

ORDERS FOR PROTECTION: FINDING PERSONAL JURISDICTION OVER OUT-OF-STATE BATTERERS

This technical assistance packet explains the legal concept of personal jurisdiction as it relates to obtaining Orders for Protection (OFP) in the state of Minnesota. It is common for battered women to run from the states where their batterers live. However, it is often difficult for a battered woman to get an Order for Protection in the new state where she lives. The reason for this difficulty is because state courts may not have personal jurisdiction (i.e. authority to make a court order against a person) over a person who lives in another state. As a result, battered women without court protection are vulnerable to additional harm from their abusers.

The purpose of this technical assistance packet is to simplify the concept of personal jurisdiction. After reading this packet, you should have a better understanding of the reasons a state court may not be able to issue an Order for Protection against a particular individual. For those of you who are interested, the footnotes contain more technical legal information than the regular text. You do not need to read or understand the footnotes to have a basic understanding of this area of the law.

Attachments: MN §§ 543.19 and 518B.01, subds. 3, 5, 8.

Compiled June 1997
Last Updated February 2003

Finding Personal Jurisdiction Over Nonresident Batterers when Seeking Orders for Protection

I) Common Vocabulary used in Court

1. **Order for Protection:** An OFP is a restraining order. A battered woman may get an OFP ordering her abuser to stay away from her.
2. **Personal Jurisdiction:** When a court has power to make decisions or court orders in regards to a person, we say the court has personal jurisdiction over that person. The court automatically has personal jurisdiction over anyone who lives in the state.
3. **Nonresident:** A person who lives in another state.
4. **Petitioner:** A person who asks the court to take action on a matter, such as issuing an OFP.
5. **Respondent:** The person that the petitioner wants to get an OFP against (usually the batterer).
6. **Civil Action:** A court action (e.g. lawsuit) that is started by a person (NOT the government. If the government is the party starting the court action, it is a *criminal* action).
7. **Forum State:** The state where the lawsuit will take place if the court has personal jurisdiction over all parties.

II) The Significance of Personal Jurisdiction

Personal jurisdiction is a complicated legal requirement. A court must have personal jurisdiction over both the petitioner and respondent before it will agree to listen to the case. A state generally has personal jurisdiction over its residents. However, it is often difficult for a court to get personal jurisdiction over a person who does not live in the state.

Even though a woman is farther away from her batterer when she moves to another state, she might still want to get an OFP. This technical assistance packet is meant to help women who are in Minnesota who want to get an OFP against their batterer, even though he lives in another state.

III) Orders for Protection Issued in Another State - Full Faith & Credit Clause

If a woman gets a valid OFP in any state in the United States, all other states (including Minnesota) are required to honor and enforce it. This is true because both the Constitution¹ and the Violence Against Women Act² (VAWA) contain “full faith and credit” clauses. Because of full faith and credit, if a battered woman returns to the state where her batterer lives to get an OFP, then the OFP will be enforced in the new state where she lives. However, this option is not realistic for many

¹ States recognize other states’ orders according to the “full faith and credit” clause of the Constitution. U.S. Const. Art. IV, § 1.

² Under the Full Faith and Credit Clause of the Violence Against Women Act (VAWA) (18 U.S.C. § 2265), a battered woman who moves to, or even visits another state, will not lose the legal protections she received in her “old” state.

women who are afraid to return to the state where their batterer lives, or are unable to travel. In that case, the battered woman may try to get an OFP in her new state. To do this, she must show that the new state court (in this case the Minnesota court) has personal jurisdiction over her batterer.

IV) How to get Personal Jurisdiction under Minnesota Law

There are several ways to get jurisdiction over a respondent. The first two are simple. First, a respondent may volunteer personal jurisdiction to the court. This means that the respondent is letting the state have jurisdiction, even though the state may not otherwise have personal jurisdiction over him. The second way to get personal jurisdiction over a respondent is to serve the respondent with court papers while he is in the forum state. For example, if a Wisconsin resident is visiting Minnesota, the Minnesota court may get personal jurisdiction over him by serving him while he is in Minnesota. This is called “tag” jurisdiction.

