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A Guide to Enforcing Custody Orders With the UCCJEA's Powerful New Tools, Part I

by David A. Blumberg



When Wisconsin replaced the Uniform Child Custody Jurisdiction Act (former Ch. 822) with the Uniform Child Custody Jurisdiction *and Enforcement Act* (new Ch. 822) last year,¹ it went far beyond updating, fine tuning, and resolving ambiguities and oversights in the UCCJA's 30-year-old statutory framework.² Tucked away quietly at the back of the new Act is a collection of new enforcement tools for custody and placement that should not be underestimated. Hiding within the elegant simplicity of the Act's final 17 sections lie tools of astounding power, speed, and reach.

This article, the first in a two-part series, will describe those newly created enforcement tools and explain a little about the problems that gave rise to their creation.

I. Background: The Problems

Under the UCCJA, states were required to "recognize and enforce" a valid child custody or placement order issued in any other state.³ The old law even set up a system for filing certified copies of other states' custody

orders with "the clerk of any circuit court of this state" and for treating those registered orders as if they were locally issued.⁴ It also provided for certified copies of local Wisconsin orders to be sent, on request, to sister-state courts or litigants.⁵ These enforcement provisions were contained in just four brief sections of

the old UCCJA. Details of exactly how Wisconsin or any other state was to go about registering or enforcing a sister-state's custody orders were notably absent.

With no specific guidance from the UCCJA, each state was left to develop its own enforcement procedures. Some would mimic those of other states. Some were unique. For example, one state might call for enforcement by a "motion to enforce," while the usual practice in another state would be a "writ of habeas corpus." Courts in one state might require a "citation for contempt," while courts in others would expect a "writ of mandate" or a "writ of prohibition." Yet other states might expect a "motion to grant full faith and credit" or some other

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Chair's Column

by Sheryl A. Haarmann Cahn



Since my last column, the Section has been monitoring an expanse of legislation, as well as positions taken by other sections. The Legislative Committee held its first working meeting in February to begin a draft of the removal statute rewrite. As expected, former Assistant Family Court Commissioner Cooper was in attendance with her sleeves rolled up and ready to work with those of us who haven't retired. This is an excellent opportunity for me to urge all section members to follow Lucy's example and become involved in the Section and serve on a committee, even if you don't serve on the Board.

As I look out my office window and consider the "Blizzard of 2007," it is hard to believe spring will be upon us soon. This, of course, leads to the planning of the annual convention program

hosted by the State Bar in May. This year, Chair-Elect Dan Cross has planned an interesting and timely program. The highlights will be a Case Law Update, Military and Family Law Issues, and an expanded presentation by a group known as Take Root. Take Root's stated mission is "to empower former abducted children to respond to family abduction by facilitating healing, providing knowledge, and raising public awareness from

the unique perspective of the abducted child." This presentation will focus on parental abduction of children from the perspective of an adult survivor, including the impact of the professionals involved in the return.

The Family Law Section's program will be held in the afternoon on May 9, 2007, at the Midwest Center in Milwaukee.

The Mentoring Committee issued a short e-mail survey which was distributed to section members. Thank you to those members who filled it out to help the committee get your feedback in its planning stages.

Our next Board meeting will be held on Saturday, March 17, 2007 at 8:30 a.m. at the State Bar Center in Madison. As always, the Board welcomes your presence and participation.

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combination of enforcement tools.⁶ And while many states limited the permissible issues in enforcement cases to whether the issuing court had jurisdiction to make the order in question, others expanded the range of permissible issues to allow inquiry into whether enforcement would be in the best interests of the child—thereby permitting what could amount to a partial or full de novo rehearing on the merits of the underlying case.⁷

This lack of uniform rules and procedures complicated interstate enforcement in many ways. Because each state had its own preferred

combination of enforcement remedies, a parent in one state was nearly compelled not only to retain counsel in his or her own state, but also to retain counsel in the sister state. Moreover, the lack of uniformity significantly reduced the predictability of outcome, and increased both the time and cost of enforcement. Depending on the states involved, an opposing parent could delay the enforcement of a sister state's custody or visitation order for months or years—effectively frustrating the very process that led to the issuance of the original court order.

