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Futures for Families*

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Grand Rapids

**ERICSA 61ST ANNUAL
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APRIL 7-11, 2024**

Jurisdictional Issues in Child Support

April 9, 2024, 10:30-12:00

Tish Keahna Kruzan, J.D., Moderator, Lac Courte Oreilles staff

Meg Haynes, J.D., Free-wheeling lover of child support

Kelly Micka, J.D., Director, Alvarez & Marsal



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There are many different kinds of jurisdiction pertaining to child support. First, we need subject matter jurisdiction. Then, you need either personal jurisdiction or in rem jurisdiction, depending on what action you're requesting. Long-arm jurisdiction is often applicable in interstate cases. UIFSA introduces the concept of Continuing, Exclusive Jurisdiction (CEJ), not to be confused with continuing jurisdiction. What about concurrent jurisdiction? How is jurisdiction determined when one of the parties is a tribal member, resides in Indian country, or works for a tribal employer? Getting jurisdiction "right" is critical in order to have an order that stands up and is enforceable. This session will review the most common jurisdictional issues that may arise in a child support proceeding.



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Jurisdiction Definition

According to Black's...**nerd barometer** – who knows where their law dictionary is?

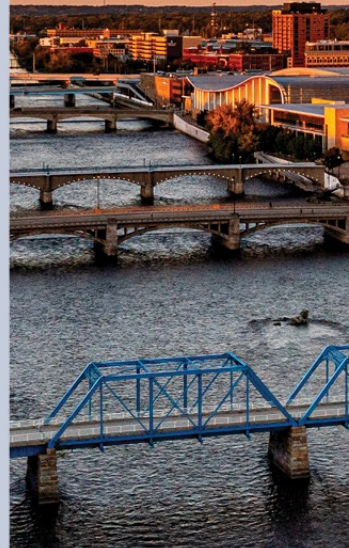
The power and authority constitutionally conferred upon (or constitutionally recognized as existing in) a court or judge to pronounce the sentence of the law, or to award the remedies provided by law

Some types of jurisdiction are waivable



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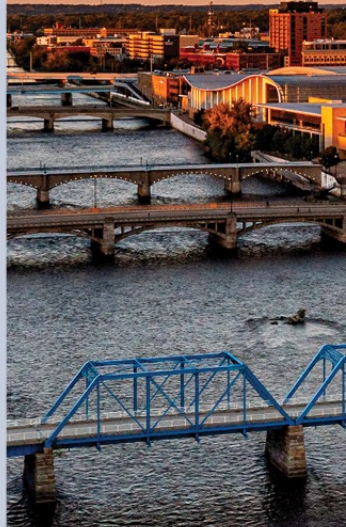
Agenda

Today we will cover the following:

- Personal Jurisdiction
- Subject Matter Jurisdiction
- In Rem Jurisdiction
- Concurrent Jurisdiction
- Continuing Jurisdiction
- Continuing, Exclusive Jurisdiction
- Improper Modification of Order



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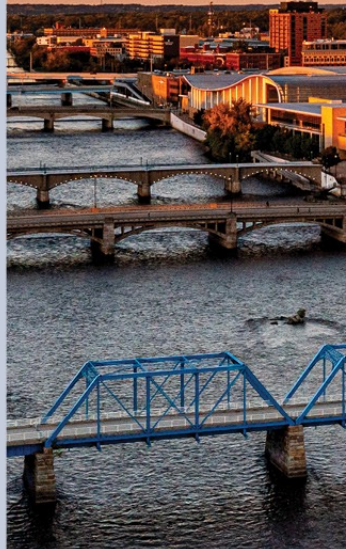
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Jurisdiction Definition

And if you thought that was bad.... There's more:

Ancillary jurisdiction	Full jurisdiction	Ecclesiastical jurisdiction
Title jurisdiction	Equity jurisdiction	Prorogated jurisdiction
Ambulatory jurisdiction	Pendent jurisdiction	Contentious jurisdiction
Special jurisdiction	Territorial jurisdiction	Common-law jurisdiction
Original jurisdiction	Union jurisdiction	Limited jurisdiction
Military jurisdiction	Tax jurisdiction	Arrestment jurisdiction
Foreign jurisdiction	Advisory jurisdiction	Excess of jurisdiction*

*No, this is not a description of this slide. It is when a case is heard by the right jurisdiction, but the judge then exceeds his/her jurisdiction when giving judgment.



Comparison of FFCCSOA/UIFSA

FFCCSOA (1994)

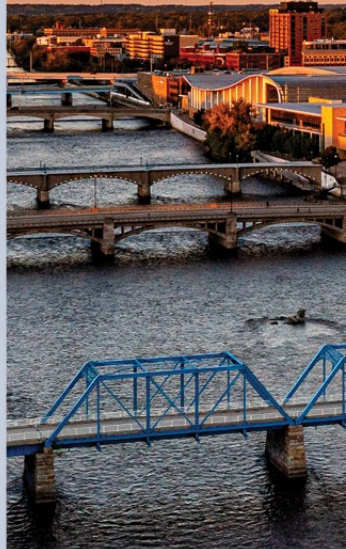
- Federal law
- Applies to States and Tribes
- Applies to IV-D and non-IV-D child support cases
- Controlling order and CEJ rules
- Does not apply to foreign support orders

UIFSA (2008)

- Model act that Congress required states to enact
- No requirement for Tribes to enact
- Applies to IV-D and non-IV-D child support cases
- Controlling order and CEJ rules
- Includes provisions that apply to foreign support orders



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Personal Jurisdiction



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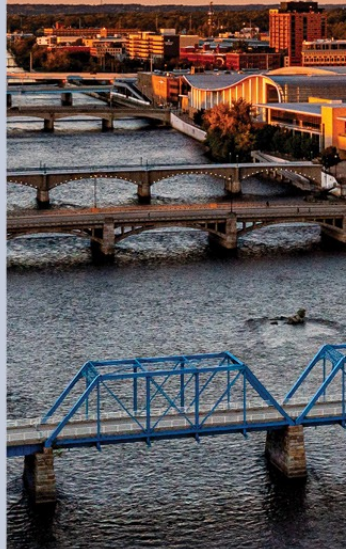
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What are Elements of Personal Jurisdiction?

