



*Bridging Bright
Futures for Families*

**ERICSA
2024**

Grand Rapids

**ERICSA 61ST ANNUAL
TRAINING CONFERENCE & EXPOSITION
APRIL 7-11, 2024**

Intergovernmental Mods

- I Mod

Stacie Alexander

- Who Mod

Maria Catli Ferguson

- You Mod

Ryan Morrow

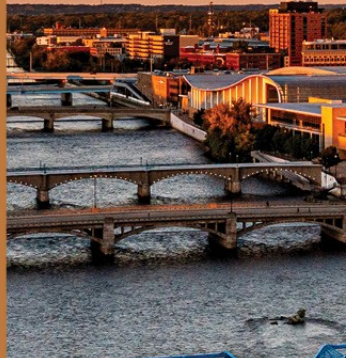
- Me Mod?

Andrew Schweller

The court did not order
no parties showed today
they had all moved
moved, far, far, away

I sat there with the Judge
we sat there, we two
and I said “let’s use UIFSA
it’ll know what to do”

Intergovernmental Modifications



Jurisdiction to Modify

The Modification Process

Effects of an Intergovernmental

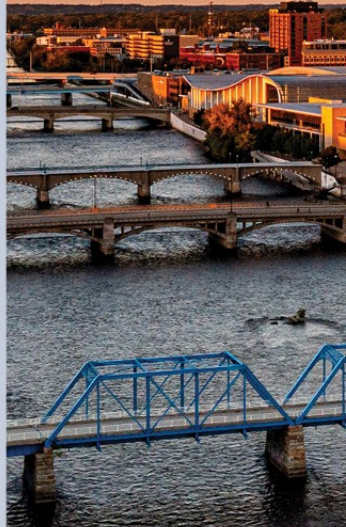
Scenario – CEJ All the Way

- Husband and Wife are divorced in State A.
- The divorce decree did not set child support or discuss any children
- Husband moves to State B
- IV-D Agency in State A requests State B establish support
- Husband files a plea to the jurisdiction, claiming CEJ is in State A

What do you think?



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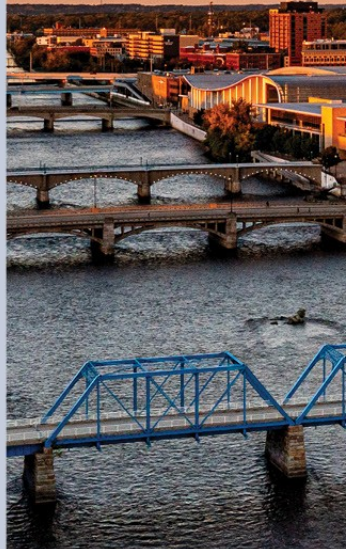
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Scenario – CEJ All the Way

- Office of Atty. Gen. v. Long, 401 S.W.3d 911 (Tex. App.—Houston [14th Dist.] 2013, no pet.)
- North Carolina did not set a child support obligation and did not have continuing, exclusive jurisdiction to adjudicate question of child support.
- Order states “there are no claims for child support, alimony or equitable distribution of marital property between the parties.”
- North Carolina law permits separate actions for custody and support, parties can limit their requested relief solely to dissolution of marriage.



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Jurisdiction to Modify

- One Order World
 - Continuing Exclusive Jurisdiction
- Grounds to Change CEJ
 - UIFSA 611
- Every Lives in the Same State
- Everyone Leaves (Play Away)
- Everyone Agrees (Consent)
- Multiple Orders and Everyone Leaves