The drafters of the UCCJEA understood these problems that had complicated and often frustrated efforts to enforce original custody

and placement orders in other states. Providing a detailed and uniform set of enforcement remedies was one of their major objectives in creating the UCCJEA.⁸ In realizing that objective, the four sketchy enforcement sections of the old UCCJA have expanded and matured into an entire subchapter, comprising 17 highly detailed sections in the new UCCJEA.⁹ Let us now examine these new tools, in roughly the same order as they are laid out in the new law.

II. Language Defined

1. "Child Custody Determination." This is the term of art which the UCCJEA uses to refer to any judgment, decree, or other

order of a court providing for legal custody, physical custody, placement, or visitation of any child. The term includes permanent, temporary, initial and modification orders.¹⁰ The same definition was used in the UCCJA¹¹ and the PKPA.¹² To simplify presentation, this article will often use term “custody order” as a shorthand reference. Just as in the statute, “custody” should be read expansively to include also placement and visitation.

2. **“Child Custody Proceeding.”**

This term refers broadly to any proceeding in which child custody, placement, or visitation are at issue. It includes proceedings for divorce, separation, and paternity, as well as neglect, abuse, dependency, guardianship, termination of parental rights, and protection from domestic violence. It does *not* include proceedings for juvenile delinquency, contractual emancipation, or *enforcement* of child custody determinations.¹³ It is not clear if adoption cases are included or excluded.¹⁴ In this article, the terms “child custody proceeding” and “custody case” will be used interchangeably.

3. **“Petitioner” and “Respondent.”**

Confusion can easily result when the “respondent” or “defendant” in another state’s case seeks to enforce a provision of that case’s custody order in this state. To avoid linguistic contortions in constructing statutory language to fit all enforcement cases, § 822.31 provides simply that any party who seeks to enforce either a child custody determination or an order for the return of a child under the Hague Convention will be called a “petitioner.”¹⁵ Likewise, anyone against whom such an enforcement proceeding is brought will be

Editor’s Message

by Gregory S. Mager



We have seen two major statutory changes in family law over the past year, the recodification of Chapter 767 and the adoption of the Uniform Child Custody Jurisdiction and Enforcement Act. Thanks to Ozaukee County Family Court Commissioner Darcy E. McManus and Attorneys

Carlton D. Stansbury and David A. Blumberg, the WJFL has provided and will continue to provide family law practitioners with excellent articles explaining those changes.

Another big change is coming, namely, the new Rules of Professional Conduct for Attorneys, which become effective July 1, 2007. These new Rules will impact how we practice. For example, the new SCR 20:1.5 mandates that, unless it is reasonably foreseeable that the total cost of representation to the client, including attorney’s fees, will be \$1,000 or less, attorneys must advise the client in writing of the nature and scope of representation and the basis or rate of fees and costs that the client will pay before or within a reasonable time after commencing the representation. An exception is allowed when the attorney will charge a regularly represented client on the same basis or at the same rate as in the past. If the total

cost of representation to the client, including attorney’s fees, is more than \$1,000, attorneys must also communicate to the client in writing the purpose and effect of any retainer or advance fee that is paid to the attorney. Further, attorneys must also communicate to the client in writing any

changes in the basis or rate of the fee or expenses. Many of us already follow this practice and require clients to sign comprehensive retainer agreements before we commence representation, but now is a good time to review our retainer agreements to make sure they comply with the new Rules.

Take advantage of resources available to you through the State Bar to learn about the new Rules. The text of the new Rules and other information regarding them are available at www.wisbar.org/rulesofconduct. Watch for mailings about the State Bar’s teleseminars and live seminars. You can register for a seminar at www.wisbar.org/CLE or by calling (800) 728-7788 or (608) 257-3838. Of course, you can also call the State Bar Ethics Hotline with specific questions Monday through Friday, 9 a.m. to 4 p.m., at (608) 250-6168 or (800) 444-9404, ext. 6168.

