

Chapter 39

INTERSTATE FAMILY LAW JURISDICTION

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SYNOPSIS

§ 39.1 INTRODUCTION

§ 39.2 JURISDICTION IN INITIAL INTERSTATE MATTERS

§ 39.2.1—Dissolution Of Marriage/Civil Unions

§ 39.2.2—Paternity And Support

§ 39.2.3—Allocation Of Parental Responsibility

§ 39.3 CONTINUING EXCLUSIVE JURISDICTION

§ 39.3.1—Generally

§ 39.3.2—Conflicts With Continuing Exclusive Jurisdiction

§ 39.3.3—Immunity In Interstate Custody And Support Cases

§ 39.4 JURISDICTION IN A NEW STATE

§ 39.4.1—Child Support

§ 39.4.2—Allocation Of Parental Responsibility (Custody)

§ 39.5 CONCLUSION

§ 39.1 INTRODUCTION

Query: Does Colorado have jurisdiction in the dissolution of marriage, paternity, parental responsibility, or support case set on the court docket? If so, what issues can the court decide? Does exclusive jurisdiction continue in Colorado, or can another state modify Colorado's order? When can Colorado modify or enforce another state's order? These questions have plagued parties, family law practitioners, and judges for years. The interplay between long-arm statutes and federal and state custody and support jurisdiction statutes is complex. The statutes governing interstate jurisdiction have had nine major modifications since October 20, 1994.¹ This "alphabet soup" of jurisdictional laws can be deciphered

1. The Full Faith and Credit for Child Support Orders Act (FFCCSOA), 28 U.S.C. § 1738B, became effective on October 20, 1994. Colorado passed the Uniform Interstate Family Support Act

using certain basic principles common to all jurisdiction statutes, and by understanding certain key differences between them.²

The peril to judges and magistrates who refuse to exercise jurisdiction when they have it,³ or who exercise jurisdiction when they do not have it,⁴ should not be understated: it

(UIFSA), C.R.S. §§ 14-5-101, *et seq.*, replacing the Uniform Reciprocal Enforcement of Support Act, effective January 1, 1995. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. No. 104-193 (1996), required that all states pass the revised UIFSA by January 1, 1998. Colorado passed the revised UIFSA effective July 1, 1997. The third UIFSA (amendments passed in Colorado in 2003) substantially revised the 1997 version and was effective July 1, 2004, but only 22 states have adopted the amended version. PRWORA also amended the FFCCSOA so that it mirrors the revised UIFSA in almost all areas. The National Conference of Commissioners for Uniform State Laws drafted UIFSA 2008. UIFSA 2008 implements changes to The Hague Convention addressing international collection of child support that have not yet been adopted by the United States. ~~UIFSA 2008 is currently pending in two states: Massachusetts and New Jersey.~~ A 2014 federal law requires that all states enact the 2008 UIFSA amendments by the end of their 2015 legislative session as a condition for continued receipt of federal funds supporting state child support programs. On July 1, 2000, Colorado's Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), C.R.S. §§ 14-13-101, *et seq.*, replaced the Uniform Child Custody Jurisdiction Act. The UCCJEA is generally considered to be fully consistent with the jurisdictional principles of the Parental Kidnapping Prevention Act (PKPA), 28 U.S.C. § 1738A (1980). All states except for Massachusetts and ~~the U.S. Virgin Islands~~ Puerto Rico have adopted the UCCJEA as of ~~December 31, 2015~~ February 20, 2017. ~~The Act is currently pending in Massachusetts.~~ See also C.R.S. §§ 14-13.5-101, *et seq.*, the Uniform Child Abduction Prevention Act (UCAPA), effective May 14, 2007, which relies on the jurisdictional and procedural provisions from the UCCJEA to assist legal custodians of children in preventing removal or relocation of children in violation of custodial rights or a court order. See Chapter 30 in this handbook. UCAPA has been adopted in 14 states and the District of Columbia as of ~~January 29~~ February 20, 2016 2017.

2. UIFSA and FFCCSOA (support) were almost identical prior to July 1, 2004, and their basic jurisdictional principles remain consistent. The PKPA and UCCJEA are almost identical in terms of their jurisdictional requirements. The interstate support statutes require traditional notions of personal and subject matter jurisdiction for the issuance of a valid initial order. The child custody statutes require only subject matter jurisdiction, with proper notice to all parties in interest. All four of these statutes state that jurisdiction over the issues of child support and child custody continue with a state that properly issued the initial order, for so long as any parent or the child continues to reside in the issuing state, unless jurisdiction is transferred to a new state in accordance with the specific terms of each statute.

3. See *People ex rel. A.J.C.*, 88 P.3d 599 (Colo. 2004). In this failed adoption case, the Colorado court should have exercised jurisdiction over parental responsibility issues rather than deferring to the Missouri court, since the child had been with the proposed adoptive parents in Colorado for more than six months at the time the custody action was filed. The practical impact of the court's failure to exercise jurisdiction was the failure of the child to have a permanent placement for more than one year, and the entire process having to begin anew.

4. See *People ex rel. M.C. & Concerning J.C.*, 94 P.3d 1220 (Colo. App. 2004), which involved a child who was born and raised in Texas. The father obtained a temporary restraining order

is significant. Attorneys who wrongfully advise their clients regarding these issues place their clients and their licenses in peril.⁵ This chapter attempts to provide a structure within which judicial officers and attorneys can answer complex interstate jurisdictional questions in any action filed with the court.

§ 39.2 JURISDICTION IN INITIAL INTERSTATE MATTERS

Personal jurisdiction gives the court legal authority over the respondent person.⁶ Subject matter jurisdiction concerns the court's authority to deal with issues in cases in which it renders judgment.⁷ Most jurisdictional statutes require the court to have both, but in certain situations, especially in cases involving children, only subject matter jurisdiction is necessary.

(TRO) to grant him custody and to keep the mother from removing the child from his care when she moved to Colorado. In November 2000, the father was arrested in Colorado while bringing the child from Texas to visit the mother. A dependency and neglect (D&N) action was filed, and the child was placed in foster care. The Department of Human Services (DHS) knew about the Texas TRO but did not disclose it to the court in the D&N petition. The Colorado magistrate terminated the parental rights of both parents in 2001. The father's original appeal of the termination was remanded, and the trial court determined it had temporary emergency jurisdiction over the child custody issue under C.R.S. § 14-13-204. On further appeal, the court found that the magistrate had exceeded her UCCJEA jurisdiction because no stay was entered in Colorado once the child was placed in protective custody under the D&N, and no conference was held with the Texas court to determine jurisdiction. The court found that the UCCJEA was enacted to prevent this situation. Therefore, Texas, and not Colorado, had jurisdiction. Four long years after the litigation over this child began, the order terminating the father's parental rights was reversed, and the case was remanded to enter protective orders for the child (and perhaps for Texas to determine whether the child had been in Colorado long enough for Texas to give jurisdiction to Colorado). *See contra, In re T.L.B. and M.A.B., and Concerning Esquibel & Boswell*, 272 P.3d 1148 (Colo. App. 2012) (Colorado can exercise temporary emergency jurisdiction under the UCCJEA to keep the child safe while Canada is determining custody under the Hague Convention; this action is consistent with the UCCJEA and does not divest the Canadian court of custody jurisdiction).

