Lisette González
lisette@berkeley.edu
Natalia Merluzzi
nmerluzzi@berkeley.edu

Problems in Divorce and Custody Matters Post-Katrina

Abstract: Over 700,000 people were displaced after Hurricane Katrina, including 330,000 families. This paper examines some of the potential jurisdictional and practical problems many of these displaced families will face in relation to divorce and child custody matters. It specifically focuses on Louisiana divorce laws and recent modifications to these laws, as well as the conflict of laws issue faced by spouses in covenant marriages when attempting to dissolve their marriages outside of the state. This paper also focuses on the jurisdictional questions that arise when parents attempt to either petition for or modify a preexisting custody decree after displacement. It will examine the implications of federal and uniform laws governing child custody jurisdiction in situations where one of the parents has been displaced outside of Louisiana due to emergency evacuations.

FAMILY LAW AND JURISDICTIONAL ISSUES IN THE WAKE OF HURRICANE KATRINA: DIVORCE AND CHILD CUSTODY

On August 29, 2005 Hurricane Katrina made landfall on the Gulf Coast. Subsequent levee failure flooded the city, leaving it uninhabitable. Homes, businesses, roads, and entire communities were destroyed. A congressional report estimates that 5.8 million people were affected by hurricane winds, over one thousand people died, and hundreds of thousands were displaced.[1] In the midst of the disaster, the initial concerns were immediate: rescue, safety, food, and shelter. In the aftermath, however, the long-term effects of emergency relocation give rise to more complicated legal concerns. Some of these concerns relate to family law matters. Of the estimated 700,000 evacuees, 183,000[2] were children and 330,000[3] were families. Many will not return home to New Orleans and their family law cases will be heard outside of Louisiana.[4] This

---

[1] Thomas Gabe, Gene Falk, Maggie McCarty, & Virginia W. Mason, *Congressional Research Report for Congress: Hurricane Katrina: Social-Demographic Characteristics of Impacted Areas*, Order Code RL33141, LIBRARY OF CONGRESS., Nov 4, 2005, *available at* http://fpc.state.gov/documents/organization/53687.pdf. The report found 700,000 were acutely impacted but acknowledged a USA Today article that reported 1.2 million displaced persons (Haya El Nasser & Paul Overberg, *Katrina Exodus Reaches All States*, USA TODAY, Sept. 29, 2005 at 1A).

[2] Gabe, et al., *supra* note 1, at 2.

[3] Dep't Homeland Sec., *Nearly $690 Million in Assistance Helping More Than 330,000 Families Displaced by Katrina*, Federal Information and News Dispatch, Inc., Sept. 10, 2005, *available at* http://www.fema.gov/news/newsrelease.fema?id=18765.

[4] Shaila Dewan, Marjorie Connelly, & Andrew Lehren, *Evacuees' Lives Still Upended Seven Months After Hurricane*, N.Y. TIMES, Mar. 22, 2006, at A1.The New York Times polled Katrina evacuees to examine the lives and attitudes of those displaced. Of the over 300 respondents, "Fewer than a quarter of the participants in the study have returned to the same house they were living in before the hurricane, while about two-thirds said their previous home was unlivable. A fifth said their house or apartment had been destroyed. Many have not found work and remain separated from family members." *Talk of the Nation: Katrina Evacuees: Where are They Now?* (National Public Radio broadcast, Oct. 19, 2005), *available at* http://www.npr.org/templates/story/story.php?storyId=4965553. Approximately one week after FEMA was supposed to get hurricane victims out of emergency shelters, the radio program investigated where evacuees had relocated. The investigation revealed that evacuees are now living in all 50 states of the union. Most are concentrated in Louisiana and Texas, and 100,000

paper outlines a few family law complications related to divorce and child custody that will arise for Louisiana residents who intend to return as well as those who have permanently evacuated.

Section one addresses the changes made to divorce proceeding within the state, as well as how Louisiana covenant divorces will be handled in sister states. Louisiana's covenant marriage legislation raises a unique conflict of laws issue for spouses seeking a divorce outside of the matrimonial state. In these cases, Louisiana will retain jurisdiction over the divorce until one of the spouses becomes domiciled in another state. Once a spouse is domiciled outside of Louisiana, the non-matrimonial state may grant a divorce according to its substantive laws. The conflict of laws issue regarding whether sister states will enforce the covenant marriage quasi-marital, quasi-civil contract known as the Declaration of Intent remains open.

Section two addresses post-evacuation child custody jurisdiction issues. These issues will arise when at least one parent has relocated with the child (or children) outside of Louisiana and either parent seeks to initiate custody proceedings or modify a preexisting order. Whether there is a preexisting custody decree or not, this is a critical issue for evacuated parents with formal or informal custody and/or visitation arrangements because the evacuation took place during a weekend, a typical time for children to visit their parents. Of course, this is also an important question for separated parents without any sort of custody or visitation arrangement who wish to initiate custody proceedings. Most states have adopted the Uniform Child Custody Jurisdiction Enforcement Act ("UCCJEA"), which governs interstate jurisdictional and enforcement issues

---

had applied for permanent housing in Huston. Bruce Katz, Matt Fellows, & Mia Mabanta, *Katrina Index: Tracking Variables of Post-Katrina Reconstruction*, The Brookings Institution Metropolitan Policy Program, Apr. 5, 2006, *available at* http://www.brookings.edu/metro/pubs/200512_katrinaindex.htm.

arising in child custody cases. However, a handful of states have not yet adopted the UCCJEA and still operate under the older Uniform Child Custody Jurisdiction Act ("UCCJA"). This section will discuss how an initial jurisdiction question will play out under these two uniform laws, as well as under federal law governing child custody jurisdiction, and will assess these outcomes in light of the recent, unprecedented mass displacement.

I. DIVORCE

The disruption of a natural disaster has lasting impacts on families. A longitudinal research study on survivors of Hurricane Hugo, which devastated South Carolina in 1989, showed that the life-threatening natural disaster acted as a catalyst for survivors to make significant changes in their close relationships.[5] Divorce, marriage, and birth rates all increased the year following the hurricane. These results were explained by a theory that natural disasters challenge the presumption that the world is safe and predictable, and in order "to find meaning in the event and to establish a sense of control, survivors are motivated to reevaluate their priorities about what is important and to take action."[6]

Individual stressors and economic factors also contributed to the increased divorce rates among hurricane survivors.[7] This study highlights the need to examine how divorce proceedings are managed in the wake of a natural disaster.

---

[5] Catherine L. Cohan & Steve W. Cole, *Life Course Transitions and Natural Disaster: Marriage, Birth, and Divorce Following Hurricane Hugo*, 16 J. FAM. PSYCHOL. 14 (2002). The study used longitudinal data from 1975 to 1997, and measured post-storm divorce, marriage and birth rates against pre-storm rates and against 22 neighboring counties unaffected by the storm.

[6] Cohan & Cole, *supra* note 5.

[7] Cohan & Cole, *supra* note 5.

A. Louisiana's Dual Divorce System

Similar to the Hurricane Hugo survivors, divorce rates among Katrina evacuees will likely be higher than the general population for at least one year after the storm. This section will outline Louisiana divorce procedures generally and post-Katrina modifications. It will also examine the conflict of laws issue in relation to dissolution of Louisiana covenant marriages in sister states.