- Notice
 - Proper service
- Sufficient Minimum Contacts to Satisfy Due Process
 - Petitioner submits to personal jurisdiction by filing
 - Forum has personal jurisdiction over resident respondent
 - Forum has personal jurisdiction over nonresident respondent if there is basis for long arm jurisdiction



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When is Personal Jurisdiction Required?

- Establish a support order
- Modify a support order



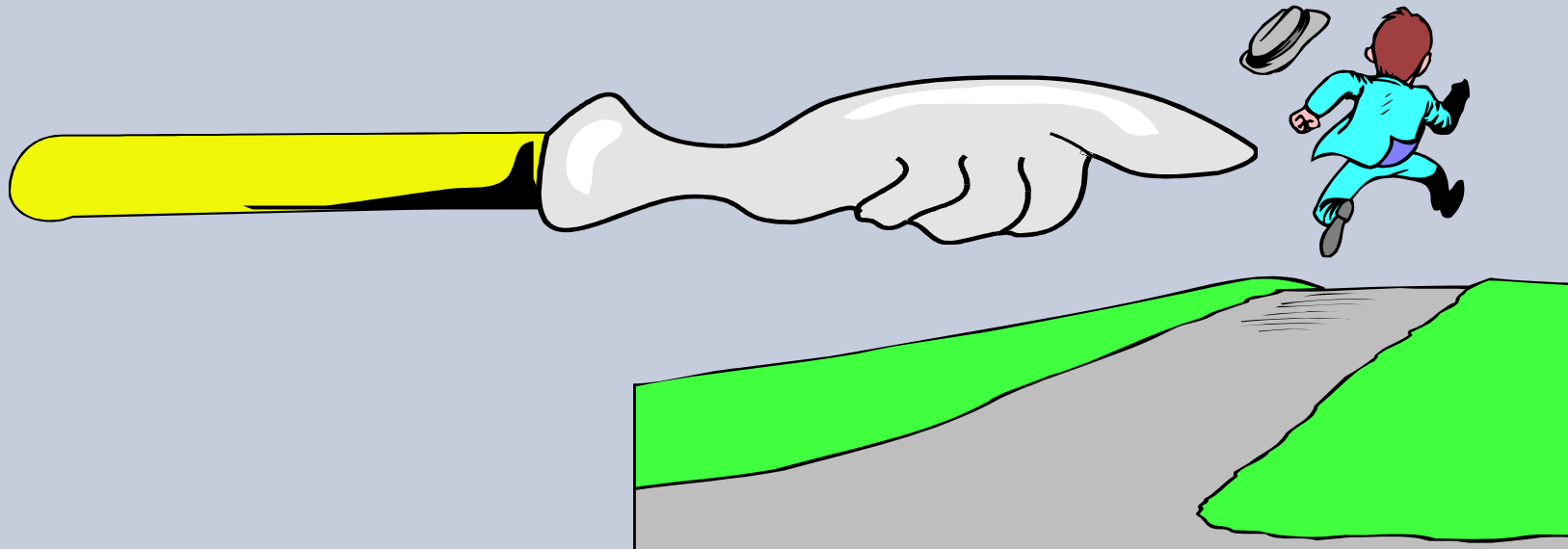
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Long Arm Jurisdiction

- Is long arm jurisdiction available?

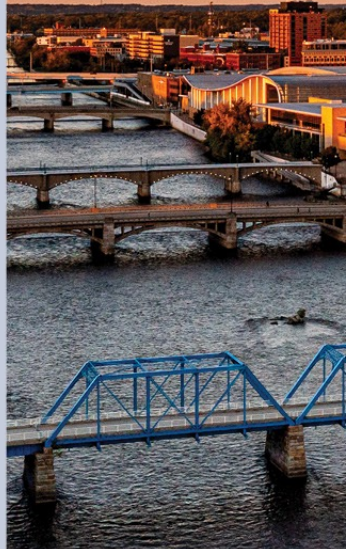


UIFSA, Section 201

- Nonresident was personally served with [citation, summons, notice] within the state
- Nonresident submitted to jurisdiction of the state
 - By consent
 - By entering a general appearance
 - By filing a responsive document having the effect of waiving any contest to personal jurisdiction
- Nonresident lived with the child in the state
- Nonresident lived in the state and provided prenatal expenses or support for the child



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UIFSA, Section 201 (cont'd)

- Child is living in the state due to directives or acts of Nonresident
- Nonresident had sexual intercourse in the state, possibly resulting in conception of the child
- Nonresident asserted parentage of the child in the [putative father registry] maintained in the state
- There is any other basis for personal jurisdiction consistent with state and U.S. Constitutions



