

**Custody Cases involving Special
Immigrant Juvenile Status (SIJS)
in the North Carolina Courts**

*Approved for 1.75 Hours of Continuing Legal
Education by the NC State Bar*

Program Content

International, Federal, and State Statutory,
Administrative, and Case Law on the Subjects of
Special Immigrant Juvenile Status (SIJS) and
International Service of Process



Target Audience:

Judges, Court Personnel,
and Attorneys practicing
in Family, Juvenile
Delinquency, and Juvenile
Abuse/Neglect/
Dependency Courts



Course Objectives:



To enable practitioners to screen cases, and for judicial personnel to evaluate the substantive merits of cases, to follow correct procedures regarding service (including outside the U.S.), hearings, and evidence, and make correct legal decisions in cases of Special Immigrant Juveniles.

Agenda

1. Introduction of Speakers & Housekeeping (5 min.)
2. Current Trends in Immigration (10 min.)
3. Federal Administrative & Law Enforcement Structure (5 min.)
4. SIJS: Federal Structure (15 min.)
5. NC State Law: Jurisdiction, Bases, Venues (30 min.)
6. International Service of Process (10 min.)
7. Other Considerations (10 min.)
8. Hypotheticals for Discussion (20 min.)
9. Additional Questions and Answers (10 min.)

INTRODUCTION OF SPEAKERS

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HOUSEKEEPING

- If you would like CLE credit, please sign in on the signing-sheet by the door, including your **bar number** and **correct full name** (we will retype and submit to the state bar for you).
- Please fill out a partial-credit form, available by the door, if you **leave early and/or arrived late**, and deposit in the tray.
- Hard copies some documents (already distributed by e-mail) are available by the door
- **IF YOU DID NOT REGISTER EARLY, PLEASE GIVE US YOUR EMAIL ADDRESS TO RECEIVE THE MATERIALS**

CURRENT TRENDS IN IMMIGRATION

- Crisis in Central America's "northern triangle" (Guatemala, Honduras, and El Salvador)
- Unaccompanied Minors
- Family Detention



City of Durham Policy

On January 5, 2015, the Durham City Council passed resolution supporting these migrant children, joining Orange Co., Chapel Hill, and Carrboro:

- *Recognizing the humanitarian crisis in Honduras, El Salvador, and Guatemala*
- *Recognizing that the children were “in urgent need of protective adult care” and legal services*
- *Thanking the local court system for working to meet the needs of these children*

Humanitarian and Family-Based Categories of Immigration Status/Relief from Removal

- Family-based Relief
- Asylum
- T Visas
- U Visas
- DACA (June 2012)
- Executive Action (Nov 2014)
- Prosecutorial Discretion: Enforcement Priorities
- Special Immigrant Juvenile Status (SIJS)



FEDERAL AGENCIES INVOLVED WITH CHILDREN'S IMMIGRATION CASES



Overview of relevant Agencies within:

- U.S. Department of Homeland Security (“DHS”),
- U.S. Department of Health and Human Services (“DHHS”) and
- U.S. Department of Justice (“DOJ”)

Department of Homeland Security (“DHS”):

- **U.S. Customs and Border Patrol (“CBP”):** Apprehends aliens at/near the U.S. border
 - **U.S. Immigration and Customs Enforcement (“ICE”):** Apprehends aliens in the interior; manages detained & non-detained aliens without lawful status; represents the government in seeking orders of removal in immigration court
 - **U.S. Citizenship and Immigration Services (“USCIS”):** Administers benefits/visas for non-citizens within the U.S.
 - *USCIS’s Administrative Appeals Office (“AAO”): The final administrative authority within USCIS for many kinds of appeals, including denials of Special Immigrant Juvenile Status*

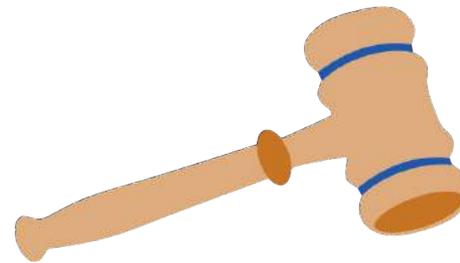
DHHS: Office of Refugee Resettlement (“ORR”):

Maintains shelters and/or finds foster care placement for unaccompanied immigrant children (sometimes called “Unaccompanied Alien Children” or “UACs”) until their release to relatives (“sponsors”).



