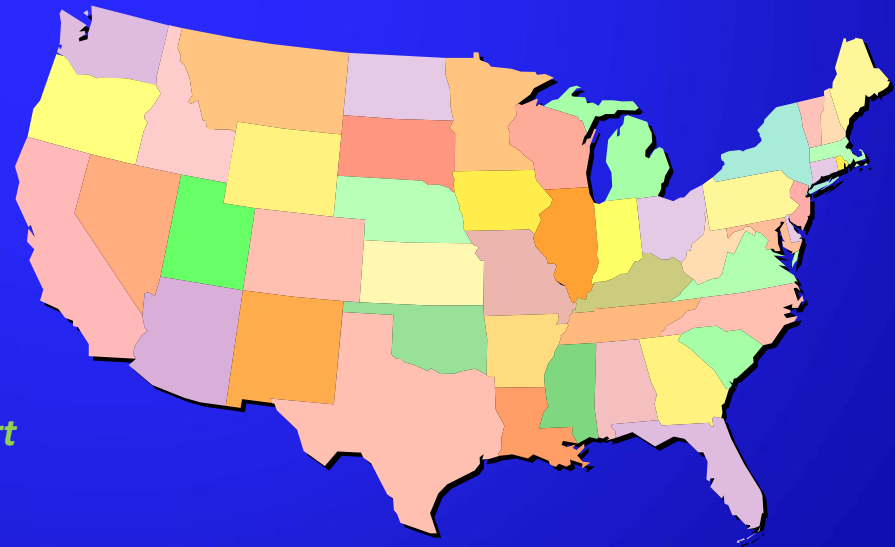


UNIFORM CHILD CUSTODY JURISDICTION & ENFORCEMENT ACT (UCCJEA) for Juvenile Court Judges



Senior Judge Maureen McKnight
Formerly at Multnomah County Circuit Court

August 12, 2019

Pretest: True or False

1. The federal government requires states to adopt the UCCJEA as a condition of their receipt of federal \$ for IV-E (foster care) services.
2. The UCCJEA applies to all states and most tribes, and also to foreign countries if they are signatories to The Hague Convention on the Civil Aspects of International Child Abduction.



3. As long as the Child is present in Oregon at the time of filing + abuse or neglect is found at an evidentiary hearing, Oregon has jurisdiction to adjudicate custody (including a dependency petition), regardless of the length of the child's presence here.
4. Even *ex parte* orders are entitled to interstate enforcement under the UCCJEA.
5. Parties/attys are entitled to be present when judges from sister states are communicating about a case to determine which state is the more appropriate forum.

6. Oregon appellate courts consistently find periods as short as 6-8 weeks as sufficient to establish “significant connection” jurisdiction.

7. Once a state has made a custody determination, it loses jurisdiction to modify that judgment in favor of another state where the child has lived for at least 6 months before the new filing.



Uniform Act

- Developed by Comm'srs on Uniform State Laws
- Codified in 1999 at ORS 109.701 *et seq*
- Replaces UCCJA, enacted in 1970's
- Commentary – instructive; available on-line
 - Commentary to a uniform law adopted in Oregon is legislative history.
Jeld-Wen, Inc., v Pacific Corp. 240 Or App 124 (2010)
- Applies to all states, including:
 - Tribe -- if federally recognized or acknowledged by the state
 - Foreign country – unless application would violate fundamental human rights



Essential Qs under UCCJEA

Which state has the
power to make decisions
about the custody of the child?

If *more* than one state has the
power to decide,
which state should *exercise*
its power?

UCCJEA Controls Subject-Matter Jurisdiction

Power over the Child Custody/Placement CLAIM:
Does the court have the *power* to adjudicate?

- **Significance of S-M Jurisdiction:**
 - It cannot be created by stipulation.
 - It is never waived.
 - It can be challenged at ANY stage, even on appeal.
 - Court can raise on its own.
- **≠ Personal Jurisdiction**

Get it right FROM THE OUTSET.

Distinguish “Merits” decision from Enforcement.

UCCJEA has provisions re both, but we are talking today primarily re “Merits” analysis

Is Court DECIDING WHO GETS CUSTODY, or WHAT ACCESS or PLACEMENT will be ordered?

(i.e., *usually* a “best interests” focus)

**Must use UCCJEA
Jurisdictional analysis**

Is Court ENFORCING an existing order?

EVERY state must enforce.
Not a “best interests” focus.

NOT need UCCJEA jurisdictional analysis, just statutory compliance

Applies to “child custody proceedings”

- Includes temporary orders* as well as permanent

- *Not ex parte

- Includes TPOR/Status Quo order. *Rowland & Kingman, 131 Or App 204 (1994)*

- Includes initial orders & judgments and also “modifications”

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

In the matter of the marriage of:

LISA K. BARROW,
Petitioner,
and
ROBERT C. BARROW,
Respondent.