5. Parents who violate child support and parental responsibility orders can be subject to felony and contempt charges. Attorneys who advise them without understanding the law can be subject to discipline. *See People v. Aron*, 962 P.2d 261 (Colo. 1998), where an attorney advised his client that she could keep her children in Arizona beyond the return dates in the Colorado parenting time order, in order to gain custody jurisdiction in Arizona. The client was convicted for felony violation of a custody order. *See* C.R.S. § 18-3-304. The attorney was suspended for 30 days for not giving his client complete and correct legal advice.

6. *People in the Interest of Clinton*, 762 P.2d 1381 (Colo. 1988).

7. *Id.* Note that once subject matter jurisdiction has been determined by the trial court with no appeal, its existence cannot be further collaterally attacked. *In re Marriage of Mallon*, 956 P.2d 642 (Colo. App. 1998); *Olsen v. Hillside Cmty. Church S.B.C.*, 124 P.3d 874 (Colo. App. 2005).

Personal jurisdiction is initially acquired by service inside or outside the state as otherwise specified by C.R.C.P. 4. “Snatch and serve” service on an out-of-state resident sojourning in Colorado confers initial full personal jurisdiction over the responding party.⁸ A waiver and acceptance of service signed by the responding party also initially confers personal jurisdiction, and subjects him or her to the court’s jurisdiction.⁹

Personal service outside the state initially gives the court limited jurisdiction over parties, children, and property as defined by statute.¹⁰ Service by publication is governed by statute in matters brought under the Uniform Dissolution of Marriage Act and differs from the requirements for publication found in C.R.C.P. 4(g).¹¹ International service of process must be accomplished in accordance with The Hague Convention of Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters,¹² unless the respondent’s address is unknown or the petitioning party seeks an alternative form of service and the responding party does not object.

§ 39.2.1—Dissolution Of Marriage/Civil Unions

One of the parties must have been domiciled in the state of Colorado for 91 days prior to the commencement of the proceeding in order for the district courts of Colorado to exercise jurisdiction over the marital relationship or a civil union.¹³ If one of the parties to a marriage satisfies the domiciliary requirement and the court obtains personal jurisdiction over the person of the other party, the court has jurisdiction under the Uniform Dissolution of Marriage Act¹⁴ to grant complete relief.¹⁵ However, personal jurisdiction over a party to a

8. *Burnham v. Superior Court of Cal.*, 495 U.S. 604 (1990); *In re Custody of Nugent*, 955 P.2d 584 (Colo. App. 1997); *People ex rel. J.A.E.S.*, 7 P.3d 1021 (Colo. App. 2000).

9. C.R.S. § 14-10-107(2)(g).

10. C.R.S. §§ 13-1-~~125~~124, 14-5-201 and -202, 14-13-104, and 19-4-109, discussed below.

11. C.R.S. § 14-10-107(4)(a) (service is by one published, consolidated notice, rather than the five successive weeks of publication required under C.R.C.P. 4(g)).

12. 1 Hague Convention art. 1, Nov. 15, 1965, 20 U.S.T. 361.

13. C.R.S. § 14-10-106(1)(a)(I). *But see In re Marriage of Mallon*, 956 P.2d 642 (Colo. App. 1998) (wife is estopped from contesting subject matter jurisdiction at a later date if she participated in the dissolution proceeding and did not contest husband’s claim of Colorado 90-day residency at that time). *See also* C.R.S. § 14-15-115 (2013): “(2) The district court has jurisdiction over all proceedings relating to the dissolution of a civil union, legal separation of a civil union, or the declaration of invalidity of a civil union, regardless of the jurisdiction where the civil union was entered into. The court shall follow the procedures specified in article 10 of this title, including the same domicile requirements for a dissolution, legal separation, or declaration of invalidity for such proceedings.”

14. C.R.S. §§ 14-10-101, *et seq.*

15. This is true unless Colorado cannot exercise jurisdiction over the children under the UCCJEA. C.R.S. §§ 14-13-101, *et seq.* *See In re Marriage of Tonnessen*, 937 P.2d 863 (Colo. App. 1996) (although wife filed for divorce in Colorado and was subject to personal jurisdiction here, court had no subject matter jurisdiction over children in Colorado, as they were born in Arizona and never resided here); *In re Marriage of Medill*, 40 P.3d 1087 (Or. App. 2002). *See also In re Marriage of Doria*, 855 P.2d 28 (Colo. App. 1993) (Colorado Court of Appeals found the trial court had abused

civil union is not required because any party entering into a civil union consents to jurisdiction in Colorado regarding any matter related to the civil union.¹⁶

If the non-resident spouse in a marriage is served by publication, the court has *in rem* jurisdiction over the status of the marriage,¹⁷ may make disposition of marital property located within the state of Colorado,¹⁸ and may determine parental responsibility under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).

If the non-resident spouse to a marriage is served under the domestic relations long-arm statute,¹⁹ the court may determine support and maintenance to children and spouses in any action for dissolution of marriage, legal separation, declaration of invalidity of marriage, or support of children, and may divide property and allocate parental responsibility if appropriate under the UCCJEA. Jurisdiction for dissolution of marriage is established under the long-arm statute by maintenance of a matrimonial domicile within the state.²⁰ However, jurisdiction over those issues remains in Colorado under the long-arm

its discretion in relinquishing the support and property issues to the State of Massachusetts, as Massachusetts had jurisdiction over the custody issue under the UCCJA but Colorado had personal jurisdiction over the wife, and therefore the remaining issues in the divorce should have been adjudicated in Colorado). *But see In re Marriage of Mockelmann*, 121 P.3d 335 (Colo. App. 2005) (complete relief does not include tort claims concerning marital property, and such claims may not be joined into an otherwise equitable dissolution proceeding).

16. C.R.S. § 14-15-115: “(1) Any person who enters into a civil union in Colorado consents to the jurisdiction of the courts of Colorado for the purpose of any action relating to a civil union even if one or both parties cease to reside in this state.” Arguably, service on a non-resident party, giving him or her notice and an opportunity to be heard, would subject that party to jurisdiction regarding all pre-decree issues, except, perhaps, allocation of parental responsibility, if subject matter jurisdiction does not exist in Colorado under the UCCJEA. As in a divorce, the civil union jurisdictional construct would be unlikely to trump the jurisdictional requirements of the PKPA and the FFCCSOA for post-decree custody, support, and maintenance modifications. *See generally* §§ 39.3 and 39.4 in this chapter.

17. C.R.S. § 14-10-106.

18. C.R.S. § 14-10-113. *See In re Marriage of Gercken*, 706 P.2d 809 (Colo. App. 1985) (Colorado may divide in-state property even if the property is the subject matter of an out-of-state divorce action, so long as the out-of-state divorce has not gone to a decree by the time of the Colorado court’s permanent orders hearing); *but see In re Marriage of Booker*, 833 P.2d 734 (Colo. 1992), and *In re Marriage of Akins*, 932 P.2d 863 (Colo. App. 1997) (Colorado Rules of Civil Procedure regarding the acquisition of jurisdiction over persons for division of some items of property may be preempted by federal law).