called a “respondent.”¹⁶ This approach to enforcement cases is the same as that of old Wis. Stats. § 767.242 [recodified and reworded as § 767.471(1)]. While a “petitioner” will most often be one of the parents, the UCCJEA’s language is broad enough to include others—even unexpected others, such

as local prosecutors.¹⁷

III. Registration of Out-of-State Custody Orders.

While the old UCCJA provided generally for registration of sister-state custody orders,¹⁸ it left the exact details of that registration process to be worked out by the individual

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states or—more often—by the clerk of each county's circuit court. Section 822.35 of the new UCCJEA spells out, in meticulous detail, a new, uniform registration procedure—thus ending the tangle of inconsistent local registration procedures in all but the handful of states that have yet to adopt the new law. Practitioners who have experience with registering sister-state support orders will be pleased to learn that the UCCJEA's registration procedure is closely analogous to that of UIFSA (Wis. Stats. ch. 769).¹⁹ It is even simple enough that most parents will be able to accomplish the process on their own—without the assistance of counsel. Here is how it works:

A. Letter Request to Court Clerk.²⁰

A party who wishes to establish another state's custody order in Wisconsin²¹ has only to send the Circuit Court Clerk the following:

1. A "letter or other document requesting registration,"²² *and*
2. Two copies (one of which is a certified copy) of the custody order that is to be registered.²³
3. The letter must contain a "statement under penalty of perjury"²⁴ that the order has not, to the best of his or her knowledge and belief, been modified.
4. The letter must also list the name and address of the applicant *and* of any parent (or other "person acting as a parent"²⁵) who has been awarded custody, visitation, or placement rights under the order in question. If the applicant claims that his or her health, safety, or liberty or that of the child would be jeopardized by openly disclosing such information,

there is a special procedure for separately furnishing the information under seal.²⁶

B. Clerk Files Order and Notifies All Parties. Once the registration request and the required attachments are delivered to the circuit court, the clerk must immediately do the following:

1. File the custody order "as a foreign judgment," along with one copy of the registration request and all accompanying information—"regardless of their form,"²⁷ *and*
2. Serve all the persons named in #4 above with a notice of the registration.²⁸ The notice itself must state that (a) the out-of-state custody order has been registered and is immediately enforceable just as a custody order issued by a Wisconsin court, (b) a hearing to contest the order's validity must be requested within 20 days, and (c) if the registration is not contested, the order will be confirmed and further contest will be precluded.
3. Serve copies of order and application. Unlike UIFSA, which explicitly provides that the clerk's notice "must be accompanied by a copy of the registered order and documents and information accompanying the order,"³⁰ the UCCJEA is silent as to whether such copies must be served on the other parent by the clerk or by the applicant. Thus, while sending the notice without copies of the order and request letter will not violate the UCCJEA's literal requirements, omitting the copies from the notice *feels* like a needless invitation to a due process challenge. Indeed, all states that

have thus far promulgated internet-accessible UCCJEA registration forms call for their court clerks to include copies of the order being registered and of its accompanying documents along with their statutorily required notice.³¹ It would seem prudent to follow that lead by attaching copies (uncertified) of the order and application form to the notices provided for the clerk to mail to the in-state parent.³²

C. Default; Hearing Procedure; Few Grounds For Objection.

If a hearing is not requested within the 20 days allowed, the clerk³³ must notify the applicant and all other parties that the registration is confirmed as a matter of law and that subsequent challenge is precluded.³⁴ If the other parent does request a hearing within the 20 days allowed, the court must confirm the registered order³⁵ unless the objector can establish one of the permissible defenses—of which there are only three:

1. The issuing court did not have subject-matter jurisdiction;³⁶ or
2. A court of competent jurisdiction has vacated, stayed, or modified the order;³⁷ or
3. The objecting parent was entitled to notice in the proceeding that gave rise to the order, but proper notice was not given.³⁸

D. Effects of Registration; Confirmation.

As soon as it is initially filed with the circuit court clerk, the out-of-state custody order is fully enforceable (this does not mean "modifiable"³⁹) just as any in-state custody or placement order would be enforceable,

unless and until it is later successfully challenged in the manner outlined above.⁴⁰ Once the registered custody order has been confirmed, whether by operation of law or following a hearing, any further contest of that order is precluded for “any matter that could have been asserted at the time of registration.”⁴¹