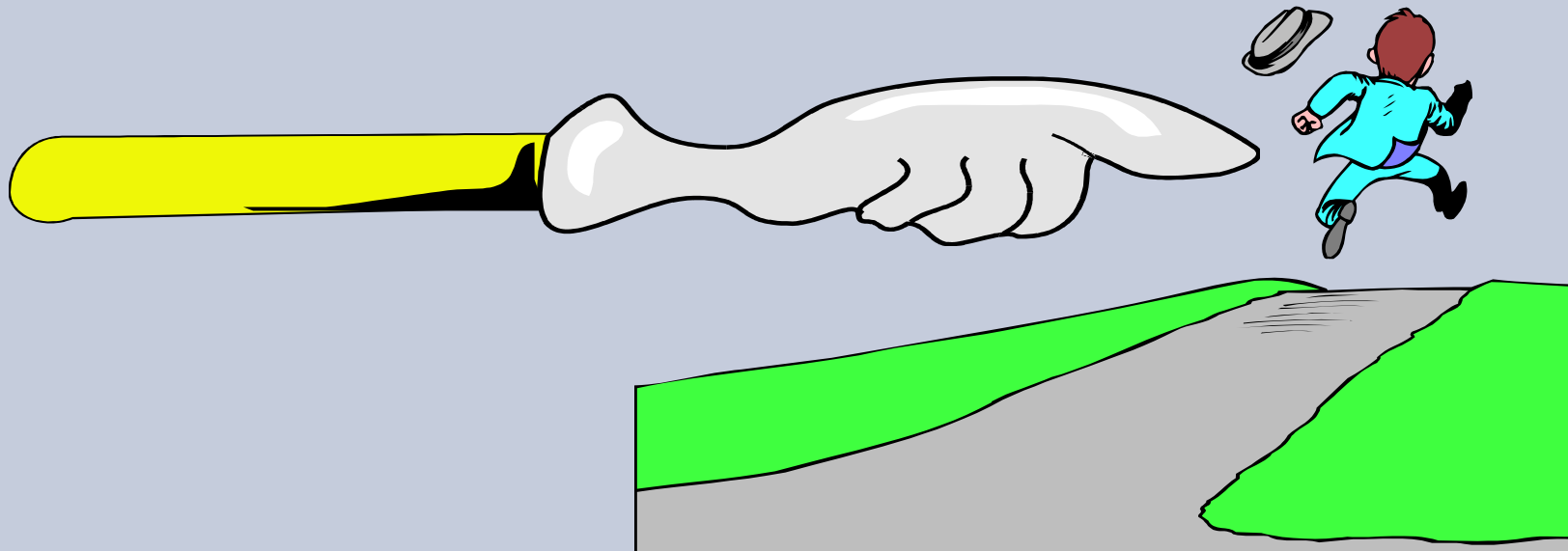
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Long Arm Jurisdiction

- Is long arm jurisdiction available?
- Is it appropriate?



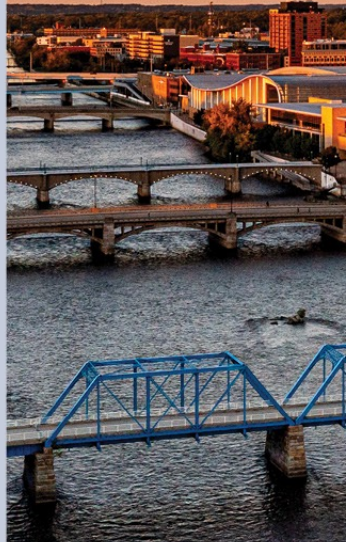
Scenario #1 Long Arm Jurisdiction

Facts:

- Mom and Dad married in WI.
- Mom now lives in MI, Dad lives in TN.
- Mom seeks establishment of support in MI. Alleges personal jurisdiction over Dad because she served him with child support establishment pleadings when he was in MI visiting a friend.
- Dad files limited appearance, arguing lack of personal jurisdiction over him.



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What should court do?

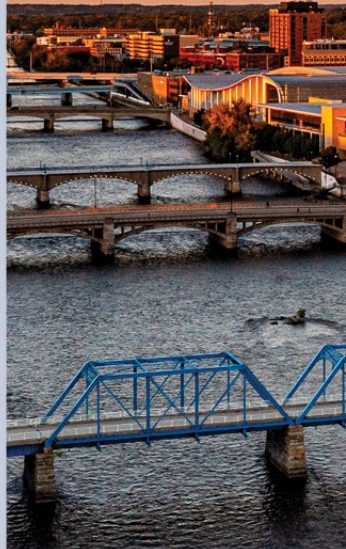
Options:

- (a) MI trial court should apply Section 201 of UIFSA and find long arm jurisdiction over dad because he was served while physically present in MI.
- (b) MI trial court should apply Section 201 and find a lack of personal jurisdiction over dad because the one-time visit to his friend does not constitute sufficient minimum contacts with MI to satisfy due process.

Vote (a) or (b)



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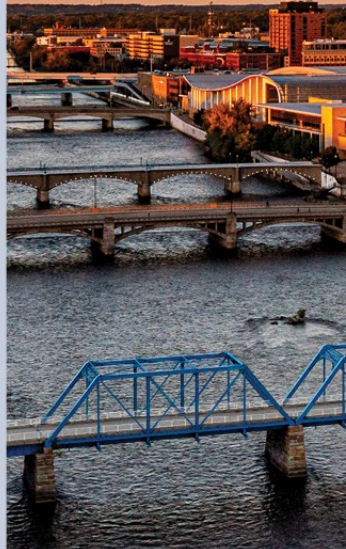
Court should:

(a) MI trial court should apply Section 201 of UIFSA and find long arm jurisdiction over dad because he was served while physically present in MI.

Burnham v. Superior Court, 495 U.S. 604 (1990), reaffirms the constitutional validity of asserting personal jurisdiction based on personal service within a state.



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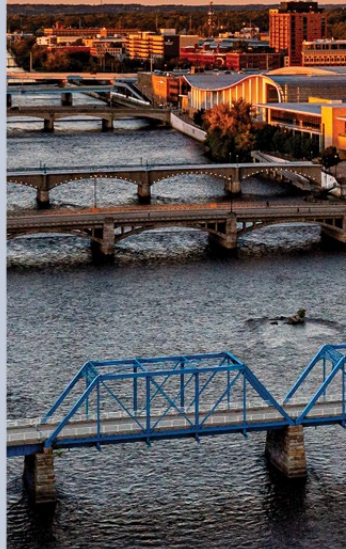
Scenario #2 Long Arm Jurisdiction

Facts:

- FL divorce order
- Mom now lives in GA, Dad lives in SC.
- Dad registers FL order in SC and seeks modification of support in SC. Alleges personal jurisdiction over Mom because she had been arrested in SC 3 weeks earlier in an unrelated criminal matter.
- Mom served in GA.
- Mom files limited appearance in SC action, arguing lack of personal jurisdiction over her.



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What should court do?

