Continuing, Exclusive Jurisdiction (CEJ) in United States Child Support Cases

All U.S. states have enacted the Uniform Interstate Family Support Act (UIFSA), as approved by the Uniform Law Commission (ULC) in 2008, in order to receive federal funding for their child support programs [42 U.S.C. §666(f)]. UIFSA applies to interstate cases in the U.S. and to cases involving foreign countries.

UIFSA is built on a "**one order, one time, one place"** construct. A U.S. tribunal may not enter a current support order where a valid one already exists. The support order that governs prospective *current* support is known as the "controlling order".

UIFSA's core concept is **continuing, exclusive jurisdiction (CEJ)**. So long as an individual party or the child resides in the "issuing state" (the state of the tribunal which issued the controlling order), that tribunal retains CEJ - exclusive jurisdiction to *modify* its order, upon proper petition. Though the language differs, the federal Full Faith and Credit for Child Support Orders Act (FFCSOA) also adopts CEJ as a linchpin (28 U.S.C. §1738B). Whether an issuing tribunal has CEJ is determined at the time a party files a modification petition. An order modifying the controlling order which was entered in violation of the CEJ rules of UIFSA/FFCCSOA later may be determined by a U.S. tribunal to be void and unenforceable.[1]

Generally, the issuing tribunal no longer has CEJ and loses the authority to prospectively modify its current child support order when the parties and the child have left the issuing state.[2] There are two exceptions in UIFSA: (1) no one resides in the issuing state but both of the individual parties consent in the record for the tribunal to retain CEJ; or (2) at least one party remains in the state but the parties agree in writing to vest jurisdiction in another state.[3]

If the issuing state loses CEJ, UIFSA §611 provides rules under which a tribunal in another state determines whether or not it has the authority to modify the issuing state's order. The party seeking the modification must register the controlling order in the other party's state – in other words, "play away". The tribunal where modification is sought must find the following: the state which issued the controlling order does not have CEJ; the petitioner is a non-resident; *and* the tribunal may obtain personal jurisdiction over the respondent. If a support order is modified consistent with UIFSA, the modifying tribunal's order becomes the controlling order.[4] Thus, as the issuing state, it now has CEJ to modify the new controlling

[1] U.S. courts generally have held the modified order void because the modifying tribunal lacked subject matter jurisdiction by failing to meet the CEJ requirements of UIFSA.

[2] UIFSA also covers spousal support orders. Contrary to the rules for child support, only the issuing jurisdiction may modify a spousal support order regardless of whether or not the parties are present in the issuing state.

[3] UIFSA's consent requirement has been strictly construed by U.S. courts. Filing a petition asking for a modification does not meet this requirement. See UIFSA §205.

[4] The modifying tribunal may not modify any provision of the order not subject to modification in the issuing state, including the duration of the support obligation.

order so long as the obligor, obligee, or child continues to reside in the state. CEJ and the continuing jurisdictional rules described above then apply to this order.

There are four exceptions to the requirement to "play away":

1. The obligor (debtor/payor) and individual obligee (creditor/recipient) may agree in writing for the petitioner's state to exercise modification jurisdiction and file that agreement with the tribunal in the state that issued the controlling order (§611).

2. For international cases, the written consent required by §611 is not required if a foreign country or political subdivision "lacks or refuses to exercise jurisdiction" to modify its support order (§615).

3. Where the individual parties reside in the same state, upon registration and petition, that state may modify the controlling order of another state (§613).

4. The issuing tribunal has authority to modify its order if one party now resides in another state and the other party resides outside the United States [§611(f)].

Under UIFSA, the tribunal which issued a valid support order has **continuing jurisdiction** to *enforce* it, regardless of whether anyone resides in the issuing state. This order also may be registered for enforcement in any and all states in which the obligor resides, is employed, or has assets without stripping the issuing tribunal of its authority to enforce the order. The order remains valid and controls the current support obligation unless and until it is modified by a tribunal with jurisdiction pursuant to UIFSA/FFCCSOA rules. Further, the tribunal continues to have personal jurisdiction over an individual in support cases so long as the tribunal has either CEJ to modify or continuing jurisdiction to enforce the order (§202).

UNIFORM INTERSTATE FAMILY SUPPORT ACT (UIFSA) - References

UIFSA (2008) The Preventing Sex Trafficking and Strengthening Families Act of 2014 mandated that all states enact UIFSA (2008) [42 U.S.C. §666(f)]. All states have complied. An electronic version of UIFSA (2008) is on the ULC website at: http://www.uniformlaws.org/shared/docs/interstate%20family%20support/UIFSA_2008_Final_Amended%202015_Revised%20Prefatory%20Note%20and%20Comments.pdf

See also OCSE IM-16-02 at https://www.acf.hhs.gov/css/resource/2008-revisions-to-the-uniform-interstate-family-support-act, and OCSE AT-14-11 at https://www.acf.hhs.gov/css/resource/pl-113-183-uifsa-2008-enactment.