- E. **Benefit of Registration.** Although prior registration of another state’s custody order is not strictly required to seek and obtain its swift enforcement,⁴² there is much to be gained if the registration and confirmation process is completed *before* the children leave their home state to start enjoying placement with the other parent. Once the custody order has been registered and confirmed, the available defenses to a petition for expedited enforcement are reduced from three to only one.⁴³ Thus, the primary placement parent will have effectively pre-tested the judicial waters in the other parent’s state and will know with far greater certainty if the custody order will be recognized and enforced should that need later arise. Before the UCCJEA, a visiting parent could too often find ways to manipulate the local legal system to prevent a child’s return for months on end. Now, registration and confirmation can become an effective way—before sending a child out of state for a visit—of substantially reducing the risk of that child’s non-return. Moreover, since the UCCJEA mandates registration and enforcement of most foreign custody orders,⁴⁴ this pre-test of recognition and enforceability should prove quite useful in international custody cases, especially where the sending parent lives in a country that is not a party to the Hague

Convention.⁴⁵ **Practice Tip:** Because the registration and confirmation process is designed, at least in part, to expedite and simplify later enforcement efforts, counsel should obtain certified copies of the notice or order of confirmation as soon as it is issued.⁴⁶

IV. Expedited Enforcement; Next Day Recovery, Even Without Registration

The Need for Speed. Time is almost always of the essence in custody enforcement cases. If a visiting parent refuses to return a child at the end of the summer or after spring vacation, even a few days’ delay often means that the child will be absent when school resumes. Conversely, if the primary placement parent refuses to put the child on the plane for Christmas vacation or Thanksgiving break, just a couple of days’ delay in obtaining enforcement can scuttle the entire visit. Even if some of the visit can be salvaged, last-minute changes in airline reservations will almost always be costly, and attorney fees for handling emergency custody enforcement proceedings can be a substantial burden.

To address this need for a fast enforcement tool, sections 822.38 to 822.41 create tandem expedited enforcement remedies that are strongly reminiscent of *habeas corpus*. Both variations require hearings on the *next court day* after the application is filed. The first, or basic remedy is designed for cases where a quick remedy is desired but where neither abuse nor threat of flight is alleged. The second adds an extra layer of emergency safeguards designed to protect a child from alleged abuse or a threat to flee from the jurisdiction. Even the basic (non-emergency) remedy is so fast, summary, inflexible, and so restrictive of possible defenses that the committee that drafted the model act “came to call it the ‘turbo-habeas’ proceeding.”⁴⁷ Here is how the basic

remedy works:

A. Basic Enforcement Remedy

1. **Expedited Enforcement Proceeding.**⁴⁸ To initiate the expedited enforcement process, the “petitioner”⁴⁹ must file:

- a. *One certified copy of all orders the petitioner seeks to enforce and of any order confirming registration.* If a certified copy is not available, a photocopy or fax-copy of a certified copy may be substituted. This “copy of a certified copy” provision means that instead of waiting for FedEx to deliver a certified copy the next morning, the delay can be reduced to perhaps an hour or however long the other state’s court takes to issue a certified copy of the order(s) in question and to fax that copy to the petitioner’s counsel in Wisconsin. Though this copy-of-a-copy provision does not apply to the petition itself, filing by fax transmission may be available, under Wis. Stats. § 801.16(2) if permitted by local rule⁵⁰ or by the individual judge who will be handling the petition.
- b. *A verified petition.*⁵¹ The petition⁵² should describe the order(s) that is/are to be enforced (identifying the issuing state, county and court, docket number and date of issuance) and must state all the following:

- (1) The present physical address of the child(ren)

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and of the respondent, is known.⁵³

(2) If the order has been registered and confirmed, the date and place of its registration.⁵⁴

(3) Whether the issuing court identified the jurisdictional basis on which it relied in exercising jurisdiction, and, if so, what the basis was.⁵⁵

(4) Whether the order has been vacated, stayed, or modified by a court whose decision must be enforced under the UCCJEA and, if so, the court, case number, and nature of the proceeding.⁵⁶

