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Modifications in the Modern UIFSA World

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Agenda

- Continuing, exclusive jurisdiction to modify.
- Modification of an in-state child support order.
- Registration and modification of an order of another **state**.
- Registration and modification of an order of another **country**.



Continuing, Exclusive Jurisdiction - CEJ

- UIFSA § 205 is a crucial provision of UIFSA.
- Contains the concept of “continuing, exclusive jurisdiction” (CEJ).
 - Do not confuse with the “controlling order” concept.
- Applies to the jurisdiction (authority) to modify a support order.



CEJ

- CEJ - Authority to modify a child support order
 - A tribunal that issued a child support order exercises CEJ if the:
 - Order is the controlling order, and
 - At the time of the filing of a request for modification, one of the individual parties to the support case resides in the state.
 - Residence of the parties at the time of filing of the request for modification is the consideration when determining whether CEJ exists.



Modification of an In-State Order

- An in-state tribunal retains jurisdiction to modify its own order if:
 - Either the NCP, the CP, or the child to the order remains in that state (at least one of the parties); or
 - The parties consent in writing or in open court that the controlling order state retains CEJ despite the fact that all of the parties now reside in other states; or
 - One party resides in another state and the other party resides in another country.



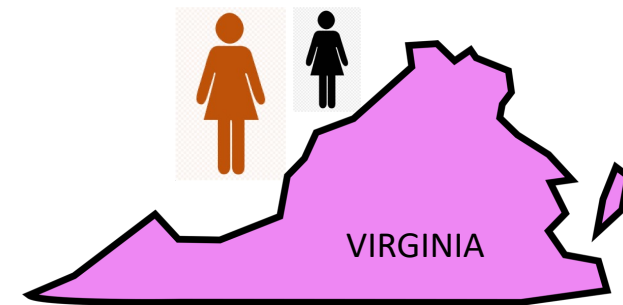
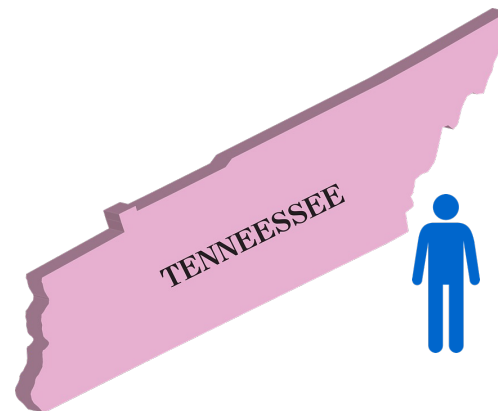
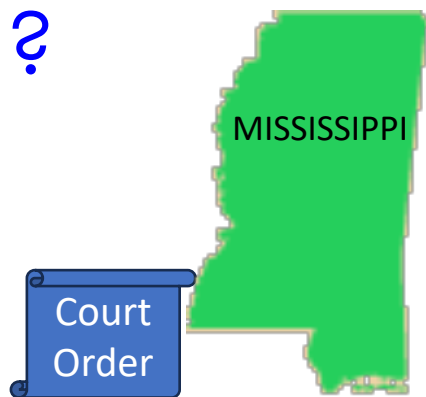
Modification of Another State's Order

- Requires that registration occurs first.
- UIFSA §611(a)(1)
- Then, the responding tribunal may modify that order, upon petition, only if both individual parties do not reside in that state and after notice and hearing it finds that either one of the following sets of requirements is met:
 - Neither the child, the individual obligee nor the obligor reside in the issuing state; and
 - The petitioner seeking modification does not reside in the registering state – this is called the “Play-Away Rule”; and
 - The respondent (the party to the action who is not seeking modification) is subject to the personal jurisdiction of the tribunal.



Scenario – CEJ

- Mississippi order
- NCP resides in Tennessee
- CP and child reside in Virginia
- Under what circumstances can MS retain CEJ?
- Otherwise, what state would have jurisdiction to modify?
- **Bonus point:** What part of the order cannot be modified?