CASE NUMBER: 0901-60634
**SUPPLEMENTAL JUDGMENT
REGARDING MODIFICATION OF
SPOUSAL SUPPORT, CHILD
SUPPORT and PARENTING TIME**
[Money Award]

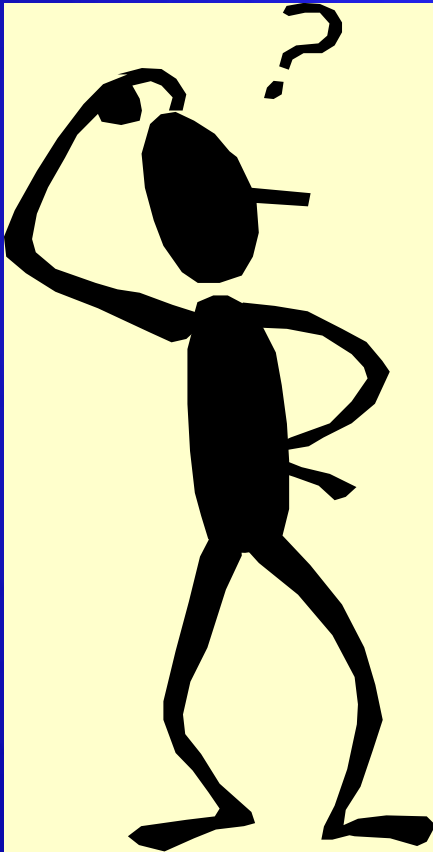
This matter came before the Court on November 4, 2014 based on Respondent's Motion to Modify Spousal Support and Child Support and Petitioner's Motion for Modification of Parenting Time. Respondent appeared, represented by Shelly K.

What is a “child custody proceeding”?

- . . . means a proceeding in which legal custody, physical custody, parenting time or visitation with respect to a child is an issue. “Child custody proceeding” includes a proceeding for divorce, separation, **neglect, abuse, dependency**, guardianship, **paternity**, termination of parental rights and protection from domestic violence in which the issue may appear.
- “Child custody proceeding” does *not* include a proceeding involving juvenile delinquency, contractual emancipation or **enforcement** under ORS 109.774 to 109.827.

NOTE: UCCJEA doesn't include adoptions but ORS applies UCCJEA with tweaks

What is a “modification” ?



A child custody determination that changes, replaces, supersedes, or IS OTHERWISE MADE AFTER a previous determination concerning the same child, whether or not made by the court that made the previous determination

For now, remember only that:

- “Modification” definition is very broad in the UCCJEA
- The “subsequent” child custody proceeding need **NOT**:
 - be in same case as the earlier order/judgment
 - Involve same parties (but must be re same child)

Snow & Snow, 189 Or App 189 (2003)

(Under UCCJEA, ORS 109.119 psych parent custody order GMo obtained “modifies” custody in prior disso between parents)

What is a “Person Acting as a Parent”?

- Non-parent who:

- A. Has physical custody OR

- Had physical custody for 6 consecutive months w/in 1 yr before commencement (filing) AND

- B. Has been awarded legal custody OR

- Claims a right to legal custody under Oregon law*

Does “claims a right” mean “has already filed a claim” or “seems to meet statutory test”? Not addressed by Court of Appeals or clear in Commentary but I think Former.

- Compare:

- ORS 109.119: “Child-Parent relationship” &
 - ORS 419B.116: “Caregiver relationship”

UCCJEA Major themes

- Discourage interstate forum-shopping
- Channel decision-making to state/forum w/ closest ties to child
- Treat “person acting as a parent” equivalently to parent for *jud* purposes
- Restrict modification authority – keep with decree state if it still has ties to child
- Allows for emergency jurisdiction, but only for temporary rulings
- Encourage & sometimes require interstate communication between judges
- Require interstate enforcement

Pleading Requirements

EACH PARTY must plead in 1st pleading (or attached affidavit or ORCP 1 declaration):

- child's location: current location + for last 5 years
- Caretakers for past 5 years & their current addresses
- Filer's past participation in custody proceedings re this child
- Knowledge of other proceedings or claimants



- This info is the initial and often sole basis for court to determine whether it has subject-matter jdx

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Commentary says compliance with ICPC should be pled where ICPC is applicable

Failure to plead UCCJEA info?

Mo/dismiss is needed but probably can cure pleading defect by evidentiary showing.



