

BASIC UCCJEA JURISDICTION

*Interstate Custody Basics for Judicial
Officers and Attorneys in Domestic
and Juvenile Cases*

- ➡ Was in all 50 states.
- ➡ Introduced the concept of child-state jurisdiction.
- ➡ Lists 5 equal bases for child custody jurisdiction.
- ➡ Requires that jurisdiction continue in the issuing state until all have left (but many Courts ignored this).

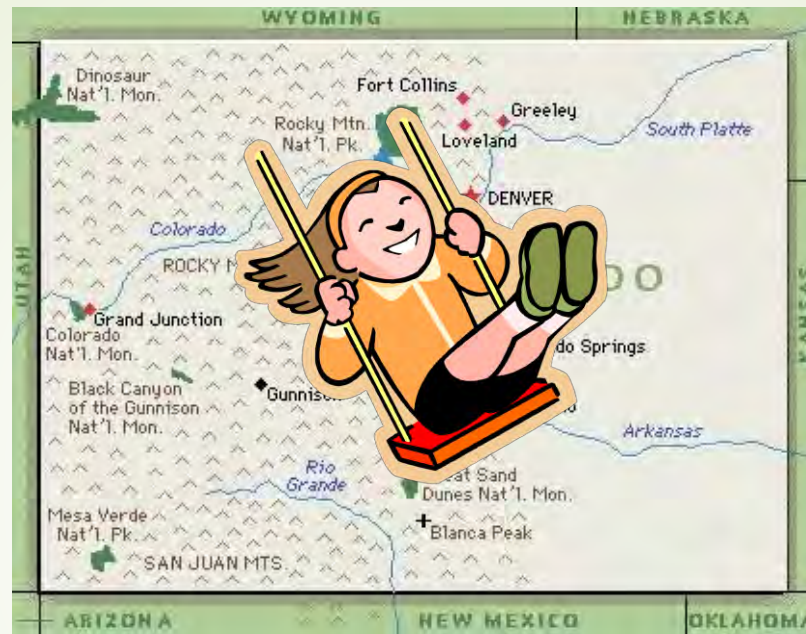
Uniform Child Custody Jurisdiction Act (UCCJA)

- Prefers home state over other bases for jurisdiction; other bases only available if home state is not.
- Requires states to give full faith and credit to custody orders of other states ONLY IF the issuing state's initial exercise of jurisdiction was consistent with the Act.

**Parental Kidnapping
Prevention Act (PKPA) 28
U.S.C. 1738A (1980)**

- ➡ Continues the concept of child-state jurisdiction.
- ➡ Requires home state jurisdiction in establishment cases; continuing jurisdiction in modification cases.
- ➡ Requires this state to give full faith and credit to custody orders of other states **ONLY IF** the issuing state's initial exercise of jurisdiction was consistent with the Act.

Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)



Child/State Jurisdiction

Where has the child lived for the past 182 days?