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Domestic vs. Foreign

Domestic Parties

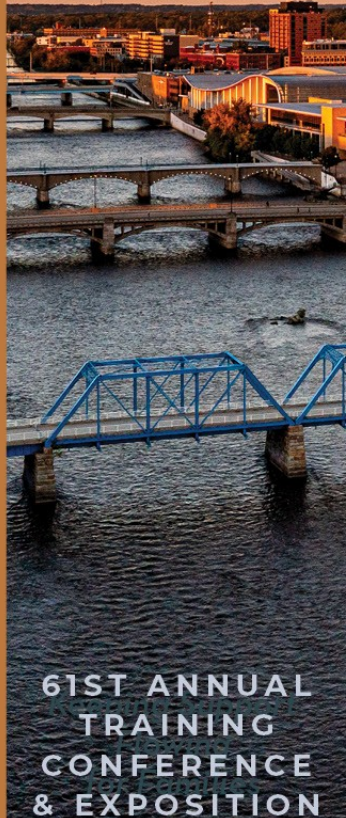
- Everyone Lives in the Same State
 - UIFSA § 613
- Everyone Leaves (Play Away)
 - UIFSA § 611
- Everyone Agrees
 - UIFSA § 215(a)(2)
- Multiple Orders and Everyone Leaves
 - UIFSA § 207(c)

Foreign Party

- One Party Outside the Country
 - UIFSA § 611 (f)
- Foreign Country: Lacks or Refuses Jurisdiction
 - UIFSA § 615
- Hague Convention Order
 - UIFSA § 711



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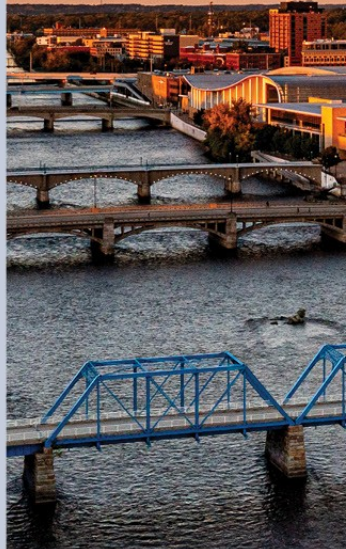


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Scenario – Consenting Adults

- Mom and Dad were divorced in New York
- Child to reside in New York with Dad
- Mom moved to California
- Child decided she wants to live with Mom in California
- Dad agrees to let Child live with Mom
- California modifies the New York order on the basis of Dad consenting to let Child live in California

What do you think?



Scenario – Consenting Adults

- Kulko v. Superior Court of California In & For City & Cnty. of San Francisco, 436 U.S. 84, 98 S. Ct. 1690, 56 L. Ed. 2d 132 (1978)
- The Supreme Court, Mr. Justice Marshall, held that: (1) acquiescence of divorced father who was a New York resident in his daughter's desire to live with her mother in California did not confer jurisdiction over divorced father in California courts in divorced mother's action to establish foreign judgment of divorce and to modify such judgment so as to award her child custody; (2) divorced father did not derive financial benefit as a result of his acquiescence in his daughter's desire to live in California with her mother so as to warrant California court's exercise of in personam jurisdiction over divorced father, and (3) basic considerations of fairness pointed decisively to New York as proper forum for adjudication of divorced mother's action to establish foreign judgment of divorce.



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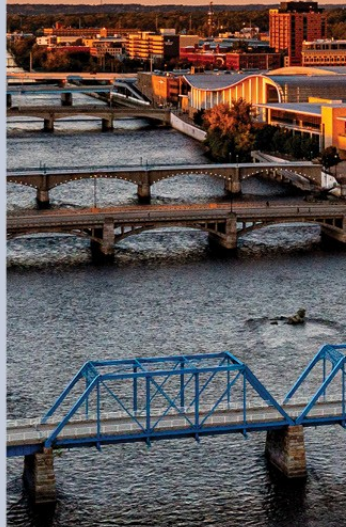
Scenario – Hometown Hero

- Child support order in State A
- Dad moves back home to State B
- Mom closes her full service case with State A's IV-D agency
- Dad files a confirmation of arrears and modification in State B
- State B defaults Mom, issues payment and possession credits and modifies support to zero

What do you think?



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Scenario – Hometown Hero

- In re T.L., 316 S.W.3d 78 (Tex. App.—Houston [14th Dist.] 2010, pet. denied)
- When a party seeks to modify a support order issued by another state, the Uniform Interstate Family Support Act (UIFSA) applies, and thus, a party seeking to modify a support order from another state must establish jurisdiction pursuant to the UIFSA.
- Question
 - What do you file in your state when another state wants to, or has, assumed jurisdiction?