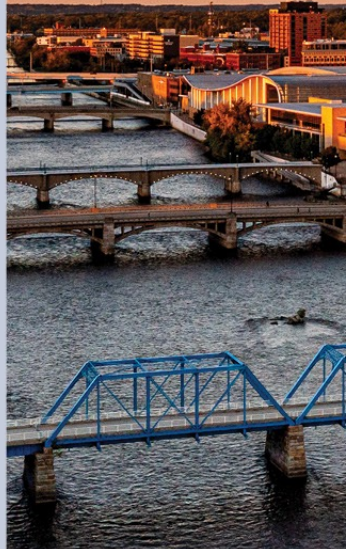
Options:

- (a) SC trial court should apply Section 201 of UIFSA and find long arm jurisdiction over mom because of arrest in SC.
- (b) SC trial court should apply Section 201 and find a lack of personal jurisdiction over mom because the arrest does not constitute sufficient minimum contacts with SC to satisfy due process.
- (c) SC trial court cannot apply Section 201 to acquire personal jurisdiction over mom to modify FL support order unless SC has modification jurisdiction under Section 611 or 615 of UIFSA.

Vote: (a), (b), or (c)



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Court should:

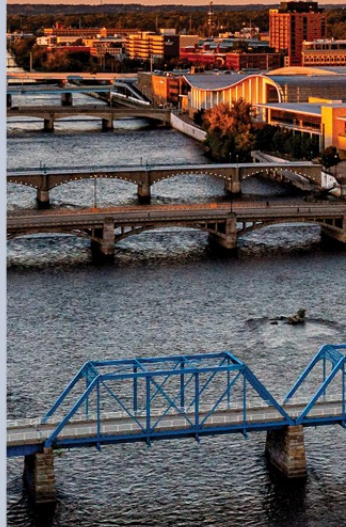
- (c) SC court should not apply Section 201 of UIFSA to find personal jurisdiction to modify a support order in this action.

SC trial court cannot use UIFSA's long arm provision in Section 201 to acquire personal jurisdiction in modification action unless modification jurisdiction under UIFSA met. Here it wasn't. Dad cannot register another state's order in his own state for modification.

Ex Parte Sperry: In re: Patrick Quinlivan v. Jessica Sperry, No. C -2022-1036 (Ala. Civ. App. 2022)



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Subject Matter Jurisdiction



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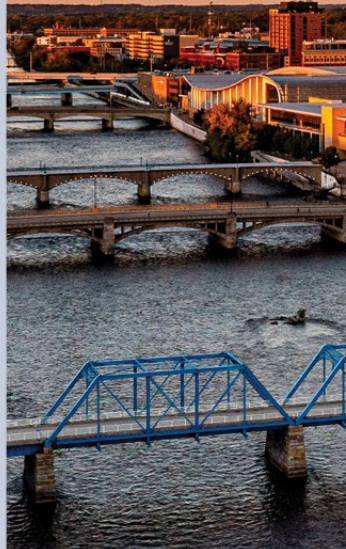
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What is Subject Matter Jurisdiction?

- Court's authority to hear the type of case or matter in question
- Addresses which cases are properly heard in which courts
- Established in constitution or statute
- Issue often arises in UIFSA/FFCCCSOA modification cases (more later)



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Caselaw

State vs. Central Council of Tlingit and Haida Tribes, 371 P.3d 255 (Alaska 2016)

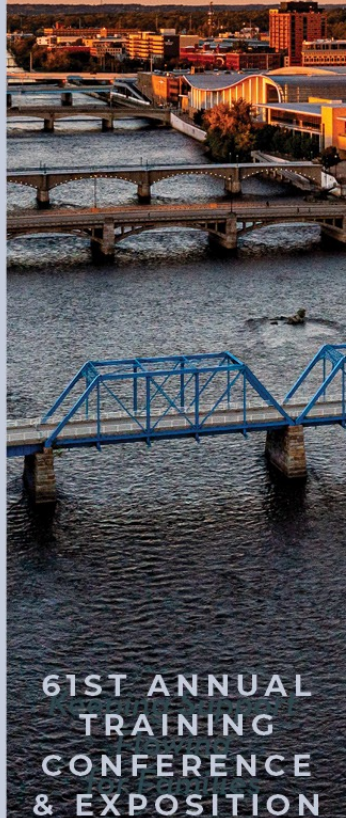
Because we agree that tribal courts have inherent subject matter jurisdiction to decide the child support obligations owed to children who are tribal members or are eligible for membership, and that state law thus requires the State's child support enforcement agency to recognize and enforce a tribal court's child support orders, we affirm. (Introduction)

From Justice Fabe's opinion:

This case, in contrast, requires that we decide whether tribal courts' inherent, non-territorial subject matter jurisdiction does in fact extend to the adjudication of the child support rights and obligations of nonmember parents of children who are members or eligible for membership. We hold that because tribes' inherent authority over child support stems from their power over family law matters concerning the welfare of Indian children — an area of law that is integral to tribal self-governance — the basis and limits of that authority are tied to the child rather than the parent.



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In Rem Jurisdiction



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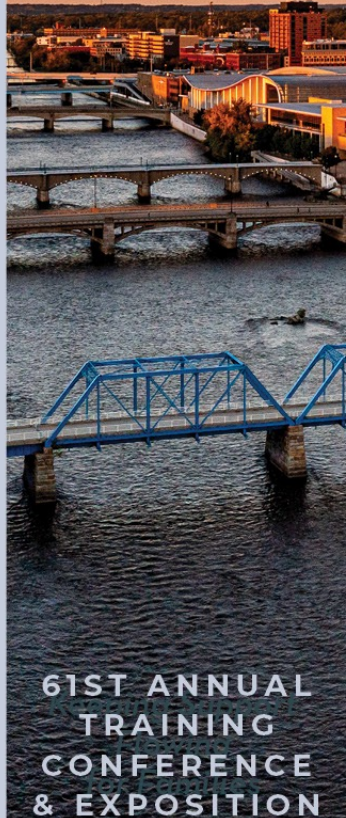
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How does In Rem Jurisdiction relate to Child Support?