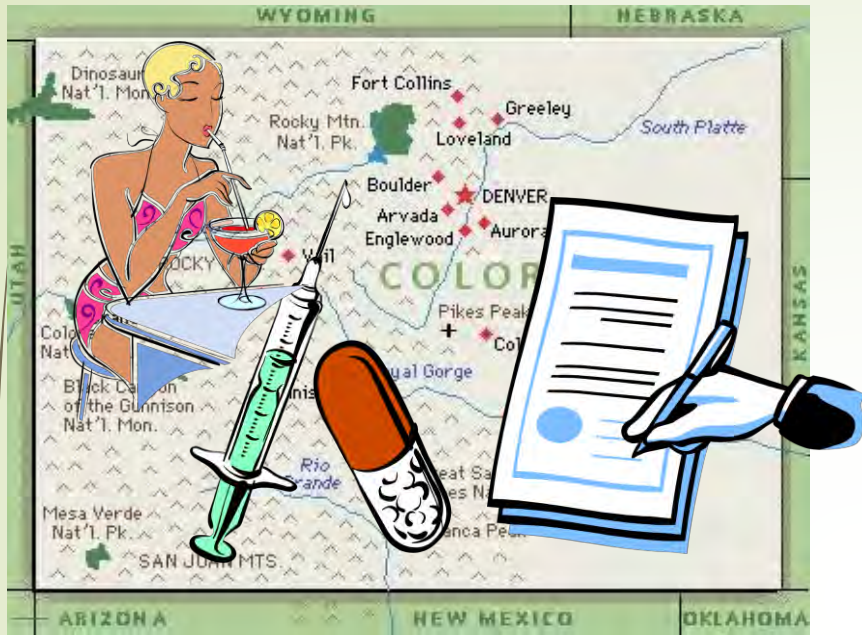


Mom remains in Colorado. Dad and child
move to Texas.

Who has Custody Jurisdiction?



Mom in CO, Dad in TX
Who has jurisdiction?



**Dad says Mom is a drug addict.
Can Texas take jurisdiction?**

- Is in 49 states (except Massachusetts), the District of Columbia, and the All territories but Puerto Rico.
- Jurisdiction continues in the issuing state until all have left, unless the issuing state relinquishes jurisdiction.
- Limits emergency jurisdiction in Colorado to the time necessary for the state having jurisdiction to act.

Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) (Cont.)

Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) (Cont.)

- Allows only one state to determine jurisdiction at any given time.
- Allows parties to register and enforce other states' custody orders in Colorado, if properly obtained.
- Allows for expedited enforcement of other state's custody orders, if properly obtained.
- Requires that judicial officers make a record of contact with other Courts, and allows for attorney input.



-The issuing state (state that issued the initial order) has exclusive continuing subject matter jurisdiction over the child support and/or custody issue(s) so long as any party/child continues to reside there.

-Jurisdiction can change in 3 ways:

- The parties consent;
- The Judge decides;
- No one lives in the issuing state anymore.



**Continuing Exclusive
Jurisdiction
(CEJ/ECJ)**



- In custody cases, if anyone still lives in the state that issued the order, *only the court in that state* has the power to decide whether or not to exercise jurisdiction.
- The other state can exercise jurisdiction only if the issuing state relinquishes it, or under CRS 14-13-204.

Conflicts in Statutory Bases for Jurisdiction to Modify



- Was the jurisdictional basis for the entry of the initial order correct?

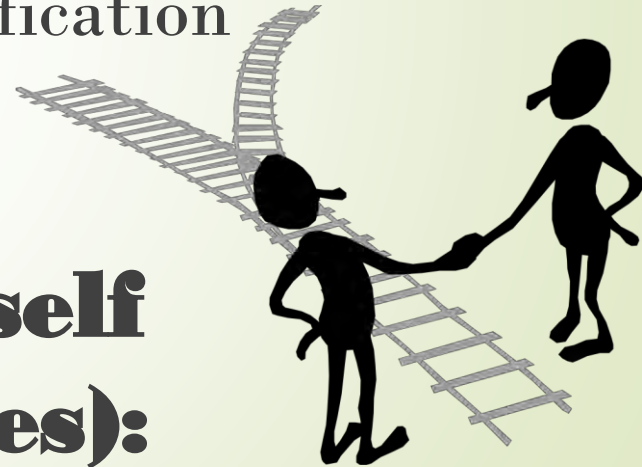
- Does any party to the original dispute still live in the state that issued the order?

- IF THE ANSWER TO THESE TWO QUESTIONS IS “YES,” JURISDICTION CONTINUES IN THE ISSUING STATE UNLESS:.

**Questions to Ask Yourself
(or the Parties):**

➤ If the issue is child support, the party still living in the issuing state and the other party agree in writing to a transfer of jurisdiction to the state of residence of the other party or the child, and a written agreement between the parties is filed in the Court of the issuing state, **PRIOR** to filing any request for modification in the new state.