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Ryan's Rule for Intergovernmental Modification Jurisdiction

2 > 1

**“It’s math so
easy,
even a lawyer can
do it!”**

- Ryan



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Ryan's Rule for Intergovernmental Modification Jurisdiction

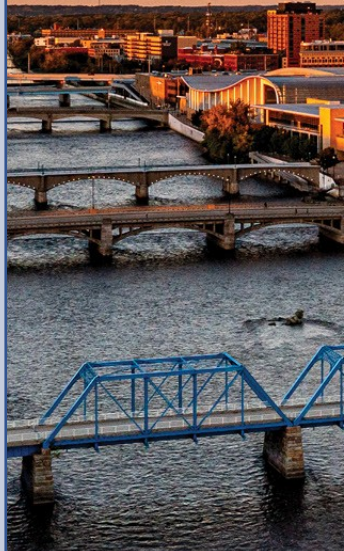
Required Information:

- Order State
- Custodial Person / DP State
- Non-Custodial Parent State

Scenario - UIFSA - UCCJEA, Tomato - Tamato

- Parties were happily married in 2012
- In 2015, wife gave birth the a son
- Parties divorced in 2019 in the State of Missouri
- Father was ordered to pay support to mom and parenting time was set up between dad and child with mother given custody
- Subsequently, mom moves to Ohio with the child.
- Dad moves to Indiana.
- Father hires an attorney in Ohio to address parenting time issues. Mom requests IV-D assistance in modifying order.
- Ohio sends over a UIFSA to modify the MO child support order.
- Upon contact with dad, he indicates he wants to deal with Ohio on all issues. He indicates his atty has been in contact with Ohio to modify support. His attorney in Ohio contacts your office and verifies this. He also includes a letter he sent to mother indicating his client would submit to the jurisdiction. You contact Ohio, Ohio wants support modified.

What do you think?



Scenario - UIFSA - UCCJEA, Tomato - Tamato

- This case is currently with Andrew's office.
- The Official Comment to Section 611 also discusses the "UIFSA Relationship to UCCJEA." It states:

The major difference between the two acts is that the basic jurisdictional nexus of each is founded on different considerations. UIFSA has its focus on the personal jurisdiction necessary to bind the obligor to payment of a child-support order. UCCJEA places its focus on the factual circumstances of the child, primarily the 'home state' of the child; personal jurisdiction to bind a party to the custody decree is not required.

The Modification Process

- Service
- Registration
- Choice of Law
- Limitations
- Long Arm



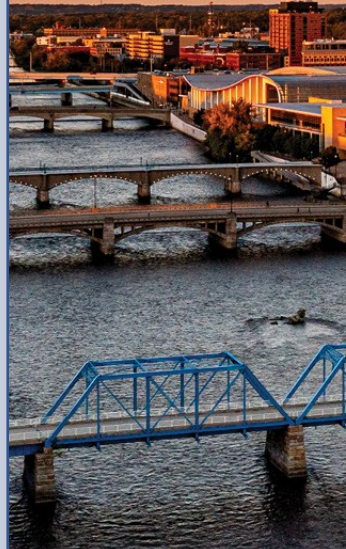
Scenario – Service, we don't need no stinking service

- Mother files a dissolution action in County A, Indiana
- During the pendency of the action, mother and children move to Ohio
- Indiana trial court grants dissolution and to pay \$163.00 per week in support
- Mom requests IV-D services and County A intervenes, payments forwarded
- A year later, dad wants a modification
- IV-D reviews the request and files a motion to modify. A hearing is set, and pleadings and notices are sent to father and the State
- State and father appear at a hearing and announce there is an agreement.
 - Arrears are determined, oldest child has lived with father for 2 years, dad will pay \$75 per week for the remaining 2 children on order and mom will pay \$175 a week to dad for the oldest child
- There is no indication that the order or agreement was sent to mom.
- Two years later mom finds out about the order
- Mom files a motion to set aside and testifies she never received a copy of the petition to modify. She testifies she never received anything from the State of Ohio or Indiana regarding a petition, court date or order

What do you think?



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Scenario – Service, we don't need no stinking service

- (This case is based on the case of Sigman v. Sigman 131 N.E. 3d 215 (2019) Unpublished.
- Questions:
- How do offices notify individuals of motion to modify?
- Do we rely on the other State?
- Are we comfortable not receiving any type of proof from the other state that the other party was notified?
- How many State's reach out to the other party directly?