Role of judge to inquire if record is lacking

State ex rel Pennsylvania v Stork, 56 Or App 335 (1982)

(absence of pleading + FAILURE OF EVIDENTIARY SHOWING = jurisdictional defect and void order appropriate for judge to inquire)

But Commentary states majority view is pleading non-compliance is not jurisdictional

Pleading Requirements -- more

- Continuing obligation to provide information
- Implicates significant confidentiality and locate concerns –
 - Nondisclosure compelled on showing of health, safety, or liberty risk to party or a child
 - If hearing requested, disclosure if “in interests of justice”



Reminder:

**Jurisdictional facts are
FROZEN
At the time of filing**



Contra: convenience factors

Analysis for Determining Jurisdiction

See attached sheets



Prepared by:
Hon. Maureen McKnight
Revised 06/14

JURISDICTIONAL ANALYSIS UNDER THE UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

Initial Order: *Controlling Concept: Home State Priority*

1. Does Oregon have jurisdiction? (109.741) *A, B, C, or D must be true*

- A. Is Oregon the **Home State**?
State in which child lives and has lived for at least six consecutive months immediately before the filing (~~not hearing~~). ~~temporary absences~~ *do not toll time; for child less than 6 months old, "home state" is state in which child has lived since birth).* *or*
State in which child has lived for at least six consecutive months, a part of which occurred within the last six months, and though child is absent from Oregon at time of filing, a parent or PERSON ACTING AS A PARENT continues to live in Oregon.

Totality of
circumstance
" test

If Oregon is not the Home State and a Home State which has not declined jurisdiction exists, Oregon does not have jurisdiction unless it is temporary emergency jurisdiction.

- B. Does Oregon have **Significant Connections** to the child and at least one parent or PERSON ACTING AS A PARENT, **with substantial evidence** here regarding the child's care, protection, training, and personal relationships located here
AND:
- **No Home State exists; or**
- **The Home State has declined to assert jurisdiction in favor of Oregon?** (see "Inconvenient Forum" factors in ORS 109.761 and "Unjustifiable Conduct" factors in ORS 109.764).
- C. Has the Home State and all Significant Connections States **declined jurisdiction in favor of Oregon**, based on inconvenient forum grounds (ORS 109.761) or unjustifiable conduct grounds (ORS 109.764)?
- D. Is there **NO other state** with Home State or Significant Connections' jurisdiction, *or* who had that status and declined in favor of Oregon?

☆ **BUT CONSIDER: Does Oregon have basis for Temporary Emergency Jurisdiction (see page 3)?**

? Is ICWA applicable? If so, UCCJEA is not applicable where inconsistent with ICWA

2. If Oregon has jurisdiction, should Oregon exercise jurisdiction?

(See "Inconvenient Forum" factors in ORS 109.761 – discretionary declination)
(See "Unjustifiable Conduct" factors in ORS 109.764 – could be mandatory declination)

TEMPORARY EMERGENCY JURISDICTION

INITIAL
ORDER
ANALYSIS

MODIFICATION
ORDER
ANALYSIS

First Q: Which Box are you in???

Hand-outs for UCCJEA Jurisdictional Analysis

Is this the **INITIAL** order?

Must have:

Last 6 mos

- **Home state** (controls)
- No H.S. but Significant Connections + Substantial Evidence
- H.S. & S.C. state declines jdx or
- No state is HS or SC

BUT

- Presence + emergency = TEJ

Temp jdx only

Is it a **MODIFICATION**?

Does **issuing state** still have jdx? Yes, unless:

- Every parent + child has moved (*Either state can determine this*)
- Issuing state no longer has SC + SE? (*Only the issuing state can decide this*) or
- Issuing state has DECLINED jdx

BUT – if Presence + emergency, have Temporary Emerg. Jdx

Temporary Emergency Jurisdiction

Presence in state

+

Abandonment

or

Emergency – need to protect child because child, sib, or parent subjected to or threatened with abuse

Temporary orders only, until State with “initial” or “CEJ/modification” jurisdiction enters an order;

NO ADJUDICATION OF THE PETITION;

Unless....

“Neglect” is specifically **DISALLOWED** as a basis of TEJ, as “too elastic”.
See Commentary.

Oregon case law requires “immediate risk of harm if returned,” even if return is not imminent

Scenario #1

5 month-old Child born in Oregon. Is still here at dependency filing.

- Does Oregon have “home state” jurisdiction?

Scenario #2

Child born in Texas, moved to Arizona at 6 weeks, then 2 months later moves to Oregon. Here in Oregon 3-4 days.

- Does Oregon have “home state” or “significant connection” jurisdiction?
- Does Oregon have any jurisdiction to issue initial order?

Scenario #3

Is an absence
“temporary?” Use a
“totality of circumstance”
test. *Schwartz v Battini*,
289 Or App 332 (2017)

Child born in Texas. At age 2, comes to Oregon with Mother so Mother can live with GMo & finish school since no child care in Texas. 7 months later, child is injured due to Mother’s inattention while under influence of drugs. Father remained In Texas.