Department of Justice (“DOJ”):

- **Executive Office for Immigration Review (“EOIR”):** Immigration Courts fall under EOIR. Immigration Judges (“IJ”) adjudicate certain claims; may grant status or issue removal orders.
- **Board of Immigration Appeals (“BIA”):** Reviews decisions of EOIR; appeals from the BIA lie with the Circuit Courts of Appeal.



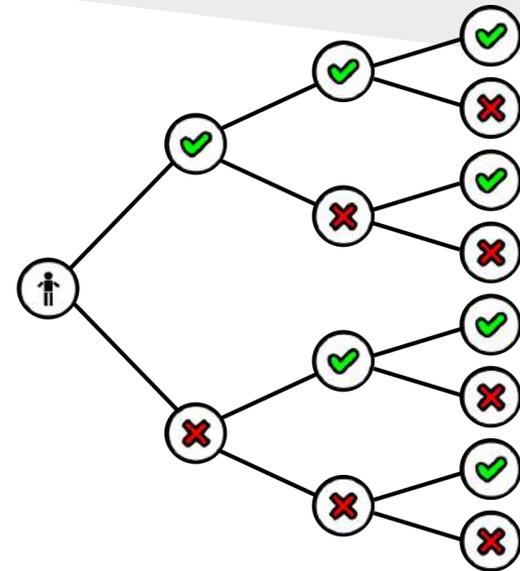
Immigration Court Process

- Issuance of “Notice to Appear” and Notice of Hearing
- Pleadings
- Seek a form of immigration relief
- Adjudication of case



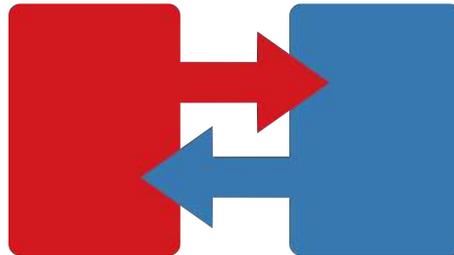
Methods of Case Disposition

- Relief is granted by Immigration Judge (IJ)
- Order of removal
- Case is administratively closed
- Respondent takes Voluntary Departure
- Case is terminated (dismissed)



Special Immigrant Juvenile Status ("SIJS")

- A form of humanitarian protection for immigrant children who have been abused, abandoned, and/or neglected
- Created by Congress in 1990, modified several times through bipartisan legislation
- Unique Federal-State legal structure



Special Immigrant Juvenile Status (“SIJS”)

- Definition at 8 U.S.C. § 1101(a)(27)(J) [§ 101(a)(27)(j) of the Immigration and Nationality Act (“INA”)], as modified by the 2008 TVPRA
- Governing regulations are at 8 C.F.R. § 204.11 (also subject to the modifications by the 2008 TVPRA)

Special Immigrant Juvenile Status (“SIJS”): In plain words:

A **child in the U.S.** who does not have lawful immigration status, **who can demonstrate to the federal immigration agency USCIS that:**

- s/he has been abused, abandoned or neglected by a parent (and therefore cannot reunify with that parent), *and*
- an adult or agency in the U.S. has been awarded custody of him/her, OR s/he is dependent on a state court, *and*
- his/her best interests are not served by returning him/her to country of origin

can request permission to remain in the U.S.

Role of the state court order

A court order from a state court empowered to make determinations on the care and custody of minor children is *one required element* with which the young person makes the required showings (described on the previous slide) and requests status as a Special Immigrant Juvenile from the immigration agency (USCIS).

Which state court?