Parties Consent

- UIFSA §205(a)(2) authorizes a tribunal to modify a controlling order even if the state is not the residence of the obligor, individual obligee or child for whose benefit the support order is issued, if the parties consent in a record or in open court that the tribunal issuing the controlling support order may continue to exercise CEJ.



Parties Consent

- UIFSA §611(a)(2)
- The registering state is the residence of the child or an individual party is subject to the personal jurisdiction of the tribunal, and
- All of the parties who are individuals have filed consents in a record in the issuing tribunal for the registering tribunal to assume CEJ over the order.
- The consent must be filed in writing or in open court.



UIFSA

- §205(b) addresses that a state may not exercise CEJ when:
 1. All of the parties who are individuals file a consent in a record with the tribunal of this state that a tribunal of another state, that has jurisdiction over at least one of the individual parties or is located in the state of residence of the child, may modify the order and assume CEJ, or
 2. The order is not the controlling order.



UIFSA

- A tribunal that lacks CEJ may serve as an initiating tribunal to request that a tribunal of another state that has CEJ should modify the order.
 - Example: a state has registered an order for enforcement only but may act as the initiating state to request another state to modify the order.



Effect of Modification by Another State

- UIFSA §205(c) – If another state modifies the child support order issued by this state, then this state must recognize CEJ of the other state.
- UIFSA §611(e) - If the child support order issued by one state is modified by another state, the modifying tribunal assumes CEJ.



Recognition of Modification in Another State

- UIFSA §612 – The tribunal of the issuing state:
 - Must recognize the CEJ of the modifying state;
 - May enforce the order that was modified as to arrears and interest accruing before the modification;
 - May provide appropriate relief for violations of the order which occurred before the effective date of the modification; and
 - Must recognize the modified order of the tribunal of the other state upon registration for the purpose of enforcement.



Rules for Modification

- UIFSA §201 (b) – Long-arm provisions DO NOT apply to modification proceedings
 - “Subsection (b) elaborates on the principle by providing that modification of an existing child-support order goes beyond the usual rules of personal jurisdiction over the parties. Amended in UIFSA (2001) subsection (b) makes clear long-arm personal jurisdiction over a respondent, standing alone, is not sufficient to grant subject matter jurisdiction to a responding tribunal of the state of residence of the petitioner for that tribunal to modify an existing child-support order. The limitations on modification of a child support order provided by Section 611 must be observed irrespective of the existence of personal jurisdiction over the parties.”



Duration of Support

- UIFSA §611(c) – Provides the original timeframe for support is not modifiable unless the law of the issuing state provides for its modification.
- UIFSA §611(d) – Specifically provides and makes it clear that the law of the state with the initial controlling order governs the duration of the support obligation.



International Modifications – U.S. Orders

- UIFSA §611 (f) – Provides that a United States tribunal retains jurisdiction to modify an order it issued if:
 - One party resides in any US state (as defined by UIFSA).
 - The other resides outside the US.
 - Consent is not necessary.
 - Residence of the petitioner does not matter.



International Modifications – Foreign Orders

- UIFSA §615 – Provides that a US tribunal has jurisdiction to modify a foreign support order even if the other country would have CEJ if:
 - US tribunal has personal jurisdiction over the parties.
 - The other party resides outside the US.
 - Issuing country **cannot** or **will not** modify its order.
 - Consent is not necessary.



International Modifications

- Normally, these facts give rise to the requirement to “play-away”, i.e., the party seeking modification must file to the other party’s state. However, this provision permits the issuing state to retain CEJ even though it would not longer normally retain “modification jurisdiction.”
- This exception to the play-away rule provides assured personal jurisdiction over the parties, which in turn enables the issuing tribunal to retain continuing jurisdiction to modify its order. Of course, the party residing outside the United States has the option to pursue modification in the state where the other party or child currently reside(s).