(5) Whether any criminal or civil proceeding has been commenced that could affect the current enforcement proceeding, and if so, the court, case number and nature of the proceeding. For example, such other proceedings could include adoptions, or cases related to domestic violence, restraining orders, neglect, abuse, or termination of parental rights.⁵⁷

(6) Whether any relief, beyond immediate physical custody of the child(ren) and attorney fees is sought, and, if so, a description of the relief sought.⁵⁸ Examples of such additional relief might include a temporary order of protection⁵⁹ or an order requesting the police or sheriff to assist the petitioner in enforcing the order.⁶⁰

2. Order to Appear on Next Day. As soon as the verified petition is filed, the court must

issue an order⁶¹ directing the respondent (the party with the child) to appear in person at a hearing to be held on the "next judicial day" following service of the order, unless that is "impossible."⁶² The order may require the petitioner to bring the child to the hearing, but it may also direct that the child *not* be brought.⁶³ At the same time, the court is also permitted to "issue any order necessary to ensure the safety of the parties and the child."⁶⁴ In addition to stating the time and place of the hearing, the order must give notice that unless the respondent appears and can establish one of the defenses set out in paragraph 5, *infra*, the court "will order that the petitioner may take immediate physical custody of the child and the payment of costs, fees, and expenses . . . and [that] the court may schedule a hearing to determine whether further relief is appropriate"⁶⁵

3. Service of the Order. Rather than spelling out service requirements,⁶⁶ the UCCJEA simply provides that the order must be served on the respondent and on anyone else who has physical custody of the child "by any method authorized by the laws of this state."⁶⁷ In practice, it may be best to have the issuing judge, within the order itself, direct the manner of service (and a deadline). Doing so could forestall later arguments (and potential delay) that "better" notice was required or that insufficient time was afforded by the petitioner's late night service.⁶⁸

4. "Next Court Day." The only exception⁶⁹ to the mandate to hold a hearing on the "next judicial day after service of the petition" is "unless that date is impossible."⁷⁰

Impossibility seems to be a very high standard for which mere inconvenience, crowded calendars, or a previously scheduled custody trial will probably not qualify. If the next day actually is "impossible," the act requires that the hearing be held on the first judicial day that is possible.⁷¹ Though judges and clerks may initially balk at what they may fear is a calendar-clogging requirement, these next-day hearings are not likely to do serious harm to those calendars in actual practice. The hearings should take only a short time, since the issues are so narrowly restricted, and there are no more than three narrow defenses permitted.⁷² It should also be noted, in the interests of full disclosure, that the UCCJEA does allow a second way to extend the date of the hearing: the court may extend the date of the hearing if (but only if) the *petitioner* so requests.⁷³

5. The Hearing: Required Orders; Limited Defenses At the hearing, upon a finding that petitioner is entitled to immediate physical custody of the child(ren), the court must grant petitioner their immediate physical custody⁷⁴ plus costs, attorneys fees, and expenses,⁷⁵ unless the court finds sufficient evidence of "mistreatment or abuse" to issue a "temporary emergency order,"⁷⁶ or *unless* the respondent appears and establishes (a) that the court issuing the custody order lacked jurisdiction,⁷⁷ or (b) that the respondent was never given proper notice before the order was issued,⁷⁸ or (c) that the order has been modified,⁷⁹ vacated, or stayed by a court that had jurisdiction to do so.⁸⁰ No other defense is permitted. And if the custody order has

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already been registered and confirmed,⁸¹ only the third of the last three defenses (i.e., that the order has been modified, vacated or stayed) is available to the respondent⁸²—the other two having been foreclosed by the registration process. Beyond the award of immediate physical custody and the award of fees and costs, described above, the court is also authorized to [“may”] grant “additional relief,” such as temporary protective orders⁸³ or a request that law enforcement officers assist petitioner in enforcing the order.⁸⁴ If the petitioner is out of state and proceeding here through counsel, such “additional relief” will need to include making provision for safely transporting the child(ren) back to the petitioner’s home. The court may also schedule a further hearing to consider further relief.⁸⁵

6. Evidentiary Considerations.

a. Petitioner’s Appearance.