Property/asset – bank account, real property, etc.
Child support- enforcement



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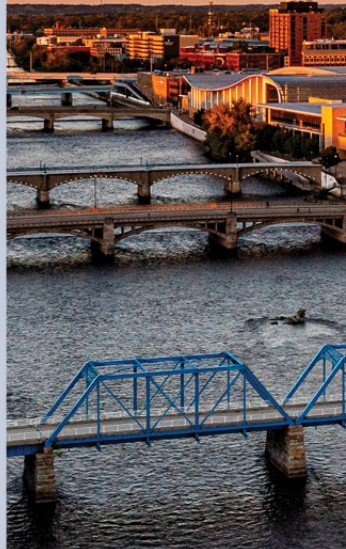
Scenario #3 In Rem Jurisdiction

Facts:

- Florida divorce decree
- Mom and children in AZ where in 1988 mom registered FL order in AZ for enforcement under URESA
- Dad obligor in CA
- Dad receives military retirement benefits
- In 1990 Mom files motion in AZ to establish a judgment for support arrears under registered FL order
- Dad argues entry of money judgment requires personal jurisdiction and AZ lacks personal jurisdiction over him.
- Mom points out she is not seeking to modify the order. She argues that in rem jurisdiction is sufficient to determine the arrears judgment and that AZ has in rem jurisdiction over the military benefits.



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What should the court do?

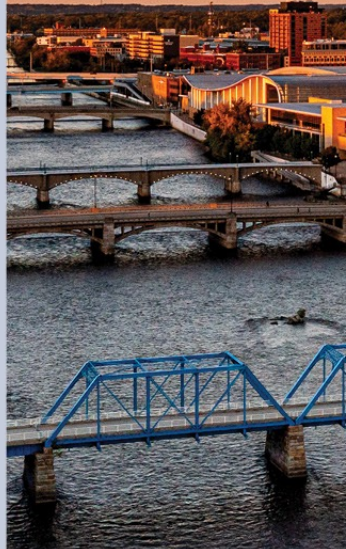
Options:

- a) Find in rem jurisdiction exists since under federal law, a state court can garnish military benefits
- b) Find there is no basis for in rem jurisdiction because the benefits were neither issued nor received in AZ and dad has no other property in AZ
- c) Find in rem jurisdiction exists because the money is for the child who is located in AZ

Vote: (a), (b), or (c)



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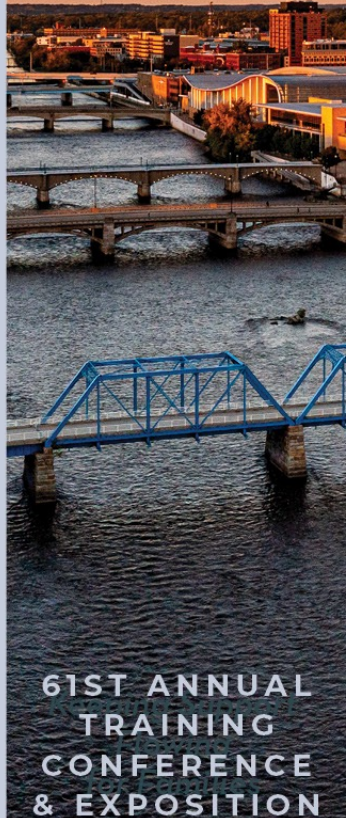
Court should

(b) there is no basis for in rem jurisdiction because the benefits were neither issued nor received in AZ and dad has no other property in AZ

Polacke v. Superior Court, 823 P.2d 84 (Ariz. Ct. App. 1992). The court cited the Georgia case of *Williamson v. Williamson*, 275 S.E.2d 42 (1981). It held that federal law didn't make money paid to army personnel property constructively present in every state.



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Concurrent Jurisdiction



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Concurrent Jurisdiction

Two or more courts have subject matter jurisdiction

Governed by statutes and caselaw

Example: Paternity cases where there are state and tribal interests

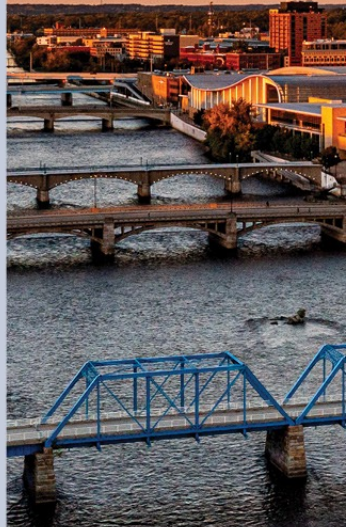
Factors to consider:

- Where did conception take place?
- Is the mother a member of the tribe?
- Does the mother reside on the tribe's reservation?
- Is the alleged father a member of the tribe?
- Does the alleged father reside on the tribe's reservation?

Matrix developed by Jim Fleming to address these factors.



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Public Law 280

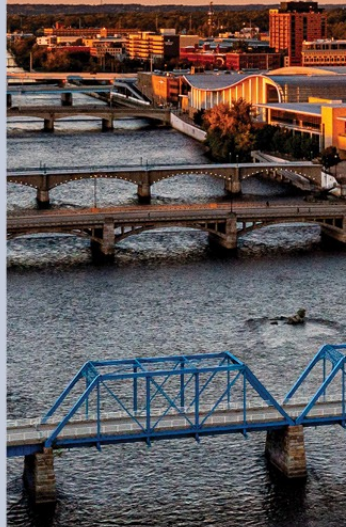
Tribes have jurisdiction over all civil and criminal matters involving their people and territory

The federal government had asserted limited, concurrent jurisdiction over certain crimes in Indian country

- PL 280 transferred concurrent jurisdiction TO a few states
 - CA, MN*, NE, OR*, WI*, AK
- PL 280 did not affect Tribes' jurisdiction.



