

**RELATIONSHIP BETWEEN
CUSTODY ACTIONS IN
CHAPTER 7B, CHAPTER 50
AND CHAPTER 50B**

"Oh what a tangled web we weave . . ."

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UCCJEA

In any action for custody, the Court must have subject matter jurisdiction under the UCCJEA (Chapter 50A)

Subject matter jurisdiction may include emergency jurisdiction



7B – 200(c) (1) AND 50 – 13.1(i)

Juvenile abuse, neglect and dependency actions have priority over any other civil action in which custody is at issue (Chapter 50 or 50B)

Order in juvenile proceeding controls as long as juvenile court maintains jurisdiction



**7B – 200(c) (1) AND 50 – 13.1(i)
continued**

Juvenile action is filed
any pending civil custody action is
automatically stayed

Order in juvenile action (including non-
secure custody order) has priority over any
order in civil action (Chapter 50 or 50B)

Juvenile court judge can:

- Stay juvenile proceeding pending hearing
in civil action
- Consolidate civil action with juvenile action
in same district - on own motion
in separate district - after consultation
with other district court judge



- Transfer juvenile action to
another district (after
consultation)

Chapter 7B - 911

After adjudication and disposition, juvenile
judge can terminate juvenile court
jurisdiction and transfer orders to Chapter
50 civil custody order



OR IS IT????

Passport to Chapter 50

- Must be at or after disposition
- Must be at least 6 months after court determined the permanent plan was giving custody to the proposed custodian – unless custody is to parent or person child lived with when petition was filed
- Evidence must support findings and conclusions sufficient to support
 - Initial civil custody order, or
 - Modification of existing order



Creating Initial Custody Order

- Determine who the parties are and how the caption should read
- Determine and include in the order whether the court is waiving the filing fee
- Ensure that clerk assigns civil file number and creates civil case file
- Determine whether venue is more appropriate in another county



Initial or Modification Order

If custody is to a non-parent, the court determines best interest, however:

1. Findings must be made by clear and convincing evidence, and
2. Court must make findings sufficient to conclude that each parent
 - has neglected the welfare of the child, or
 - is unfit, or
 - has acted in a way that is inconsistent with the parent's constitutionally protected status as a parent

Initial or Modification Order

- The order must include findings to support a conclusion that the court has exclusive continuing jurisdiction
- If custody is to a parent,
 - the standard is best interest and
 - the findings may be supported by the greater weight of evidence



Modifying a Civil Custody Order

- If the civil action is in another county, which county is most appropriate for venue of the civil custody action?
- After consulting court in other district, court may transfer either case to county in which the other is pending. [GS 7B-200(c)]
- Determine whether
 - Someone needs to be joined as a party to the civil action and
 - Whether caption of action should change



Findings Required to Modify

- In relation to the last order in the civil case, include findings sufficient to show
 - A substantial change of circumstances affecting the welfare of the child since entry of that order
 - That placing custody with the proposed custodian is in the child's best interest



**Chapter 50 and Chapter 50B
50B – 3(a)(4)**

- Chapter 50B ex parte or temporary order
- New Chapter 50 order (temporary or permanent) supersedes 50B order
- Hearing in Chapter 50 action is de novo as to custody
- Custody findings in 50B action are not binding but Domestic Violence determination may be collateral estoppel

To 50-B or not to 50-B

- Chapter 50 order (temporary or permanent) is in effect
- Chapter 50B action filed – ex parte order entered
- No statute indicating priority - but because 50B is subsequent order, it probably has priority
- If enter a temporary order in 50B action after hearing, should be time limited and
- Advise parties to file motion in Chapter 50 action

AT LEAST REMEMBER THIS:

- **JUVENILE HAS PRIORITY AS LONG AS JUVENILE COURT CONTINUES TO EXERCISE JURISDICTION**
- **NEW CHAPTER 50 ORDER SUPERSEDES CHAPTER 50B ORDER**