**Questions to Ask Yourself
(or the Parties):**

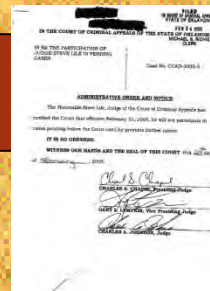
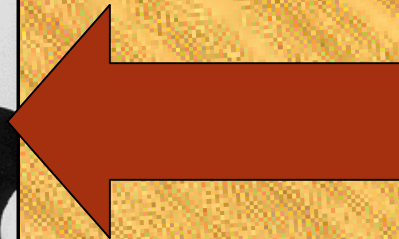
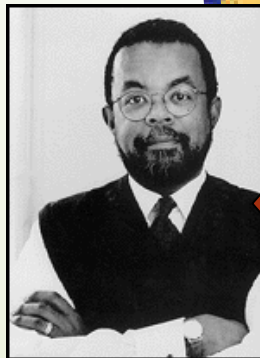


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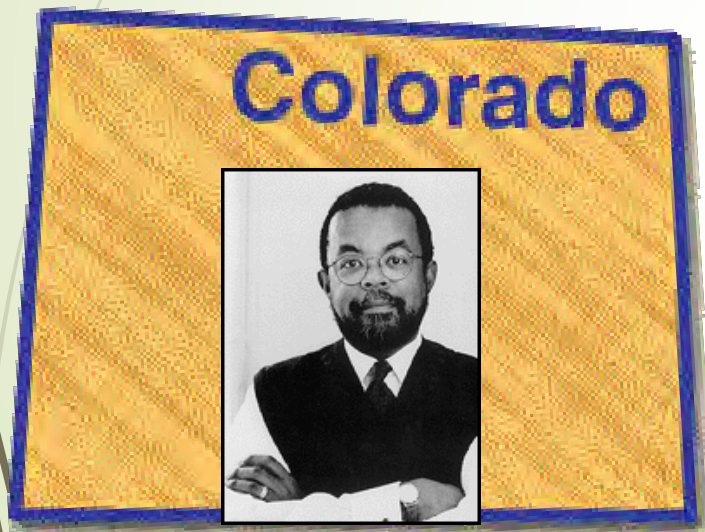
- ➡ If the issue is custody, the parent complied with provisions of the existing custody order, the children have lost a significant connection with the issuing state, substantial evidence concerning the children is no longer available in the issuing state, the children have established significant connections with CO, **and** the court in the issuing state relinquishes jurisdiction to the Colorado court pursuant to a pending motion; **OR**
- ➡ If the issue is custody, the issuing state relinquished jurisdiction in a prior proceeding.

In re Marriage of Tonnesson
1996 Colo.App. LEXIS 267 (Colo.App. 1996).

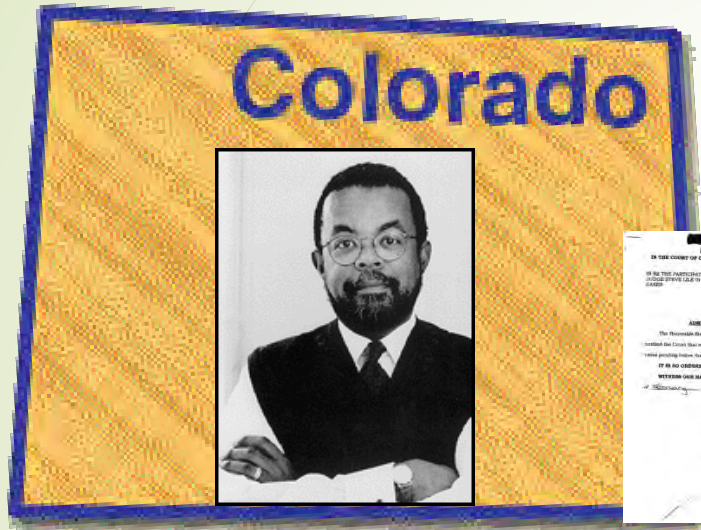
**Ms. T files for divorce.
Parties briefly reconcile. Twins conceived
in CO.**



**Mom moves to AZ, where twins are born.
Dad moves for paternity, support and
parenting time determination in CO. Mom
moves for custody in AZ.**



What issues can CO decide?