- USCIS will consider an order from **ANY** state court that is empowered to make determinations about child care and custody, e.g. family courts, juvenile delinquency courts, etc.
- Federal law refers to these as “**juvenile courts**” - NOT the same as what we in NC call “juvenile court” - the federal regulation explicitly states that when it refers to a “juvenile court,” it means “**any court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles.**” 8 CFR 204.11

What does USCIS look for in the state court order?

- (1) Reunification w/ one or both parents not viable due to abuse, abandonment, neglect, or similar
- (2) Not in child's best interest to return to country of origin
- (3) Child has been placed in the custody of an individual or entity, or is **dependent** on the court

* “*Dependent*” - a child is considered “dependent” on a state court when the court accepts jurisdiction of a case in which it is asked to make a determination as to her care or custody; when the child's custody is anything other than the child remaining in the custody of two natural parents.

Something USCIS does *NOT* look for -

Eligibility for foster care **NOT** necessary

- The original statute provided relief to children who had been “*deemed eligible for long-term foster care.*”
Immigration Act of 1990, 1990 Pub. L. No. 101-649, 104 Stat. 4978 § 358 (Nov. 29, 1990).
- In 2008, the TVPRA **replaced** “eligible for long-term foster care...” with a finding that “reunification with *one or both parents* is not viable due to abandonment, abuse, neglect or a similar basis.”

(1) Reunification w/ one or both parents not viable due to abuse, abandonment, neglect, or similar

- **Where does this language come from?**
 - INA 101(a)(27)(j)(i), which defines SIJS: “...*whose reunification with 1 or both of the immigrant’s parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law*”
- **What does “similar basis” mean?**
 - Includes “mistreatment,” “cruelty to a child,” etc. (found in some states’ statutes instead of/in addition to “abuse,” “abandonment,” or “neglect”)
 - Leaves discretion to state court judges
- **What does “found under state law” mean?**
 - Statute or common law; entrusts the state court to make findings on these questions, as per its usual standards and proceedings

FURTHER DISCUSSION OF NC LAW ON THESE SUBJECTS TO FOLLOW

(2) Not in child's best interest to return to country of origin

- **Where does this language come from?**
 - INA 101(a)(27)(j)(i), which defines SIJS: “for whom it has been determined in administrative or *judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country* of nationality or country of last habitual residence,” see also implementing reg. 8 CFR 204.11(c).
- **What does this mean?**
 - A best interests determination
 - Fact-based, case-specific inquiry based on available evidence - what is best for *this* child? Life in his/her country of origin, or current placement?
 - At judge's discretion, can involve an inquiry into the child's safety, well-being, educational opportunities, food availability, caretaker, etc. in country of origin vs. in the child's current placement

(3) Child has been placed in the custody of an individual or entity, or is dependent on the court

- **Where does this language come from?**
 - INA 101(a)(27)(j)(i), which defines SIJS: “who has been declared dependent on a juvenile court located in the United States or **whom such a court has legally** committed to, or **placed under the custody of**, an agency or department of a State, or ***an individual or entity appointed by a State or juvenile court*** located in the United States” (see also implementing regulation 8 CFR 204.11(c))

Recap:

Two specific factual findings are necessary to enable the Minor Child or his representative to petition the U.S. Citizenship and Immigration Services (“USCIS”) for a classification of Special Immigrant Juvenile Status (“SIJS”).

First factual finding USCIS will look for

The **first** required finding is that that “reunification with *one or both* of the [Minor Child’s] parents is not viable due to abuse, neglect, abandonment, or a similar basis found under [North Carolina] law.”
8 U.S.C. § 1101(a)(27)(J)(i).



TVPRA: “one or both” parents

2008 TVPRA revisions: a child is now eligible for SIJS where “reunification with 1 or both parents is not viable due to abuse, abandonment, neglect or a similar basis.” *What does this mean?*

- State courts routinely read this to mean that a child is eligible for SIJS where there are has been abuse, abandonment, neglect or similar preventing reunification with *one* parent, **even if the child has reunified with the other parent.**
- This interpretation is in keeping with **plain language** of the statute.
- **Consistent with the legislative history of the SIJS law:** The TVPRA expanded SIJS eligibility and specifically removed earlier language limiting SIJS to cases where reunification with both parents was not an option.
- **Child still needs protection and immigration relief:** The child may be fleeing an abusive parent in the home country and migrated in an effort to reunify with the other parent. Unless the child has an independent right to immigration relief, he or she could be deported to the abusive parent.

