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## DIVORCE

# Courts' Authority to Order Alimony

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Courts are able to hear and decide legal actions only when they have authority over the particular type of lawsuit or legal matter, which is called "subject matter" jurisdiction. For example, a divorce court can't decide suits involving speeding tickets because they lack subject matter jurisdiction.

Just as important, however, is the requirement that a court have authority over the parties in the lawsuit, which is called "personal" or "in personam" jurisdiction. Personal jurisdiction in divorce actions, and especially when alimony or support issues are involved, differs from personal jurisdiction in other types of legal matters. And, if you're involved in a divorce where alimony is being asked for, you need to know when a court can order alimony.

## Personal Jurisdiction

In most civil lawsuits, as opposed to criminal cases, a court's personal jurisdiction is usually based upon where the defendant lives. For example, if you're from Ohio and you're injured in a car accident in Kentucky where the other driver lives, you can't sue the other driver in an Ohio court. That is because the other driver does not have enough contacts or ties with Ohio to justify forcing him to defend a lawsuit in another state.

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In divorce actions, however, the rules for personal jurisdiction are a bit different: a court can have jurisdiction over a divorce based upon the contacts that the plaintiff-spouse has with the state and regardless of the defendant-spouse's contacts. For example, if you were married in Ohio and later moved to Tennessee where you now permanently live, but your spouse later moved to Nevada, you could file a divorce action in Tennessee.

However, the personal jurisdiction rules change a bit again when alimony is being requested in a divorce action.

# Personal Jurisdiction and Alimony

**In order for a court to have authority to order alimony or spousal support, the court must have in personam jurisdiction over the defendant-spouse,** just as with all other civil lawsuits.

In order to establish personal jurisdiction, the defendant must have sufficient "minimum contacts" with the state where the divorce action was filed. The idea here is fairness: a defendant-spouse shouldn't have to go through the inconvenience and expense of having to defend an alimony action in a state where he or she has no contacts or ties and does not enjoy any of the benefits or protections of the laws and the courts of that state.

The reason for the difference in rules between the divorce itself and alimony is based on the fact that alimony involves money, and an order to pay money can be enforced by a personal judgment. Under these circumstances, the law requires that a court have personal jurisdiction or power over a defendant.

**For example,** if your ex-spouse is ordered to pay you alimony and he or she refuses to do so, you can file a lawsuit against your ex-spouse and get a judgment against him or her for the amount of past due alimony ("arrearage").

**What are "sufficient minimum contacts?"** It is impossible to list all of the ways in which a defendant-spouse's contacts with a state will permit a divorce court to order him or her to pay alimony. However, courts usually will find sufficient contacts when:

- The parties were married in and lived in the state before the divorce and alimony actions were filed and the plaintiff-spouse remained in that state
- The defendant-spouse is served with notice of the alimony action while he or she is in the state, even if only for a brief visit
- The defendant spouse owns real estate in the state

# Jurisdiction to Enforce Alimony

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In general, if the parties no longer live in the same state, establishing a court's power to enforce an alimony order can be questionable or difficult. However, a court in the recipient spouse's state will enforce an alimony order when:

- The payor-spouse has been ordered to pay a lump sum of money as alimony and has not done so, or
- The payor-spouse has not made alimony installment payments as ordered by a court, such as monthly payments, and so the payor-spouse is in "arrear"

## Questions For Your Attorney

My wife left me, moved to another state, and then filed for divorce. Can she get alimony as part of the divorce?

After I filed for divorce, my husband moved to another state, but before I was granted a divorce, he moved again to a different state, where he's been for the past six months. Where do I need to file a petition for spousal support?

Several months ago, my wife moved with our children to another state and filed for divorce and alimony. I was thinking of going out to visit my children. Is there any reason why I shouldn't go?

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