19. C.R.S. § 13-1-124(1)(e).

20. There remains some question as to whether the court has jurisdiction to divide a military pension under our long-arm statute. *See In re Marriage of Akins*, 932 P.2d 863 (Colo. App. 1997) (husband’s military pension was not subject to division because the court did not obtain the personal jurisdiction over him under C.R.S. § 13-1-124(1)(e) that would be necessary for division under Uniformed Services Former Spouse’s Protection Act). *See also In re Marriage of Booker*, 833 P.2d 734 (Colo. 1992); *In re Marriage of Peters*, 876 P.2d 114 (Colo. App. 1994).

statute only if one of the parties to the marriage continues without interruption to be domiciled within the state after the other party has left.²¹

§ 39.2.2—Paternity And Support

Engaging in sexual intercourse within this state that may have resulted in the conception of a child in Colorado provides a basis for Colorado courts to exercise jurisdiction in determining the parentage of that child, if a verified petition is filed pursuant to the Uniform Parentage Act (UPA)²² or the Uniform Interstate Family Support Act (UIFSA).²³ One of the parties (to the conception) must be a resident of Colorado at the time the action is filed in Colorado to give the court subject matter jurisdiction to determine parentage, order modification of the birth certificate of the child, establish the duty of child support, recover a child support debt, order payment of the mother's reasonable expenses of pregnancy and confinement, and provide for medical insurance for the child.

Under UIFSA's long-arm statute,²⁴ Colorado courts may also obtain jurisdiction to establish a spousal support order. UIFSA allows Colorado courts to obtain jurisdiction over a non-resident if the individual who has not previously been subject to jurisdiction in another state (1) is personally served with a summons in Colorado; (2) enters a general appearance or files a responsive pleading; (3) resided with the child in Colorado; (4) resided in Colorado while supporting the child here; (5) acted in a way that resulted in the child's residing in Colorado;²⁵ or (6) acted in any other way that would allow the exercise of personal jurisdiction that is consistent with the constitution of Colorado or the United States.²⁶ Of course, if the obligor has no minimum contacts with Colorado and does not wish to submit to jurisdiction here, UIFSA allows the case to establish support and paternity

21. See *In re Marriage of Ness*, 759 P.2d 844 (Colo. App. 1988), where one party to the dissolution of marriage action moved to Colorado after the entry of a decree and permanent orders in Nebraska, and filed an action to domesticate pursuant to C.R.S. § 14-11-101, serving the other party personally outside the state of Colorado. The court held that jurisdiction was not established under the long-arm statute.

22. C.R.S. §§ 19-4-101, *et seq.*

23. C.R.S. § 14-5-201.

24. See generally C.R.S. § 14-5-201(a).

25. See *In re Marriage of Malwitz & Parr*, 99 P.3d 56 (Colo. 2004), *rev'g In re Marriage of Malwitz & Parr*, 81 P.3d 1076 (Colo. App. 2003) (pregnant mother's move to Colorado from Texas following domestic abuse by the child's father was sufficient to allow exercise of UIFSA long-arm jurisdiction over father for paternity and child support because father's abuse of mother caused her to flee to her parents' home in Colorado and father could have reasonably anticipated being subject to litigation in Colorado court), and *Abu-Dalbouh v. Abu-Dalbouh*, 547 N.W.2d 700 (Minn. App. 1996) (wife's return with children from Saudi Arabia to prior home state of Minnesota to escape domestic abuse by husband a valid basis for UIFSA jurisdiction for child support because parties went to Saudi Arabia as a family, so reasonable for husband to expect wife's return to Minnesota following abuse).

26. See, e.g., *In re Parental Responsibilities of H.Z.G.*, 77 P.3d 848 (Colo. App. 2003) (the letter written by the father that he anticipated would allow the mother to collect welfare benefits for herself and the child in Colorado was a sufficient nexus to justify the father's being subject to Colorado jurisdiction to establish paternity and child support).

to be filed in the jurisdiction where the respondent resides. In that case, the respondent's state of residence, rather than Colorado, would be the issuing state for paternity and support orders.²⁷

§ 39.2.3—Allocation Of Parental Responsibility

The jurisdictional concept of the UCCJEA²⁸ and Parental Kidnapping Prevention Act (PKPA)²⁹ is “child-state” jurisdiction. “Child-state” jurisdiction involves only jurisdiction over the subject matter (the child), and usually arises after the child has resided in the “home state” for more than six months. Personal jurisdiction is therefore irrelevant, and personal service anywhere is sufficient, even if the respondent parent has no minimum contacts with Colorado.³⁰

Under the UCCJEA, there are three bases for “initial child-custody jurisdiction” in Colorado: (1) this is the child's home state; (2) there is no home state, or the home state has declined to exercise jurisdiction, *and* the child has a significant connection with substantial information in this state; or (3) all other states with jurisdiction have declined to exercise jurisdiction in favor of this state.³¹ “Home state” is specifically designated as the priority basis for jurisdiction.³² The home state court has the exclusive right to choose to exercise

27. C.R.S. §§ 14-5-401 and -701. Keep in mind that if the child is in Colorado and the obligor is out of state, or vice versa, jurisdiction for custody and support will be bifurcated. *See People ex rel. R.L.H.*, 942 P.2d 1386 (Colo. App. 1997) (Colorado court having jurisdiction to determine parentage under UIFSA long-arm statute did not have subject matter jurisdiction to determine parenting time because child did not reside in Colorado).

28. C.R.S. §§ 14-13-101, *et seq.*

29. 28 U.S.C. § 1738A.

30. C.R.S. § 14-13-108. To give notice, the UCCJEA requires service of process in accordance with C.R.C.P. 4.

31. C.R.S. § 14-13-201. *See In re Parental Responsibilities Concerning B.C.B. and Concerning C.R.B.*, 2015 COA 42 (child could have no home state if no one lives in the state where the child resided last for more than six months; court held a hearing and properly determined that Massachusetts, not Colorado, should exercise jurisdiction). *See also In the Interest of L.B., Dusaliјеva, and Blumberg and White, and Concerning Carlin*, 2017 COA 5 (The probate court properly exercised temporary emergency jurisdiction over L.B. when Dusaliјеva and Blumberg initially co-petitioned to grant Co-Petitioners uncontested temporary co-guardianship of L.B. after L.B.'s father, her only living parent, died. However, by the time the matter became a “child custody proceeding” between Dusaliјеva, and Blumberg and Carlin relating to the custody of L.B., L.B. had been living in Colorado for more than 182 days, and was therefore subject to Colorado jurisdiction under C.R.S. § 14-13-201).

32. *See In re Parental Responsibilities Concerning L.S., and Concerning McNamara and Spotanski*, 226 P.3d 1227 (Colo. App. 2009), *rev'd*, 257 P.3d 201 (Colo. 2011), in which Nebraska mischaracterized the Colorado proceedings and took jurisdiction over the custody issue, finding that Colorado had declined to exercise jurisdiction when a magistrate closed the Colorado case for lack of progress. The parties were divorced in Colorado and the child lived most of her life with the mother in Colorado, but the Nebraska court, after exercising jurisdiction, ordered that the child be in the custody of the father. The Colorado trial court ordered custody to be kept with the mother. The

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jurisdiction or choose not to do so, prior to any other state having the option to exercise jurisdiction.

In the recent case of *In re the Interests of Madrone*,³³ the Colorado Supreme Court found that, absent an emergency, a Colorado trial court must determine whether to exercise jurisdiction by determining whether Colorado is the child's home state, or could otherwise exercise jurisdiction, based solely on the parameters of the UCCJEA. In *Madrone*, the trial court apparently determined that Colorado was not the child's home state, but exercised jurisdiction based on the parties' intent to permanently relocate here. The supreme court reversed and remanded the issue to the trial court, finding that the parties' intent to relocate was not part of the jurisdictional inquiry. The court found that, once the trial court decided that Colorado was not the child's home state, the trial court was required to determine whether another state was the child's home state and, if so, whether that state had declined to exercise jurisdiction. If there is no home state, then the trial court must determine jurisdiction using the other bases for exercising jurisdiction under the UCCJEA.