Second factual finding USCIS will look for

- The **second** required finding is that it is not in the best interest of the Minor Child to be returned to his/her previous country of last habitual residence. 8 U.S.C. § 1101(a)(27)(J)(ii).



How is SIJ status granted, by who?

USCIS adjudicates petition for SIJS and either grants or denies Special Immigrant Juvenile Status (see 8 C.F.R. § 204.11)

- 204.11(b): Explains that a **petition for special immigrant juvenile status** for the child must be filed with USCIS, using Form I-360
- 204.11(d): Outlines the **documents which must be submitted to USCIS in support of the petition**, which include:
 - documentary evidence of the alien's age (birth certificate, passport, etc.), and
 - a state court order including the findings described previously
- 204.11(e): **Explains that USCIS will issue a decision on the petition.** The petitioner will be notified of the decision, and, if the petition is denied, of the reasons for the denial and of the petitioner's right to appeal the denial.

How is SIJS granted? (cont.)

Conclusion:

It is the U.S. Citizenship and Immigration Services (USCIS) that ultimately decides whether the child qualifies for Special Immigrant Juvenile Status (based on all evidence provided, including court order), and grants or denies immigration status.

Outcome for the child

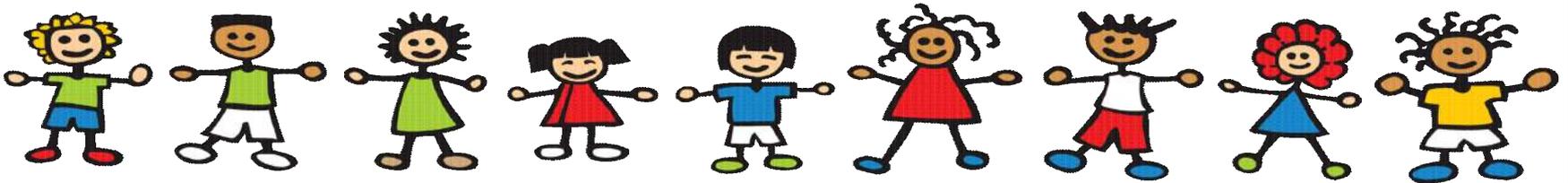
- Results: the child may petition USCIS for a SIJS classification, which, if granted by USCIS, opens the possibility for the child to remain in the United States notwithstanding his or her prior legal status.

8 U.S.C. § 1255(a), (h).



Outcome for the child (cont.)

If the child completes the immigration process and obtains lawful status, it would have an extremely positive impact on the child's well-being, including physical and emotional safety, education, medical care, and almost every aspect of the child's life.





NC STATE LAW

- **Public Policy**
- **Courts/Proceedings where Child Custody determinations may be made**
- **Subject Matter Jurisdiction (UCCJEA)**
- **Venue**
- **Personal Jurisdiction & Service of Process**
- **Definitions of Terms relevant to SIJS Findings**

North Carolina Public Policy

- Every child needs & deserves a Guardian or Custodian who has full legal authority to act in their best interests, during each and every day of their childhood.

§ 35A-1201(6) North Carolina recognizes that:

Minors, because they are legally incompetent to transact business or give consent for most purposes, need responsible, accountable adults... Parents are the natural guardians of the person of their minor children, but unemancipated minors, when they do not have natural guardians, need some other responsible, accountable adult to be responsible for their personal welfare and for personal decision-making on their behalf.

What is Child Custody?

- Child custody is a “bundle” of rights and responsibilities relating to the care, custody, and control of a minor child.
- Prior to any court involvement or other binding legal action, biology controls and the parents share equal custody rights (regardless of whether a child is legitimated or any formal paternity determination)
- Child custody may be shared by multiple individuals/entities, and some, all, or none of whom may be the biological parents.
- Child custody consists of both legal custody (decisionmaking authority) and physical custody (physical care, visits, delegated care)
- Mere physical custody or possession (caretaking) of a child does not constitute the kind of legal custody required for SIJS.