- Does Oregon have “home state” or “significant connection” jurisdiction?
- Does Oregon have any jurisdiction to issue initial order?

Remember definition of “modification”

A child custody determination that changes, replaces, supersedes, or IS OTHERWISE MADE AFTER a previous determination concerning the same child, whether or not made by the court that made the previous determination

What if the first custody order is no longer effective?

Examples:

- terminated or expired FAPA custody order
- terminated guardianship
- terminated dependency/wardship


10. IT IS FURTHER ORDERED THAT:

- All prior orders not in conflict with this order remain in effect.
- The child/gen. remain a ward/s of the court
- Temporary commitment to DHS is terminated. Wardship is terminated. The petition is dismissed.
- The child/gen is/are placed/continued in the legal custody and guardianship of DHS
 other: _____
- The child/gen shall remain in substitute care. The child/gen shall be returned to the care of
 Mother Father Other: _____, by _____, 20____.

- Prior to 2014, unclear in Oregon **how to treat prior ruling that was “dead”** (no longer effective), such as:
 - Restraining order that had lapsed
 - Prior dependency that was now terminated
- Ignore “now dead” order for purposes of UCCJEA and go with “initial order” analysis instead?
- 2014 case answers this question

- When first order was dismissed or terminated (has no prospective effect) but was not nullified *ab initio*, the proper UCCJEA analysis for the next order is the “modification” analysis, not “initial state”
 - *Campbell v Tardio*, 261 Or App 78 (2014)

- So o o o o o....

Terminated order in State #1 means subsequent dependency case in Oregon has to undergo a “modification” analysis, not “initial order” analysis 

Scenario #4

Father has custody under California restraining order upheld at contested hearing. Soon after the hearing, Mother flees with Children to Mexico. Restraining order expires and is not renewed but during its pendency Mother and children returned to U.S. and came to Oregon, unknown to Father who still lives in California. Oregon dependency is filed due to maternal neglect.

- Are we in an “initial” or “modification” analysis?
- Can Oregon adjudicate the dependency petition?
- Can Oregon enter a shelter order re children’s placement?

Scenario #5

Child born in Texas, moved to Arizona at 6 weeks where a dependency case is filed, then 2 months later Father brings Child to Oregon. Here in Oregon 3-4 days.

- Does Oregon have a basis for initial jurisdiction?
- “Initial Jdx” is not the analysis if Arizona has issued any custody/placement order. An order issued by Arizona, even if under TEJ, means Oregon is in the “modification” analysis
- Because a custody case is pending, Oregon judge must communicate with the Arizona court

Scenario #6

Divorce in Michigan. Mother now living with child in Oregon for 3 years. Father moved to Montana. Oregon dependency is filed due to DV between Mother and Boyfriend, Mother's alcohol use, and neglect.

- Can Oregon adjudicate the dependency?
- **Yes.** In modification context, but Michigan has no *continuing exclusive jurisdiction (CEJ)* because no parent/caregiver or Child lives there now. Oregon is now home state.

Implications:



Since movant has burden and subject-matter jdx is never waived, DHS has even more work to do to ascertain existence of prior court orders in custody prcdgs (and pending custody claims).

Court MUST know of:

- Prior restraining orders that grant custody
- Prior custody orders of any type
- Prior dependencies

Parents, relatives, court records searches.