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The Registration Process

A support order can be registered for the purposes of either enforcement, modification, or both.

Registration – UIFSA / Foreign Order

- UIFSA Section 605
 - 20 Days Notice

Recognition – Hague Convention

- UIFSA Section 707
 - Contest of a Convention Order must be filed not later than 30 days after notice
 - Contest must be filed not later than 60 days after notice if the party does not live in the United States

Scenario – It's a Matter of Process

- Parties have a divorce order from New York setting support.
- NCP moves to Texas
- Parties consent to modification in Texas
- Parties with attorneys negotiate modification along with judgment on arrears
- Hearing regarding payment toward arrears
- NCP disagrees with court and appeals claiming the New York order was never registered

What do you think?



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Scenario – It's a Matter of Process

- Kendall v. Kendall, 340 S.W.3d 483 (Tex. App.—Houston [1st Dist.] 2011, no pet.)
 - “Sections 159.602 and 159.609 of the Texas Family Code require a foreign support order be registered in Texas as a prerequisite to enforcement or modification.”
 - “the filing of foreign support order satisfies the registration requirement so long as no one was prejudiced by the failure to follow the statutory procedures.”
 - “in substantial compliance with UIFSA requirements,”



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Registration - How Close is Close Enough

Strict Compliance

- Alabama - Williams v. Williams, 91 So. 3d 56 (Ala. Civ. App. 2012)
- New York - Auclair v. Bolderson, 6 A.D.3d 892, 775 N.Y.S.2d 121 (2004)
- Nebraska - Lamb v. Lamb, 14 Neb. App. 337, 707 N.W.2d 423 (2005)
- Wisconsin - Cepukenas v. Cepukenas, 221 Wis. 2d 166, 584 N.W.2d 227 (Ct. App. 1998)

Not Strict Compliance

- Texas - Kendall v. Kendall, 340 S.W.3d 483 (Tex. App.—Houston [1st Dist.] 2011, no pet.)
- Washington - In re Marriage of Owen & Phillips, 126 Wash. App. 487, 108 P.3d 824 (2005)
- Mississippi - Nelson v. Halley, 827 So. 2d 42 (Miss. Ct. App. 2002)

Choice of Law

Issuing State Governs:

- (1) the nature, extent, amount, and duration of current payments under a registered support order;
- (2) the computation and payment of arrearages and accrual of interest on the arrearages under the support order; and
- (3) the existence and satisfaction of other obligations under the support order.

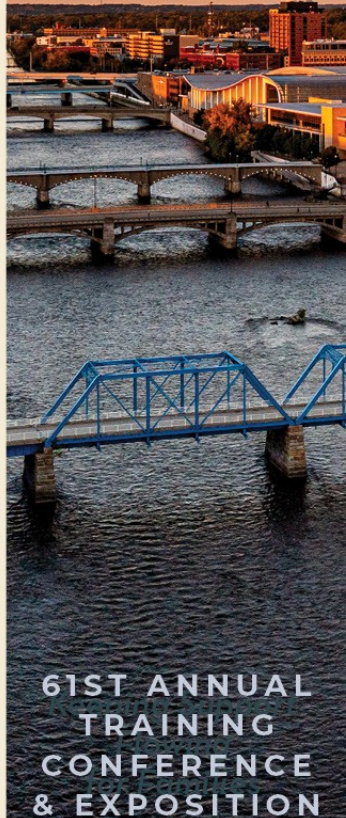
Responding State Governs:

- Procedures and remedies to enforce current support and collect arrears and interest

UIFSA Section 604



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Choice of Law

Income Shares Model

Percentage of Income Model

Melson Formula

- Dalton v. Clanton, 559 A.2d 1197 (Del. 1989)