What kinds of custodians exist under NC Law?

- A biological parent or an adoptive parent (Ch 48)
- A general guardian or guardian of the person (Ch 35A or 7B)
- A custodian appointed by a court (Ch 50 or, rarely Ch 7B)

What categories are not custodians?

- *Caretakers*
- *Individuals appointed by ORR as voluntary 'sponsors'*
- *Individuals with (revocable) powers of attorney over the child*

Summary of Courts/Proceedings

(making child custody determinations)

Who is seeking “care and custody”?

- Parent vs. parent
- Third party (anyone) vs. parents
- CPS/DSS

- DJJ (i.e. “the state”)

- DSS, OR certain individuals with standing to file
- Anyone (when parents are deceased)
- Anyone wishing to adopt (including step-parents)

Appropriate Action/Special Proceeding

- Ch. 50 “Family Court”
- Ch. 50 “Family Court”
- Ch. 7B Juvenile Abuse-Neglect-Dependency Court

- Ch. 7B Juvenile Delinquency Court

- Ch. 7B Termination of Parental Rights

- Ch. 35A Guardianships

- Ch. 48 Adoptions

Chapter 50 Child Custody Actions

- Often this is one parent versus another, showing that only one should have the right to legal custody
- 50-13.1 allows non-parents to petition for custody of a minor child, *so long as* they have standing with respect to the particular child, and can show unfitness of the parents*
- 50-13.2(a) codifies that a best interest standard applies (“the court *shall* consider *all relevant factors*... and *shall make findings accordingly*... which support **the determination of what is in the best interest of the child.**”)



Chapter 50 Child Custody Actions

- GS § 50-13.8 provides for custody of individuals past 18 where they are physically or mentally incapable of self-support.
- GS § 50-13.5 provides for the detailed procedure, including grounds for *ex parte* or temporary orders prior to service of process
 - (d)(2) states that the court may enter orders prior to service of process in appropriate cases.
 - A temporary or *ex parte* order for custody solidifying status quo may normally be ordered.
 - To changes the living arrangements *ex parte*, the child must be exposed to:
 - a substantial risk of bodily injury/sexual abuse
 - a substantial risk of abduction/removal from the State (to evade the jurisdiction of North Carolina courts).

Juvenile Court Actions:

7B Article 1-10, Juvenile Abuse/Neglect/Dependency Actions ("DSS Court")

- Only a County Department of Social Services ("DSS") may initiate a juvenile petition regarding a child who meets the statutory criteria of Abuse, Neglect, or Dependency
- DSS involvement is based on a confidential Child Protective Services ("CPS") report.
- Court may award custody or guardianship to non-parents.
- If a one-parent home, SIJ may still be appropriate.*
- The Court's File is confidential - Make sure any SIJS order is released by a court order (including the SIJS order itself)

7B Article 11, Termination of Parental Rights (“TPR”)

- N.C. Gen. Stat. § 7B-1103 the action may be brought by DSS, a GAL for the child, a guardian, one parent against another, a long-term custodian or caretaker, or anyone who has filed a petition to adopt the child.
- The TPR is a more severe deprivation of rights than a mere custody determination, and involves significantly more procedural hurdles than other actions, including appointed counsel for respondent parents

7B Article 15-27, Juvenile Undisciplined/Delinquent Actions

- These actions qualify under the federal statute, where the court makes an award of custody of the minor.
- Note that certain crimes may eliminate the possibility of obtaining legal immigration status - USCIS will carefully examine and evaluate these before granting status