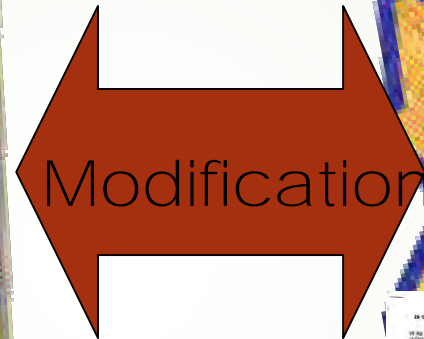
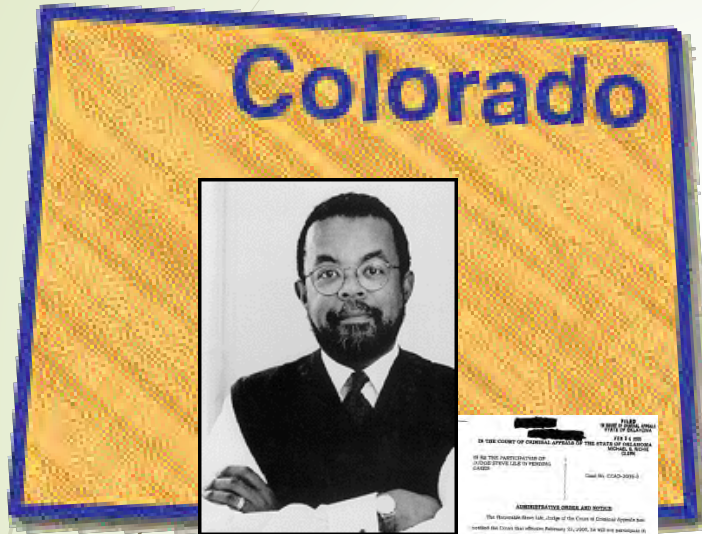


Paternity/Divorce? Custody?

Property/Maintenance/Child Support?

Attorney's Fees?

What issues can CO decide?



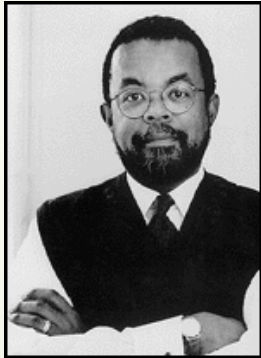
Child Support Order
Custody Order

➤ Dad moves to

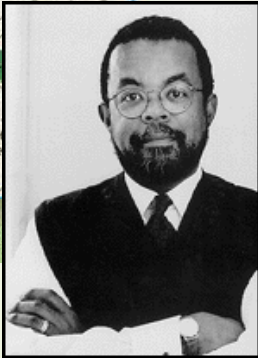


What if...

What if parties were divorced in CO?



And then both parties move...



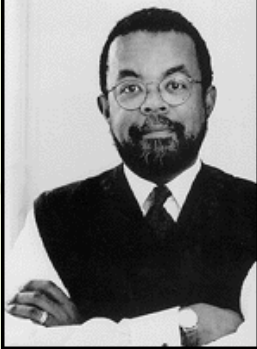
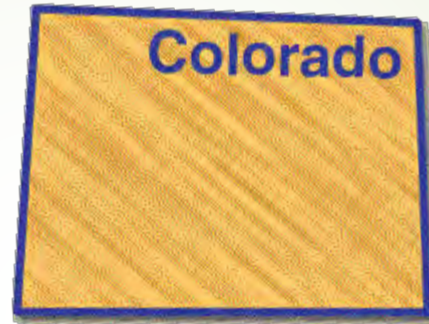
Washington



Arizona



Where can maintenance, CS, APR be modified?