After the Covenant Marriage Act[8] was passed in the state legislature, Louisiana became the first state to have a dual marriage system, and consequently a dual divorce system. In addition to a "standard" marriage, as of 1997 Louisiana couples could opt to enter into a "Covenant Marriage." Spouses in either type of marriage can seek expedited fault-based divorces after one spouse acts in a reprehensible manner. Reprehensible behavior would include adultery and commission of a felony with a sentence of death or imprisonment at hard labor.[9] Covenant fault-based divorce grounds also include: abandoning the matrimonial domicile and refusing to return for at least one year and physical or sexual abuse of the plaintiff spouse or of a child of either spouse.[10]

Aside from similar fault-based grounds, the laws governing dissolution of standard and covenant marriages differ significantly. No-fault divorces are only available for dissolution of standard marriages in Louisiana and can be obtained after spouses live separate and apart for 180 days.[11] In contrast, covenant divorces are procedurally difficult to obtain because courts will only grant a divorce after spouses meet the strict requirements outlined in the statute.

1. Dissolution of Covenant Marriages in Louisiana

---

[8] LA. REV. STAT. ANN. § 9:272-275, 307-309 (West 2000).
[9] *See,* LA. CIV. CODE ANN. art.103 (West 1993); LA. REV. STAT. ANN. § 9:307(A)(1)-(4) (West 1991 & Supp. 1998).
[10] LA. REV. STAT. ANN. § 9:307(A)(1)-(4) (West 1991 & Supp. 1998).
[11] LA. CIV. CODE ANN. art. 102 (West 1993).

In an attempt to strengthen the institution of marriage and thwart rising divorce rates, the Louisiana legislature enacted the covenant marriage statute drafted by Professor Katherine Shaw Spaht.[12] Couples who choose to enter into a covenant marriage must voluntarily agree to more stringent requirements for marriage and divorce. Since the passage of the statute in Louisiana, covenant marriage legislation has been introduced in thirty states and adopted by two, Arizona and Arkansas.[13]

There are three pertinent features of a covenant marriage.[14] First, couples must attend mandatory pre-marital counseling which promotes marriage as a lifelong commitment. Second, couples sign a legally binding Declaration of Intent which requires them to "take all reasonable efforts to preserve the marriage, including marriage counseling." If spouses do not perform their contractual obligation outlined in the Declaration of Intent, a non-complying partner is liable for pecuniary and non-pecuniary damages to their spouse, or the court may order specific performance. Third, spouses have limited ability to divorce, and by signing the Declaration of Intent spouses agree to restrict their pursuit of a no-fault divorce. Unless one spouse commits a fault, spouses must undergo counseling before they can seek a divorce. In addition to the counseling requirement, spouses must live separate and apart for twenty-four months before a decree will be granted, compare to the six-month waiting period required for no-fault divorces.

Legal separation is an alternative to divorce for those who enter into covenant marriages. Couples who choose legal separation may later divorce, but the required time couples must live

---

[12] *See,* Katherine Shaw Spaht & Symeon C. Symeonides, *Symposium (Part II) Covenant Marriage and the Law of Conflicts of Laws*, 32 CREIGHTON L. REV. 1085, 1087 (1999).
[13] Only a small number of couples seek covenant marriages, *see* Ira Mark Ellman*, Divorce Rates, Marriage Rates, and the Problematic Persistence of Traditional Marital Roles*, 34 FAM. L. Q. 1, 15 (2000).
[14] Spaht & Symeonides, *supra* note 12, at 1095.

separate and apart before divorce varies by whether the couple has minor children. If there are minor children, the spouses must live separate and apart for one year and six months after the legal separation before a divorce will be granted. Spouses with no minor children need to live separate and apart for only one year after the separation. The legislative intent behind this difference was to preserve marriage for the sake of the children who are a part of the marriage.

2. Effect of Hurricane Katrina on Louisiana Divorce Proceedings

Hurricane Katrina's devastating effect on families as well as infrastructure posed numerous problems for spouses seeking a divorce in Louisiana. On September 6, 2005 Governor Blanco responded to the ensuing crisis in the courts by issuing an Executive Order[15] which suspended "all deadlines applicable to legal proceedings … in all Louisiana state courts" until September 25, 2005.[16] This order ensured that those who were affected by the devastation would not be penalized by an inability to meet court deadlines. When the Legislature was called into special session on November 6, 2005 it determined that the Executive Order would not affect the calculation of the waiting period requirement to file a divorce petition for both no-fault and covenant divorces.[17]

Moreover, the Executive Order did not suspend the time calculated for "abandoned" divorce proceedings. In Louisiana, a petitioner must show cause within two years of the filing for a divorce petition or the divorce is deemed abandoned. The legislature gave petitioners 30 days

---

[15] Exec. Order No. KBB 2005-32 (2005), 2006 Louisiana Statues Annotated, Interim Annotation Service No. 1 1, 94 (West), *available at* http://www.gov.state.la.us/assets/docs/48execAmend-KBB2005-32-Prescription-Peremption.pdf.
[16]Steve Lane, *Jurisdictional and Practical Problems in Family Law Following Hurricane Katrina*, TEXAS LAW CENTER, March 22, 2006.
[17] Moreover, the Executive Order would not affect the 180 living separate and apart after a divorce.

from September 23, 2005 [18] to show cause as required by Article 102 of Louisiana Civil Code.[19] The Executive order was renewed twice and ultimately expired on November 25, 2005.

While Louisiana was able to use extended deadlines as issued by Executive Order to handle the complicated procedural issues for residents affected by the storm, residents who were displaced outside of the state may choose to seek a divorce under the jurisdiction of another state. For couples who entered into covenant marriages, this can raise a conflict of laws issue related to choice of law.

B. Conflicts of Law and Covenant Divorce

Under the traditional conflict of laws approach, states generally recognize the validity of marital contracts formed in sister states. The exception to this rule is if the law recognized in one state violates the public policy of another state: an example is same-sex marriages. While covenant marriages are recognized outside of Louisiana, sister states are not required to enforce the strict limitations on divorce outlined in the covenant statute.

1. Jurisdiction and Choice of Law

The current precedent regarding ex-parte divorce proceedings outside of the matrimonial state was established in *Williams v. North Carolina*.[20] According to the holding in *Williams*, the state where either spouse,[21] is domiciled may constitutionally apply its law to grant a divorce. The *Williams* decision affirms that *domicile*, not residence or physical presence, is the basis for a

---

[18] The effective date of LA. REV. STAT. § 9:304 (2005).
[19] LA. CIV. CODE ANN. art. 102 (West 1993).
[20] Williams v. North Carolina ("Williams I"), 317 U.S. 287 (1942); *See also*, Williams v. North Carolina ("Williams II"), 325 U.S. 226 (1945).
[21] Williams I, overruled Haddock v. Haddock, 201 U.S. 562 (1906), where the court only allowed the "innocent" spouse domiciled outside of the matrimonial state to seek an ex-parte divorce under new jurisdiction.

non-matrimonial state to grant a divorce according to its laws.[22] Thus, if one spouse becomes domiciled in a state, that spouse can seek a no-fault divorce even though she entered into a covenant marriage. Moreover, the spouse can seek a divorce for acts that are grounds for divorce in the new domicile but would not be recognized under Louisiana law. Ex-parte divorces in non-matrimonial states leave open the possibility that a spouse can challenge the divorce decree on the grounds that the spouse who sought the divorce was not actually domiciled at the time of the divorce.[23]

If both spouses seek a divorce, a bilateral divorce, in a non-matrimonial state the state may grant a divorce according to its laws as long as at least one spouse is domiciled or the state has personal jurisdiction over both spouses. Moreover, spouses who participate in a bilateral divorce in are collaterally estopped from challenging the issue of domiciliary status in a subsequent proceeding.[24] If neither spouse chooses to domicile in a new state, Louisiana law governs the divorce and spouses will be held to the traditional covenant requirements.

