

Avoiding Fatal Flaws to Ensure Fabulous and Not Void Orders

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Questions to think about

- What efficiencies or local practices could actually harm your case?
- Is the benefit really worth the risk?



Discussion

- This presentation is in a discussion format.
- We want and need your participation!



Guide

- Consider helping our effort to put together a IV-D Child Support Practice Guide.



Jurisdiction

- The boundaries of legal authority or power.
- When the court does not have jurisdiction, orders are either void or voidable.



Subject Matter Jurisdiction

- The court's authority and power to decide certain types of cases or issues as granted by the Constitution, statutes, and rules.
- Parties cannot consent to subject matter jurisdiction.



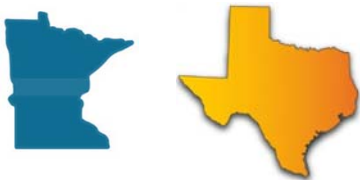
Personal Jurisdiction

- The court’s authority and power over a person rather than a type of case or particular issue.
- Parties can consent to personal jurisdiction.
- May be gained by service of process or long-arm jurisdiction.



In Rem Jurisdiction

- The “thing” or “issue” must have a connection to the geographical area where the action is taken.



Venue



- The particular place (county) in which a court with personal and subject matter jurisdiction may hear and determine the outcome of a case.
- There may be more than one venue where the case can be heard in court. But the court case can only be handled in one county.
- Venue laws relevant to child support are:
 - **Paternity** – County where the Defendant (ALF, Presumed Father, Husband, Respondent) or child reside or is found.
 - **Dissolution** – County of either spouse.
 - **Establishment of Support** – County of either party.

Due Process

- Due Process
 - The balance of power of the government over the rights of its citizens
- Waiver of personal service issues
- Service by publication



Scope of the Action

- A subsequent motion is limited to the issues included in the original complaint/petition:
 - **Establishment** – Usually limited to support being paid to one specific party to the other specific party for the support of these specific children
 - **Paternity** – Limited to the named children, but the support issue may be a broad petition (but not if PRISM forms are used)
 - **Dissolution** – Often a broad petition, generally to establish support



Scope of the Action

When is a new action needed vs. a modification?

- Role reversals?
- Foster care?
- Subsequent child born?



Evidentiary support

The pleadings must contain enough evidentiary support to prove the case so that the order may be issued by default.

- Paternity affidavit
- Proof of marriage
- Proof of arrears/past support
- Verification of child care expenses
- Valid ROP
- Income/Employment Information
- Interstate transmittals and general testimony
- Proof of disability



Rule 11

Be careful with “sign here stickers”

“By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion or other paper, an attorney... is certifying that to the best of the person’s knowledge, information and belief, formed after an inquiry reasonable under the circumstances... the allegations and other factual contentions have evidentiary support...”



Paternity Adjudications

- Have you named all necessary parties?
 - Mother, all ALFs, all presumed fathers
 - Child, if a disestablishment
- Have you served all necessary parties?
 - Personal in-hand service
 - Waiver of personal service
 - Alternative personal service (publication)



Paternity Adjudications

- Have you included everything in your pleadings that needs to be included in an adjudication order?
 - Legal and physical custody - After the father-child relationship is adjudicated, there is no statutory presumption to the mother
 - Parenting time
 - The child's name
 - Ongoing child support (basic, medical, child care)
 - Past support
 - Pregnancy and confinement expenses
 - Mother's and Father's names, social security numbers (confidential information sheet), dates of birth, and places of birth (if known)
 - Whether or not the birth record should be amended to include the father's name and/or change the child's surname



Paternity

- Is there a factual basis to default?
- File the adjudication order with MDH, please!



Questions?

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