Bases for jurisdiction other than home state can be utilized only after initial action by the home state declining jurisdiction or, if the child has no home state, as otherwise allowed under the Act.³⁴ Unlike paternity and support actions under UIFSA, which is a cumulative remedy,³⁵ the UCCJEA is the sole basis for determining subject matter jurisdiction in Colorado in an interstate custody case.³⁶

Colorado Court of Appeals held that even when another state wrongfully finds facts that constitute its basis for jurisdiction, if the other state's basis for exercise of jurisdiction is facially consistent with the UCCJEA and PKPA, the Full Faith and Credit Clause of the U.S. Constitution requires that Colorado recognize the other state's jurisdiction and order. A divided Colorado Supreme Court overturned the court of appeals decision in an opinion by the Chief Justice on June 19, 2011. The supreme court found that Colorado had home state jurisdiction over the minor child under the UCCJEA, which it never relinquished. Since Nebraska wrongfully exercised jurisdiction, under the PKPA, the Nebraska decision was not entitled to full faith and credit in Colorado. Therefore, the Colorado court did not have to enforce the Nebraska order in Colorado.

33. *In re the Interests of Madrone*, 290 P.3d 478 (Colo. 2012).

34. See *In re Parental Responsibilities Concerning B.C.B. and Concerning C.R.B.*, 2015 COA 42. (Child was born to unmarried parents in Idaho. When child was seven months old, family moved to Colorado, but 4 weeks later, mom took child to Massachusetts, where mom's family lived. Three weeks later, dad filed for custody in Colorado and mom contested jurisdiction in Colorado and filed for custody in Massachusetts. Colorado trial court determined that either Colorado or Massachusetts could exercise jurisdiction, and declined to exercise jurisdiction in Colorado after an evidentiary hearing. The court of appeals held that the child had no home state, and the trial court properly proceeded under C.R.S. § 14-13-201(1)(b) to determine that child and his parents had a more significant connection with Massachusetts than Colorado.)

35. C.R.S. § 14-5-104.

36. C.R.S. § 14-13-102(4). The UCCJEA definition contains a list of child custody proceedings to which it applies, including the following: "divorce, dissolution of marriage, legal separation, visitation, parenting time, grandparent visitation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence." Note

§ 39.3 CONTINUING EXCLUSIVE JURISDICTION

§ 39.3.1—Generally

Like the UCCJEA and PKPA, under UIFSA and the Full Faith and Credit for Child Support Orders Act (FFCCSOA), any state with proper original jurisdiction that issues a child-related order retains continuing exclusive jurisdiction (or exclusive, continuing jurisdiction) so long as any party or the child at issue remains in the issuing state.³⁷ If all parties leave the issuing state, then the jurisdiction to modify any particular issue will be different, depending on the statutes that apply.³⁸

There are certain key rules to keep in mind: (1) 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 to exercise jurisdiction; and (2) in support cases, if anyone still lives in the state that issued the order, *only the parties* have the power to transfer or retain jurisdiction. The change of jurisdiction must be done specifically in accordance with the processes set forth in the applicable statutes, or subject matter jurisdiction will not lie here or in the new state.³⁹

that the UCCJEA does not govern jurisdiction in adoption cases. *See In re Adoption of a Child, K.L.L.*, 160 P.3d 383 (Colo. App. 2007). *See also* C.R.S. § 14-11-101(4), noting that the procedure for docketing foreign decrees does not apply to child custody determinations, which must be registered pursuant to C.R.S. § 14-13-102(3).

37. 28 U.S.C. § 1738A, C.R.S. § 14-13-202(1), 28 U.S.C. § 1738B, and C.R.S. § 14-5-205(a)(1). *See S.W., D.W. and D.W. v. Duncan*, 24 P.3d 846 (Okla. 2001), where custody jurisdiction continued in Oklahoma arising out of the divorce, even after the mother died, because the children resided in Oklahoma for the six months prior to their mother's death and their guardians designated in the mother's will continued to reside there. This was so even though the children's father took them to Kansas and gave custody of them to his relatives. *See also In re Marriage of Brandt*, 268 P.3d 406 (Colo. 2012).

38. Under C.R.S. § 14-5-611(a)(2) and FFCCSOA, the parties can enter into a written agreement filed with the issuing court of this state, requesting that jurisdiction to modify child support be transferred to another state where one of the parties or the child resides, but UIFSA states that only the issuing state can modify maintenance, even if all parties have left the state. C.R.S. § 14-5-211. Presumably, any state that domesticates another state's order with proper jurisdiction over the responding party could modify maintenance and/or division of marital property in accordance with the law of the domesticating state. *See, e.g.*, C.R.S. § 14-11-101(1). Note that under the 2004 revision to UIFSA, C.R.S. § 14-5-205(a)(2) allows parties to consent in a court record or in open court to continue jurisdiction for modification of support in Colorado, even after the parties and child have all left this state.

39. *See In re Marriage of Orr*, 36 P.3d 194 (Colo. App. 2001), where the husband argued that the wife's initial failure to comply with the statutory requirement in C.R.S. § 14-11-101(1) to attach exemplified copies of the Texas file deprived the trial court of subject matter jurisdiction to enforce the parties' Texas agreement at the time the order was issued. The appellate court agreed with

If a judicial officer or attorney is trying to determine how to proceed in the enforcement or modification of an existing interstate domestic order, the following questions should be considered or asked of the parties when drafting or reviewing the pleadings, or at the initial hearing:

- 1) Was there a proper basis for entry of the initial order (is the existing order entitled to full faith and credit under the statutes)?⁴⁰ **NOTE:** The jurisdictional basis for entry of the order must not only be consistent with the UCCJEA, the UIFSA, and PKPA, and the FFCCSOA, but the same must pass constitutional muster under the U.S. and Colorado Constitutions.⁴¹
- 2) Does any party to the original dispute (exclude the Child Support Enforcement Agency, but include grandparents or stepparents) still live in the state that issued the order?⁴²
- 3) **IF THE ANSWER TO THESE TWO QUESTIONS IS “YES,” JURISDICTION CONTINUES IN THE ISSUING STATE UNLESS:**
 - a) If the issue is child support, the party still living in the issuing state agrees with the other parties in writing to a transfer of jurisdiction to the state of residence of the other party or the child, and the written agreement is filed in the court of the issuing state *prior* to filing any request for modification in the new state.⁴³

the husband’s argument and determined that the trial court did not have subject matter jurisdiction over the Texas decree when it entered its judgment.

40. If the jurisdictional basis was proper when the order was issued, it will continue. If not, it will not continue. *See Upon the Petition of Jorgensen & Concerning Vargas*, 627 N.W.2d 550 (Iowa 2001) (original order issued in New York not entitled to full faith and credit because child did not live in New York for six months prior to issuance of the initial custody order). *See also In re Parental Responsibilities Concerning L.S., and Concerning McNamara and Spotanski*, 226 P.3d 1227 (Colo. App. 2009), *rev’d*, 257 P.3d 201 (Colo. 2011), discussed in note 30, above.