2. Enforcement of the Declaration of Intent in Non-matrimonial States

Enforcement of the Declaration of Intent outside of the matrimonial state raises a unique family law issue regarding legal recognition of contracts between spouses. There has been a historical shift from disallowing any contractual agreements between spouses to enforcement of some private contracts, such as ante-nuptial agreements. The Declaration of Intent is a hybrid of a marital agreement and a civil contract; it is an agreement between spouses and the matrimonial state that entitles spouses to damages for breach of the marital agreement. While spouses choose

[22] *See*, Restatement (Second) of Conflict of Laws § 72 (1971). "If a person leaves the state immediately after a decree of divorce is granted, this fact is evidence that no domicile was acquired."; *See also*, Andrews v. Andrews, 188 US 15 (1903), State v. Armington, 25 Minn 29 (1878), Fischer v. Fischer, 173 NE 680 (NY 1930).
[23] *See*, Williams II, 325 U.S. 226 (1945).
[24] Sherrer v. Sherrer, 334 U.S. 343 (1948).

to enter into a covenant marriage instead of standard marriage, the terms of the agreement are set by the state, and only the state can terminate the agreement. Furthermore, The Declaration of Intent can be distinguished from an ante-nuptial agreement because it is a marital agreement that regulates how spouses will negotiate problems during the marriage as opposed to a private contract between spouses that can be terminated at will. While Louisiana awards damages for breach of the Declaration of Intent, it is unclear whether sister states will enforce this type of spousal agreement.

Theoretically, a spouse who is opposed to a non-covenant divorce can seek damages associated with the breach of the Declaration of Intent outside the matrimonial state. If the Declaration of Intent is treated as a civil contract, then the forum state would address the conflict of laws issue as it would for any civil contract. The choice of law issue would follow the forum state's conflict of laws approach. However, courts will likely find the Declaration of Intent is part of the martial agreement and unenforceable in a no-fault divorce states.[25] Below are two hypotheticals that address how enforcement of the declaration may play out.

Hypothetical 1: Spouse A is domiciled in and seeks a no-fault divorce in California; Spouse B seeks to enforce the breach of Declaration of Intent in California.

In this hypothetical, California has jurisdiction over the spouse seeking a no-fault divorce because the spouse is a California domiciliary. Additionally the court would be able to exercise personal jurisdiction over the spouse still domiciled in Louisiana. Once the jurisdiction issue is settled, California courts would determine whether to treat the Declaration of Intent as part of the Louisiana covenant divorce procedure, which no longer applies to its domiciliary, or as a private

---

[25] *See,* Peter Hay, *The American "Covenant Marriage" in the Conflict of Laws*, 64 LA. L. REV. 43, 63 (2003).

contract between the spouses. Even if the California courts consider the agreement a civil contract, it is unlikely the courts will enforce the spousal agreement.

Given California precedent regarding private contracts between spouses, it is doubtful California courts would award damages for breach of the Declaration of Intent. In *Mehren v. Dargen* the California Court of Appeals did not enforce a private contract between spouses that granted the wife all of the husband's interest in the parties' community property should the husband use illicit drugs because the spousal contract violated California's no-fault public policy.[26] An objective of no-fault divorce policy is to promote egalitarian marriages.[27] Fault-based divorces make divorce proceedings more punitive and potentially difficult for spouses. Even allowing courts to enforce the counseling requirement would enable spouses to create marital "contingencies" not recognized in no-fault states. If this type of agreement between spouses was recognized in one case, courts would have to recognize it in future cases. Spouses would be empowered to customize marriages and courts would be obligated to enforce contractual, fault-bases contingencies. Allowing spouses to contract for fault would enable them to reintroduce the numerous problems associated with fault-based divorce.[28]

Hypothetical 2: Spouse A is domiciled in and seeks a no-fault divorce in California; Spouse B remains in Louisiana and seeks to enforce breach of the Declaration of Intent in Louisiana.

In this scenario, the spouse domiciled in California will receive a no-fault, ex-parte divorce under California law. However, the breach of the Declaration of Intent issue could be litigated in Louisiana. If the spouse opposed to the non-covenant divorce is still domiciled and

---

[26] In re Mehren v. Dargen, 118 Cal.App.4th 1167 (2004).
[27] *See,* Herma Hill Kay, *"Making Marriage and Divorce Safe for Women" Revisited*, 32 HOFSTRA L. REV. 71 (2003).
[28] *See*, Jeanne Louise Carriere, *"It's Déjà vu All Over Again": The Covenant Marriage Act in Popular Cultural Perception and Legal Reality*, 72 TUL. L. REV. 1701, 1747 (1998).

living in Louisiana, then the spouse may use Louisiana's long-arm statute to get personal jurisdiction over the other spouse in order to get damages for breach of the marital agreement.

While possible, this litigation would still be controversial because Louisiana would not be honoring California's right to exercise its laws over its domiciliary. If a Louisiana court awarded damages for breach of the Declaration of Intent, then it would essentially be punishing a California domiciliary for seeking a no-fault divorce in California. For that reason, Louisiana should be prohibited from imposing its marital laws on the domiciliary of another state.

3. Proposed Changes to the Approach

As mentioned above, jurisdiction and choice of law are separate issues in divorce proceedings outside the matrimonial state. Potentially, a non-matrimonial state could grant a divorce according to the divorce law of the matrimonial state. However, courts do not apply the choice of law provision in a marital agreement as they will civil contracts because marital contracts are qualitatively different. The terms of martial agreements are set by the state not by the parties, and while both types of agreements are entered voluntarily marital agreements are permanent. Marriages can only be terminated by legal decree, whereas civil contracts can be dissolved by the parties themselves. Moreover, the relationship between the two parties entering either contract differs significantly. "When formed… [marriage] is no more a contract than 'fatherhood or sonship' is a contract."[29] Policies regarding marital agreements are designed to assure full spousal consent is freely given and interested parties are protected. Common examples of interested parties include spouses, children, and potential subsequent spouses. Therefore, personal freedom in relation to dissolution of marriage and states' ability to apply its laws is more important in marital than civil contracts.

---

[29] Ditson v. Ditson, 4 R.I. 87. LEXIS 14, at *101 (S. Ct. R.I. August, 1856).

An article co-authored by Professor Spaht advocates for the use of Louisiana covenant marriage law as the choice of law for spouses who entered into a covenant marriage but seek a divorce in a no-fault state.[30] The covenant marriage legislation even includes a clause that strengthens the argument for Louisiana law as the choice of law, stating that couples "do hereby declare that our marriage will be bound by Louisiana law on Covenant Marriages." Requiring sister states to enforce Louisiana legislation would arguably better execute the experiment of covenant marriage.