Washington

Arizona



What if kids then move from Mom to Dad...



2017 COA 60. No. 16CA1082. People in re M.S.

- ▶ The Mesa County DHS assumed temporary custody of 8-year-old M.S. and initiated a dependency and neglect proceeding. Mother lived in Texas.
- ▶ The court adjudicated M.S. dependent or neglected. The magistrate determined it was in M.S.'s best interests to be placed with mother and issued an order granting permanent APR to mother. Father appealed.
- ▶ The Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA) applies to dependency and neglect proceedings once a child has been adjudicated dependent and neglected.



2017 COA 60. No. 16CA1082. People in re M.S.

- Under the UCCJEA, the court that makes an initial custody determination generally retains exclusive, continuing jurisdiction. A Colorado court, absent temporary emergency jurisdiction, may only modify a custody order issued by an out-of-state court under limited circumstances. Here, the magistrate did not confer with the California court that issued a prior custody order, nor did it determine whether CA had lost exclusive, continuing jurisdiction. Consequently, the magistrate failed to acquire jurisdiction under the UCCJEA before issuing the APR order that effectively modified the CA custody order.
- The judgment was vacated and the matter was remanded to determine whether CO has jurisdiction to issue an APR order that modifies the CA custody order.

➤ The Supreme Court held in this Rule 21 Motion that the trial court failed to properly analyze jurisdiction under the UCCJEA when it exercised jurisdiction over minor child R.M.

➤ The child had not been in Colorado for more than 182 days months, nor gone from Oregon for more than 182 days, but trial court found that the intent of the parties was to remain in Colorado when they moved here. The order was reversed and remanded to the trial court to analyze whether it has jurisdiction under Section 201 of Colorado's UCCJEA.

**2012 CO 70 *In the
Interest of Madrone***

➤ Mom, Dad and baby live in Idaho for 7.5 months after child was born. Family moves to CO, but after 6 weeks, Mom takes baby to Massachusetts 4 weeks later, Dad files for custody in CO. Mom contests jurisdiction in CO, and files for custody in MA. MA court grants Mom temp custody of Baby. CO and MA courts confer: CO court sets hearing on jurisdiction, and exercises temporary emergency jurisdiction; MA court stays its case. After CO evidentiary hearing, Court decides:

- Idaho has jurisdiction, but no one filed in Idaho.
- Between CO and MA, either or both have jurisdiction, but CO should decline to exercise jurisdiction, because CO is an inconvenient forum, and alternatively, MA has more significant connections with Baby and Mom.

In re the Parental
Responsibilities Concerning
B.C.B. (15 COA 42, 4/9/15)

- Colorado COA sustains trial court, and finds:
- Baby had no home state, because no one lived in Idaho when case was filed;
- Significant Connection jurisdiction is a factual inquiry, and there was evidence in the record to support the Court's decision to decline jurisdiction in CO;
- Not error to *consider* best interests under the PKPA;
- Unjustifiable conduct of the MA parent is not a basis for CO to exercise jurisdiction under CRS §14-13-208.

In re the Parental
Responsibilities Concerning
B.C.B. (15 COA 42, 4/9/15)

- Child born and raised in TX. Dad obtained TRO to keep Mom from removing child from his care when she moved to CO.
- In Nov. 2000, Dad was arrested in CO while bringing child to visit Mom. D and N was filed, and child was placed in foster care. DHS knew of TX TRO, but did not disclose it in D and N Petition.
- Magistrate eventually terminated the parental rights of both parents.
- Original appeal remanded and T.C. determined it had jurisdiction under C.R.S. 14-13-204 (temporary emergency jurisdiction).

