due regard to international duty and convenience, on the one hand, and to rights of citizens of the United States and others under the protection of its laws, on the other hand.” [Litvaitis](#), 162 Conn. at 544. Comity has important exceptions and qualifications, however. A court will not recognize a foreign judgment under the principal of comity where due process of law was denied, the judgment was obtained fraudulently, it offends the public policy of Connecticut, or the foreign court did not have jurisdiction to enter its order. [Litvaitis](#), 162 Conn. at 545. A foreign court order, where the parties had the opportunity to be heard in an impartial proceeding without a showing of prejudice by the court or laws of that jurisdiction, is entitled to recognition by comity. [Zitkene v. Zitkus](#), 140 Conn. App. 856 (2013).

A judgment rendered in a jurisdiction in which neither party was a domiciliary will not be recognized in Connecticut. [Juma v. Aomo](#), 143 Conn. App. 51 (2013).

#Comment Begins

Strategic Point: When faced with a matter involving foreign decrees, check to see whether there are any treaties between the United States and the particular foreign nation covering the issue.

#Comment Ends

When assessing the validity of a foreign judgment, the Connecticut court will not enforce the judgment unless one of the parties was domiciled in the jurisdiction in which the judgment was entered. [Litvaitis](#), 162 Conn. at 545.