While the authors' arguments are compelling, the current law is preferable because it enables more personal freedom in relation to dissolution of marriage and allows states to exercise jurisdiction over its citizens in regards to marital policy. As Carriere notes, "because changes in marital status of a state's domiciliaries are supremely matters of its public policy, its decision as to how and why they can terminate that status cannot be trumped by Louisiana or by individual choice."[31]

C. Covenant Divorce in Other Covenant Marriage States

As a choice of law matter, Arizona and Arkansas (states with covenant marriage laws) could choose to apply their covenant divorce laws to former Louisiana spouses seeking divorces. Arizona lists eight circumstances in which the court will grant a covenant divorce,[32] some of

---

[30] Spaht & Symeonides, *supra* note 12, at 1120.
[31]Carriere, *supra* note 28 at 1734.

[32]ARIZ. REV. STAT. ANN. § 25-903 (West 1991 & Supp. 1998). (1) The respondent spouse has committed adultery; (2) The respondent spouse has committed a felony and has been sentenced to death or imprisonment in any federal, state, county or municipal correctional facility; (3) The respondent spouse has abandoned the matrimonial domicile for at least one year before the petitioner filed for dissolution of marriage and refuses to return. A party may file a petition based on this ground by alleging that the respondent spouse has left the matrimonial domicile and is expected to remain absent for the required period. If the respondent spouse has not abandoned the matrimonial domicile for the required period at the time of the filing of the petition, the action shall not be dismissed for failure to state sufficient grounds and the action shall be stayed

which are more lenient than Louisiana law. For example, if both spouses agree to the divorce, the court will grant a dissolution without requiring a fixed pre-divorce waiting period. Similarly, the Arkansas code sets out several causes, many not recognized in Louisiana, for granting a covenant divorce, including permanent impotence.[33] Additionally, Arkansas spouses need only separate

---

for the period of time remaining to meet the grounds based on abandonment, except that the court may enter and enforce temporary orders pursuant to § 25-315 during the time that the action is pending; (4) The respondent spouse has physically or sexually abused the spouse seeking the dissolution of marriage, a child, a relative of either spouse permanently living in the matrimonial domicile or has committed domestic violence as defined in § 13-3601 or emotional abuse; (5) The spouses have been living separate and apart continuously without reconciliation for at least two years before the petitioner filed for dissolution of marriage. A party may file a petition based on this ground by alleging that it is expected that the parties will be living separate and apart for the required period. If the parties have not been separated for the required period at the time of the filing of the petition, the action shall not be dismissed for failure to state sufficient grounds and the action shall be stayed for the period of time remaining to meet the grounds based on separation, except that the court may enter and enforce temporary orders pursuant to § 25-315 during the time that the action is pending; (6) The spouses have been living separate and apart continuously without reconciliation for at least one year from the date the decree of legal separation was entered; (7) The respondent spouse has habitually abused drugs or alcohol; (8) The husband and wife both agree to a dissolution of marriage.

[33] ARK. CODE ANN. § 9-12-301 (Michie 1998). (1) When either party, at the time of the contract, was and still is impotent; (2) When either party shall be convicted of a felony or other infamous crime; (3) When either party shall: (A) Be addicted to habitual drunkenness for one (1) year; (B) Be guilty of such cruel and barbarous treatment as to endanger the life of the other; or (C) Offer such indignities to the person of the other as shall render his or her condition intolerable; (4) When either party shall have committed adultery subsequent to the marriage; (5) When husband and wife have lived separate and apart from each other for eighteen (18) continuous months without cohabitation, the court shall grant an absolute decree of divorce at the suit of either party, whether the separation was the voluntary act of one (1) party or by the mutual consent of both parties or due to the fault of either party or both parties; (6)(A) In all cases in which a husband and wife have lived separate and apart for three (3) consecutive years without cohabitation by reason of the incurable insanity of one (1) of them, the court shall grant a decree of absolute divorce upon the petition of the sane spouse if the proof shows that the insane spouse has been committed to an institution for the care and treatment of the insane for three (3) or more years prior to the filing of the suit, has been adjudged to be of unsound mind by a court of competent jurisdiction, and has not been discharged from such adjudication by the court and the proof of insanity is supported by the evidence of two (2) reputable physicians familiar with the mental condition of the spouse, one (1) of whom shall be a regularly practicing physician in the community wherein the spouse resided, and when the insane spouse has been confined in an institution for the care and treatment of the insane, that the proof in the case is supported by the evidence of the superintendent or one (1) of the physicians of the institution wherein the insane

for 18 months, compared to Louisiana's required 24 months, in order to be granted a covenant marriage divorce. No case law addresses whether a forum state in a divorce proceeding will apply its covenant law to domiciliaries who entered a covenant marriage in a sister state.

II. CHILD CUSTODY: JURISDICTION OVER CHILD CUSTODY MATTERS UNDER THE UCCJA, PKPA, AND THE UCCJEA

Among those displaced by Hurricane Katrina from their homes in Louisiana, as well as Alabama, Mississippi and Texas, are families with children. For some of these families, evacuating to another state, either permanently or temporarily, will mean finding new homes and jobs while at the same time picking up the pieces of their former lives. On top of these concerns, some families will encounter legal difficulties resulting from the mere act of bringing their children along to their new home. Parents with children who have either divorced or who have established legal custody and visitation through the courts may find themselves facing jurisdictional roadblocks if they relocate to a different state and try to modify those decrees in their newly adopted state. Parents who relocate with their children to a different state while the other parent does not, or while the other parent relocates to a completely different state, and who

---

spouse has been confined. (B)(i) In all decrees granted under this subdivision (b)(6), the court shall require the plaintiff to provide for the care and maintenance of the insane defendant so long as he or she may live. (ii) The trial court will retain jurisdiction of the parties and the cause from term to term for the purpose of making such further orders as equity may require to enforce the provisions of the decree requiring the plaintiff to furnish funds for such care and maintenance; (C)(i) Service of process upon an insane spouse shall be had by service of process upon the duly appointed, qualified, and acting guardian of the insane spouse or upon a duly appointed guardian ad litem for the insane spouse, and when the insane spouse is confined in an institution for the care of the insane, upon the superintendent or physician in charge of the institution wherein the insane spouse is at the time confined. (ii) However, when the insane spouse is not confined in an institution, service of process upon the duly appointed, qualified, and acting guardian of the insane spouse or duly appointed guardian ad litem and thereafter personal service or constructive service on an insane defendant by publication of warning order for four (4) weeks shall be sufficient; and (7) When either spouse legally obligated to support the other, and having the ability to provide the other with the common necessaries of life, willfully fails to do so.

wish to initiate a custody proceeding will also encounter jurisdictional difficulties, especially if the other parent challenges the petition.

Before the enactment of federal and state legislation addressing the issue of interstate jurisdiction of child custody, enforcement of one state's custody decree in another state was not regulated. The situation created by the lack of regulation was one of jurisdictional and enforcement chaos; in cases where parents were not satisfied with the custodial decree in one state, there was a strong incentive to remove the child from that state to a different state where a more favorable decree might be had. Consequently, the result was both a "national epidemic of parental kidnapping" and "widespread jurisdictional deadlocks."[34]A contributing factor to these problems is that it was unclear how the Full Faith and Credit Clause[35] (and the full faith and credit statute[36]) would apply to one state's enforcement of a custody order from another state. Many courts interpreted the full faith and credit protection to allow, for instance, State A's courts to treat State B's custody decree in much the same way as State B's courts would; that is, because State B retained the power to modify its own custody decree, then State A was allowed to modify the decree as well.[37]

As a response to these widespread problems, the Uniform Child Custody Jurisdiction Act (UCCJA) was promulgated in order to prevent jurisdictional conflicts and to create uniformity among the states with respect to child custody enforcement. While the UCCJA was being enacted by the states, Congress took further action in addressing some of the gaps left by states'

[34] Thompson v. Thompson, 484 U.S. 174, at 180 (1988).
[35] "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state." US Const., Art. 4.
[36] "The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof … shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken." 28 U.S.C. § 1738 (1948).
[37] *See* Thompson, *supra* note 34, at 180.

adoption of the UCCJA by enacting the Parental Kidnapping Prevention Act of 1980. The latest development is the NCCUSL's recent revision of the 1968 UCCJA, the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), which addresses some of the gaps left by the UCCJA and the PKPA.

