

Illinois Divorce Jurisdiction

Subject Matter Jurisdiction: The word "jurisdiction" refers to several different ideas. An attorney must determine whether a case may properly be brought before a particular court. This is known as "subject matter jurisdiction." Some issues between married couples may be resolved in courts other than divorce court¹ – other issues must be brought before only the divorce court. The most obvious example of a non-divorce court hearing a case between husband and wife is when a criminal court adjudicates an Order of Protection.² In more populous counties, the court system has entire units staffed with scores of judges and clerks who do nothing but divorce and paternity cases. In less populous counties, maybe only one or two judges will hold court and they will change hats (criminal, chancery, family law) depending on the case that is called. In every county of Illinois, some child support matters must be brought in a court system separate from the usual family law court.³ You should work with a knowledgeable attorney to be sure you don't file – and conclude – your case in the wrong court. The decision of which court to use may seem simple and straightforward, but it is more involved than it first appears. It can be used creatively by a good attorney to create great bargaining leverage and to rope in an opponent early in a case.

Be forewarned, however: making mistakes in this decision of which court to use can prove fatal to a good case. For example, our law firm was once faced with a case where the client's first attorney started the case in the wrong court, finished the case in that same wrong court, and then the client hired us to try to salvage and enforce the orders obtained. All of the efforts by the first attorney proved worthless – because that court lacked subject matter jurisdiction – and the case had to be done from scratch a second time... this time, in the right court.

Jurisdiction; Personal Jurisdiction: Personal jurisdiction refers to the power a court has over an individual. If you've never been to Alaska, for example, then the Alaskan courts probably have no power over you. Similarly, if you landed at O'Hare airport on a layover, you couldn't just get a divorce while you were waiting for your next flight. All states have laws that determine when persons qualify to avail themselves of – and are susceptible to – the state's legal system.

Personal jurisdiction is now pretty easy to satisfy under Illinois' divorce law. It used to be that, to satisfy the jurisdictional requirements to file for a divorce, one had to live within the State for at least six months and the grounds for the divorce had to occur within Illinois. If the grounds for the divorce occurred outside of Illinois (that is, if you fled from another state to obtain a divorce) one would have to wait at least a year before filing a case. Imagine that – if you moved to Illinois and your spouse soon thereafter had an affair while on a trip outside of Illinois, you'd have to wait an entire year before you could even file a case.

Today, personal jurisdiction for Illinois divorce cases is determined solely on the basis of "residency."⁴ The waiting period is virtually nonexistent and in many cases, there is no waiting period.⁵ You should work with a good attorney who has a good working knowledge of the Illinois courts' definition of "residency." Residency is not defined specifically in the law, but has been defined by courts over the years. An experienced family law attorney can tell you whether you satisfy Illinois' residency requirements.⁶

If you live outside of Illinois, but want to get divorced within Illinois under Illinois law, talk with a knowledgeable attorney who can help you meet the technical requirements and get your case done quickly and easily.

Jurisdiction; Personal Jurisdiction Over an Absent Spouse: If your spouse doesn't live in Illinois, the court may, or may not, be able to exercise personal jurisdiction over him/ her. In some cases the court can exercise "long-arm jurisdiction" over a spouse who has never been to Illinois.⁷