Simultaneous Proceedings

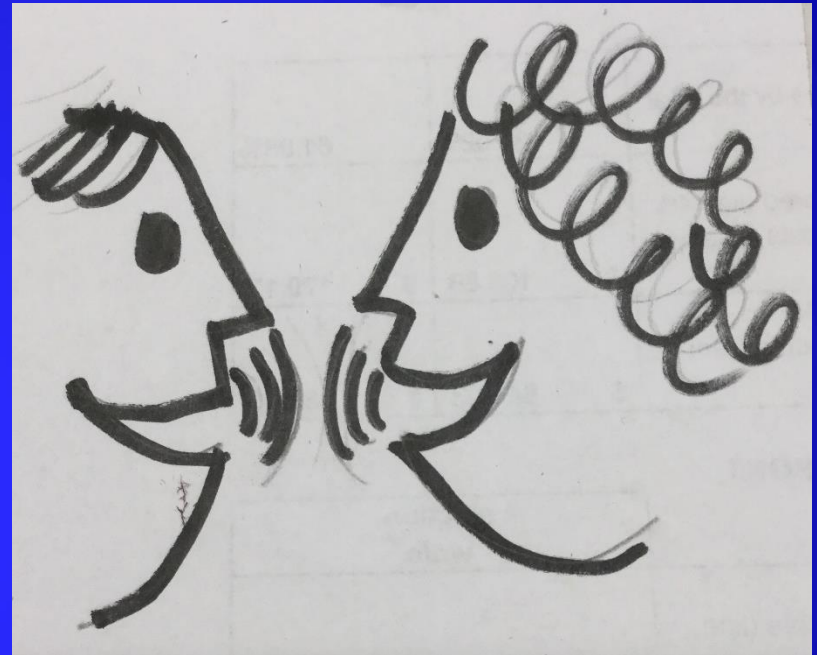


- Oregon must communicate with Judge in other state
- If at the time of the Oregon filing another state has a pending UCCJEA matter, Oregon cannot exercise its jurisdiction UNLESS:
 - Oregon has emergency re child (Temporary Emergency Jurisdiction = TEJ) or
 - Other state stays its case or defers to Oregon as more convenient

Interstate Judicial Communication

Court *can* allow Parties to be present but need not

-- Commentary reflects recognition communication may be after hours due to judicial workload



If not present, parties must have opportunity to present facts/argument *before* ruling

A retrievable record must be kept.

Method:

Email is specifically authorized in Commentary as is phone. “No method of communication precluded . . .recognizes increasing use of modern communication techniques.”



Record:

Record need *not* be verbatim. Can be recording but can also be print-out of email or even post-communication memorandum.

See Commentary, recognizing scheduling issues and possible after-hours communications.

Interstate Judicial Conference is MANDATORY:

- When Oregon is exercising Temporary Emergency Jurisdiction and learns another state has a PENDING or ALREADY ENTERED enforceable order (& vice versa)
- When Oregon is enforcing another state's order and a modification is pending elsewhere (& vice versa)



Conference is DISCRETIONARY:

- At any time
- Is easiest way to resolve:
 - Declination of jurisdiction
 - Inconvenient Forum
 - Unjustified Conduct



Interstate Judicial Cooperation

- Oregon can directly order that testimony be taken in another state for Oregon case
- Oregon can request another state:
 - to hold hearing
 - order person to produce evidence
 - appear with or without child
 - order evaluation
- Documentary evidence transmitted interstate electronically cannot be excluded based on that factor (i.e., no original)

SHOULD Oregon exercise its
jurisdiction?



Declination of Jurisdiction

(1) Inconvenience of Forum

- Presence/likelihood of continuing DV
- Length of time child outside state
- Distance between forums
- Relative financial circumstances of parties
- Agreement of parties
- Nature and location of evidence
- Ability of each forum to decide expeditiously and procedures necessary there
- Familiarity of each forum with facts and issues
- Other relevant factors

Discretionary

Declination of Jurisdiction



(2) Unjustified Conduct

- Removing, secreting, retaining, or restraining the child
- Applies when jdx exists *because of* the inappropriate conduct (i.e., agst the invoker)
- Strong commentary recognizing situation of DV victims who flee despite court order: calls for case-by-case inquiry re justification
- Court can fashion order to protect child pending dismissal (require filing elsewhere, place in foster care, etc.)

Mandatory

Interstate Enforcement



- **Must enforce, even w/o registration**
- **Registration possible. Only defenses to validity:**
 - **No subject-matter jurisdiction**
 - **Denial of notice & opportunity to be heard**
 - **Vacation or modification of order to be registered**
- **Visitation enforcement procure can give compensatory time or make “reasonable” specific**
- **“Turbo” habeas proceeding – immed. physical custody & costs**
- **Warrant for no-notice seizure of child if “imminently likely to suffer serious physical harm or be removed from State”**
 - **Petition heard day after service**
- **Enhanced enforcement through public prosecutors**

Oregon Appellate Cases involving the UCCJEA in a Dependency context

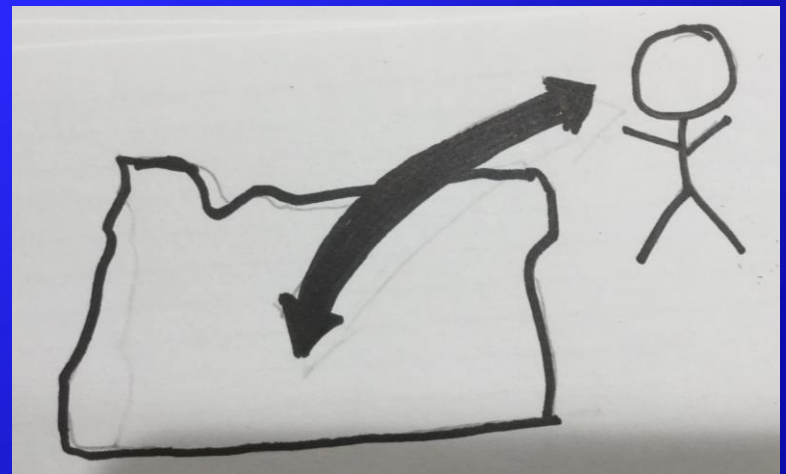
- *In re G.G.*, 234 Or App 652 (2010)
- Correspondence from interstate UCCJEA consult placed in court file is part of file and therefore may be designated as part of record for appeal
- Error to not allow parties access to record and to present facts/argument before ruling