The following is a brief description of all three and how they work together.

A. Uniform Child Custody Jurisdiction Act

The UCCJA was created in 1968[38] and was eventually adopted by all states in some form.[39] Louisiana adopted a version of the Act in 1978. The UCCJA has three overarching goals: to ensure that custody litigation takes place in an appropriate forum, to decrease jurisdictional competition and conflict between the states, and to prevent the further kidnapping of children by parents seeking favorable custody decrees in different states.[40] It provides criteria for determining a state's initial jurisdiction in a child custody matter and guidelines meant to help reduce jurisdictional conflict among the states.

The Act sets out four bases for determining a state's jurisdiction to enter either an initial or modification child custody decree. The first basis is the "home state" basis. This deems a state "competent to decide child custody matters" if:

(i) the state is the child's "home state"[41] at the time of commencement of the proceeding, or

---

[38] By the National Conference of Commissioners on Uniform State Laws (NCCUSL).
[39] Ironically, the fact that the UCCJA was adopted in various forms by the states resulted in a lack of uniformity between the states, creating some of the same conflicts the Act was designed to prevent.
[40] Russell M. Coombs, *Interstate Child Custody: Jurisdiction, Recognition and Enforcement*, 66 MINN. L. REV. 711, at 721 (1982). The general purposes of the Act are set out in UCCJA (1968) §1.
[41] The UCCJA defines "home state" as "the state in which the child immediately preceding the time involved lived with his parents, a parent, or a person acting as parent, for at least 6

(ii) if it had been the child's home state within six months of the commencement of the proceeding *and* the child is not in the home state because of his removal or retention by a person claiming his custody or for other reasons, *and* a parent or person acting as parent[42] continues to live in the home state.

The first (i) instance where the home state basis provides jurisdiction is based solely on the fact of a child having lived with a parent in that state for at least 6 months immediately prior to the commencement of custody proceedings. The second (ii) instance is meant to discourage parents from removing a child from its home state to another one, and to protect the rights of the parent who continues to reside in the home state when this happens. This second instance essentially gives a Parent A (or person acting as a parent) the opportunity to pursue a custody proceeding in State X even though the child may have been removed by Parent B to State Y, so long as State X had been the child's home state within 6 months prior to the commencement of the proceeding and Parent A remains in State X.

In the context of Hurricane Katrina, the home state basis may be applied in situations where one of the child's parents was displaced to another state as a result of the disaster. For example, if Louisiana was the child's home state, and the child stayed with Parent A in Louisiana even though Parent B was evacuated, Parent A could claim home state basis jurisdiction in Louisiana. Under the home state basis, the results may be the same even though the child is no longer living in Louisiana. For example, assume Parent A and child had been living in Louisiana for six consecutive months, establishing Louisiana as the child's home state. Further assume that

---

consecutive months, and in the case of a child less than 6 months old the state in which the child lived from birth with any of the persons mentioned." UCCJA (1968) § 2(5).

[42] A "person acting as a parent" is defined as "a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody." UCCJA (1968) § 2(9).

Parent B was evacuated to State X due to the hurricanes, taking child with her/him. In this situation, Parent A could still claim a home state basis for jurisdiction in Louisiana even though the child was removed to a different state, so long as Parent A initiates the custody proceedings within six months of the child having been removed from his/her care to State X. In essence, the second instance (ii) extends the home state rule for six months after the child has been removed, allowing the home state to assert jurisdiction.[43]

Continuing with this hypothetical, assume that the child was removed by Parent B to State X, and that Parent B and child have been living together in state X for over six months, while Parent A has remained in Louisiana the entire time and has not initiated any custody proceedings. Can Parent A still claim that Louisiana has rightful jurisdiction under the UCCJA, even though Louisiana is no longer technically the child's home state? It seems likely that Louisiana could claim jurisdiction in the custody proceedings under the second basis for jurisdiction under the UCCJA.

The second basis for determining jurisdiction is often referred to as the "significant connection" basis. This basis allows a state court to assume jurisdiction if it is in the best interest of the child that the court do so "because (i) the child and his parents, or the child and at least one contestant, have a significant connection with [the] State, and (ii) there is available in [that] State substantial evidence concerning the child's present or future care, protection, training, and personal relationships."[44] This provision could come into play as an alternative to the home state basis or in situations where the child has moved from state to state frequently, and has not lived in one particular state for six months prior to the commencement of a suit.[45] Following our

[43] UCCJA (1968), Comment to § 3.
[44] UCCJA (1968) § 3(a)(2).
[45] UCCJA (1968) § 3 (Comment).

hypothetical from the preceding paragraph, it seems that a Louisiana court could assume jurisdiction so long as it is actually in the best interest of the child to do so and there is a significant connection to the state - which could be satisfied in our hypothetical if Parent A remained in Louisiana. This provision would also apply in the context of Hurricane Katrina when a child has been removed from Louisiana and is living with one parent in State X, and the second parent has also moved out of Louisiana to a different state.[46]

The third basis for jurisdiction is that of emergency jurisdiction.[47] This provision is applicable when a child has either been abandoned in the state exercising jurisdiction or such exercise is necessary to protect the child from neglect, mistreatment, or abuse.[48] It is different from the first two because, unlike the home state or the significant connections bases, it requires the physical presence of the child in the state exercising the jurisdiction.[49] Furthermore, a state's jurisdiction under this provision is only temporary and ends when a more appropriate forum has been established. However, the threshold here is high, and jurisdiction under this basis requires extreme circumstances where there is a clear emergency. [50] Neither the language of the Act nor its comments, however, suggest that this jurisdictional basis should be employed during times of a disaster such as Hurricane Katrina when entire families are evacuated and very often scattered throughout various states, so that children are not even living with their parents.

[46] UCCJA (1968) § 3 (Comment).
[47] UCCJA (1968) § 3(a)(3).
[48] Mistreatment or abuse could be actual or threatened.
[49] UCCJA (1968) § 3(a)(3).
[50] The Comment to this section states that "the jurisdiction usually exists when a child has been abandoned and in emergency cases of child neglect…Where there is child neglect without emergency or abandonment, jurisdiction cannot be based on this paragraph." UCCJA § 3 (Comment).

There is also a fourth basis for child custody jurisdiction, sometimes referred to as the "vacuum" basis.[51] This provision allows a state to assume jurisdiction if (i) it appears that no other state would have jurisdiction in accordance with the first three bases, or another state declines exercise jurisdiction, and (ii) it is in the best interest of the child that the state assume jurisdiction.[52] It is meant to be supplementary in nature, allowing for jurisdiction in one state only when no other state would or could exercise jurisdiction under any of the three other bases.[53] In essence, however, this basis allows for a substantial amount of judicial discretion in one state to determine whether another state would have jurisdiction and what the best interest of the child is. It makes it possible for one state to assume jurisdiction under its interpretation of the UCCJA requirements even though another state might also assert jurisdiction under its own interpretation and state laws.