41. *See In re Marriage of Lohman*, 2015 COA 134. (Husband and wife, a native of England, married in Colorado in 1997 and had a baby in 1998. In 2008, wife moved with the child to England, and husband remained in Colorado. Wife petitioned for divorce in England and served husband in Colorado. Husband did not respond to wife’s petition or otherwise appear in the English court. The English court entered a support judgment against husband for £638,000 (\$1,010,911 U.S.). Wife then filed a notice of registration under UIFSA § 14-5-605. Husband contested registration under §§ 4-5-606 and -607 and cited C.R.S. § 14-11-101 as a basis for vacating the notice of registration. After an evidentiary hearing, the district court sustained the notice of registration and ordered enforcement of the English judgment. The Colorado Court of Appeals reversed and remanded the decision, finding that a Colorado court that is requested to enforce a foreign support judgment against a Colorado resident shall consider not only whether the foreign court had personal jurisdiction under its laws, but also whether the exercise of that jurisdiction is consistent with the Constitution and laws of the United States.)

42. C.R.S. § 14-5-205(a)(1); C.R.S. § 14-13-203.

43. C.R.S. §§ 14-5-205(a)(2) and -611(a)(2); 28 U.S.C. §§ 1738B(e) and (i). *See also Schuyler v. Ashcraft*, 680 A.2d 765 (N.J. Super. Ct. App. Div. 1996), where both parties participated

- b) If the issue is custody, the parent complied with provisions of the existing custody order,⁴⁴ 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 a new state, and the court in the issuing state relinquishes jurisdiction to the Colorado court pursuant to a pending motion.⁴⁵
- c) If the issue is custody, the issuing state relinquished jurisdiction in a prior proceeding.⁴⁶

in a child support enforcement and modification action in New Jersey, even though Florida was the issuing state for the child support order and the father still resided in Florida. The court held *sua sponte* on appeal that the failure of the parties to file a written agreement in the Florida court transferring jurisdiction to New Jersey deprived the New Jersey court of subject matter jurisdiction to modify support under FFCCSOA. The father's right to continuing jurisdiction in Florida could not be waived by his participation in the proceedings because the statute specified the exclusive method for a transfer of jurisdiction, which was not complied with in this case.

44. C.R.S. §§ 14-13-207 and -208.

45. C.R.S. § 14-13-202(1)(a). Only the court of the issuing state can determine whether to exercise jurisdiction to modify a lawfully entered custody order, unless all parties have left the issuing state. C.R.S. § 14-13-203(1).

46. See *In re Marriage of Dedie and Springston*, 255 P.3d 1142 (Colo. 2011) (A family court referee in New York was asked by the father to enforce the New York custody order. The referee found that New York could not exercise jurisdiction in accordance with the UCCJEA because the children had lived in Massachusetts in the mother's primary care for more than four years, and New York no longer had sufficient information about the children to enforce its prior order. The referee directed the father to file an action to enforce the order in Massachusetts. The father instead filed a separate action in the New York Supreme Court (trial court), and the supreme court exercised jurisdiction and modified the prior New York custody order. The father then sought to enforce his new New York order in Colorado, where the mother and children had relocated. The Colorado Supreme Court held that since the New York Supreme Court had exercised jurisdiction after it had already been relinquished under the UCCJEA, the Colorado court was not required to give the New York order full faith and credit under the PKPA.). See also *Schuyler v. Ashcraft*, 680 A.2d 765 (N.J. Super. Ct. App. Div. 1996), where both parties participated in a child support and custody modification action in New Jersey. Florida was the issuing state for the child support order, and the father still resided in Florida. Custody jurisdiction, however, had been transferred to California by the Florida court (the mother had lived there for a few years with the children) and then to New Jersey by the California court (after the mother lived with the children in New Jersey for more than six months). The court held *sua sponte* on appeal that the New Jersey court had no subject matter jurisdiction to modify support under FFCCSOA, but that the New Jersey court could modify custody because it had subject matter jurisdiction under the UCCJA and PKPA. See also *Barton v. Barton*, 29 P.3d 13 (Utah App. 2001), in which the mother argued that the Utah court had lost jurisdiction because the court stated it would relinquish jurisdiction "when a special master had been established in California." A special master had been established in California, but the father remained in Utah and the Utah court never acted to extinguish its jurisdiction. Therefore, the mother was incorrect: as long as the father continued to live in Utah, jurisdiction continued in Utah until it was specifically relinquished by court order.

If Colorado was not the issuing state and a party or the child still lives in the issuing state, unless the above standards are met, the issuing state's order can be registered in Colorado for enforcement only, and only if proper jurisdiction for such registration exists.⁴⁷ This requirement was at issue in the 2012 case of *In re Marriage of Brandt*.⁴⁸ In *Brandt*, two state courts battled over where the mother "presently resided." The mother and father were divorced in Maryland, and shared joint custody of their son. The mother was thereafter sequentially stationed by the army in Texas, Iraq, and Texas. While the mother was in Iraq, the father had the child with him in Colorado, and the child was returned to the mother when she returned to Texas from Iraq. The mother was notified that she was being transferred back to Maryland, but she had not yet returned when the father registered the Maryland order in Colorado under the UCCJEA. The Maryland court found the mother continued to "presently reside" in Maryland, based on many facts reflecting that the mother had always maintained significant aspects of residency there. The Colorado judge found the mother did not "currently reside" in Maryland, and that Colorado now had jurisdiction to modify custody. The Colorado Supreme Court reversed the trial court, and set forth a procedure for determining whether all parties and/or children have left the issuing state:

- 1) The Colorado court must confer with the court in the issuing state and must hold a hearing in Colorado if the continuing residence of any party or child in the issuing state is contested.
- 2) The moving party bears the burden of proving that neither party nor the child "presently resides" in the issuing state. The supreme court clarified that "home state" is only a priority for the exercise of initial jurisdiction, *not* when determining whether the issuing state's jurisdiction continues.
- 3) A determination of where a person "presently resides" requires consideration of a totality of the circumstances, not just physical presence, and does not equate to "technical domicile."
- 4) The focus should be to continue the stability of custody orders, not to allow a parent to establish a new home state to gain an advantage whenever the other parent leaves the issuing state for vacation, a hospital stay, or military service.⁴⁹

The supreme court remanded the case to the trial court to conduct further hearings and further communications with the Maryland court in accordance with its opinion.

Remember that there is no statute that may be used for actions filed after July 1, 2000, to register a child custody order in Colorado, except the UCCJEA.⁵⁰ If Colorado was the issuing state for the custody or support order and a party to the dispute still resides here,

47. C.R.S. §§ 14-5-607(a)(1), 14-11-101, and 14-13-305. Unlike the support and domestication statutes, the UCCJEA provides that at the time of registration of the "child custody determination," neither the responding party (respondent) nor any other party entitled to notice and opportunity to be heard need be subject to personal jurisdiction in Colorado. C.R.S. § 14-13-305.

48. *In re Marriage of Brandt*, 268 P.3d 406 (Colo. 2012).

49. *Id.* at 413-14.

50. C.R.S. § 14-11-101(4).

actions must be filed in Colorado until jurisdiction is relinquished by Colorado in accordance with the various statutes.

