

ERICSA 2015: Building Sweet Futures for ...



INTERSTATE MODIFICATIONS CAN BE SWEET

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Session Goals

- ❖ Learning Goals for the Session:
 - Understand when to go to another state
 - Learn to analyze a situation when UIFSA does not provide an apparent answer
 - Deal with messy mods (split custody, add a child, CS order/reunification/split, foster care, etc.)
 - Know your role in lame duck jurisdiction cases
 - Know how to handle mod-only requests
 - Understand how UIFSA 2008 differs from UIFSA 2001

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UIFSA Modification Principles

- ❖ As long as a CP (*or caretaker*), NCP, or child still lives in controlling order state, that state has CEJ to modify
- ❖ CP and NCP can agree to another state having CEJ as long as there is a nexus
- ❖ If everyone has left controlling order state, play away
- ❖ When UIFSA rules are silent on a scenario
 - ❖ treat the family unit holistically for jurisdictional decision-making, and
 - ❖ consider the “law of the case”

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Basic Modification Flow

- ❖ §611 – if no individual (CP, NCP, child) remains in the issuing state
 - ❖ Party (NCP or CP) seeking modification files in the state of the other party (CP or NCP)
- ❖ §612 – state losing CEJ can enforce order for arrears, and for current up to the effective date of the new order; it must recognize new order upon registration for prospective enforcement
- ❖ §613 – if all individuals move to same state, that state can claim CEJ
- ❖ §614 – party that sought new controlling order must file a certified copy with old CEJ court and copies to the parties within 30 days of the entry of the modified order
- ❖ §615 – if another country will not or cannot modify its order, state that can claim §611 modification jurisdiction may issue new controlling order

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Impact of Other Laws

- ❖ **FFCCSOA** (28 USC §1738B) - As of October 20, 1994, only one controlling order could be in effect prospectively (most states did not pass UIFSA for another 2-3 years). An independent orders issued under URESA/RURESAs after that date when there was a pre-existing order for the family is either void or voidable
- ❖ **Title IV-D** (statute (42 USC §651 *et seq.*) and regs (45 CFR §301-307)) - Now: every state must pass UIFSA 2008 during first legislative cycle after September 2014 (42 USC 466(f)) –
 - ❖ 1996 UIFSA states have to incorporate non-international changes found in UIFSA 2001 in addition to the Part 7 Hague Convention changes
 - ❖ basically Part 7 and some definitional changes added to UIFSA 2001See 45 CFR §303.7 for interstate rules (initiating and responding state duties and timeframes)
- ❖ **PKPA** (28 USC §1738A) /**UCCJEA** (codified in state codes) – there is often a misconception by non-child-support lawyers that PKPA and its home state rule (where child has last resided continuously for a six-month period) also gives jurisdiction over child support matters – NO – jurisdiction under the PKPA and UCCJEA is for custody and visitation and often different states have jurisdiction for custody and support issues

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Interstate Central Registry

- ❖ Since August 22, 1988, every state has had to have an Interstate Central Registry (ICR) for incoming out-of-state IV-D cases (45 CFR §303.7(a))
- ❖ Timeframes for ICR activities:
 - ❖ Within 10 working days after receipt from initiating state:
 - ❖ Documents reviewed for completeness
 - ❖ Documents forwarded to SPLS or appropriate local office (as long as case can be worked, documents must be forwarded to local office even if missing documents)
 - ❖ Receipt of documents acknowledged and request sent to initiating state for any missing documents
 - ❖ Initiating state informed to which state or local office the case was forwarded for continued case-processing

Within 5 working days of inquiry, respond to other state with case status update

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Lame Duck Jurisdiction

- ❖ Everyone (CP, NCP and children) has left the state that entered the last order – what happens?
- ❖ Until another state modifies that last order, the state everyone left still has to enforce the order and oversee payment flow – it has “lame duck” responsibilities
- ❖ Do not close the case solely because everyone has left the state w/ the last order
- ❖ If one of the parties returns to the last-order state before another state attempts to modify the order, the last-order state has the power to modify – jurisdiction is based on a residential snapshot at the time of the modification



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Modification Only Requests

- ❖ Interstate form checked for “modification only”
- ❖ Once a court in a state that assumes jurisdiction to modify from another state modifies the order, that state becomes the CEJ state with the controlling order and is in charge of future enforcement and modification activity
- ❖ There is no “mod only” situation where a court in a state mods the order and sends it back to the old CEJ state so old CEJ state continues to control enforcement activities
- ❖ Once a modification occurs, the new CEJ state can either ask the old CEJ state to continue to enforce using a new IWO or other techniques, or preferably the new CEJ state agency issues the new IWO itself and enforces using other techniques.