By the mid 1980s, all states had adopted a form of the UCCJA. However, as this happened and as courts across the country applied the UCCJA in custody matters, it became clear that the UCCJA still had some gaps that gave rise to the same jurisdictional conflicts that the Act was designed to prevent. One of these problems is that the Act did not give preference to any of the bases for jurisdiction, resulting in situations where more than one state could validly assume jurisdiction under their version of the UCCJA under different bases. Commentators have also posited that the UCCJA granted too much discretion to the courts when deciding whether to decline to exercise jurisdiction in situations where there was concurrent jurisdiction over the same custody matter. Additionally, states adopted the UCCJA in various forms, and judicial

[51] Russell M. Coombs, *Nuts and Bolts of the PKPA*, 22 COLORADO LAWYER 2397, 2398 (1993).
[52] UCCJA § 3(a)(4) (1968).
[53] UCCJA § 3(a)(4) (Comment) (1968).

interpretation of some of its crucial provisions often varied from one state to the next.[54] The resulting problems included continuing jurisdictional conflicts and weak interstate enforcement of decrees. The Parental Kidnapping Prevention Act of 1980 was Congress' response to these and other continuing problems, including the ongoing practice of kidnapping and forum-shopping by parents.

B. Parental Kidnapping Prevention Act of 1980

To address these issues, enhance the enforcement of decrees made under the UCCJA, and ameliorate the ongoing problem of child-snatching and forum shopping by parents, Congress passed the Parental Kidnapping Preventing Act of 1980 ("PKPA").[55] As a federal law, part of its purpose was to bring uniformity between the states that was not fully achieved by the mottled adoption of the UCCJA across the country. Although not all states had implemented the UCCJA at the time of the PKPA's adoption, the PKPA was meant to apply to all states and thus allow custody decrees from one state valid under the UCCJA to be enforced in those states where a version of the law had not yet been adopted. To these ends, the PKPA both incorporated important UCCJA provisions and made a couple of significant improvements designed to reduce interstate jurisdictional conflict.

The PKPA adopted the UCCJA's four jurisdictional bases,[56] but went beyond them and made changes affecting both initial and modification jurisdiction. The first improvement relates to the determination of initial jurisdiction. Under the PKPA, in order for a custody matter's initial jurisdiction in a state to be valid, it must first be valid under its own state laws.[57] It must

---

[54] Russell M. Coombs, *Progress Under the PKPA*, 6 J. AMER. ACAD. OF MATRIM. LAW. 59, 62 n.15 (1990).
[55] 28 U.S.C.A. § 1738A.
[56] 28 U.S.C.A. § 1738A(c)(2).
[57] 28 U.S.C.A. § 1738A(c)(1).

also either be the home state of the child or have been the home state within six months of commencement of the proceeding.[58] If the state seeking jurisdiction does not meet this requirement, it may assert jurisdiction under the significant connection basis *only* if it appears that no other state can assume jurisdiction under the home state basis. This provision of the PKPA effectively *creates a home state preference* for jurisdiction, allowing a state to assume jurisdiction under significant connection only if another state cannot already do so under the home state basis (or even the emergency jurisdiction basis, for that matter). Thus, the PKPA resolves jurisdictional conflicts between two states asserting initial jurisdiction when one of them is the child's home state.

This particular provision of the PKPA can have interesting ramifications for Louisiana families displaced due to Hurricane Katrina. For example, assume that Parent A remained in Louisiana during and after the hurricane, and that Parent B and Child were evacuated to State X, where they have been living together continuously since late August 2005. Assume further that it is April 2006, a full eight months since Child and Parent B were evacuated to State X, that there is no pre-existing custody decree from any court, and that Parent A now initiates a custody proceeding. Under UCCJA, Louisiana is no longer the child's home state and Parent A cannot claim that Louisiana has home state jurisdiction, since it's been well over six months since the child was removed from the state. However, under the UCCJA State X *is* the child's home state now, since s/he has been living there continuously with Parent B for at least six consecutive months prior to the commencement of custody proceedings. Applying the PKPA home state

[58] 28 U.S.C.A. § 1738A(c)(2)(A).

preference, State X should have jurisdiction of the custody proceeding, even though Louisiana might still have a more significant connection to the child.[59]

The second improvement stems from the same change, but it affects modification of an already existing custody decree. Under the UCCJA, a state cannot modify another state's custody decree if it appears that the state with initial jurisdiction that rendered the decree still has jurisdiction under the prerequisites of the UCCJA.[60] The comments of the uniform law state that the meaning of this section requires states to "defer to the continuing jurisdiction of the court of another state as long as that state… has sufficient contact with the case to satisfy section 3 [of the UCCJA]."[61] In other words, if the child and all contestants in the case move out of the state that rendered the initial decree, *or* if the contact with the state becomes slight, then modification jurisdiction can shift to another state under the provisions of the UCCJA.[62] The problems that arose from this language stem from both its vagueness and the fact that states adopted different statutory language. The result was a situation where the definition of "sufficient contact" in one state might simply require at least one contestant to remain in the state, while another state would require the child herself to remain in the state with initial jurisdiction in order for it to maintain modification jurisdiction and preempt a second state from asserting it.[63] What the PKPA does to correct this deadlock is grant exclusive continuing jurisdiction to the state with the initial jurisdiction, so long as the child or one of the parents remains there, if that state's laws allow it to keep jurisdiction. This prevents a second state from asserting modification jurisdiction based on

[59] This assumes, of course, that the child is not an infant, in which case the degree of the child's connections to both states may be similar.
[60] UCCJA § 14(a) (1968).
[61] UCCJA § 14 (comments) (1968).
[62] *Id*.
[63] Coombs, *supra* note 51, at 2398.

its own laws, so long as the state with initial jurisdiction chooses to assert its continuing jurisdiction and has not lost its basis for doing so.

In the context of Hurricane Katrina evacuees, assume that a Louisiana court has granted a custody decree for Child, to which Parent A and Parent B are bound. Further assume that Parent A is evacuated with Child to State X, and both have been living there continuously since the evacuations in late August, while Parent A remained in Louisiana. Even though State X has technically become Child's home state by April 2006, Louisiana retains modification jurisdiction under the PKPA because Parent B remains in Louisiana. Unless Parent B moves out of the state, or a Louisiana court relinquishes jurisdiction, any petition to modify the initial custody decree will have to go through a Louisiana court because it will have sole continuing jurisdiction under the PKPA.

Congress' enactment of the PKPA brought more clarity to the questions of initial and modification jurisdiction that had been left open by the UCCJA, and it also put the full weight of the Full Faith and Credit Clause behind the principles of the UCCJA. But its enactment did not completely solve the problems surrounding interstate child custody decree jurisdiction. A significant gap left by both the UCCJA and the PKPA is the enforcement of interstate custody decrees, and it is for this and other reasons that the NCCUSL introduced the Uniform Child Custody Jurisdiction and Enforcement Act in 1997, meant to replace the UCCJA of 1968.