This requirement is illustrated by *In re Marriage of Pritchett*.⁵¹ In *Pritchett*, the parties were granted joint custody in their 1996 Colorado divorce, but, in 1998, the Colorado court gave the mother sole custody when the father moved to Oregon. In 1999, the mother moved with the children to North Dakota. In 2001, the father filed a motion for contempt in Colorado against the mother regarding parenting time. The mother was served in North Dakota and promptly filed a request for North Dakota to take jurisdiction over parental responsibility issues because no one lived in Colorado. The courts conferred, and the Colorado court chose to retain jurisdiction over the pending contempt citation only. A motion to modify parenting time and for contempt against the father was then filed by the mother in North Dakota. The father filed a second motion for contempt in Colorado against the mother. While the North Dakota matters were pending, the Colorado court heard the two Colorado contempt motions. The first contempt motion was dismissed, but the mother was found guilty in the second contempt hearing, and the court ordered sanctions and attorney fees. The court of appeals held that the Colorado court lacked subject matter jurisdiction to hear the second contempt motion when it relinquished jurisdiction to North Dakota. To find otherwise would render invalid the primary tenet of the UCCJEA: that only one state may be exercising jurisdiction over a child at any given time. The court held that the Colorado contempt order was void, and it was vacated.

Despite the UCCJEA's clear preference for the home state, the Colorado court may choose not to exercise jurisdiction if Colorado is an inconvenient forum or if the person wishing to litigate in Colorado has engaged in unjustifiable conduct.⁵² Further, Colorado is prohibited from exercising jurisdiction to modify its own parental responsibility (custody) order if all parties and the child have left the state, and the Colorado court cannot order a parent to return to Colorado with or without the child if the other parent no longer resides in this state.⁵³ Procedurally, it would be incumbent upon the party objecting to jurisdiction in Colorado to register the Colorado order for enforcement and/or modification in another appropriate state, while making the argument in Colorado that no party continues to reside in this state.⁵⁴

51. *In re Marriage of Pritchett*, 80 P.3d 918 (Colo. App. 2003). Note that, under the July 1, 2004, revisions to UIFSA, the parties can stipulate to keep jurisdiction in Colorado, even after they have all left the state (C.R.S. § 14-5-205(a)(2)).

52. See C.R.S. §§ 14-13-207 and -208.

53. *Pritchett*, 80 P.3d 918.

54. C.R.S. § 14-13-202(1)(b) (“(1) Except as otherwise provided in section 14-13-204, a court of this state that has made a child-custody determination . . . has exclusive, continuing jurisdiction over the determination until: . . . (b) A court of this state or a court of another state determines that the child, the child’s parents, and any person acting as a parent do not presently reside in this state.”) There appears to be no current law in Colorado that would allow a Colorado court to order a parent to remain in this state once the other parent has left, nor a law that would allow the court to modify “custody” in a motion filed after both parents and the child have become non-residents. See also *Spahmer v. Gullette*, 113 P.3d 158, 162 (Colo. 2005); and *In re Marriage of*

§ 39.3.2—Conflicts With Continuing Exclusive Jurisdiction

The Long-Arm Statute

The long-arm statute in UIFSA confers jurisdiction in Colorado only if no other state has issued a valid support order and/or no other state has continuing, exclusive jurisdiction.⁵⁵ If another state has issued a valid support order and a party or the child still lives in the issuing state, then subject matter jurisdiction stays there, even if the long-arm statute would allow service of process from Colorado on the out-of-state party. If no one still lives in the state that issued the order, then the existing order needs to be registered for modification in the home state of the party responding to the requested modification, even if Colorado's long-arm statute would allow service of process on the out-of-state party.⁵⁶ The establishment and enforcement provisions of UIFSA are cumulative, but the FFCCSOA, which is generally consistent with the modification provisions of the 1997 UIFSA, is the exclusive arbiter of subject matter jurisdiction for modification of an existing support order once a valid support order has been entered.⁵⁷

The case of *In re Marriage of Zinke & Wavra*⁵⁸ is illustrative. In *Zinke*, the Colorado Court of Appeals found that C.R.S. § 14-5-205 (continuing, exclusive jurisdiction) is the heart of UIFSA and that C.R.S. § 14-5-201 (long-arm statute) cannot invalidate the central concept of UIFSA, which provides that only one state may modify an existing order at any given time.

Ciesluk, 113 P.3d 135 (Colo. 2005). The supreme court stated in *Spahmer* that C.R.S. § 14-10-124(1.5), which defines the best interests of a child in a pre-decree case, gives the court no statutory authority to tell a parent *where to live*. In *Ciesluk*, the court found that the *remaining* parent and the relocating parent should both have equal burdens to show that the relocation with the majority parent is or is not in the child's best interests. Neither case authorizes the Colorado court to consider the best interests of a child whose parents have both already left the state.

55. The July 1, 2004, revision to § 14-5-201 of UIFSA adds subsection (b), which clarifies that long-arm jurisdiction cannot defeat the other sections of UIFSA that specify how jurisdiction for the modification of the support order can be obtained.

56. C.R.S. § 14-5-611(a)(1); 28 U.S.C. §§ 1738B(f) and (i).

57. *Id.* See also *Kramer v. Kramer*, 698 So.2d 894 (Fla. Dist. Ct. App. 1997), where federal legislation had preempted state law with respect to modification of child support orders rendered in another state, pursuant to the Full Faith and Credit for Child Support Orders Act, 28 U.S.C. § 1738B. Under the Act, both parties had to consent to Florida jurisdiction before Florida could enter an order modifying child support. Since the appellee continued to reside in New York and that court maintained continuing, exclusive jurisdiction, the appellee could only obtain the termination of the child support order in the New York court. See also *Dep't of Rev. v. Skladanuk*, 683 So.2d 624 (Fla. Dist. Ct. App. 1996), where this federal legislation preempted Florida law to the extent of removing jurisdiction to modify child support orders when the exceptions of subsection (e) were not satisfied. Here, the exceptions were not satisfied.

58. *In re Marriage of Zinke & Wavra*, 967 P.2d 210 (Colo. App. 1998).

In *Zinke*, the mother, who lived in Montana, the issuing state, appealed the Colorado court's orders determining that Colorado had subject matter jurisdiction to rule on the father's motion for child support, and approving a stipulated support order. The mother was granted custody in the parties' Montana divorce in 1982. In 1991, the mother allowed the child to move to Colorado with the father. The father filed a motion for custody and child support under the Uniform Child Custody Jurisdiction Act (UCCJA) and under the Uniform Dissolution of Marriage Act (UDMA). The Colorado court conferred with the Montana court several times and finally ruled that Colorado was the more convenient forum to exercise jurisdiction over ongoing child support, custody, and parenting time issues. Thereafter, the father moved for establishment of child support in Colorado. The mother sought dismissal of the motion for child support and an amendment of the Colorado court's order, asserting that the UCCJA does not apply to support actions, and that the trial court lacked both personal and subject matter jurisdiction to modify the Montana support decree. She asserted that because Montana had already entered a support order, it had continuing and exclusive jurisdiction under UIFSA.

The court of appeals held that the UCCJA relates only to child custody and visitation, and not child support. Further, the UDMA did not confer jurisdiction over the mother, since the only contact the Colorado court had with the mother was her consent for the child to live in Colorado, and there were insufficient contacts for the court to exercise jurisdiction for child support.⁵⁹ Finally, the court found that, although UIFSA does provide for the exercise of personal jurisdiction over a non-resident individual via the long-arm statute, UIFSA states that its crucial element is universal recognition that the issuing state has continuing, exclusive jurisdiction to modify its order once an order has been issued, unless the parties have all left the issuing state or have consented in writing otherwise. That had not happened in this case. Therefore, Montana retained continuing, exclusive jurisdiction to modify child support.