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Family Splits – Foster Care

- ❖ What happens in foster care cases when mods are sought?
- ❖ Does a relative, other adult, or the state have custody?
- ❖ Does the state open one case or two cases when the children are placed in foster care?
- ❖ What if the child(ren) is (are) moved to another state?
 - Did everyone leave the state with the foster care order?
 - If so, who is requesting the modification?
 - What if either parent still lives in the state in which the child support order was entered in the foster care situation?
 - What about blended family cases where either mom or dad has kids with other partners, and all relational children are in foster care?

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Family Splits – Split Custody

- ❖ What happens when mom has custody of one child and dad has custody of another child?
 - Does your state have one or two cases?
 - Do you have net support orders so there is one NCP and one CP?
- ❖ What happens when everyone moves to different states other than the state that last had CEJ?
 - Who is asking for the modification? What if they both do?
 - Do both cases follow the modification request to the non-movant party state?

Remember the “law of the case”!

Family Splits – Child Swap

- ❖ What happens when a child or children move(s) from one parent to the other?
 - Do you require a new application fee from the new CP?
 - Do you require a legal custody switch order?
 - Do you set up a new case or use the old case?
- ❖ What if everyone has left the state with CEJ and now there is a child swap – order in State A, mom who had kids in State B, and dad who just got the kids in State C?
 - Does it matter if there is one or two cases?
 - Is there an application fee needed, and if so, whose application law applies and who collects?
 - What are the “abatement” rules in the non-movant state?

Remember the “law of the case”!

Add a Child

- ❖ What happens if the parties move away from CEJ state and mom gives birth to another child parented by dad?
 - Does paternity need to be established? Where?
 - Does the new child's age of majority follow the older child(ren)'s age of majority, or is it based on the duration statute in the state where the order is entered?
 - Is it a new order or a modified order? What would be the jurisdictional differences?

Remember the "law of the case"!

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Enforcement after Emancipation

- ❖ What happens when all the children emancipate but there are arrearages still owing?
- ❖ Does the state with CEJ at the time of the emancipation control enforcement?
- ❖ What if the parties move to states other than the CEJ state? Do adult kids count in the CEJ calculus?
- ❖ Does your state take arrears only cases? What if one child had emancipated but the other child was still a minor?
- ❖ What about collecting state debt for the CEJ state?

Remember the “law of the case”!

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UIFSA Choice of Law

- ❖ §303 – establishing an order – a tribunal may apply its procedural and substantive law, including amount and duration of support pursuant to its guidelines
- ❖ §502(d) – direct income withholding: law of the state of the obligor’s principal place of employment governs fee, CCPA limit and time frame for remittance
- ❖ §604 – Law of the issuing state governs nature, extent, amount, and duration of current payments, and computation and payback of arrears and interest, under a registered order
 - Statutes of limitation – the longer of the two states’ S/L
 - What if controlling order’s S/L expires – can you seek enforcement in other state with longer S/L?

Duration of support – the original order’s duration governs, including interpretation of it

- What about a later child born in a state with different duration?

Once registered, responding state uses its enforcement tools according to its laws

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Interstate Health Coverage

- ❖ Adding health insurance where none is ordered before is an act of modification and needs to follow modification jurisdictional rules
- ❖ Modifying health insurance or switching the responsible parent for coverage is an act of modification - follow modification jurisdictional rules
- ❖ What if one party has limited coverage (e.g., local-based insurance, HMO, or self-insured)?
- ❖ What about the impact of the ACA on obtaining health insurance?
 - Ordered coverage v tax deduction issue
 - Signing up for ACA coverage and Medicaid
 - Must be CP for Medicaid
 - Must take Medicaid if qualifying – what if one state has expanded Medicaid and the other does not?

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Weekly and Monthly Orders

- ❖ New York order: \$150/wk
- ❖ Pennsylvania order: \$645/mth
 - Is there any difference?
 - When is a NY order past due and not considered current support?
 - What if the NY order is enforced in PA?
 - What if the PA order is enforced in NY
- ❖ German order is €300 per month, entered 9/1/14
- ❖ Ohio receives German order 12/1/14, registers the order 12/15/14 and goes to court 2/1/15 to enforce order
 - What date is used for conversion?
 - What is an acceptable conversion table for court to take judicial notice?

