

CURRENT STATUS AND UNANSWERED QUESTIONS IN NEVADA FAMILY LAW JURISDICTION



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DIVISIBLE DIVORCE

- **Subject Matter Jurisdiction**
 - Light Switch
 - Failure to Obtain SMJ Can't be Waived
 - Absolute Absence to Hear Case
 - If Court Proceeds the Orders Are Void (Or Voidable)
- **Personal Jurisdiction**
 - Obtained by Statute, Rules, and Policies
 - An individual's Actions Can Determine Personal Jurisdiction
- **Backward Jurisdictional Analysis**
 - Personal Jurisdiction is Determined First
 - SMJ is Determined Second
- **Incidents of the Marriage**
 - Marital Status
 - Property Division
 - Alimony
 - Child Custody, Visitation, and Support

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DIVORCE JURISDICTION

- **All That is Needed Is Personal Jurisdiction**
 - Just need Residence Not Domicile
 - No More Special Appearances
 - More Than One Court May Have Jurisdiction
 - The Court may Decide Not to Exercise Jurisdiction
 - To Basic Reasons To Defer
 - Comity
 - Abstention
 - Long-arm Statute
 - Expanded in 1993
 - Last Matrimonial Domicile

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INITIAL CHILD CUSTODY

- **UCCJEA**
 - Created in 1997 and Replaced the UCCJA
 - Adopted in Nevada in 2003
 - Home State Priority
 - Clarification of Emergency Jurisdiction
 - Four Choices for Exclusive Jurisdiction
 - Home State
 - Significant Connection
 - Only State Interested
 - Vacuum
 - Highlander Rule – There Can Be Only One

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CHILD CUSTODY MODIFICATION JURISDICTION

- **Exclusive Continuing Jurisdiction (CEJ)**
 - Nevada Court Determines No Child, Parent, or Person Acting As a Parent Has A Significant Connection to the State, And No Substantial Evidence Exists Concerning the care, protection, training, or other personal relationships of the child.
 - Or a Court Here or Elsewhere Makes The Determination that the child nor either Parent or Person Acting As a Parent Resides in the State
 - Loses Jurisdiction If Person Remaining Leaves
 - If Parent With Custody Returns Before Another Case is Filed Elsewhere, Nevada Regains Jurisdiction
 - Not True For the Non-Custodial Parent

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INITIAL CHILD SUPPORT

- **UIFSA**
 - Adopted in Every State (Nevada in 1997)
 - Different Jurisdictional Test Than For Custody
 - Multiple Bases To Exercise Jurisdiction Over A Non-Resident
 - Personal Service Within The State
 - Submitting to Jurisdiction By Consent (General Appearance)
 - Having Resided In The State With The Child
 - Having Resided In The State and Providing Prenatal Expenses or Support For The Child
 - Child Resides In The State by Directives Of The Non-Resident
 - The Child Was Conceived Here
 - Any Basis Consistent With State or National Constitution

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CHILD SUPPORT MODIFICATION

- When Everyone Leaves State With CEJ
 - Support Can be Enforced Anywhere the Order Is Registered
 - Modification Requires The Away Game
 - Court Can't Decline Jurisdiction
 - Jurisdiction Can "Spring Back"
 - Duration of Support Is Fixed

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MILITARY RETIREMENT BENEFITS

- Federal Jurisdiction
 - Different Than For Other Retirements
 - Must Exercise Jurisdiction As A Result of:
 - Residence Other Than By Military Assignment
 - Domicile In the Jurisdiction
 - Consent to Jurisdiction (Participation in The Case)
 - These Restrictions Don't Apply To Support Cases
- Can't Divide Disability Pay
- **CAN** Include It For Support Purposes

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FEES WHERE JURISDICTION IS CONTESTED

- Out-of-State Party
 - Can't Award Fees If They Never Make An Appearance
 - Mere Participation By Out-Of-State Litigant In Child Custody or Support Case Does Not Confer Jurisdiction
 - However, Can Award Fees Against The Nevada Resident

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FAMILY COURT JURISDICTION

- Special Training
- Can hear Any Case
- Landreth
- NRS 3.025 – Family Law Cases Must Be Transferred to Family Court

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BANKRUPTCY

- Support Matters Can Proceed Even if There Is An Automatic Stay in Place
- The Court Has Jurisdiction to Determine What Is and Is Not A Domestic Support Obligation (DSO) Which Is Not Dischargeable
 - Attorney's Fees Incurred in Collecting Support Obligations **ARE** a DSO

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CONCLUSION

- Jurisdiction Must Be Considered For Each Issue Before Considering The Merits
- It Must Be Done First To Avoid Cost

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