

Custody/Paternity Actions and SIJ

A. Initiating a Case

- a. Deciding between a custody (DC) and paternity (DP) action:
 - i. A paternity action can include a custody order as one component. A paternity action must be filed when the paternity of the father is not established. Typically, if the father's name is on the birth certificate, the judge will allow the case to proceed as a custody action.
 - ii. Using the foreign birth certificate as a substitute for affidavit of parentage:
 1. Cite MCL 722.714(b): The establishment of paternity under the law of another state has the same effect and may be used for the same purposes as an acknowledgment of paternity or order of filiation under this act.
- b. Forms needed to file a paternity/custody action:
 - i. Summons
 - ii. Verified Complaint
 - iii. Fee Waiver Request
 - iv. UCCJEA Affidavit
 - v. Request for Interpreter
 - vi. Verified Statement
 - vii. MC 97 – Protected Personal Identifying Information for Defendant
 - viii. MC 97a – Protected Personal Identifying Information for Plaintiff/child(ren)
- c. Reminders for initial filings:
 - i. Some counties require certain forms while others do not. These optional forms include:
 1. Application for IV-D Services
 - a. Must be filed if asking for child support; if reserving child support, most counties do not require. **Wayne County requires this form be filed.**
 2. MC 21 Confidential Case Inventory
 - a. This form is optional but should be filed if either parent or child have been a party in a domestic relation case (i.e., divorce, custody, paternity, etc.)
 - ii. Child support and parenting time.
 1. **Child Support:** It is usually the best practice to reserve child support as a practical matter. If Defendant is abroad, the court

will not have any mechanism to enforce a child support order. If support is reserved and Defendant can provide support in the future, you can motion to modify the child support amount. If child support is reserved or otherwise not ordered, you will want to cite [MCR 3.211\(D\)\(2\)\(b\)](#) in your initial pleadings and proposed final order: “No Uniform Support Order is required because support is reserved or is not ordered.”

2. **Parenting time:** Plaintiff can ask for reasonable, specific, or no parenting time. Typically, you will want to ask the court to grant no parenting time because Defendant is abroad and would not be able to regularly see minor child or exercise parenting time schedule. Additionally, if a judge grants parenting time, you could risk undermining one of the required SIJ determinations that reunification is not possible.

B. Service

- a. In custody/paternity cases, when the Defendant cannot be served personally, the court requires that Defendant acknowledges receipt of the mail, which is demonstrated by showing a signed copy of the return receipt. This is rarely feasible when the Defendant lives abroad because most countries will not send back a signed copy of the return receipt. In cases where the Defendant is abroad, alternative electronic service is by far the most preferred method of service when possible.
 - i. Alternative Electronic Service under MCR 2.107(c)(4), stating that the parties may agree to alternative electronic service among themselves by filing a stipulation in that case.
- b. Avenues for service (stipulated vs. non-stipulated):
 - i. Stipulated Electronic service: Contact the Defendant and see if Defendant is willing to receive all documents in the case electronically, usually by WhatsApp. If so, draft a Stipulation and Order Regarding Electronic Service, signed by both parties, and submit to the court for the judge’s signature. Attach screenshots of the Defendant agreeing to electronic service as an exhibit. Courts will typically accept the attorney e-signing on behalf of Defendant if there is proof that Defendant has given permission to sign on their behalf.
 - ii. If you are unable to contact Defendant, or Defendant does not agree to electronic service, you will most likely need to give notice by publication.
- c. Serving a Defendant whose whereabouts are unknown:
 - i. Service by Publication: Consult MCR 2.106 for the rules governing alternative service by publication.
 - ii. If there is a fee waiver on the case, cite MCR 2.002(I) for publication fees to be covered by the county. This will be included in the Motion for Alternative Service by Publication.

- iii. Ordering publication: Some counties will handle publication themselves if the judge signs off on the Motion for Alternative Service, and some counties will expect the attorney to contact the local newspaper and arrange service themselves. Check with the court clerk to see how publication is done.
- d. Important Notes:
 - i. Ensure that the notice of hearing and proof of service clearly specify that BOTH the custody matter and SIJ matter are being heard to avoid issues at the hearing.
 - ii. Make sure there is a certified translation attached for any communication with Defendant in another language.

C. Conciliation/FIG/Early Intervention Conferences:

- a. Pre-hearing conferences in the context of SIJ
 - i. In the majority of cases, the Defendant will not show up to these hearings, and thus no issues can be settled. Hence, you can ask the judge to waive the conference, but the judge may still require attendance.

D. Preparing for Entry of Final Custody Order/SIJ Special Determination Orders

(After service of complaint and summons on Defendant)

a. Filing for default custody order:

- i. [MCR 3.210\(B\)](#)
- ii. After Defendant is served with initial complaint and summons, they must file an answer within 21 days after personal service, or **28 days if served by mail, alternate service, or out of state.**
- iii. After the 21st or 28th day, request an entry of default using MCo7 “Default Request and Entry.”
 - 1. Default is usually entered by clerk (administrative process)
 - a. “On filing of the request, the clerk must enter a default of the party.” [MCR 3.210\(B\)\(2\)](#)
 - b. In some counties, entering default is not within the clerk’s scope of authority
 - i. In these cases, file a motion to request default and entry of default judgment
- iv. Service notice of entry of default on Defendant. [MCR 2.603\(A\)\(2\)](#), [MCR 3.210\(B\)\(2\)\(b\),\(e\)](#). This can be served by first-class mail (does not need to be certified/registered).
- v. Obtain Default Judgment:
 - 1. Once notice of entry of default has been served, schedule a motion hearing.
 - 2. AT LEAST 14 days prior to hearing, file and serve the following:
 - a. Motion for Entry of Default Judgment

- b. Notice of Hearing
- c. Proposed Order for Custody and/or Filiation
- d. Motion for SIJ & Proposed Order for SIJ
- e. Supporting SIJ documents (brief, exhibits, etc.)

3. File proof of service of the above w/the court.

b. Obtaining custody consent order - If Defendant agrees to stipulated custody.

- i. If Defendant agrees to give sole physical and legal custody to Plaintiff, draft an Order regarding Custody, Parenting Time and Child Support that states that the parties have reached an agreement on all issues set forth. In the proof of service submitted to the court for the Order regarding custody, the Notice of Hearing, and the Motion for SIJ, include a screenshot from Defendant that demonstrates that Defendant understands that they are relinquishing full custody and grants permission to sign the Order on their behalf.
- ii. Make sure that if the conversation is not in English to obtain a certified translation.

E. Final Settlement Conference/Custody Hearing

- a. What to expect at final hearing:
 - i. The judge will hear both the custody matter (either default or consent) and the SIJ matter, one after the other.
 - ii. Once the Custody order is entered, the Judge will move on to the SIJ component.
 - 1. You should prepare your client (the minor) to offer brief testimony on the findings for special immigrant status.
 - a. For younger children or children with sensitive/traumatic pasts, you may wish to ask the judge to make the findings based on previously submitted notarized affidavit attached as exhibit with SIJ motion instead of having the child testify at the hearing.