In the Interest of M.C. and Concerning J.C.
02 CA 1888 (Colo. App. 4/8/04)

- On further appeal, Court found Mag. had exceeded UCCJEA jurisdiction, because no stay was entered in CO once child was placed in D and N, and no conference was held with TX Court to determine jurisdiction. UCCJEA was enacted to prevent this situation. Therefore, TX had jurisdiction, not CO.
- Termination reversed and case remanded to enter protective orders for the child (and perhaps determine whether child had been in CO long enough for TX to give jurisdiction to CO?!?).

In the Interest of M.C. and Concerning J.C. (Continued)

- NY court relinquished child custody jurisdiction to CO because Mom and kids lived here. Dad then went to a second NY court, which exercised jurisdiction and issued an order.
- Dad registered 2nd NY court's order in CO. The CO Supreme Court found that the NY order was not entitled to Full Faith and Credit under the PKPA because the second NY court did not have jurisdiction to modify custody.



***In re the Marriage of Dedie
and Springston, 255 P.3d
1142, 1143 (Colo. 2011).***

- ➡ Mom and Dad lived in Canada for 6 years, and Mom moved to CO with the kids without Dad's knowledge or permission. Dad's Hague Convention motion to return the children was denied based on sex abuse allegations, even though CO Court found Canada was habitual residence.
- ➡ Mom's emergency UCCJEA motion was granted.
- ➡ After many days of hearing in Canada, Dad got an order for custody, and Mom tried to block enforcement in CO.

**In re the Parental Responsibilities
Concerning T.L.B., and Concerning
Esquibel**

CO trial court found Canada's laws to be substantially similar to CO, and found that Mom had notice and opportunity to be heard in Canada, that Canada properly exercised jurisdiction under the Hague Convention and the UCCJEA, and that the protections allowed by C.R.S. §14-13-204 are very limited.

COA upheld the trial court and found also that a restriction on return under the Hague Convention does not pre-empt the application of the UCCJEA.

**In re the Parental Responsibilities
Concerning T.L.B., and Concerning
Esquibel**

➡ Nebraska Court exercised jurisdiction when CO court closed their case for lack of progress, but CO had jurisdiction and never relinquished it.

➡ COA said CO Mom had to live with NE decision.

➡ Supreme Court reversed finding NE decision not entitled to full faith and credit in Colorado under the PKPA because NE never had child custody jurisdiction.

**In re Parental Responsibilities
Concerning L.S., and Concerning
McNamara and Spotanski**

- ➡ Parties divorced in MD. Mom in military stationed in TX, child with Dad in CO. MD court found Mom “presently resided” in MD, because she had orders to transfer back there.
- ➡ CO Court found no one “presently resided” in MD under C.R.S. §14-13-203, but the CO Supreme Court reversed.

Brandt v. Brandt

➤ The Court found that the statutory term “presently reside” is not equivalent to “currently reside” or “physical presence,” the two notions on which the trial court based its order assuming jurisdiction to modify Maryland’s child custody decree. Instead, the court’s determination should be based on an inquiry into the totality of the circumstances.

Brandt v. Brandt

(Cont.)

➡ The Court concluded that the appropriate legal standard to be applied in determining whether the issuing state lost exclusive continuing jurisdiction based on non-residency involves application of a totality of the circumstances test.

Brandt v. Brandt (Cont.)

- Factors to be weighed in making the residency determination, a mixed question of fact and law, include but are not limited to: the length and reasons for the parents' and the child's absence from the issuing state; their intent in departing from the state and returning to it; reserve and active military assignments affecting one or both parents;

Brandt v. Brandt

(Cont.)

➤ where they maintain a home, car, driver's license, job, professional licensure, and voting registration; where they pay state taxes; the issuing state's determination of residency based on the facts and the issuing state's law; and any other circumstances demonstrated by evidence in the case.

Brandt v. Brandt

(Cont.)

- The party asserting that the issuing state has lost exclusive continuing jurisdiction bears the burden of proof.
- Accordingly, the Court reversed and vacated the district's court's order assuming jurisdiction, and remanded the case for further proceedings.

Brandt v. Brandt

(Cont.)