- *In re N.J.S.*, 253 Or 319 (2012)

Significant Connections + Substantial Evidence after

3 month-old Child in Oregon for 2 months where:

- Mother lived here for 4 years, including during pregnancy and child received prenatal care here
- Child comes to Oregon at age one month
- Child sees numerous medical professionals here at age 1-2 months due to Mother's (MH-affected) concerns for Child
- Mother and Child receive TANF here



- *In re V.H.*, 256 Or App 306 (2013)

ORS 419B.803(2) states that **juvenile court jurisdiction** is subject to the UCCJEA and the UCCJEA requires only **subject-matter jurisdiction** (over the *res*), not personal jurisdiction over child

- *In re L.P.L.O.*, 280 Or App 292 (2016)

(construing “**Temporary Emergency**” jurisdiction to include immediate risk *upon return* to parent/other jdx, even if timing of return is unknown. SIJS case)

EMERGENCY

- *In re N.N.*, 280 Or App 807 (2016)

Dependency trial court **erred in using venue analysis** instead of UCCJEA subject-matter jdx analysis when Mother challenged Oregon's jurisdiction

- *In re M.L.F.* 292 Or App 356 (2018)

Dismissal of petition (and not remand) was appropriate on appeal where:

- Oregon was not "home state" at time of filing,
- **State did not argue TEJ** against Mother's motion to dismiss at trial level, and
- State offered no legal argument or facts about TEJ at trial level

NOTE: Same issue; same result in *In re S.S.*, 298 Or 371 (March 2019)

- *In re E.R.*, 294 Or App 786 (2018)

State concedes error on appeal for dependency petition filed in Oregon in same month Child moved here with Mother, and record is silent re any jdx basis other than home state



- *In re G.I.R.*, 298 Or App 59 (June 2019)

Error to find TEJ in dependency case where record not show (and state concedes) risk of immediate harm if returned to Mother.

Remand because trial judge not determine alternative bases, including whether Virginia remained the home state because Mother's absence from Virginia was "temporary" under a totality of circumstances test. Also record lacking on whether Virginia grandparents with power of attorney are "acting as a parent" within meaning of UCCJEA

RECOMMENDATION for JUDGES:

Read all discovery carefully for references to prior or pending:

- restraining orders (is there a custody provision?)
- guardianships
- divorce/custody orders
- dependencies
- adoptions (because we're Oregon)

Inquire about status/extent of DHS inquiry into existence of prior/pending custody proceedings

Scenario #7

-- all moved?
-- State #1 still have SC +SE?

Divorce/Unmarried Custody order in State #1,
followed by dependency in Oregon

- Does State #1 still have CEJ (Continuing Exclusive Jurisdiction)?
 - If so, Oregon may have TEJ but **can address only temp orders** to protect the child, not adjudicate the dependency petition.
 - Orders must be time-limited
 - **Must communicate with Judge in State #1**

Scenario #8

Restraining Order w/Custody still in effect in Washington, followed by Dependency in Oregon

- Can Oregon adjudicate the dependency?
- Can Oregon issue an order at a shelter hearing?
Oregon can't modify unless State #1 decides that Oregon would be more convenient

Except for TEJ orders, Oregon must **STAY** its proceeding and communicate with State #1

Scenario #9

Dependency case in California NOW CLOSED,
followed by dependency petition in Oregon

- Can Oregon adjudicate the dependency?
- Is it an “initial order” or “modification analysis”?
 - “Modification” = an order that changes, replaces, or supersedes, or *is otherwise made after* a previous determination“
 - **Modification analysis applies** even though prior dependency determination has no current effect

Scenario #10

Paternity determination in Alabama. Mother and Child now living in Oregon for 7 years. Oregon dependency is filed based on Mother's mental illness. Father incarcerated in Alabama.

