

Minnesota child custody modification with parents in different states

Out of Sight But Not Out of Mind:

Minnesota child custody modification with parents or children in different states

While you might generally be thrilled to have your ex living in a different state from you, this situation does bring up potential complications about which state's courts will have



Photo courtesy of Vivek Chugh.

jurisdiction to determine [child custody](#) issues relating to your children. As we discussed in a previous post, many states, including Minnesota, have enacted a law called the Uniform Child Custody Jurisdiction and Enforcement Act ([UCCJEA](#)) to help alleviate the potential for bureaucratic complications to custody issues when the parents and/or children live in different states.

In the earlier post, we went through the absolute basics of the UCCJEA. This post is going to look a little more in depth at what happens when there are multiple states involved and a parent seeks custody modification. Keep in mind that when we say “custody” modification, that includes a determination on visitation or parenting time.

First question—where was the original custody decree entered?

A determination of which state has jurisdiction over your custody issues starts with looking at the state in which the custody decree was originally entered. This could have been part of your divorce decree, or it could have been a standalone judgment if no divorce was involved. This state retains jurisdiction over future custody modifications if one parent or the child (or any other person contesting custody) remains in that state. This jurisdiction is exclusive, which means the state in which the parent lives does not also have jurisdiction.

Second question—where is the child's current home state?

Let's assume your custody decree was entered in another state—we'll say Florida (purely to have thoughts of warmer weather improve the Minnesota January mood). But, now neither you, nor your ex, nor your child, live in Florida. If your child has lived in Minnesota for at least the six consecutive months before you bring a petition for custody modification, Minnesota will be considered the child's home state. In general, if you want to try to have a Minnesota court modify a custody decree that was entered in another state, Minnesota needs to be the child's home state. In other words, a determination of which state is the correct one for a custody modification generally involves looking at the status of the child, not

the status of the parents, at least once you've determined that neither parent lives in the state that entered the initial custody decree.

There are a few exceptions to the rule that Minnesota needs to be the child's home state to modify custody. The primary one is that Minnesota courts can have jurisdiction over the case if the state that actually **is** your child's home state decides that Minnesota would be a more appropriate location for the custody determination. For this to happen, there needs to be some sort of substantial connection to Minnesota. For example, maybe your child is temporarily living with his grandparents in Indiana, but both parents live in Minnesota and the plan is for the child to permanently move back to Minnesota in the next few months.

A second exception to the rule that Minnesota needs to be the child's home state is that a Minnesota court can have jurisdiction over your custody case if the child has no home state—in other words, the child has not lived in the same state for the past six months. In this type of case, Minnesota can exercise jurisdiction if, like above, there is some sort of substantial connection to Minnesota. This helps you from falling into a "jurisdictional void" if you've moved away from the state in which the decree was initially entered but the child hasn't had a long-term home in any single state.

Finally, we need to mention two caveats. First, note that the UCCJEA laws are only about which *state* has jurisdiction over your case. Despite it being a common misconception to the contrary, the UCCJEA does not have any impact on which particular court (e.g. juvenile court or family court, or the courts of different counties) has jurisdiction. This issue has to be worked out separately from the issue of which state you'll be going to court in. And second, the jurisdictional rules that we're talking about in this post only apply to child custody orders, not child support orders. Those will be the subject of a different post!

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While I appreciate all of our readers (I really do!) a few things to know before you send me an email with a "quick legal question" I'm a Minnesota only lawyer. I can't give any advice about the laws in any other state except Minnesota. Also, while I am a believer that while clients needs to know as much information as they can (that's why I do these blogs) I can't give advice to you via email and unless we sign a retainer agreement and pay the retainer as our malpractice carrier is very particular about giving out advice over email.