

Divorce creates all kinds of questions and dilemmas - Q & A on the law Ventura County Star (CA)
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Author: Lindsey B. Green Guest writer

QUESTION: Will the court allow me to file documents in the family law court if I have recently moved to the Southern California area?

ANSWER: If you attempt to file for a dissolution (more commonly known as divorce) the family code requires three months of residency in the county within Southern California and six months of residency in the state of California prior to filing the petition for dissolution.

If you file for a legal separation however which can allow you to go into court for similar relief as dissolution the six-month/three-month residency requirements do not apply.

QUESTION: What if I have not lived in the county for three months or the state for six months and I still file for divorce?

ANSWER: The opposing spouse after being personally served has 30 days in which to file a motion with the court to defeat your petition for dissolution based upon the lack of residency requirements.

If the opposing spouse files a response to the dissolution or does nothing however he waives the residency requirements and the dissolution still can proceed despite the defect in residency.

QUESTION: I am the mother of two minor children. My husband and I were divorced in the state of Nevada.

According to the Nevada divorce judgment I have primary physical custody over the children and my ex-husband was awarded reasonable visitation with the children every other weekend.

My ex-husband allowed me to move to California and I have been here with the children continuously for a year. May I go into court to modify visitation as it is not feasible for my ex-husband to see the minor children every other weekend?

ANSWER: Courts have adopted the Uniform Child Custody Jurisdiction Act (UCCJA).

Under the "home state" rule where children have resided in one state for at least six months you could make the argument that now California and not Nevada has the power to make orders as to visitation and custody.

Thus you would have to register your divorce judgment from Nevada into the California court and attempt to go into court in Southern California to change visitation for your ex-husband.

QUESTION: I am trying to establish my boyfriend as the father of our 4-month-old child under a paternity theory. We both lived in Oregon but the child was conceived on a vacation in Southern California.

Can I conduct my paternity matter in California where I have lived for the past six months or do I have to go back to Oregon and deal with the paternity issue there?

ANSWER: Despite you and your boyfriend's residence formally being in Oregon as long as sexual relations that conceived a child took place in California California has jurisdiction to determine paternity.

Under another theory called minimum contacts if you can demonstrate to the court that the boyfriend had substantial ties to California such as home or business ownership or traveling consistently on business to California you can show that your boyfriend has personal jurisdiction

and has purposefully availed himself to the jurisdiction of California so California can decide the paternity case on these connections as well.

QUESTION: My husband and I are going through a divorce. We are both retired. We live six months of the year in Florida and the other six in California.

I filed my California divorce papers first and had my husband personally served while he was in Florida. I just received in the mail today a divorce petition from Florida.

Where will the divorce case be decided in California or in Florida?

ANSWER: It is clear minimum contacts for your husband exist in California because he resides in California half the year. Thus personal jurisdiction for him exists and California has the power to hear the divorce case.

Further under the theory of first in time first in right since you filed first and served first California is more likely the court to allow jurisdiction over the divorce than Florida. That does not mean however you should ignore the Florida summons and petition in regard to the divorce papers you just received.

I recommend you hire a lawyer in Florida to attempt to defeat and dismiss the Florida divorce petition your husband recently has filed and served upon you.

QUESTION: I am a man going through a divorce in California right now.

My mother has a strong relationship with my son who is 4. My mother wants court-ordered visitation along with my visitation. Does the court have the power to grant this visitation?

ANSWER: At present the court has no jurisdiction or ability over the paternal grandmother to grant visitation.

Your mother would have to file a motion with the court to be joined as a party in the divorce action first and foremost. Only after the joinder is granted by the court making your mother a party to the lawsuit does your mother have a chance to voice her desires for grandparent visitation.

-- Lindsey B. Green is a family law attorney in private practice and a partner with the law firm of Gumm & Green LLP in Westlake Village. He can be reached at (818) 707-4233 or (805) 577-7657. Advice in "Q and A on the Law" is not intended to replace legal counsel. The column is a community service of the Ventura County Bar Association and the Ventura County Star.