- Can Oregon adjudicate the dependency?
- Depends on whether the paternity case included a "child custody determination"
 - If yes, Oregon is in a modification context and can exercise only TEJ – and must consult (assumes no other state later decided custody)
 - If no, Oregon is home state and can adjudicate

Stays



Mandatory

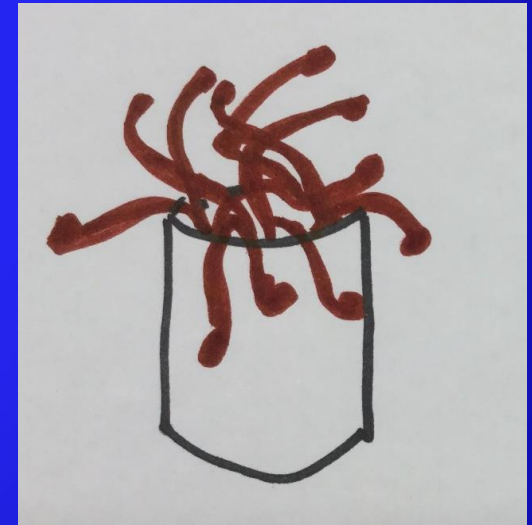
- Oregon learns UCCJEA-compliant case pending elsewhere first
- Oregon determines Oregon is inappropriate forum.
 - Must stay until case is filed in that other state, if none filed there yet

Discretionary

- Oregon learns person invoking Oregon jdx has engaged in unjustifiable conduct
- Oregon has a pending modification case and then learns another state has an enforcement case pending

Termination of Parental Rights

- TPRs are “child custody proceedings” if legal custody is an issue. And legal custody is an issue if the court “permanently commits” under ORS 419B.527.
- So different can, same worms.



But the UCCJEA issues *should* have been resolved in the related dependency

UCCJEA & ICPC

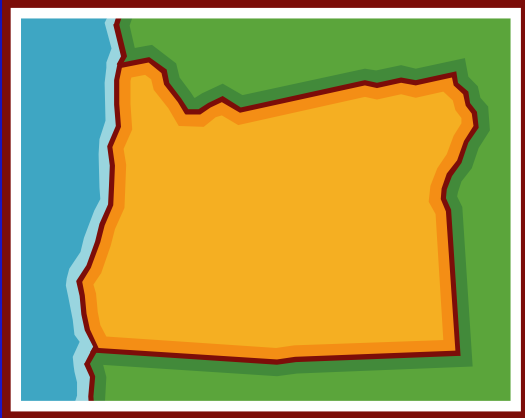
- UCCJEA implicates jurisdiction. ICPC does not.
 - ICPC compliance is not a prerequisite to the existence or exercise of jurisdiction. ICPC controls procedure when a placement is made. (But ICPC non-compliance *could* result in a sanction that affects jurisdiction).
- UCCJEA controls *judicial* decision-making re custody and placement.
 - UCCJEA controls *administrative/agency* procedures for child placement
- If conflict, ICPC (a contract between the states) trumps state law (UCCJEA), but state law (UCCJEA) trumps ICPC regulation.

UCCJEA & ICPC

- The ICPC does not apply to placements with parents UNLESS:

A Court or DHS-equivalent is placing the child with an out-of-state parent:

1. for whom the Court/Agency has evidence regarding unfitness
2. for whom fitness is being assessed, or
3. when the child will remain a court ward or in DHS custody



Thanks for listening!

maureen.mcknight@ojd.state.or.us

**JURISDICTIONAL ANALYSIS UNDER THE
UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT**

Initial Order:	Controlling Concept: Home State Priority
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1. Does Oregon <i>have</i> jurisdiction? (109.741)	A, B, C, or D must be true
---	-----------------------------------

A. Is Oregon the **Home State**?

- State in which child lives and has lived for at least six consecutive months immediately before the filing (not hearing). (*Temporary absence does not toll time; for child less than 6 months old, "home state" is state in which child has lived since birth*). or
- State in which child has lived for at least six consecutive months, a part of which occurred within the last six months, and though child is absent from Oregon at time of filing, a parent or PERSON ACTING AS A PARENT continues to live in Oregon.

If Oregon is not the Home State and a Home State which has not declined jurisdiction exists, Oregon does not have jurisdiction unless it is temporary emergency jurisdiction.

B. Does Oregon have **Significant Connections** to the child and at least one parent or PERSON ACTING AS A PARENT, **with substantial evidence** here regarding the child's care, protection, training, and personal relationships located here

AND:

- **No Home State exists; or**
- **The Home State has declined to assert jurisdiction in favor of Oregon?** (*see "Inconvenient Forum" factors in ORS 109.761 and "Unjustifiable Conduct" factors in ORS 109.764*).

C. Has the Home State and all Significant Connections States **declined jurisdiction in favor of Oregon**, based on inconvenient forum grounds (ORS 109.761) or unjustifiable conduct grounds (ORS 109.764)?

D. Is there **NO other state** with Home State or Significant Connections" jurisdiction or who had that status and declined in favor of Oregon?