Although an out-of-state parent will ordinarily have arranged to be present in court by the time of the hearing, there is no requirement that he or she must be present. Indeed, the Commission’s comments make it clear that there may be many cases in which the petitioner either chooses to or must remain in the child’s home state and proceed only through counsel in the other parent’s state.⁸⁶ Beyond the need for special arrangements to deliver children safely to an

out-of-state petitioner, both the UCCJEA and other provisions of state law and local court rules permit testimony to be taken by telephone—particularly in expedited, interstate cases.⁸⁷

b. Conduct of Hearing;

Burdens of Proof. The UCCJEA imposes no special rules for how the hearing is to be conducted or who bears the burden of proof on particular issues. As with any other case, therefore, the petitioner will bear the initial burden of proving that there is a valid order and that the respondent has violated it. The certified copy of the custody order granting placement or visitation with the child will be admissible to prove up the order.⁸⁸ If it has already been registered and confirmed, then the issuing court’s jurisdiction to enter it will be *res judicata*. If not, the certified copy will be, presumptively, *prima facie* evidence of that jurisdiction.⁸⁹ Once the petitioner demonstrates that respondent has the child(ren), in violation of the order, the burden then shifts to the respondent to prove that the order is *not* entitled to enforcement.

c. Issues of Privilege.

The Act imports two evidentiary rules concerning claims of privilege from UIFSA,⁹⁰ just to keep the procedures for support and custody enforcement as parallel as practicable.

One allows the court to draw an adverse inference from a party’s refusal to answer on the ground of potential self-incrimination.⁹¹ The other precludes any invocation of either the interspousal communication privilege or a defense of immunity based on the husband-wife or the parent-child relationship.⁹²

Coming in Part II: Warrants to pick up a child in emergency cases, temporary placement, and sample forms.

David A. Blumberg practices in Glendale, Wisconsin and limits his practice to family law. Before moving to Wisconsin in late 1999, he had practiced family law for 28 years, first in California and then in New York.

Endnotes

¹ 2005 Wis. Act 130. Publication date of the Act was March 24, 2006, and it became effective on March 25, 2006. Unless otherwise stated, all citations in this article to chapter 822 are to the new UCCJEA reenactment now in effect.

² See Carlton D. Stansbury’s article in the October 2006 issue [26 *WJFL* 93], explaining the many changes and refinements made to interstate custody jurisdiction standards and procedures by the new UCCJEA.

³ Former Wis. Stats. § 822.13.

⁴ Former Wis. Stats. §§ 822.15 – 822.16.

⁵ Former Wis. Stats. § 822.17.

⁶ See “Enforcement Provisions” in the Prefatory Note to the Model UCCJEA, drafted by the National Conference of Commissioners on Uniform State Laws (Nov. 20, 1998), www.law.upenn.edu/bll/ulc/uccjea/final1997act.htm. See also, e.g., Wis. Stats. § 767.471.

⁷ *Id.*

⁸ *Id.*

⁹ Chapter 822, Subchapter III is entitled “Enforcement” and contains §§ 822.31 to 822.47.

¹⁰ § 822.02(3).

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¹¹ Former Wis. Stats. § 822.02(2).

¹² Parental Kidnaping Prevention Act, 28 U.S.C. § 1738A.

¹³ § 822.02(4).

¹⁴ Although the Model UCCJEA specifically excludes adoptions from its proposed scope, Wisconsin's enactment deleted that exclusion without inserting it in the list of included proceedings—thereby creating an open question with respect to adoption cases. *See* expanded discussion in *Stansbury*, 26 WJFL 93 at 95 [col. 1](Oct. 2006).

¹⁵ § 822.31(2). *See* note 45 and note 135 for treatment of the *Hague Convention*.

¹⁶ § 822.31(3).

¹⁷ *See, generally*, §§ 822.02(12), 822.31(2), 822.45 to 822.47, and VI, *infra*.

¹⁸ *See* note 4, *supra*.

¹⁹ Cf. Wis. Stats. §§ 769.601 to 769.608.

²⁰ § 822.35(1)

²¹ To register a Wisconsin order in a sister state, the same basic procedure will obtain. The only real difference will be that instead of sending the request for registration to the clerk of the other state's "circuit court," it will be sent to the clerk of the court specified in that state's equivalent of § 822.35.