Because the first two ways to get personal jurisdiction do not always happen, state statutes allow a court to find personal jurisdiction over non-residents if the petitioner (in this case the battered woman) provides the right evidence. This involves two steps:

- 1) Petitioner must show that the **Minnesota long-arm statute**³ applies.
- 2) Petitioner must show that the Respondent has had **sufficient minimum contacts with Minnesota**.

Both steps must be made before the court will exercise jurisdiction.

Step 1: How to show that the Minnesota Long-arm Statute applies. Establishing Physical and Emotional Injury

Long-arm statutes are useful because they give state courts the authority to exercise personal jurisdiction over nonresidents. A petitioner for an OFP can meet the requirements of the long-arm statute by showing that the act causing injury either happened in Minnesota, or happened in another state but injured her in Minnesota.

The easiest way to meet the requirements of the long-arm statute is to show that the respondent physically assaulted the petitioner in Minnesota. However, because of the long-arm statute, Minnesota courts may also get personal jurisdiction over a nonresident respondent if the petitioner can show that the respondent’s actions outside of Minnesota caused her to suffer emotional distress in Minnesota.⁴ Some examples of acts that may cause such injuries include threatening phone calls, letters, or third party contact (e.g. messages sent through “friends”) from the respondent to the battered woman while she is residing in Minnesota.

Another emotional injury that may be sufficient for the long arm statute to apply is the fear resulting from the battery. Although the fear of domestic violence is often ongoing after the battered woman has left the state where the respondent resides, the petitioner should present the fear as a *separate*

³ Minn. Stat. § 543.19.

⁴ See Howells v. McKibben, 281 N.W. 2d 154, 156-57 (Minn. 1979).

injury that occurred while the battered woman resided *in Minnesota*. The petitioner must be very specific that the separate emotional injury occurred while she resided in Minnesota because "suffering" incidental to an injury which occurred *outside* Minnesota does not fall under the long-arm statute.⁵

The petitioner should make it clear that fear of further assault or emotional injury, created damages to her while in Minnesota. Such damages may include moving expenses, lost wages, counseling/therapy, and any medical treatments required in Minnesota.⁶

Once the petitioner has met any of the long-arm statute requirements, she must then establish that the respondent has minimum contacts with the state.

Step 2: Establishing Sufficient Minimum Contacts Between the Abuser and the Battered Woman's "New" State

The second requirement for personal jurisdiction over a nonresident is to show that the nonresident respondent has sufficient minimum contacts with the battered woman's "new" state.⁷ Minnesota courts look at five factors when determining whether sufficient minimum contacts exist. There is no exact formula for satisfying this requirement and the petitioner does not necessarily need to show that all five factors apply. The first three factors are the *quantity of contacts with the forum state*, the *nature and quality of those contacts*, and the *connection between the contacts and the cause of action (the OFP petition)*. These first three factors are the most important in the minimum contacts analysis. The last two factors are the *state's interest in providing a forum for the petitioner's claim* and the *convenience of both parties in litigating the claim in the Minnesota court*; these last two factors are secondary factors. A court will not consider these last two factors unless the petitioner can show the first three factors exist.

Factor 1: Quantity of Contacts with the State

The more contacts a nonresident respondent has with the forum state, the more likely it is that a court will exercise personal jurisdiction. Minnesota courts will consider both contacts that are related and unrelated to the OFP petition when determining whether the quantity of contacts is sufficient to establish personal jurisdiction. However, courts will require fewer contacts between the respondent and the "new" state if the contacts are related to the petitioner's claim (see Factor #3 below).

Factor 2: Nature and Quality of Contacts

The crucial focus when establishing the nature and quality of contacts factor is "the relationship among the respondent, the forum (state where petition is filed), and the litigation," *not* the relationship between the respondent and the petitioner.⁸ An additional and extremely important part of this factor is whether the contact has the potential to cause

⁵ See Anderson v. Matson Navigation Co., 336 F.Supp. 1388, 1391 (D. Minn. 1971).