☆ **BUT CONSIDER: Does Oregon have basis for Temporary Emergency Jurisdiction (see page 3)?**

? Is ICWA applicable? If so, UCCJEA is not applicable where inconsistent with ICWA

2. If Oregon has jurisdiction, should Oregon exercise jurisdiction?
--

(See "Inconvenient Forum" factors in ORS 109.761 – discretionary declination)
(See "Unjustifiable Conduct" factors in ORS 109.764 – could be mandatory declination)

The 2nd order is a "modification" even if the 1st order is no longer in effect

2. Does Oregon have jurisdiction to modify the order?

A. Is Oregon the Issuing State?

(1) **If yes**, then OREGON has continuing exclusive jurisdiction (CEJ) unless: (109.744)

(a) Oregon finds that (1) Oregon lacks a significant connection with the child, AND with the child and one parent, AND with the child and a PERSON ACTING AS A PARENT, or (2) substantial evidence regarding the child's care, protection, training, and personal relationships is no longer available in Oregon; or

(b) Oregon or another state determines that child, parents, and any PERSON ACTING AS A PARENT no longer reside in Oregon.

(2) **If no**, then the ISSUING STATE has continuing exclusive jurisdiction unless: (109.747)

(a) The Court of the Issuing State determines that it no longer has continuing exclusive jurisdiction because not the child, nor the child and parent, nor a PERSON ACTING AS A PARENT has a significant connection with that state or that substantial evidence regarding child's care, protection, training, and personal relationships is no longer available there; or

(b) The Court of the Issuing State determines that Oregon would be a more convenient forum. (See 109.761 for inconvenient forum factors.); **or**

(c) Oregon or the Issuing State determines that the child, the child's parents, and any PERSON ACTING AS A PARENT do not presently reside in the Issuing State.

B. **If Oregon doesn't have CEJ and the Issuing State doesn't have CEJ, can Oregon modify the order?**

➔ **Does Oregon have jurisdiction to make an *Initial Order* as the "Home State" or "Significant Connection" state (see page 1)?**

(a) If yes, can modify

(b) If no, no jurisdiction to modify *except* under temporary emergency jurisdiction (page 3)



BUT CONSIDER: Does Oregon have basis for Temporary Emergency Jurisdiction (see page 3)?

? Is ICWA applicable? If so, UCCJEA is not applicable where inconsistent with ICWA

2. If Oregon has jurisdiction to modify, should Oregon exercise that jurisdiction?

(See "Inconvenient Forum" factors in ORS 109.761 – discretionary declination)

(See "Unjustifiable Conduct" factors in ORS 109.764 – could be mandatory declination)

1. Even if Oregon does not have Jurisdiction to make an Initial order or a Modification order, can it nevertheless make a *Temporary Emergency Order* to protect the child?

- A. Is the CHILD PRESENT IN OREGON, and
 - (1) Has the child been abandoned or (2) is there an emergency requiring the protection of the child because the child, or a sibling, or a parent is subjected to or threatened with mistreatment or abuse? *(Commentary clarifies latter standard is narrower than “neglect”)*
 - 1. If no, no temporary emergency jurisdiction.
 - 2. If yes, then continue:

- B. Is there a PREVIOUS OR PENDING CHILD CUSTODY DETERMINATION FROM ANOTHER STATE?
 - (1) If not, then:
 - (a) The Temporary Emergency Order (TEJ) remains in effect until an order is obtained from a state with Home State or Significant Connections jurisdiction.

 - (b) AND if the Temporary Order provides, the Temporary Order can become a permanent order if (and the order states this prospective finality):
 - (1) Oregon becomes the child’s Home State and
 - (2) No other proceeding has been filed in a state with Home State or Significant Connections jurisdiction.

 - (2) If yes, (a previous enforceable child custody determination exists or one is pending), then:
 - (a) The Temporary Emergency Order must state a specific time period within which an order may be sought from the State with continuing exclusive jurisdiction or Home State or Significant Connections jurisdiction.

 - (b) The Temporary Order from Oregon will remain in effect until that other state issues an order w/in the defined period or the order expires.

- C. Requirements for MANDATORY JUDICIAL COMMUNICATION may exist:
 - (1) If there is a previous order or pending matter in another state, and Oregon is asserting temporary emergency jurisdiction, Oregon MUST immediately communicate with the other state.

 - (2) If Oregon is exercising jurisdiction on *any* basis and learns that another state has a pending Temporary Emergency Jurisdiction order or has issued a Temporary Emergency Jurisdiction order, Oregon MUST communicate with that state to resolve the emergency, protect the parties and the child, and determine the duration of the temporary order.

? *Is ICWA applicable? If so, UCCJEA is not applicable where inconsistent with ICWA*

2. If Oregon has jurisdiction to make or modify an order because of an emergency, should Oregon exercise that jurisdiction?

*(See “Inconvenient Forum” factors in ORS 109.761 – discretionary declination)
(See “Unjustifiable Conduct” factors in ORS 109.764 – discretionary declination because child is at risk)*