²² A sample form to use in making this request is reproduced in part II of the article.

²³ Wis. Stats. § 822.35(1)(b).

²⁴ This "statement" need not be notarized.

²⁵ Under § 822.02(13) a "person acting as a parent" can include an individual or agency, such as a legal guardian, or state child protective agency, who has had physical custody of the child and who has been awarded or claims a right to legal custody of the child.

²⁶ *See* § 822.29(5). If this special procedure is used, the facts justifying the non-disclosure of that identifying information must be set forth in a *sworn* affidavit or pleading. A statement "under penalty of perjury" will not suffice. Non-mandatory Forms GF-177 and GF-178 are now available through the Wisconsin circuit courts for this purpose.

²⁷ § 822.35(2)(a).

²⁸ § 822.35(2)(b). The state courts have not yet promulgated a form to be used by court clerks in providing the required notice. Until an official form is created, practitioners may wish to copy the sample form (#2, drafted by this author) in part II

of the article and submit it to the clerk for use in providing the required notice.

²⁹ § 822.35(3).

³⁰ § 769.605(1).

³¹ These states are Alaska, California, Michigan, New York, and Oregon. *See, e.g.*, Alaska Form DR-483, www.state.ak.us/courts/forms/dr-483.pdf; or California Form FL-580, www.courtinfo.ca.gov/forms/documents/fl580.pdf.

³² The sample clerk's notice (#2 in part II of this article and described, *supra* at note 28), likewise calls for the court to furnish these copies with the clerk's notice.

³³ Although § 822.35(5) is phrased in the passive voice ("all persons served must be notified"), context strongly implies that it is the clerk that must send the notification to the applicant and to all persons previously served.

³⁴ § 822.35(5). A form for this notice (#6) is included in part II of this article, for use until the courts promulgate official forms for the clerks to use.

³⁵ § 822.35(4).

³⁶ § 822.35(4)(a).

³⁷ § 822.35(4)(b).

³⁸ § 822.35(4)(c). The standard for determining if proper notice was given in the underlying proceeding is spelled out in § 822.08.

³⁹ § 822.36(2).

⁴⁰ § 822.35(3)(a).

⁴¹ § 822.35(6).

⁴² *See* discussion at part IV [Expedited Enforcement], *infra*.

⁴³ *See* discussion at IV, 5, *infra*.

⁴⁴ *See generally* §§ 822.05(2), 822.32, and part IV, F, *infra*.

⁴⁵ *The Hague Convention on the Civil Aspects of International Child Abduction* (1980). For a list of signatories, see www.travel.state.gov/family/abduction/hague_issues/hague_issues_1487.html. The Convention's implementing legislation in the United States is the International Child Abduction Remedies Act (42 U.S.C. 11601 *et seq.*).

⁴⁶ Certified copies of both the original order *and* the notice or order of confirmation are required to file a petition for expedited enforcement. Thus, even if the rest of a client's file is retired and stored off-site, the certified copy of the confirmation and at least a copy of the certified copy of the underlying order should be kept on-site in a thin "dummy file" or three-ring binder, so that they will be immediately at hand when the frantic client needs you to file an immediate petition for expedited enforcement.

⁴⁷ Uniform Child Custody Jurisdiction and Enforcement Act (with Prefatory Note and Comments by Robert G. Spector). 32 Fam. L.Q. 301, 372 n. 141.

⁴⁸ §§ 822.38 – 822.40.

⁴⁹ The petitioner will most often be one of the parents. However, this subchapter III of the UCCJEA defines "petitioner" broadly enough to include others, such as local district attorneys. *See generally* §§ 822.31(2) and 822.45 to 822.47.

⁵⁰ *See, e.g.*, Dane County Circuit Court Rule 113, and Waukesha Family Court Division Rule 1.7, which do permit fax filings. Under Milwaukee County's Rule 225 (D) and Marquette County's Rule VI, fax filing is not allowed.

⁵¹ § 822.38(1). A verified petition is one in which the usual notarial 'sworn to before me...' language is replaced by the following recital: "[petitioner's name], being first duly sworn, says that (s)he is the Petitioner in the above-entitled enforcement proceeding, that (s)he has read the foregoing petition and knows the contents thereof, and that the same is true to his/ her own knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters, (s)he believes it to be true."