Guardianship Proceedings

N.C. Gen. Stat. Ch. 35, Art., 6

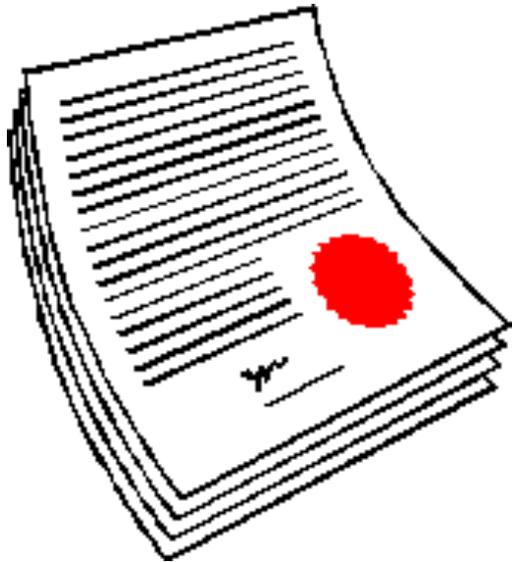
- These informal “special proceeding” are handled by the Clerk’s office.
- In all instances the Clerk must determine the facts in order to determine the best interests of the minor child, and “ the clerk shall in every instance base the appointment of a guardian or guardians on the minor's best interest.” G.S. § 35A-1224
- This is an option available for orphans, i.e. where the minor has no “natural guardian.”
- The clerk may appoint a *general guardian* who will have all the custodial rights of a parent (not the same constitutional protections).*

Adoption Proceeding

N.C. Gen. Stat. Ch. 48

- There are many procedural barriers, and if the parents contest there would need to be a TPR filed.
- These informal “special proceeding” are handled by the Clerk’s office, not judges, and follow their unique procedure (if facts are contested, may be transferred to District Court and heard by a judge).
- Most “powerful” of all awards of custody - virtually irreversible, bestows constitutional rights on adoptive parents, terminates rights of biological parents
- Adoptions rely on social work reports, and are only to be granted after the clerk makes factual determinations regarding the best interests of the minor child, *see e.g.* § 48-2-603(a) and § 48-2-606(a).

Recap: What role does a NC state court order play in the SIJS process?



Any qualifying court’s order placing the Minor Child in the custody of “an individual or entity” will be taken into consideration by USCIS in that agency’s determination as to whether the Minor Child qualifies for Special Immigrant Juvenile Status.

NC Definitions of Abuse, Neglect, and Abandon & other similar bases; Viability of Reunification

- Common Law: There are no binding statutory definitions for provided for courts (other than Juvenile A-N-D & TPR's).
- Must make determinations based on common law principles
- Courts must normally use the **plain meaning** or dictionary definition.
- Finding caselaw: discussions where the presumption of parental fitness was rebutted by showing acts inconsistent with parental status, which include (but are not limited to) abuse and neglect.
- These kinds of determinations are of the same general sort as the special findings for SIJS.
- Statutory definitions provided by Juvenile Code should be *persuasive*

Statutory Guidance:

Child Welfare Proceedings (A-N-D and TPR) statutes were drafted to meet state's due-process burdens, representing a high standard

- **N.C. Gen. Stat. § 7B-101** defines “**Abused Juvenile,**” “**Neglected Juvenile,**” and “**Dependent Juvenile.**”
- **N.C. Gen. Stat. § 7B-1111** Contains definitions for Abandonment and other grounds sufficient for a termination of parental rights



**Subject-Matter Jurisdiction:
Uniform Child Custody Jurisdiction
and Enforcement Act (“UCCJEA”):
N.C. Gen. Stat. § 50A-101 et seq.**

Applicable to all child custody proceedings of any sort,
governs subject-matter jurisdiction

Why is jurisdiction in NC?

- Jurisdiction does not arise unless and until North Carolina meets the definition of a “Home State,” which under **NCGS § 50A-102 and -201** generally occurs after six months of residence by the child in NC.
- The court may have temporary emergency jurisdiction under **§ 50A-204** when the child is present in North Carolina and has been abandoned or threatened with abuse or mistreatment (which may ripen into non-temporary jurisdiction with passage of time).

Foreign countries treated like other states

The UCCJEA (incorporated into N.C.G.S. at Chapter 50) treats foreign countries as though they were other states for purposes of these definitions.