International Modifications

- UIFSA 2008 official comments:
“The play-away principle makes sense when the tribunals involved have identical laws regarding continuing, exclusive jurisdiction to modify a child support order. If one party resides in a foreign country, a pure play-away rule would deny modification in a forum subject to UIFSA rules to the party or child who has moved from the issuing state, but continues to reside in the United States.”



Effect of Modification

- If a registered support order is modified, the modifying tribunal becomes the tribunal with CEJ (§611(d))
 - Modifying tribunal sends a copy of the order to the parties and the initiating agency or tribunal, if any (§305(e)).
 - Other states must recognize the modified order.
- If a modification of the controlling order does not occur, CEJ does not transfer to the registering tribunal.



Effect of Modification

- UIFSA §614 – Within 30 days after the issuance of the modified order, the party to the case who obtained the modification must file a certified copy of the order with the issuing tribunal where the earlier order had been registered.



Jurisdiction to Modify – Parties in Same State

- UIFSA §613 – If a registration request is made by a party in the state where both parties reside and the child does not live in the issuing state, the registering state has jurisdiction to enforce and modify the issuing state's order.
 - The registration converts the support action to a local matter where the parties reside.



Physical vs. Legal Residence

- Official comments to UIFSA state that proof that neither individual nor the child continue to reside in the issuing state is made directly in the responding tribunal.
- But what does “reside” as used in UIFSA mean? There is a split in the appellate courts as to what the drafters meant when using the term “reside”.



Appellate Court Examples

- Physical Residence – Highfill v. Moody, Court of Appeals of Tennessee, At Jackson, Filed May 25, 2010, Case #W2009-01715-COA-R3-CV.
- Legal Domicile – Lilly v. Lilly, Court of Appeals of Utah, Filed February 25, 2011, Case #20090933-CA.



Forms

- Review the federal OCSS UIFSA Forms Matrix:
 - https://www.acf.hhs.gov/sites/default/files/documents/ocse/intergovernmental_forms_matrix.pdf
- To request modification of an existing responding tribunal order, there are two options on the CSET#1: Modify and enforce, or Modify then close* the intergovernmental IV-D case. The required forms for these actions are:
 1. Child Support Enforcement Transmittal #1 – Initial Request (check action 3.B or C)
 2. Child Support Agency Confidential Information Form
 3. Uniform Support Petition
 4. General Testimony
 5. Personal Information Form for UIFSA § 311



Forms

- To request modification of an existing order from another jurisdiction (not the responding state), there are two options on the CSET#1: Register, modify, and enforce, or Register, modify, then close* the intergovernmental IV-D case. The required forms for these actions are:
 1. Child Support Enforcement Transmittal #1 – Initial Request (check action 4.B or C)
 2. Child Support Agency Confidential Information Form
 3. Letter of Transmittal Requesting Registration
 4. Uniform Support Petition
 5. General Testimony
 6. Personal Information Form for UIFSA § 311



Scenario – Add a Child

- Gretel and her child live in Mississippi.
 - Hansel (the father) resides in Florida.
 - Paternity was established and a support order was issued in MS.
 - Hansel went on vacation with Gretel and the child in Georgia. Nine months later a second child is born.
 - Gretel applies for services in MS to add the new child to the case.
- Which state should pursue paternity and modification or support establishment?
 - Can MS add a child to the order based on its earlier jurisdiction over mom and dad?
 - What if Hansel had no minimum contact with MS?
 - Can GA enter an order using long-arm if MS asks?
 - Can FL enter an order based on Hansel residing there (traditional two-state UIFSA)?
 - If more than one state can enter an order based on valid claims of jurisdiction, what factors should be considered when selecting the forum state?