Case Scenarios

The following scenarios offer examples as to how a tribunal will analyze typical fact situations under UIFSA 2008. The reader is reminded that child support cases are heard in state tribunals. ERICSA posts case law updates on intergovernmental cases as an additional resource.

Scenario 1

A child support order is entered by a U.S. state (issuing state) tribunal. The obligee and child reside in the issuing state. The obligor has moved to Canada. The IV-D agency registers the order for enforcement in the Canadian province/territory where the obligor resides. The obligor subsequently petitions the Canadian court for a modification of the registered order. The Canadian court grants the requested relief and reduces the obligor's current child support obligation and the obligor starts paying the lower amount.

Would the issuing state recognize the modified Canadian order?

No. Under UIFSA, the issuing state has continuing and exclusive jurisdiction (CEJ) to modify its support order because the custodial parent and child remain residents of the state (§205). While UIFSA allows the parties to consent to a Canadian court assuming modification jurisdiction, that consent must be clear and filed with the issuing state tribunal.

UIFSA §205(a)(1) provides that the issuing state tribunal "shall exercise continuing, exclusive jurisdiction to modify its child-support order if the order is the controlling order and . . . at the time of the filing of a request for modification this state is the residency of the obligor, the individual obligee, or the child for whose benefit the support order is issued."

UIFSA §205(b)(1) contains an exception where the issuing state with CEJ (because the obligee, obligor, or child is still in residence), "may not exercise continuing, exclusive jurisdiction to modify [its] order" if the individual parties file a consent in the record of the issuing tribunal "that a tribunal of another state that has jurisdiction over at least one of the parties who is an individual or that is located in the state of residence of the child may modify the order and assume continuing, exclusive jurisdiction."

Consent must be clear, unambiguous, and filed with the issuing state tribunal. The UIFSA rules for when a state may modify another state's support order are set out in UIFSA §§609 – 615. Specifically, §612 requires the issuing state tribunal to recognize a modification of its order only where the modifying tribunal has "assumed jurisdiction pursuant to" UIFSA.

Overwhelmingly, U.S. courts have interpreted these sections as a matter of subject matter jurisdiction. If a court modifies another state's child support order without meeting UIFSA's requirements, the modified order may be held to be void and unenforceable.

In this scenario, if the Canadian modification order is sent to a U.S. state with a request to register and enforce it, neither the issuing state nor any other U.S. state tribunal is likely to recognize the modification. Arrears would continue to accrue under the original order.

Scenario 2

A Canadian party wishes to modify a child support order made in the province or territory where that party resides. The Canadian party submits an ISO Support Variation Application (which corresponds to a UIFSA modification request), requesting that the tribunal or court in the U.S. state where the other party resides modify the Canadian child support order. The Inter-jurisdictional Support Orders Act (ISO) permits the Canadian party to make this type of application.

If the Canadian ISO Support Variation Application (modification request) is sent to the U.S. state where the other party resides, how would this request be dealt with?

Preliminarily, this scenario assumes that the party seeking modification in a U.S. state (either the obligee or obligor) resides in the same province or territory that issued the order. The requested U.S. state will consider the requirements of §§609 – 615. Since one parent continues to reside in the issuing province or territory, the U.S. state where the other parent resides will not have jurisdiction under UIFSA to modify the order unless the circumstances fit one of the UIFSA exceptions to CEJ. As described in Scenario 1, if both parties file a written consent with the issuing Canadian tribunal for the U.S. tribunal to modify the support order and assume CEJ, the U.S. state would have subject matter jurisdiction to modify under UIFSA.

But even if there is no written consent, UIFSA allows the requested state tribunal to assume modification jurisdiction where the issuing foreign jurisdiction "lacks or refuses to exercise jurisdiction to modify its child-support order pursuant to its laws…" [§615(a)]. In this situation, the requested U.S. tribunal must be satisfied that the requirement is met. There is no provision within UIFSA, nor any case law to date, addressing how a party would prove that the issuing Canadian tribunal "lacks or refuses to exercise jurisdiction" to modify its order. What satisfies a state tribunal may vary.

The requested tribunal also must have personal jurisdiction over both parties (§615). Jurisdiction over the party remaining in the issuing Canadian province or territory is obtained by submitting to the forum by making a request for modification of the Canadian support order. After the U.S. tribunal enters a modified support order, its order is controlling and the tribunal obtains CEJ to modify the controlling order.