§ 50A-105 International application of Article:

(a) A court of this State shall treat a foreign country as if it were a state of the United States...



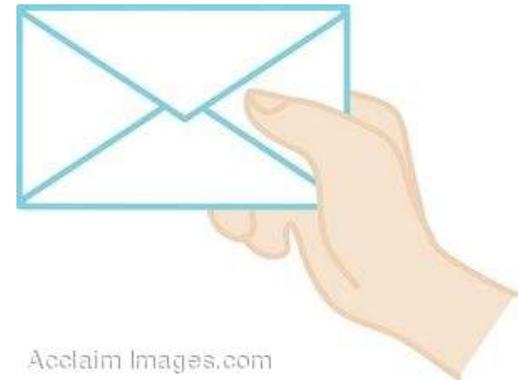
Child Custody Venue

- Specific Statute - § 50-13.5(f): Any County in which any parent or the child resides, or where the child “is physically present”
- General Rule: Objections to venue will be waived if not raised initially by the Defendant



PERSONAL JURISDICTION - INTERNATIONAL SERVICE OF PROCESS

- N.C. Rules of Civil Procedure for International Service of Process or Service of Process by Publication:
 - N.C. Gen. Stat. § 1A-1
Rules of Civil Procedure
 - Rule 4(j1) publication
 - Rule 4(j3) international
 - Also note requirements for proof of service in § 1-75.10 before a ‘default’
 - **Rule 4(j6) acceptance of service goes a long way...**



Acclaim Images.com

The UCCJEA also addresses Service of Process & Personal Jurisdiction

Notice (Service) to persons outside State: § 50A-108 (a) “Notice required for the exercise of jurisdiction when a person is outside this State may be given in a manner prescribed by the law of this State for service of process or by the law of the state in which the service is made. *Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.*”

§ 50A-201(c) Physical presence of, or *personal jurisdiction over, a party or a child is not necessary* or sufficient *to make a child-custody determination.*

PERSONAL JURISDICTION - INTERNATIONAL SERVICE OF PROCESS

- Why Serve if a parent is abroad?
 - If there is a parent abroad, you need to establish personal jurisdiction via service (and comply with due process) in order to *permanently* alter those constitutionally-protected rights
 - But UCCJEA and 50-13.5 contemplate *valid* orders (at least temporary) without service, presumably because children exist, grow, and live their childhood independent of whether their parents' rights are intact.
- Effects of Non-compliance with Service Treaties: Potentially would not be enforceable in the other country.
- Effects of Non-compliance with NC Rules regarding service: Potentially could be voided through litigation in NC

PERSONAL JURISDICTION: International Service of Process

It may be easier than you think!

- Step 1: Visit the Department of State Website and look up the country
- Step 2: If they *are* a signatory to a treaty, further analysis will be required
- Step 3: If they *are not* a signatory, or there is a loophole in the treaty, or if you decide that compliance isn't helpful, then *just proceed under the NC Rules.*



The screenshot shows the TRAVEL.STATE.GOV website, U.S. DEPARTMENT OF STATE - BUREAU OF CONSULAR AFFAIRS. The main navigation bar includes 'LEGAL CONSIDERATIONS' with sub-sections: 'U.S. Citizenship Laws & Policies', 'International Judicial Assistance' (highlighted), and 'International Treaties & Agreements'. Below this is a secondary navigation bar with 'Service of Process', 'Obtaining Evidence', 'Enforcement of Judgements', and 'Authentication of Documents'. The breadcrumb trail reads: 'Travel > Legal Considerations > International Judicial Assistance > Country Information'. The page title is 'Country Information'. There is a search box labeled 'Find Judicial Assistance Information For:' with the placeholder text 'Enter a country or area' and a 'GO' button. Below the search box is a world map.

Hague Service Convention

- Governs service in many countries
- US is a full party to the convention.
- There are nuances, *including that it does not apply where no valid address is known.*
- Requires translating documents, filling out some cover sheets, and sending to a “central authority” which ensures proper service.
- May take several months.
- There is an excellent article available at NCCourts website ([hyperlink in outline](#)).