C. The Uniform Child Custody Jurisdiction and Enforcement Act of 1997

Since its introduction in 1997, the UCCJEA has been adopted by all but eight states.[64] It may be considered a streamlined re-write of the original UCCJA that incorporates elements of

---

[64] As of the writing of this paper, of these eight states Missouri is the only state to not even have the UCCJEA introduced in its legislature. Wisconsin, Indiana, South Carolina, Massachusetts and New Hampshire all had a version of the UCCJEA introduced in their state legislatures in

the PKPA while at the same time clarifying and reconciling aspects of both of these Acts.[65] There are four main thrusts to the UCCJEA,[66] including the adoption of the home state preference, its granting of continuing exclusive jurisdiction, an expansion of the temporary jurisdiction basis, and its most significant provision, which is the enforcement of interstate custody and visitation decrees.

The UCCJEA essentially adopts the four jurisdictional bases originally set out by the UCCJA and later adopted by the PKPA.[67] It also supports the PKPA preference given to the home state for initial jurisdiction in a child custody dispute.[68] For the few states that have not yet adopted the UCCJEA, this makes little difference, since they are still bound by federal law through the PKPA's home state preference. However, the UCCJEA also allows a state that would automatically have home state preference for initial jurisdiction to decline jurisdiction if it determines that the court of a different State would be a more appropriate forum.[69] This could be significant in the context of Hurricane Katrina evacuees. Assume that Parent A evacuated with Child to State X, while Parent B remained in Louisiana, and there is no pre-existing custody determination. After eight months, State X would have initial jurisdiction UCCJEA, thereby barring a Louisiana court from assuming jurisdiction. Under Section 207 of the UCCJEA, however, State X could decline its home state jurisdiction and allow Louisiana to assume

---

2005, and Vermont recently introduced it in January 2006 (HB 787). The Act was introduced in the Louisiana legislature after Hurricane Katrina struck the Gulf Coast region, on March 6, 2006 (HB60 2006).

[65] UCCJEA Prefatory Note.

[66] As identified by the NCCUSL's Summary of the UCCJEA, available at http://www.nccusl.org.

[67] See discussion on UCCJA and PKPA jurisdictional bases, discussed in previous sections.

[68] The home state, significant connection and "vacuum" bases are provided in § 201(a) of the UCCJEA. The emergency jurisdiction basis was separated from the first two bases (to §204 of the UCCJEA) to emphasize its temporary nature (UCCJEA § 201, Comment).

[69] Section 207 of the UCCJEA focuses on inconvenient forum, and it "authorizes courts to decide that another State is in a better position to make the custody determination, taking into consideration the relative circumstances of the parties." (UCCJEA § 207, Comments)

jurisdiction under a significant connection basis.[70] This provision was also included in the 1968 UCCJA,[71] and in drafting the UCCJEA the NCCUSL did not substantially modify the original 1968 provision.[72] In other words, all state courts are authorized to decline jurisdiction if another's state's court is deemed to be a more appropriate forum for an initial custody determination.

Another important aspect of the UCCJEA that differs from the PKPA or the UCCJA is its provision for the enforcement of sister states' custody decrees. The UCCJEA requires a state to enforce a custody order from a different state as long as the initial assumption of jurisdiction substantially conforms with the UCCJEA.[73] For example, assume that a Louisiana court has asserted initial jurisdiction in a custody proceeding under the home state basis, and has issued a custody decree granting primary physical custody to Parent B. Assume further that Parent A evacuated with Child to State X, which is one of the 42 states that has adopted the UCCJEA, and that Parent B remained in Louisiana through and after the hurricanes. Even though Parent A has been living with Child in State X for about 8 months, thus establishing State X as the child's home state, State X would be compelled to enforce the Louisiana custody decree under the UCCJEA's enforcement provision. This would follow even if the original Louisiana order

[70] This would occur after a motion of State X's own court, a motion by one of the parties or a motion by a Louisiana court. (UCCJEA § 207(a)). In deciding whether to decline jurisdiction, the UCCJEA would require a State X court to consider all relevant factors, including eight that are set out by the UCCJEA. (UCCJEA § 207(b)).
[71] UCCJA §7 (1968).
[72] UCCJEA §7 (1997) (Comment).
[73] Section 303(a) of the UCCJEA states: "A court of this State shall recognize and enforce a child-custody determination of a court of another State if the latter court exercised jurisdiction in substantial conformity with this [Act] or the determination was made under factual circumstances meeting the jurisdictional standards of this [Act] and the determination has not been modified in accordance with this [Act]."

granted Parent B visitation instead of physical custody.[74] For the decree to be enforced in a different state, the order must first be registered with the second state, and the UCCJEA includes provisions for expedited enforcement of a custody decree for use in situations where the parent of a kidnapped child needs to seek help from criminal law enforcement to locate a child.[75]

A problem would arise, however, if a Louisiana court had asserted initial jurisdiction in a custody proceeding under the UCCJA's significant connection basis in a case where the child's home state was not Louisiana. This would not substantially conform to the UCCJEA provisions, since the UCCJEA would only allow the child's home state, where there is one, to assume initial jurisdiction. This would also not conform to federal law under the PKPA, which also has a home state preference. In such a situation, and using the hypothetical in the previous paragraph as an illustration, State X would not be compelled under the UCCJEA to enforce Louisiana's original custody determination and could assume jurisdiction over the custody proceeding based on the home state preference.

D. The UCCJA, PKPA, and UCCJEA in the Context of Disaster Evacuations

The goals of the reducing interstate jurisdictional conflict and roadblocks, discouraging child kidnapping, and promoting uniformity of custody decree enforcement between the states are crucial and are served by the uniform acts as well as the PKPA. Together, the uniform acts and the PKPA address the jurisdictional outcome of situations where a parent removes a child from either his or her home state or from the custody of the other parent. But neither the uniform acts nor the PKPA directly take into account situations where parents might have evacuated for long and indefinite periods of time and were unable to return to their homes due to massive

---

[74] Section 102 (2) of the UCCJEA defines child custody determination as a "judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child" including those that are either permanent, temporary, initial, or modification orders.
[75] UCCJEA § 308 (1997).

destruction of local infrastructure and health and safety concerns, such as occurred in the Gulf Coast region. As the illustrations in the previous three sections have illustrated, such a long evacuation period might, in some cases, change where the child's home state is under both the PKPA and the UCCJEA. This would, in turn, jeopardize the ability of the non-evacuated parent still living in what was the child's home state at the time of the evacuation (in our examples, Louisiana) from initiating custody proceedings in that state.

However, the home state preference under the PKPA and the UCCJEA need not prevent the non-evacuated parent from seeking a custody determination in the original state. Though neither the UCCJA nor the UCCJEA directly address long-term displacement due to disaster evacuations, it is possible for the new home state to decline jurisdiction, thereby allowing the original home state to assume jurisdiction in an initial custody determination. Ultimately, however, it will all depend on the facts of each individual case and on whether the original home state is actually the most appropriate forum for making such a determination. It could be the case that long-term displacement due to an emergency evacuation from the child's home state, as well as the effects of a disaster on that state and on that child's connections to the state might make it a less appropriate forum than the new home state. On the other hand, it could also be the case that the original home state remains a more appropriate forum.

There are innumerable factors that might come into play in this determination. In the wake of Hurricane Katrina, there is also an endless array of logistical, financial, and practical concerns that will make it more difficult for parents to resolve their custody disputes in the courts, especially when the contestants have been displaced to one or more states. Ultimately, the important effect of the UCCJA and the UCCJEA is that there is a certain degree of flexibility

afforded to State courts that would enable judges to choose the best available forum based on all of the relevant facts at their disposal.