Scenario – Remarriage of the Parties

- Lucy and Ricky were married, and had baby Little Ricky.
 - They later divorced in North Carolina which included child support.
 - Ricky and Little Ricky moved to Virginia.
 - Lucy moved to South Carolina and fell behind in child support.
 - Two years after the divorce, Lucy and Ricky remarried in West Virginia. However, old issues arose and they divorced again a year later (still in WV).
 - Lucy moved back to SC and Ricky and Little Ricky moved back to VA.
 - Ricky applies for child support services in VA.
-
- What is the impact of the divorce, remarriage and second divorce on the original divorce's support order regarding arrearages?
 - Which state has CEJ? If none, which state will be the forum state?
 - What if there was no second divorce in WV and Ricky wanted support?



Scenario – Physical/Legal Change of Custody

- George and Martha were married and had two children – Georgie and Marti.
 - They divorced in Delaware.
 - Martha got custody of both children and moved to Maryland.
 - George moved to Pennsylvania.
 - When Georgie turned 13, she wanted to move in with George. George and Martha agreed to try it out for a while. After six months they decided Georgie could stay with George. No legal custody change occurred. Marti wants to stay with Martha.
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- If a modification of the order is requested, is a change in legal custody required?
 - What happens to support payments during the physical custody change?
 - What state can entertain a change in support? Is a new application needed?
 - What if Marti moved in with George too?



Scenario – Change of Payee

- Stewie is the child of Peter and Lois, who live in New York.
 - During an out-of-state trip Stewie was taken by the New Jersey child protective services and placed in foster care.
 - Soon after, Peter and Lois divorced in NY; child support is not mentioned.
 - Peter moved to Vermont.
 - Lois moved to New Hampshire.
 - NJ is seeking IV-E reimbursement.
-
- Which state should be the forum state?
 - Is this a modification or an establishment support action?
 - What if the divorce mentioned Stewie as a child of the marriage and set the child support at \$0?
 - Who is/are the defendant(s)?
 - Is Stewie a resident of NY or NJ or somewhere else?



Scenario – NCP Becomes Incarcerated

- Goldie and Kurt are the parents of Kate.
 - There is a child support order established in Texas.
 - Goldie and Kate move to Nebraska.
 - Kurt is caught speeding and road raging in Oklahoma and receives an eight-month jail sentence by a judge in OK.
-
- Which state has jurisdiction to modify? What is Kurt's state of residence?
 - Once the state with jurisdiction to modify learns of the sentence, what modification steps should it take, if any? What about after release?



Scenario – SCRA and Military Modifications – Part 1

- Donny and Marie have one child born out of wedlock in Michigan.
- A child support order is established in MI for a minimum only \$50/month because Donny is unemployed.
- Marie and the child move to Illinois.
- Donny then enters the military and is deployed to the Leonard Wood Army Training Base in Missouri, and is scheduled to be shipped overseas.
- Marie wants an upward modification due to Donny's increased income, and she wants it done quickly so she can obtain TriCare and support before Donny is deployed.
- Who has jurisdiction to modify the order? What is Donny's state of residence?
- How does the Servicemembers Civil Relief Act play into this?



Scenario – SCRA and Military Modifications – Part 2

- Donny is deployed to Afghanistan for 9 months in a combat zone and has an extra 30% in pay as a result.
- Should a modification be sought? Where?
- Does it matter if the MI order was just modified a couple of months ago?
- How does the SCRA play into this scenario?



Scenario – International – U.S. Order

- There is a North Dakota child support order for Cher to pay Sonny for their two children.
- Sonny applies for child support services after moving to South Dakota and wants enforcement and modification of the ND order.
- Cher is currently residing in England.
- Which jurisdiction do you request to do enforcement?
- Which jurisdiction do you request to do the modification?
- What paperwork do you send, and where?



Scenario – International – Foreign Order

- There is a child support case between Taylor and Travis; Taylor has custody of the child.
 - Taylor comes into your child support office in Maine where she resides and applies for services.
 - She has a child support order from Germany, which is where Travis resides, for 500 Euros per month. She wants the order modified.
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- Which tribunal has jurisdiction to do this, Maine or Germany?
 - What do you do if you send the modification request to Germany but they refuse to modify their own order based on what they claim is lack of jurisdiction over the child?



Thank you for your participation!

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