Inter-American Service Convention and Additional Protocol

- Governs service in certain Western Hemisphere Countries
- The US only considers parties those states who adopted the original Convention AND the Additional Protocol
- Northern Triangle Countries: Guatemala **is** a signatory; Honduras is **not** a signatory; and El Salvador **appears to be** a signatory (but DOS has given conflicting opinions).
- Uses similar forms, has similar requirements, and utilizes the same “Central Authority” to effectuate service as the Hague.
- However, the clerk’s office is required to issue and certify these forms, unlike the Hague.

International Custody Case Process

1. File Complaint
2. Decision on any *ex parte* request; schedule temporary hearing (possibly just ‘permanent’)
3. Send for Service via Private Process Server abroad
4. *Hearing (Temporary); Set Date for Permanent*
5. Service Perfected and Filed with Court
6. Final Custody Hearing, may have live testimony or other evidence supporting SIJS Findings, resulting in Custody Order with findings

If legal or factual questions persist re SIJS findings, Court may request briefing or Court/party may request to continue/reopen evidence

Typical SIJS Case Process

1. UAC discharged from ORR to sponsor
2. Pleadings with EOIR, seek time to pursue SIJS
3. Draft, Verify, and File Custody Complaint
4. Send for Service via Private Process Server abroad
5. Hearing (Temporary or Permanent Order)
6. Submit Custody Order to USCIS
7. If SIJS is awarded, terminate EOIR Proceedings
8. File for Adjustment of Status (Green Card)

ETHICAL CONSIDERATIONS

- Ethical Issues Concerning Dual-Representation
- Other Ethics Opinions

The Challenges of Dual Representation

- Who are our clients?
- How do we explain confidentiality?
- How do we protect each clients' privacy interests?
- How do we anticipate and manage conflicts?

NC State Bar Ethics Opinion

RPC 175 January 13, 1995 (*see also consistent prior opinion RPC 120 July 17, 1992*) indicates that a lawyer may violate client confidence to comply with the then-effective reporting statute (recodified and updated, but very similar, at GS § 7B-301).

Failure to report may be punishable criminally, but will *not* normally result in discipline.

N.B. Immunity from liability for reporters: GS § 7B-309

NC State Bar Ethics Opinion

- **2009 FEO 5 January 22, 2009** indicates that attorneys may not report opposing parties to Immigration and Customs Enforcement (“ICE”, an agency of the federal Department of Homeland Security)

NC State Bar Ethics Opinion

- **CPR 296 July 15, 1981** (*see also* **CPR 121 July 15, 1977**): indicates that attorneys may prepare an *acceptance of service document* for an opposing party, but **not** a *waiver of the right to answer* or an *answer* or other responsive pleading

Hypotheticals for Discussion (Just over five minutes each)

Hypotheticals for Discussion:

Example A - Eduardo

Hypotheticals for Discussion:

Example B - Julisa

Hypotheticals for Discussion:

Example C - Hector

OPEN FLOOR:

**ADDITIONAL QUESTIONS AND
ANSWERS**

MATERIALS DISTRIBUTED:

Make sure we have your correct E-Mail Address!

- Electronic Copy of Powerpoint
- Relevant Statutes and Code Sections, Ethics Opinions, and other Miscellaneous Materials referenced above are available via embedded links within the electronic version of the Outline (and some are available in hard copy today as well)
- SIJS Whole-Process Checklist
- International Service of Process Protocol

Let us know if you are missing anything!

Additional Resources

- Consider listening to a podcast done in Fall 2014 by Joanna, Derrick, and Prof. Lenni Benson of New York Law School (link on outline)
- Additional SIJS Resource are available at a Dropbox.com folder from another CLE (held at Elon University School of Law in 2014) with various SIJS materials (link on outline)
- Derrick's website www.LODJH.com has a section on legal resources that includes permanent links to today's materials and will be updated with future additions on this subject

Contact Information for Speakers

Questions? Call or e-mail us anytime!

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