Docketing Foreign Decrees

Even though UIFSA is a "cumulative remedy,"⁶⁰ if neither party continues to live in the issuing state, the Colorado petitioner cannot use the procedure for docketing foreign decrees⁶¹ to modify a support order in Colorado when the responding party lives elsewhere. The court of appeals, in *In re Marriage of Hillstrom*,⁶² upheld the trial court's dismissal of the Colorado petitioner's motion to modify child support. The court found that under UIFSA and the FFCCSOA, the exclusive way to modify a support order when all parties have left the issuing state is by registering the support order in the state of the responding

59. See *In re Marriage of Ness*, 759 P.2d 844 (Colo. App. 1988) (*in personam* jurisdiction can be exercised by the courts of Colorado only if the defendant has "minimum contacts" with the state). See also *Kulko v. Superior Court*, 436 U.S. 84 (1978) (the Supreme Court determined that the father's acquiescence in the child's desire to live with the mother was not a sufficient contact to support exercise of personal jurisdiction over him in the state where the mother resided).

60. C.R.S. § 14-5-104.

61. C.R.S. § 14-11-101.

62. *In re Marriage of Hillstrom*, 126 P.3d 315 (Colo. App. 2005).

party.⁶³ The court found that the language in UIFSA allowing cumulative remedies related to “establishing or enforcing” a support order, but that modification was intended to only occur in the state of the responding party. The court noted that this was both federal and state law and policy that was central to UIFSA and the FFCCSOA, and could not be defeated by the docketing law in any one state. The court cited many UIFSA decisions from other states in support of its ruling.

§ 39.3.3—Immunity In Interstate Custody And Support Cases

Pursuant to the UCCJEA, a responding party in an initial “child custody proceeding” and a petitioning or responding party in a modification proceeding have limited immunity: said party is not subject to personal jurisdiction in Colorado regarding any other matter, unless there is an independent basis for subject matter jurisdiction here.⁶⁴ UCCJEA jurisdiction is subject matter jurisdiction only, and exists, or continues, only in the child’s current or former home state. The responding party to an initial Colorado home state proceeding, or any party in a modification, has no choice but to litigate in Colorado. Therefore, the UCCJEA grants immunity from service of process on a person who just happens to have an interest in a parental responsibility matter in Colorado. Ordinarily, a party’s mere presence in Colorado would otherwise allow an opponent to obtain personal jurisdiction over that party in Colorado in other matters.⁶⁵ Thus, a support obligor’s appearance in Colorado on a parental responsibility or parenting time issue would not generally allow the litigation of a child support issue in this state.⁶⁶

Similarly, UIFSA does not allow Colorado to exercise child custody jurisdiction over a nonresident party to a child support proceeding.⁶⁷ However, such “immunity” does not extend to petitioners in UIFSA cases when there is a claim involving child support.

In *In re Marriage of Haddad*,⁶⁸ the petitioner mother, a resident of Connecticut, filed a 1998 UIFSA action against the respondent father in Colorado. In 1999, one of the children moved to Colorado with the respondent, and in 2002, the respondent moved for a

63. See C.R.S. § 14-5-611(a)(1); 28 U.S.C. §§ 1738B(f) and (i).

64. C.R.S. § 14-13-109.

65. Jurisdiction in interstate child support matters is governed exclusively by UIFSA and FFCCSOA.

66. See *In re Marriage of Zinke and Wavra*, 967 P.2d 210 (Colo. App. 1998). See also *In re Marriage of Erickson*, 991 P.2d 123 (Wash. App. 2000). In *Erickson*, the parties were divorced in California in 1994. By 1998, the mother and children had moved to Washington State. The father was served with a motion for modification of child and spousal support while in Washington for visitation. The court held that Washington had personal jurisdiction over the father (and, perhaps, custody jurisdiction), but per UIFSA, Washington had no subject matter jurisdiction over either child support or spousal support. The Washington Supreme Court in *In re Marriage of Schneider*, 268 P.3d 215 (Wash. 2011) revised the rule stated in *Erickson*. The court found that the Washington trial court has subject matter jurisdiction to modify the support order under state law, but UIFSA restricts the court’s legal authority to do so.

67. C.R.S. § 14-5-104(b)(2).

68. *In re Marriage of Haddad*, 93 P.3d 617 (Colo. App. 2004).

modification of current and past child support and sought a judgment against the petitioner for back child support. The trial court granted the respondent a retroactive modification, but found it had no jurisdiction over the petitioner and could not, therefore, grant the respondent a judgment for back child support against her.

The Colorado Court of Appeals reversed, finding that the petitioner subjected herself to personal and subject matter jurisdiction in Colorado when she filed the UIFSA petition in 1998. The court distinguished this case from *Zinke*,⁶⁹ discussed in [§ 39.3.2](#), because the respondent's counterclaim against the petitioner arose entirely from the limited child support jurisdiction that was the subject of the original UIFSA petition. The fact that the petitioner's UIFSA case was filed on her behalf by the Connecticut child support office, and enforced by the Colorado child support office, did not insulate her from personal jurisdiction in Colorado regarding child support issues.

Similarly, in *Vogan v. County of San Diego*,⁷⁰ the defendants obtained a California order for child support and an income assignment. Under UIFSA, the defendants forwarded the income assignment to the plaintiff's Colorado employer, who began withholding child support from her income.⁷¹

In 2002, the plaintiff registered the California order in Colorado. In 2003, the plaintiff filed a petition to vacate the California judgment for lack of jurisdiction due to lack of service on the plaintiff. The defendants never responded, and the court granted the petition. In 2005, the plaintiff filed an action in Colorado against the defendants, alleging that they wrongfully refused to terminate the income assignment; she sought reimbursement for all money withheld from her income since Colorado vacated the California child support order, and treble damages under the civil theft statute, C.R.S. § 18-4-405. The defendants filed a special appearance to contest jurisdiction and a motion to dismiss the plaintiff's action for lack of personal jurisdiction. The plaintiff responded, alleging that Colorado had jurisdiction over the defendants under the long-arm statute. The trial court granted the defendants' motion to dismiss.

The Colorado Court of Appeals found that Colorado had jurisdiction over the Californian defendants because C.R.S. § 14-5-607(b) provides that a Colorado court may stay enforcement of a registered order and "may issue other appropriate orders." The defendants argued that Colorado did not have personal jurisdiction because, pursuant to C.R.S. § 14-5-314(a), participation by a petitioner in a UIFSA proceeding does not confer personal jurisdiction over the petitioner in another proceeding. However, the court held that, since the defendants purposefully availed themselves of UIFSA by using a California child support order to reach earnings in Colorado, Colorado had continuing subject matter and personal jurisdiction over the defendants to enforce its prior order.

69. *In re Marriage of Zinke & Wavra*, 967 P.2d 210 (Colo. App. 1998).

70. *Vogan v. County of San Diego*, 193 P.3d 336 (Colo. App. 2008).