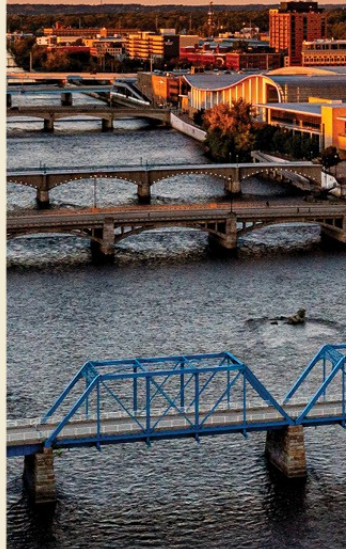
CALCULATING SUPPORT

- Income Shares Model (41 States and Territories)
 - Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wyoming, Guam, Virgin Islands.
- Percentage of Income Model (6 states)
 - Flat Percentage: Alaska, Mississippi, Nevada, and Wisconsin
 - Varying Percentage Model: North Dakota and Texas
- Melson Formula (3 states)
 - Delaware, Hawaii, and Montana

National Conference of State Legislatures
www.ncsl.org/human-services/child-support-guideline-models



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LIMITATIONS

- § 201 - Bases For Jurisdiction over Nonresident
 - Long Arm Jurisdiction
- § 202 – Duration of Personal Jurisdiction
- § 314– Limited Immunity of [Petitioner]
- § 610 – Effect of Registration for Modification
 - **Registration for Modification does not convey jurisdiction to modify**
- § 611(c) – Cannot modify parts of an order that could not be modified in the order issuing state.
- § 611(d) - Duration cannot be modified, except in cases of indefinite support.
- Start Date of a Modification



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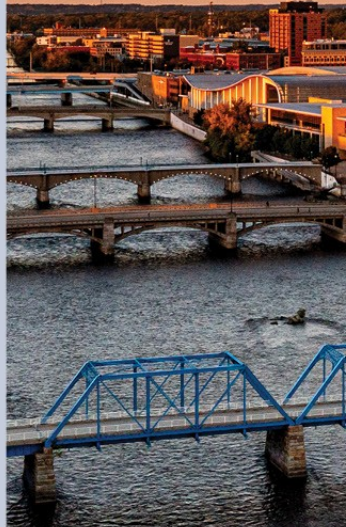
Scenario – My Constitutional Right

- Ex-Wife sought to register, enforce and modify out of state order through the IV-D agency
- Ex-wife failed to appear at the hearing
- IV-D agency used the general testimony as evidence to secure the modification and confirm arrears
- Ex-husband appeals claiming UIFSA is unconstitutional as it violated his rights under the Confrontation Clause, U.S. Const. amend VI, as he was not afforded the opportunity to cross-examine

What do you think?



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Scenario – My Constitutional Right

- Arnell v. Arnell, 416 S.W.3d 188 (Tex. App.—Dallas 2013, no pet.)
- Provisions of Uniform Interstate Family Support Act (UIFSA) restricting cross-examination of witnesses did not violate due process
- Statute allows for means to cross-examine through deposition or trial testimony by telephone, audiovisual means, or other electronic means and required cooperation between tribunals to designate appropriate location for deposition or testimony
- Have the right to confront, just not by only the means in which you want to.



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Scenario – I Say, You Say, Can We All Say Hearsay

- What if Mr. Arnell appealed on the basis that the general testimony constituted hearsay and was impermissible evidence considered by the court?



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Scenario – I Say, You Say, Can We All Say Hearsay

- What if Mr. Arnell appealed on the basis that the general testimony constituted hearsay and was impermissible evidence considered by the court?
 - He did, and he still lost.



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Hearings and Evidence

- UIFSA § 316 – Special Rules of Evidence and Procedure
 - Can't require physical presence of nonresident party
 - UIFSA forms not excluded as hearsay
 - Electronically sent evidence not excluded due to means of transmission
 - Nonresident parties and witnesses may be deposed and/or testify electronically
 - Court can draw an adverse inference based on refusal to testify
 - Spousal communication privilege does not apply