⁶ See Howells, 281 N.W. 2d at 154 and Anderson v. Luitjens, 311 Minn. 203 (1976).

⁷ To satisfy respondent's constitutional right to due process, a nonresident respondent must "have certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945).

⁸ West American Insurance Co. v. Westin, 338 N.W. 2d 676, 679 (Minn. 1983).

physical harm; if there is the potential to cause physical harm, the state's interest in finding personal jurisdiction increases.⁹

In a related matter, a Minnesota court ruled that the "quality" of the contact may also be sufficient if a minor child of the nonresident batterer suffered emotional trauma from the nonresident parent's harmful actions.¹⁰ So long as the child continues to suffer emotionally and physically from the trauma related to the relationship with his or her batterer, the court can assert personal jurisdiction, whether or not the actual abuse occurs within Minnesota. This issue might be significant in building a case for a battered woman's request for an OFP in her "new" state.

Since the basis for a petition for an OFP is linked to the threat of physical harm, this "nature and quality" factor is especially important for establishing personal jurisdiction over the respondent.

Factor 3: Connection Between the Contacts and the OFP Petition

The third factor Minnesota courts consider in determining whether sufficient minimum contacts exist is the connection between the nonresident's contacts with the state and the OFP petition. This factor considers the strength of the relationship between the contacts and the OFP petition. If few contacts are available, it is important that the connection between the contacts and the cause of action are closely tied. For example, if a respondent assaults the battered woman once while she is in Minnesota, this may meet the minimum contact requirement even though it was only one contact, because it is significant and related to the OFP petition.

Contacts such as threatening phone calls, letters, or messages are related to the OFP petition and increase the likelihood that the quantity of contacts with the forum state is sufficient. Unrelated contacts -- such as the fact that the respondent owns property or conducts business in the forum state -- are not as strong of evidence, but should not be ignored when arguing that the nonresident batterer has a sufficient number of contacts with Minnesota.

Factor 4: The State's Interest in Providing a Forum

Minnesota has demonstrated a strong interest in protecting its residents from further exposure to domestic violence. In 1979 the state legislature adopted the Domestic Abuse Act,¹¹ a statute that directly addresses domestic violence in Minnesota and provides legal resources for battered women to help protect themselves from their batterers. This shows that Minnesota has a strong interest in finding personal jurisdiction, so that Minnesota residents can bring their cases to court.

⁹ See *Aftanase v. Economy Baler Co.*, 343 F. 2d 187, 197 (8th Cir. 1965).

¹⁰ See *Hughes v. Cole*, 572 N.W. 2d 747 (Minn. 1997).

¹¹ Minn. Stat. § 518B.01.

Factor 5: Relative Convenience of the Parties

Minnesota courts balance the petitioner's interest in filing her claim in Minnesota against the difficulty and expense a nonresident respondent might encounter when defending an OFP claim.¹² A battered woman who has fled the state where domestic abuse occurred clearly has a strong interest in pursuing an OFP in her "new" state in order to avoid any potential violent consequences. The petitioner should make the argument that preserving her safety is far more important than any inconvenience an OFP procedure may cause the nonresident batterer.

V) Conclusion

Allowing a battered woman to file for an OFP in Minnesota when the respondent is a nonresident is vital to the battered woman's health and safety. Minnesota courts clearly have an interest in providing a forum for these women, but must have personal jurisdiction over the respondent in order to actually hear an OFP case. You may establish a straightforward argument that a Minnesota court *does* have personal jurisdiction over the nonresident respondent if Minnesota's long-arm statute is met and there are sufficient minimum contacts. The state's interest in providing protection to resident battered women should induce Minnesota courts to attempt to find personal jurisdiction over nonresidents.

¹² See Anderson v. Luitjens, 311 Minn. 203, 210, 247 N.W.2d 913, 917 (1976).