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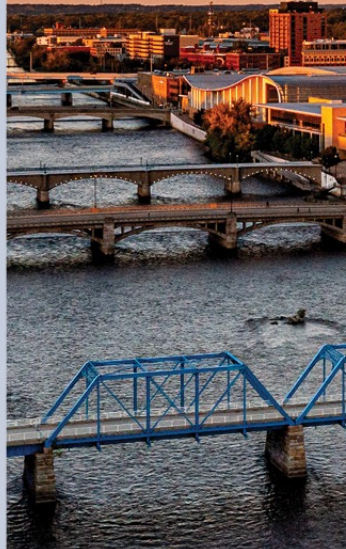
Caselaw (non PL 280 state)

State of North Dakota v. Daniel Peltier, Defendant and Appellant, 915 N.W.2d 115 (2018), 2018 ND 170

“Daniel Peltier appeals from an order denying his motion for relief from a child support judgment. Peltier argues the state district court erred in denying his motion because the Turtle Mountain Tribal Court has exclusive subject matter jurisdiction to decide his child support obligation. We conclude the state district court has concurrent jurisdiction to decide Peltier's child support obligation, and the district court did not err in denying his motion for relief from the judgment. We affirm.”



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Continuing Jurisdiction



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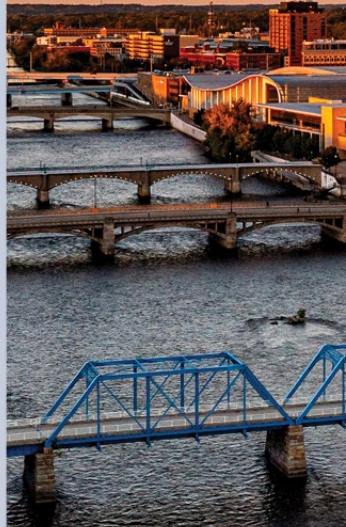
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When does Continuing Jurisdiction apply in Child Support?

SECTION 202. DURATION OF PERSONAL JURISDICTION. Personal jurisdiction continues as long as a tribunal of this state has continuing, exclusive jurisdiction to modify its order or continuing jurisdiction to enforce its order as provided by Sections 205, 206, and 211

SECTION 206. CONTINUING JURISDICTION TO ENFORCE CHILD SUPPORT ORDER. (a) A tribunal.. that has issued a child-support order...may serve as an initiating tribunal to request a tribunal of another state to enforce: (1) the order if the order is the controlling order and has not been modified by a tribunal of another state that assumed jurisdiction pursuant to the [Uniform Interstate Family Support Act]; or (2) a money judgment for arrears of support and interest on the order accrued before a determination that an order of a tribunal of another state is the controlling order.

(b) A tribunal of this state having continuing jurisdiction over a support order may act as a responding tribunal to enforce the order.



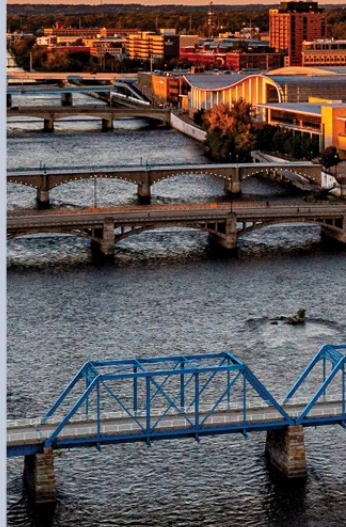
Scenario #4 Continuing Jurisdiction

Facts:

- Divorce decree in Wyoming set child support for dad to pay mom for three children
- Eventually, dad gets custody of all three children in WI
- Mom is in IN
- Dad files in WY to determine arrears; WY court rules \$0 after mom failed to appear
- Mom files 60(b) motion in IN court for relief from the WY default order
- IN trial court rules the WY arrears order void for lack of SM jurisdiction and that any child support order should be established in WI since that is where all three children reside
- Dad appeals in IN



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What should the court do?

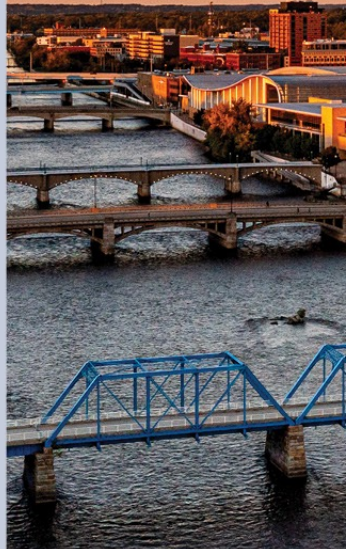
Options:

- a) The Wyoming order wiping out arrears is void because all the parties had left the state and it did not have CEJ
- b) As the issuing state, the Wyoming court had continuing jurisdiction to rule on the arrears even if it didn't have jurisdiction to modify the order
- c) Indiana should rule on arrears applying Indiana law since this action is being heard by an Indiana court and it is the state of the non-requesting party

Vote: (a), (b), or (c)



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Court should

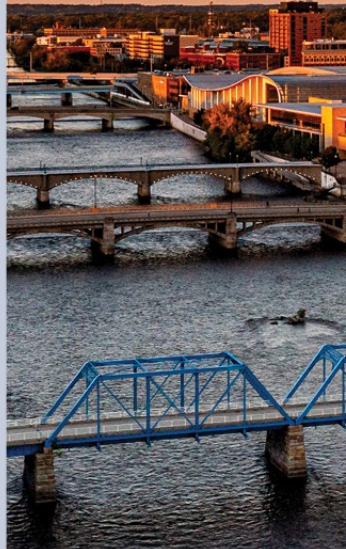
(b) As the issuing state, the Wyoming court had continuing jurisdiction to rule on the arrears even if it didn't have jurisdiction to modify the order

Hays v. Hays, 49 N.E.3d 1030 (Ind. Ct. App. 2016) (The calculation of whether the obligor has fully complied with the payment of current support, arrears, and interest on arrears is the duty of the issuing tribunal. Therefore, even though all parties had left the issuing state and the state lacked jurisdiction to modify its order, it had continuing jurisdiction to determine the arrearage under its order).

“The trial court's order misunderstands the procedural history of this case and misinterprets UIFSA.”



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Continuing Exclusive Jurisdiction



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What does CEJ mean in UIFSA & FFCCSOA?