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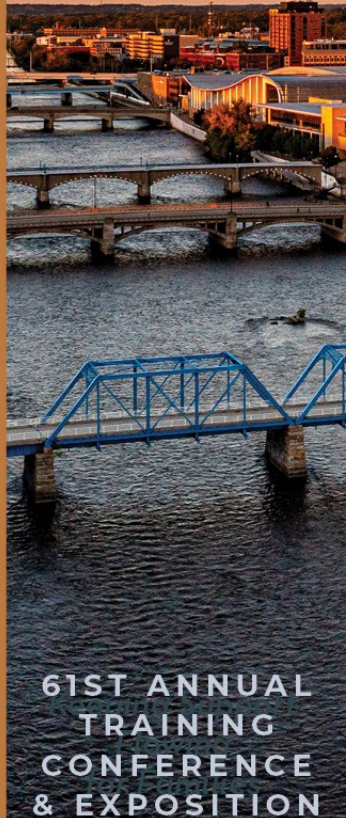
Hearings and Evidence

UIFSA § 316(b) – Special Rules of Evidence and Procedure

- An affidavit, a document substantially complying with federally mandated forms, or a document incorporated by reference in an affidavit or document, that would not be excluded under the hearsay rule if given in person, is admissible in evidence if given under penalty of perjury by a party or witness residing outside this state.



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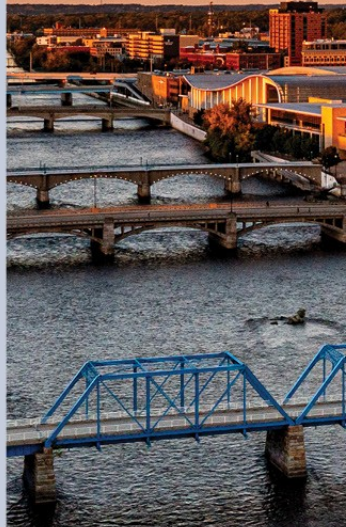


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Scenario

- Obligee, Obligor, and child (who was conceived in Indiana) live together in Indiana for five years. Parties separate. Obligor moves to California. Obligee and child move separately to California. Parties get divorced and support set in California. Obligee and child move back to Indiana. Obligee asks Indiana to modify.

What do you think?



Scenario

- Obligor, Obligee, and child resided together in Texas. The family moves to New Jersey. Obligor files for divorce in New Jersey. Upon getting served in New Jersey, Obligee and child move back to Texas. Obligee files for divorce in Texas and serves Obligor in New Jersey. Texas issues a divorce decree with support.

What do you think?

Scenario

- Obligor and Obligee have a support order in Colorado. Everyone moves to Tennessee and get a Tennessee modification. Obligor then moves to Dubai. Obligee and child move to Colorado.

What do you think?



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Scenario

- CP (mom) and NCP (dad) have a custody and support order out of Maryland for three children. NCP (dad) moved to Texas. CP (mom) moved to Colorado with the children. A few months later, all three children went to live with NCP (dad) in Texas. NCP (dad) registered the MD order pursuant to the UCCJEA and filed a subsequent modification alleging the children are in Texas due to the acts and directives of the CP (mom), asking for custody, and support. CP (mom) was served in Maryland while at her mother's house. It is unclear whether CP (mom) is living in Maryland again or not.

What do you think?

Intergovernmental Mods

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- Who Mod

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Andrew Schweller

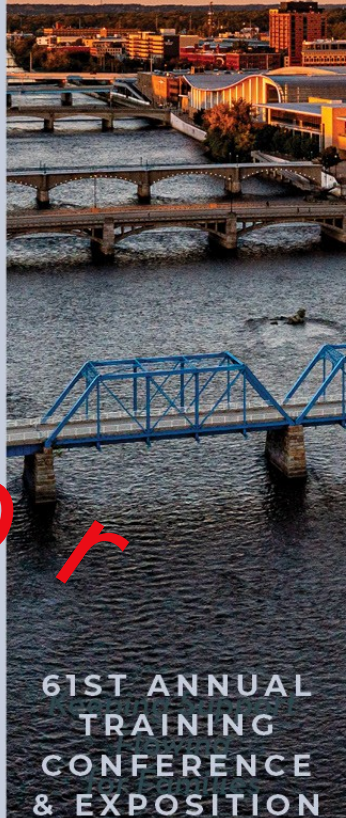
The transmittal was sent
four states away
CSNet came through
with locate just yesterday

They'll get them all served
and appear in the coming day
to right-size the order
for the parties to pay

Thanks for
Attending



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