⁵² Until an official form is created, practitioners may wish either to copy and use the sample form that will appear in part II of this article (#7, drafted by this author) or to use it as a model in drafting their own petition. The sample provided should cover most usual enforcement cases, but it is not intended to cover truly unusual situations, such as non-parent petitioners, unusual party configurations, or cases with complicated facts that will need more space to describe than allowed.

⁵³ § 822.38(2)(d).

⁵⁴ § 822.38(2)(f). *See* § 822.35 and section III, *supra*, for registration procedure.

⁵⁵ § 822.38(2)(a).

⁵⁶ § 822.38(2)(b).

⁵⁷ § 822.38(2)(c). The information called for here closely mirrors what §822.29 requires in non-enforcement cases.

⁵⁸ § 822.38(2)(e).

⁵⁹ § 822.38(3) empowers the court to "enter any order necessary to ensure the safety of the parties and the child."

⁶⁰ § 822.38(2)(e). This paraphrase of the somewhat more opaque statutory wording comes from the Commission's Comments to Model UCCJEA §310 [§822.40], www.law.upenn.edu/bl/ulc/uccjea/final1997act.htm.

⁶¹ Until an official form is created, practitioners may wish either to copy and

use the sample order form that will appear in part II of this article (#8, drafted by this author) or to use that form as a model in drafting their own orders. As with the sample petition (#7), the sample provided should work in most usual enforcement cases, but it may need to be modified to cover truly unusual situations.

⁶² § 822.38(3). See also #4 “Next Court Day” *infra*.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ § 822.39(4). See part IV, C, *infra*, for a discussion of costs, fees, and expenses.

⁶⁶ The old UCCJA (former Ch. 822) contained express provisions for service. By contrast, the UCCJEA (new Ch. 822) leaves matters like service to be dictated by existing state law.

⁶⁷ § 822.39.

⁶⁸ Such a provision could, however, prove a double-edged sword if the deadline thus imposed cannot be met.

⁶⁹ In fairness, there are actually two exceptions, as will be seen at the end of this paragraph. However, the second exception is only at petitioner’s express request.

⁷⁰ § 822.38(3).

⁷¹ *Id.*

⁷² See IV (A)(5), *infra*.

⁷³ § 822.38(3)[last sentence].

⁷⁴ § 822.40(1)

⁷⁵ §§ 822.40(2) and 822.42(1).

⁷⁶ See § 822.24. For a discussion of the very limited circumstances in which such an order may be made, see Carlton Stansbury’s recent article in the October, 2006 issue of WJFL [26 WJFL 93 at 97].

⁷⁷ § 822.40(4)(a)(1).

⁷⁸ § 822.40(4)(a)(2).

⁷⁹ See part IV, E, in the next part, for the special rule governing cases in which a modification proceeding has been commenced but is not yet concluded in another state.

⁸⁰ § 822.40(4)(a)(3) or (b).

⁸¹ See the discussion of that process at III, *supra*.

⁸² § 822.40(1)(b).

⁸³ §§ 822.40(2), 822.38(3).

⁸⁴ § 822.40(2).

⁸⁵ § Since the urgency of placing the child into petitioner’s physical custody will no longer be a factor, § 822.40(2) is silent as to when such a further hearing must be

held. In theory, it could be scheduled weeks or months later, although the spirit of the “expedited” remedy would probably militate toward a date that is days or a couple weeks—not months—off.

⁸⁶ Commission’s Comments to Model UCCJEA § 311 [see note 60, *supra*, for citation.]

⁸⁷ See, e.g., §§ 822.11(b) and (c), § 807.13(2).

⁸⁸ Wis. Stats. § 889.07.

⁸⁹ This presumption follows from § 822.40(1)(a)1.’s having set up *lack* of jurisdiction as an affirmative defense to be proved by the respondent.

⁹⁰ Wis. Stats. Ch. 769, at 769.316.

⁹¹ § 822.40(3).

⁹² § 822.40(4). This bar applies to all enforcement procedures of the UCCJA—not just expedited enforcement.

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