- Refers to a tribunal's exclusive jurisdiction to modify a support order
- UIFSA, Section 205(a)
- FFCCSOA, 28 USC 1738b



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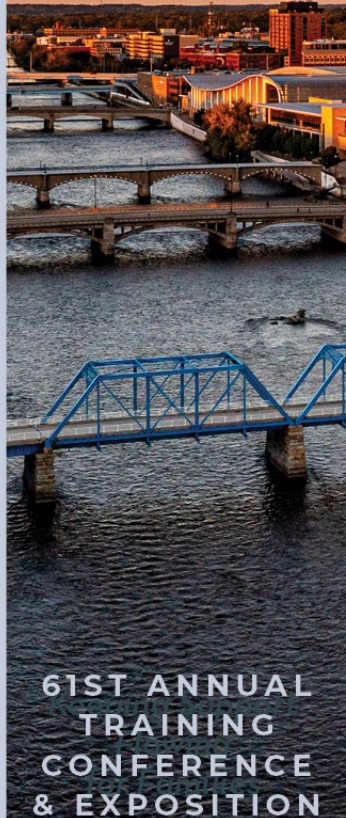
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When does a tribunal have CEJ?

- Tribunal assumes CEJ once support order issued
- Tribunal retains CEJ if either party or child resides there
 - Time of filing of modification request
- Even if no one resides in issuing state, tribunal retains CEJ if parties consent in a record or in open court that the issuing tribunal may continue to exercise jurisdiction to modify its order



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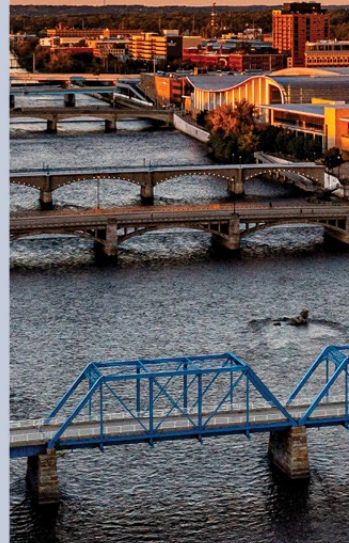


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Scenario #5 CEJ

Facts:

- FL child support order
- Dad lives in FL
- Mom and children now live in MI
- Dad seeks a reduction in support



Scenario #5 CEJ (cont'd)

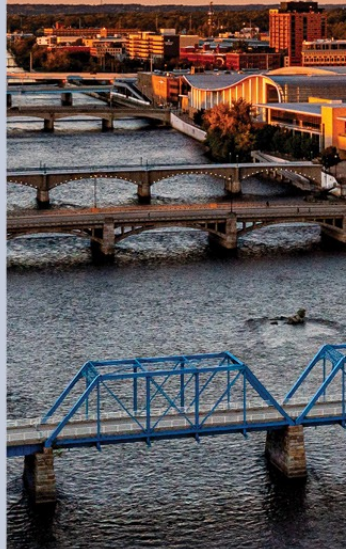
Which state has modification jurisdiction?

- (a) FL because it issued the support order and the obligor resides there
- (b) MI because that is where the children reside
- (c) MI because the dad must seek modification in the state where the other party resides

Vote: (a), (b), or (c)



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Correct Answer is:

(a) FL because it issued the support order and the obligor resides there

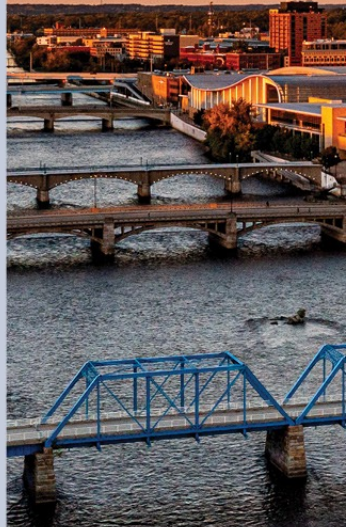
Under UIFSA, Section 205(a)(1)

CEJ = Order + Residence of Party or Child



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Scenario #6 CEJ

Facts:

- Obligee and children live in LA
- Obligor lives in NJ
- Order issued in FL

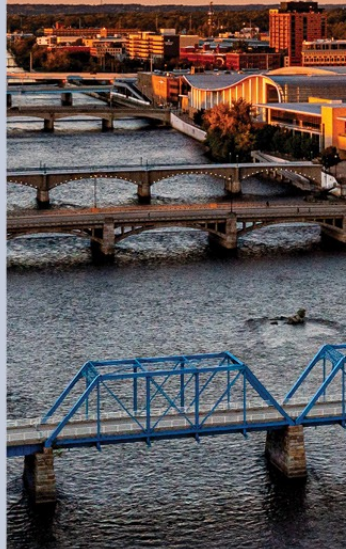
Can obligee seek modification in FL?

- (a) Yes, because FL issued the order
- (b) No, because no party lives there
- (c) Yes, if both parties consent for FL to retain jurisdiction to modify its order

Vote: (a), (b), or (c)



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Correct Answer is:

- (c) Yes, if both parties consent for FL to retain jurisdiction to modify its order

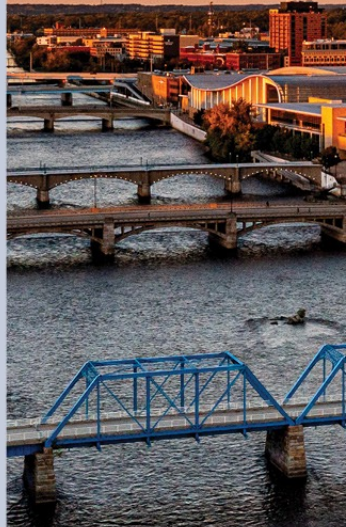
Under UIFSA, Section 205(a)(2)

CEJ = Order + Consent in record or open court



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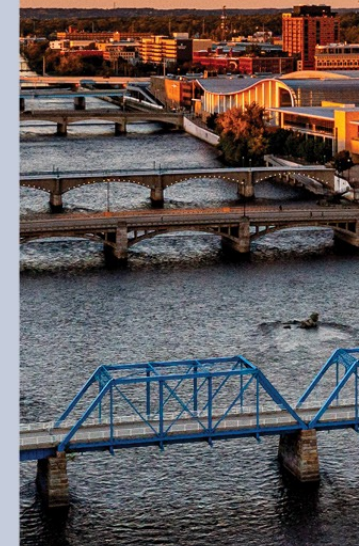
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Consent to Shift CEJ

