A legal note from Marshal Willick about a new twist in jurisdiction when either spouse is a military member

Normally, a person's State of residence is where that person is actually living, but State laws diverge surprisingly widely on the meaning of the terms "residence" and "domicile." In the apparent majority, "residence" is a physical question of location at the time of filing, while "domicile" is that permanent home "to which one returns."

Where one party to a marriage is a member of the military, that party has long enjoyed the ability to maintain a State of residence in one place, while actually living in a number of other places during the military career. Nevada law is in the mainstream on this issue.

No such protection, however, has ever been available to the *non*-military spouse in such a marriage, who has generally been held to be a resident in whatever State the member spouse was stationed (presuming the parties live together).

That has now changed. The Servicemembers Civil Relief Act ("SCRA") has been amended by the new "Military Spouses Residency Relief Act" to essentially extend to spouses of military personnel the protections previously afforded just to military members. It is easiest to think of the new law in the negative; boiled down, it says:

> A spouse of a military member accompanying a servicemember who is on military orders who relocates from one State to another neither loses nor gains a domicile or State of residence by that relocation for purposes of federal or State voting rights or taxation.

Presumably, this will be applied to "residence" for purposes of legal actions as well; while there is some division of authority, many States, including Nevada, permit a member to be a "resident" of some other State, while still filing an action as a State law Plaintiff. And most States treat personal service of process within their borders as equivalent to residence for purposes of jurisdiction over a defendant.

For purposes of divorce litigation, the new law creates something of a brave new world, since it now seems to be possible for either party to a military marriage to be a resident of one or more other States than where the parties actually live. Conceivably, the law could create a bizarre situation in which the parties live in Nevada, but only the military member's State of residence elsewhere would have jurisdiction to divide the military retirement under the Uniform Services Former Spouses Protection Act, but Nevada would be the mandatory jurisdiction for determination of child custody under the Uniform Child Custody Jurisdiction and Enforcement Act, while the non-military spouse could be a resident of a third State.

Even in non-family law matters, this new residency law could alter legal relationships, liability to suit, and enforceability of judgments in a host of contractual and tort matters.

The federal government does not have a wonderful track record when it comes to Supremacy Clause

impacts on State-law governed litigation, especially in family law. It's a pretty safe bet that this most recent change will, through the law of unintended consequences, cause a pretty wide variety of unexpected obstacles and complications in various State court actions. Practitioners – and litigants – should watch out for them.

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