In those situations where a Louisiana court has already made a custody determination or where Louisiana can assert initial jurisdiction in a custody proceeding, there is also a substantive law issue that comes into play: relocation. Louisiana's relocation statute would apply in those situations where a Louisiana court has asserted initial jurisdiction in a child custody proceeding or can assert it in accordance with the UCCJA and the PKPA. The following section discusses this statute and its implication in the mass displacement of thousands of Louisiana families.

III. LOUISIANA'S RELOCATION REQUIREMENT

Not only were families devastated by the storm but the court system was as well.[76] Courts were shut down for months, records were lost, and people left without notice. In this chaos, some parents were able to abscond with their child and can use the breakdown in the system to help their efforts. While Louisiana law outlines strict relocation guidelines to prevent one parent from leaving with the child, some parents will be able to circumnavigate this law because of system wide failure and confusion. Still, many parents will work together to restore their families using appropriate legal channels. It is advisable that all parents who want to legally relocate file for relocation according to Louisiana law. The parent seeking relocation has the burden of proving the proposed relocation is in good faith.

Under Louisiana law, a custodial parent must give notice to the other parent of the proposed relocation of the child's permanent residence. Relocation happens under the following circumstances: when a child is moved out of state, when the child is moved more than 150 miles

[76] Steven J. Lane, New Orleans family law practitioner at Herman, Herman, Katz & Codar, Remarks at Texas Bar CLE Webcast: *Jurisdictional and Practical Problems in Family Law Following Katrina* (Mar. 22, 2006).

away from the other parent, and when there is a change in a child's permanent residence for at least 60 days. Just as a temporary relocation is not considered permanent relocation for the purposes of triggering a notice requirement, an emergency evacuation (such as that experienced by thousands of hurricane evacuees in the Gulf Coast region) would not constitute permanent relocation either.

If a parent contests the proposed relocation, Louisiana courts will take several factors into account to determine whether the parent can relocate the child.[77] For post-Katrina cases, the court is advised to consider "factors such as the best interests of the child, the feasibility of relocation by the objecting parent, each parent's reasons for seeking or opposing the relocation."[78] According to current law, "the court may not consider whether or not the person

---

[77] LA. REV. STAT.§ 9:355:12 (West 2005) sets forth 12 factors: (1) The nature, quality, extent of involvement, and duration of the child's relationship with the parent proposing to relocate and with the nonrelocating parent, siblings, and other significant persons in the child's life; (2) The age, developmental stage, needs of the child, and the likely impact the relocation will have on the child's physical, educational, and emotional development, taking into consideration any special needs of the child. (3) The feasibility of preserving a good relationship between the nonrelocating parent and the child through suitable visitation arrangements, considering the logistics and financial circumstances of the parties. (4) The child's preference, taking into consideration the age and maturity of the child. (5) Whether there is an established pattern of conduct of the parent seeking the relocation, either to promote or thwart the relationship of the child and the nonrelocating party. (6) Whether the relocation of the child will enhance the general quality of life for both the custodial parent seeking the relocation and the child, including but not limited to financial or emotional benefit or educational opportunity. (7) The reasons of each parent for seeking or opposing the relocation. (8) The current employment and economic circumstances of each parent and whether or not the proposed relocation is necessary to improve the circumstances of the parent seeking relocation of the child. (9) The extent to which the objecting parent has fulfilled his or her financial obligations to the parent seeking relocation, including child support, spousal support, and community property obligations. (10) The feasibility of a relocation by the objecting parent. (11) Any history of substance abuse or violence by either parent, including a consideration of the severity of such conduct and the failure or success of any attempts at rehabilitation. (12) Any other factors affecting the best interest of the child.

[78] Lane, *supra* note 16.

seeking relocation of the child will relocate without the child if relocation is denied or whether or not the person opposing relocation will also relocate if relocation is allowed."[79]

When considering relocation issues the court will have to make case-by-case determinations. Relocation after the hurricane gives rise to a host of difficult factors for the court to weigh. Determining what is in the best interest of the child will be difficult considering the recent upheaval in families' lives as well as in the city of New Orleans. Parents will encounter a seemingly endless barrage of questions. Will they be able to find a job in Louisiana? What are the potential environmental hazards their children might encounter? Is it better to return home after their children have adjusted to a new school in another state? What educational opportunities are available in Louisiana? In addition to assessing the economic stability of both parents, the court will also take into account these complicated issues related to quality of life for both custodial parent and child.

The New York Times recently profiled a father who contested the relocation of his daughter. Prior to the storm, he and his wife shared joint custody of his daughter.[80] His wife evacuated with their daughter and intends to remain in Mississippi. This example of a family torn apart by the storm demonstrates the Louisiana courts more lenient approach to contested relocation cases in the face of the fallout from this disaster. If not for Katrina, it is unlikely that the court would have approved such a hasty, potentially unnecessary move because it would take the child away from a loving parent.

CONCLUSION

---

[79] LA. REV. STAT.§ 9:355:12 (West 2005).
[80] Lynette Clemetson, *Torn by Storm, Families Tangle Anew on Custody*, N.Y. TIMES, April 16, 2006, §1, at 4.

While the rebuilding process gets underway in New Orleans, former residents also begin the slow process of piecing their family lives back together. For some, relocation within Louisiana was a viable option. For those displaced out of state, navigating family law cases will be especially arduous because of the additional burden of dealing with jurisdictional and conflict of laws issues. This paper aimed to clarify some of the issues that will arise for displaced persons in relation to divorce and child custody, and assess how current state and federal laws may play out under such unprecedented and devastating circumstances as those resulting from the hurricanes

Exec. Order No. KBB 2005-32 extended filing deadlines to keep divorces underway in Louisiana from being derailed. While Louisiana law covered Louisiana residents, many evacuees will eventually seek a divorce outside of the state. Once spouses domicile in a new state, the forum state will be able to grant a divorce according to its laws. For spouses that entered into a covenant marriage in Louisiana, a unique conflict of laws issue arises. Sister states do not have to uphold the strict covenant limitations on divorce. Still, it is yet to be decided whether sister states will recognize the Declaration of Intent or consider it violation no-fault public policy.

The UCCJA, UCCJEA and the PKPA together tackle the problems of how state courts should address child custody jurisdiction and decree enforcement and can be applied to custody proceedings arising in the wake of the mass displacement. It is very likely, however, that strict application of these laws will result in parents having to return to Louisiana in order to participate in a child custody proceeding. This is in spite of the financial and physical losses already experienced by thousands of those who were forced to evacuate, and the difficulties that many parents might face in returning to Louisiana due to housing shortages, infrastructure breakdown, lack of money or jobs, and health concerns among other factors.

On the other hand, a situation with such widespread displacement as that resulting from Hurricane Katrina is precisely the sort of situation that would give rise to thousands of conflicting custody decrees and to inconsistent enforcement of interstate custody determinations. Furthermore, while most parents who fled the state with their children have done so in good faith, some parents will try to take advantage of the emergency evacuations. By removing their children permanently from Louisiana they will try to prevent the other parent's attempts to establish custody or visitation or enforce a current order. It is too soon to know what the impact of the application of the UCCJEA, the UCCJA and the PKPA to interstate custody disputes arising from Hurricane Katrina will be. As more and more custody proceedings are introduced in the courts after the hurricanes, the legal community should remain aware of ways to that these laws can facilitate, not complicate, the resolution of custody disputes.