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UIFSA from 1996 to 2001

- ❖ What are the differences between 1996 and 2001 UIFSA when it comes to modification?
- ❖ §611 – carve out new §615 from §611; stress that duration is nonmodifiable; “on the record” instead of “written” consent to a court assuming jurisdiction
- ❖ §612 – language clean up – no major changes
- ❖ §613 – no changes
- ❖ §614 – no changes
- ❖ §615 – new – expands on UIFSA 1996 §611(a)(2) – if a foreign country “will not or may not” modify its order, a court with personal jurisdiction over all individuals may issue a new controlling order.
- ❖ (1996 UIFSA: if other country does not have substantially similar law, consent to jurisdiction is not needed.)

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UIFSA from 2001 to 2008 – Part 1

- ❖ What are the differences between 2001 and 2008 UIFSA when it comes to modification?
- ❖ §611(f) - tribunal retains jurisdiction to modify an order issued by a tribunal of same state if:
 - 1) one party resides in another state; and
 - 2) the other party resides outside the United States.
- ❖ §612 - § 614 - no major changes
- ❖ §615 – except as provided in §711, if foreign country lacks or refuses to exercise jurisdiction to modify its child-support order pursuant to its laws, a tribunal of this state may assume jurisdiction to modify the child-support order and bind all individuals subject to the personal jurisdiction of the tribunal
 - whether or not the consent to modification of a child-support order otherwise required of the individual pursuant to Section 611 has been given, or
 - whether the individual seeking modification is a resident of this state or of the foreign country

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UIFSA from 2001 to 2008 – Part 2

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- ❖ §616 – “A party or support enforcement agency seeking to modify... a foreign child-support order not under the Convention may register that order. A petition for modification may be filed at the same time as a request for registration, or at another time. The petition must specify the grounds for modification.”
- ❖ §102(5) Definitions - “Foreign country” means a country, including a political subdivision thereof, other than the United States, that authorizes the issuance of support orders and:
 - (A) which has been declared under the law of the United States to be a foreign reciprocating country;
 - (B) which has established a reciprocal arrangement for child support with this state as provided in Section 308;
 - (C) which has enacted a law or established procedures for the issuance and enforcement of support orders which are substantially similar to the procedures under this [act]; or
 - (D) in which the Convention is in force with respect to the United States.’
- ❖ §102(26) Definitions – “State” no longer includes foreign countries.
- ❖ Article 7 (§§701-713) - UIFSA conforming language with Hague Convention

UIFSA and Hague Convention

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- ❖ Article 7 – Hague Convention
- ❖ §704 – roadmap for support enforcement agencies
- ❖ § 706 – Convention registration – more to it than domestic registrations, including a filed record of order enforceability and that the parties had an opportunity to be heard
- ❖ § 707 – Procedures to contest the registered order
- ❖ § 708 – Defenses to registration – includes that the foreign country did not have personal jurisdiction over the NCP (most countries have child-state jurisdiction and may not require pers. juris. over NCP)
- ❖ § 710 – recognizing “foreign support agreements” as enforceable as an order – not just under contract theory
- ❖ §711 – modification under the Convention
 - (a) A tribunal may not modify a Convention child-support order if the obligee remains a resident of the foreign country where the support order was issued unless:
 - (1) the obligee submits to the jurisdiction of a tribunal of this state... or
 - (2) the foreign tribunal lacks or refuses to exercise jurisdiction to modify its support order or issue a new support order.
 - (b) If a tribunal of this state does not modify a Convention child-support order because the order is not recognized in this state, Section 708(c) applies (no dismissal while a party seeks a US-enforceable Convention child support order.).

Non-Hague International Cases

- ❖ Will all international cases go through the Hague Convention when all states have UIFSA 2008?
- ❖ No, there are still:
 - State reciprocal agreements
 - Federal reciprocal agreements
 - Countries with substantially similar laws
- ❖ If a country is a signatory to the Hague Convention, does the Convention supersede other reciprocal agreements and become the only avenue for enforcement and modification?

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Respecting Tribal Jurisdiction

- ❖ What does it mean to respect tribal jurisdiction?
- ❖ IV-D Tribes have the right to have their orders recognized under FFCCSOA, and the FFCCSOA modification jurisdictional scheme controls
 - One order at one time in one place
 - Is there a resident individual in the controlling order state or tribal territory?
- ❖ IV-D Tribes do not have to have UIFSA and do not have to recognize direct income withholding under Article 5 of UIFSA
- ❖ Remember that some tribes allow in-kind payments to fulfill an obligation under a tribal order.
 - Will a state agency accept a IV-D tribal pay record that credits a NCP with payments in kind on a tribal order? Registered state order?

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Wrap Up and Other Issues

What did we miss?

Thank you!

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