71. C.R.S. §§ 14-5-501, *et seq.*

With regard to the civil theft claim, the court found that Colorado had personal and subject matter jurisdiction over the defendants because Colorado's long-arm statute provides jurisdiction over "any cause of action arising from: (a) The transaction of any business within this state; [or] (b) The commission of a tortious act within this state."⁷² Further, the court found that the plaintiff's unanswered complaint alleged that harmful effects of the tortious acts were felt in Colorado; thus, there was a sufficient nexus between the defendants and Colorado to satisfy due process. The case was remanded to proceed on the plaintiff's complaint since both prongs of the long-arm jurisdiction analysis were met.

§ 39.4 JURISDICTION IN A NEW STATE

The National Conference of Commissioners on Uniform State Laws, drafters of UIFSA and the UCCJEA, chose to base UIFSA jurisdiction on "traditional" jurisdictional concepts, rather than to use the more radical "child-state" jurisdictional concepts of the UCCJEA.⁷³ The result of this choice is that, when both parents leave the issuing state, two separate states can become the battlegrounds for a high-conflict family's ongoing war: one state for child custody, and another state for child support. This choice was in conflict with the recommendations of the U.S. Commission on Interstate Child Support⁷⁴ and has resulted in the frequent bifurcation of paternity, custody, and support issues;⁷⁵ a result the National Conference of Commissioners on Uniform State Laws stated it wished to avoid.

§ 39.4.1—Child Support

A court has continuing, exclusive jurisdiction over a child support order it enters as long as the issuing state remains the residence of the obligor, the individual obligee, or the

72. C.R.S. §§ 13-1-124(1)(a) and (b).

73. See J. J. Sampson, "Uniform Interstate Family Support Act (with Unofficial Annotations)," 27 *Fam. L. Q.* 93, 106-107, nn. 24-26 (1993).

74. U.S. Commission on Interstate Child Support, "Supporting Our Children: A Blueprint for Reform," at 84, 87-88.

75. See Sampson, *supra* n. 70 at 119, n. 63. See *Early v. Early*, 499 S.E.2d 329 (Ga. 1998). In *Early*, the mother claimed that the trial court erred when it refused to accept jurisdiction over the proceedings, because pursuant to the FFCCSOA, the trial court that last made the support order had continuing and exclusive jurisdiction over the orders where one of the parties to the order continued to reside in the state. The court held that because the trial court had continuing, exclusive jurisdiction over the last child support order entered consistent with the FFCCSOA, the trial court erred by declining to exercise jurisdiction over the father's petition to modify child support pursuant to 28 U.S.C. § 1738B. The court also found that while it appreciated the need for judicial economy and it recognized that litigating the custody issues in one state and the support issues in another state would be inconvenient and expensive, that result was the direct consequence of the express provisions of the FFCCSOA. Finally, the court found that Georgia had jurisdiction because the mother would not consent to the modification of the support order by another state. For an illustration on how such jurisdictional conflicts can be further complicated by the limited role of the child support enforcement (IV-D) attorney, see *Vanzant v. Purvis*, 927 S.W.2d 339 (Ark. App. 1996).

child for whose benefit the order was entered, or until each individual party has filed written consent with the issuing tribunal to allow another state to modify the order and assume continuing, exclusive jurisdiction.⁷⁶ If no one lives in the state that issued the order and there is no agreement of the parties to retain jurisdiction,⁷⁷ the party wishing to modify child support must register the existing order for modification in the home state of the responding party, unless each individual party has filed written consent with the issuing tribunal to allow another state in which one party is resident to modify the order and assume continuing, exclusive jurisdiction over the support issue.⁷⁸ These provisions of UIFSA and the FFCCSOA confer subject matter jurisdiction on the court of the state that will modify the original order.

If all parties currently reside in Colorado, UIFSA provides that the existing order may be registered here and modified as though it were a Colorado order.⁷⁹ If parties wish to use the domestication statute, or simply wish to file a new action for support in Colorado, the new Colorado order supercedes any prior orders and gives Colorado continuing, exclusive jurisdiction if either party or the child leaves the state.⁸⁰ UIFSA now requires that, upon the request of any party or the support enforcement agency, the court must determine the controlling order at the time of modification, so that only one order will remain for the future.⁸¹

§ 39.4.2—Allocation Of Parental Responsibility (Custody)

The UCCJEA sets forth the continuing jurisdiction of Colorado as the issuing state, if the initial order was properly entered, but there is a clear difference between jurisdiction in an initial “child custody proceeding” and jurisdiction in a modification proceeding.⁸² In a Colorado modification proceeding, if Colorado did not issue the initial order, the “issuing state” must first determine whether or not it has, or chooses to exercise, continuing jurisdiction over the child custody issue. Unless there is a clear emergency requiring the

76. C.R.S. § 14-5-205(a)(1).

77. C.R.S. § 14-5-205(a)(2).

78. C.R.S. § 14-5-611(a)(1); 28 U.S.C. § 1738B(i).

79. C.R.S. § 14-5-613. *See also In the Interest of F.A.G.*, 148 P.3d 375 (Colo. App. 2006). Colorado had jurisdiction over both parties, and could therefore modify the Texas divorce and custody decree even though the parties were divorced in Texas, since both had moved to Colorado with the child (*see* UIFSA § 613(a) and UCCJEA § 203(1)(b)).

80. C.R.S. § 14-5-207; 28 U.S.C. § 1738B(f).

81. Issues relating to determining a controlling support order and determining the arrears in a multiple order case are too voluminous to be discussed in the context of this chapter. If a case involves multiple child support orders, start by looking at the 2004 version of C.R.S. § 14-5-207, and 28 U.S.C. § 1738B(f). Note that the support enforcement agency is now required to make reasonable efforts to have the controlling order determined in all cases where multiple orders exist. C.R.S. § 14-5-307(c)(2).

82. *Compare* C.R.S. § 14-13-202 *with* C.R.S. § 14-13-203 and the PKPA (28 U.S.C. § 1738A).

court to take immediate action to protect the child,⁸³ Colorado cannot exercise jurisdiction to modify an existing order that was properly issued in the child's prior home state until the issuing state has declined jurisdiction, or until Colorado determines that everyone has clearly left the issuing state and that Colorado would have jurisdiction in an initial child custody proceeding.⁸⁴

§ 39.5 CONCLUSION

Because one in three family law cases becomes an interstate case during the child's minority, Colorado family law judges and attorneys are strongly urged to familiarize themselves with the jurisdictional constructs of UIFSA, FFCCSOA, PKPA, and UCCJEA for all domestic cases in which they participate. The practitioner must be wary of the pitfalls of interstate support and custody litigation, and must inform his or her client of the bifurcation possibilities when accepting employment in an interstate custody or support case.

A best practice would be for judges and practitioners to set forth in all domestic orders issued in Colorado:

- 1) The basis for both personal and subject matter jurisdiction over the parties and the minor children;
- 2) The method of notice given to each party; and
- 3) A description of service of process on a non-appearing party.

This practice should be followed even if jurisdiction is not at issue in the current proceeding. Parties should be able to rely on the fact that their Colorado order will be enforceable outside Colorado if any party or the child leaves this state.

83. C.R.S. § 14-13-~~203~~ 204 (temporary emergency jurisdiction). Note that the temporary emergency jurisdiction can become permanent in Colorado if properly exercised initially, and if jurisdiction is not exercised within six months by the court otherwise having exclusive, continuing jurisdiction.

84. See *In the Interest of F.A.G.*, 148 P.3d 375 (Colo. App. 2006); *Brandt*, 268 P.3d 406.