

*Smith v. Jones*

## RESEARCH UPDATE

You asked us to update and check the research in the briefs you prepared and in your opponent's brief in the above-referenced case.

We have checked all the cases cited in the briefs for any additional citations to those authorities since the date you filed your reply brief. A summary of those citations is being provided separately.

We also did additional research on the issue of whether the use of "residence" in the Act should be interpreted as "domicile." We conducted Westlaw searches on the Uniform Act and various iterations of "residence" and "domicile." It still appears that no other state court has directly addressed the issue of how "residence" should be interpreted. Here are some of the cases, including older cases with ideas not presented in your briefs.

*Harbison v. Johnson* (N.M. App. 2001) 29 P.3d 1136. In this case, the New Mexico Court of Appeals rejected petitioner's effort to modify an order because one of the parents did not reside in New Mexico. The court also distinguished modification from enforcement. The mother sought modification of a visitation and support order entered by a Texas court. She and the child lived in New Mexico while the father lived in Texas. The father sought enforcement of the order in New Mexico, and the mother filed a counterclaim for modification of the child support order. The court concluded that because "the father continues to reside in Texas," Texas has continuing exclusive jurisdiction to modify the order. *Harbison, supra*, 29 P.3d at p. 1141. The court noted that modification was different from enforcement – the order could be enforced by the mother after registration, but modification was beyond the court's jurisdiction. *Id.* at 1142.

*State Support Enforcement Servs. v. Beasley* (La. App. 2001) 801 So.2d 515. In this recent Louisiana case, the court discussed the importance of avoiding multiple orders and stated that the Uniform law is designed to avoid such situations.

*In re Marriage of Holder* (Cal. App. March 20, 2002) 2002 WL 443397. This is the most recent California case to address similar issues. In *Holder*, a California serviceman temporarily stationed in Germany argued that the trial

court lacked jurisdiction to hear custody matters because Germany, rather than California, was his children's home state under the Uniform Child Custody Jurisdiction and Enforcement Act. The Court avoided the issue of deciding as a matter of law whether Germany or California was the home state under the statute, finding that the soldier made admissions that California was his home state for other purposes. The Court did note that other cases had found that residence or domicile was not altered by military service. Unfortunately, this decision is unpublished and cannot be cited.

*In re Marriage of Hattis* (1987) 196 Cal.App.3d 1162, 1175-1177 (conc. opn. of Benke, J.). The trial court cited this case. In a concurring opinion, the concurring justice noted that a military service person retains the domicile or residence in the state from which he or she entered the service.