- Only state with CEJ can modify the controlling order unless:
 - All parties file consent in a record with the issuing tribunal that a tribunal of another state may modify the order and assume CEJ; and
 - The other state must have jurisdiction over at least one of the parties or be the state where the child resides
 - UIFSA, Section 205(b)



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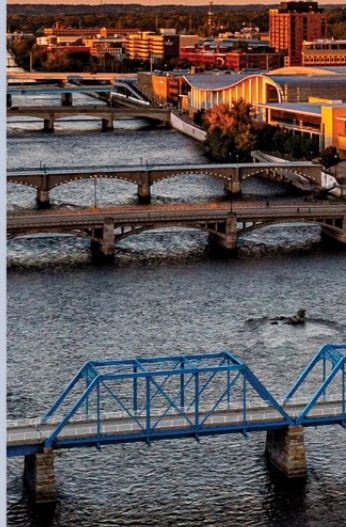
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Registration for Modification

- Requires existing support order
- Requires personal jurisdiction over parties
- Used when no CEJ
- Only time can be used when there is a state with CEJ is when parties have agreed to shift modification jurisdiction to registering state



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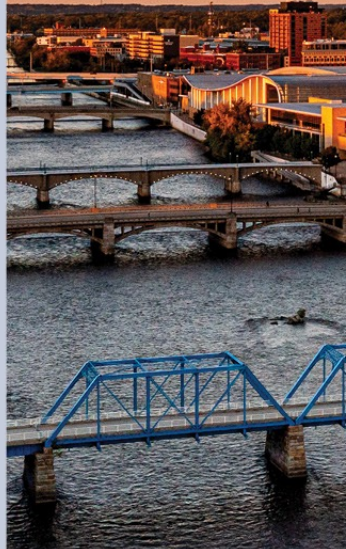
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Registration for Modification – No CEJ State – Section 611(a)(1)

- Tribunal must find all requirements are met:
 1. There is no CEJ state;
 2. The petitioner is a nonresident of the state in which modification is sought; and
 3. The respondent is subject to the personal jurisdiction of the registering tribunal.
- Known as “play away”



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Example of Modification Jurisdiction Under Section 611(a)(1)



TENNESSEE

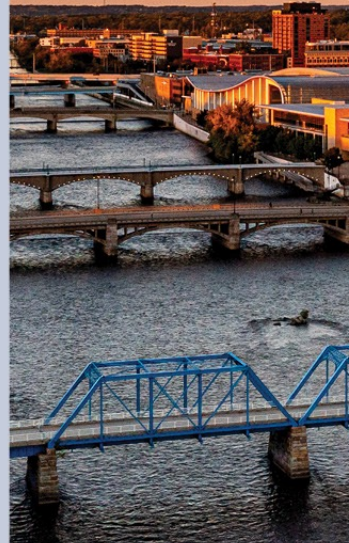


NORTH CAROLINA



SOUTH CAROLINA

- Obligee seeks increase in support.



Improper Modification of Order



Bridging Bright
Futures for Families

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Determining Validity of Modification

- If question about validity of subsequent order
 - **Ask tribunal to decide**
- Lack of subject matter jurisdiction
 - Nullity from the outset
 - Can be raised any time by parties or by court
- Mistake of law
 - May be vacated by tribunal or appellate court
 - Must be timely raised

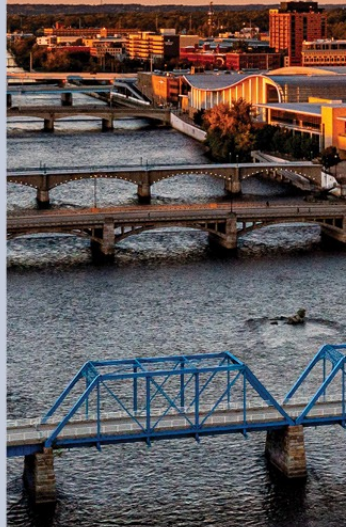
Scenario #7 Modification Jurisdiction

- SC issued child support order.
- Dad lives in KY.
- Mom and children live in OH.
- Mom registers order in OH and seeks modification of child support. Argues OH has jurisdiction over dad because he owns property in OH.
- Mom serves dad in KY. When dad fails to appear, OH court confirms the SC order and modifies the order to increase support.
- Mom registers modified order in KY for enforcement
- Dad challenges the registration and argues OH lacked jurisdiction to modify the SC support order because UIFSA Section 611 does not allow a petitioner to register an order in her own state for modification, absent consent by the other party.

How should court rule?



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Conflicting Case Law

- Subject matter jurisdiction
 - AL, D.C., FL, KY, LA, ME, NC, RI, TX, UT
 - Recent case: *Monteith v. Monteith*, 255 A.3d 1030 (Me. 2021)
- Mistake of law
 - MO, WA, WI
- Excellent resource: Essentials for Attorneys, [Ch. 13 Intergovernmental Child Support Cases](#), on OCSS website



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Appendix



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Other Jurisdiction Opinions

Lamancusa v. Dep't of Revenue, 250 So. 3d 812 (Fla. Dist. Ct. App. 2018) (UIFSA provision regarding duration of support is a choice of law rule, not one of subject matter jurisdiction)

Ross v. Ross, 805 S.E.2d 7 (Ga. 2017) (Georgia trial court lacked subject matter jurisdiction to modify Connecticut child support order where issuing court had CEJ because husband was still a resident of the state and neither party had provided written consent for a Georgia tribunal to exercise jurisdiction over the matter).

Earls v. Mendoza, 2011 Tenn. App. LEXIS 430, No. W2010-01878-COA-R3-CV, 2011 WL 3481007 (Tenn. Ct. App. Aug. 10, 2011) (trial court lacked subject matter jurisdiction to modify its order because no one resided in the issuing state and the narrow exception based on “consent in a record or in open court” did not apply. However, it retained jurisdiction to enforce the order).



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