UIFSA: THE FUNDAMENTALS AND MORE  (CLE)

Whether you are a newcomer to the world of interstate child support, or you are a more seasoned professional, this workshop is for you. The session starts with a beginner’s guide to processing interstate cases, including information on the Uniform Interstate Family Support Act, both the 1996 and the 2001 versions. Concepts to be discussed include establishment, long-arm jurisdiction, the registration of an order in another state for enforcement and/or modification, continuing exclusive jurisdiction, the determination of controlling order, and the federal UIFSA forms. More in-depth issues will be discussed as well.

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“When it Comes to Supporting Children
We Don’t Horse Around!”

ERICSA 2010
Interstate 101

Presented by
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• PRWORA (Welfare Reform) mandated that states enact UIFSA

• The Goal-

One Controlling Order
Multiple states may enforce the order, but only one has the jurisdiction to modify it.
Interstate Defined

• A case in which the CP and NCP reside in separate states. Some states define interstate to include cases where the order is from another state.

• Historically on a national level, interstate cases represent about one-third of the child support caseload.
Interstate Legislation

- Uniform Reciprocal Enforcement of Support Act (URESA)
- Revised Uniform Reciprocal Enforcement of Support Act (RURESA)
- Full Faith and Credit for Child Support Orders Act (FFCCSOA)
- Uniform Interstate Family Support Act (UIFSA)
Key Concepts to Remember

• The Controlling Order determines the child support obligation and insures one order/one time/one place
• Both CP and NCP can use UIFSA
• Only the state with CEJ can modify
• If no CEJ state, person seeking modification must “play away”
• States must recognize and enforce other States’ orders
Key Concepts to Remember

• Visitation may not be raised and is not a defense to nonpayment of support
• UIFSA has enhanced evidence rules
• Non-paternity is not a defense, if paternity has been established or acknowledged
• There are one-state and two-state procedures, and special rules of evidence
Analyzing an Interstate Action

- If there is no order, an order needs to be established.
- If there is only one order, determine whether it needs enforcement or modification.
- If there are multiple orders, the controlling order must be determined first.
Determining the Controlling Order

• Since 1998, States have been striving to enter only one order for each set of parents and child, but there may still be cases with multiple orders.

• The determination of one controlling order is the cornerstone of UIFSA and FFCSOA.

• When multiple valid support orders exist, there are rules for determining which support order governs.
Determining the Controlling Order

- States must give full faith and credit to valid child support orders issued by other states.
- UIFSA and FFCCSOA use the same rules for reducing multiple valid support orders to one controlling order.
  - No provision in either law invalidates any previously issued valid support order.
  - A controlling order determination should be made only once, when multiple orders exist.
Determining the Controlling Order

• For a state to make a controlling order determination, all of these conditions must exist:
  – There must be multiple orders for current support
  – Either the obligor or the individual obligee must reside in the state
  – The request must be accompanied by a certified copy of every order in effect
Are there any child support orders in the case?

- **NO**

  - A tribunal with jurisdiction over the parties can enter a new order that becomes the controlling order.

- **YES**

  - How many child support orders are in effect?

    - **ONE**

      - This child support order is the controlling order, even if everyone has left the issuing state.

    - **2 or MORE**

      - A tribunal with jurisdiction issues a new order that becomes the controlling order.

  - Can any issuing state claim CEJ?

    - **NO**

      - This order must be recognized as the controlling order.

    - **YES**

      - How many states can claim CEJ?

        - **ONE**

          - The most recent order entered by a tribunal with CEJ is the controlling order.

        - **2 or MORE**

          - The order from the child’s home state is the controlling order.

  - Does any CEJ tribunal qualify as the child’s home state?

    - **NO**

    - **YES**

      - The order from the child’s home state is the controlling order.
Case 1

PAY $250/mo

PAY $150/mo
Case 2

PAY $150/mo

PAY $200/mo
Order Determining Controlling Order

• The order must include:
  – The basis on which the determination was made
  – The amount of prospective support
  – The amount of arrears and interest

• Within 30 days, the requesting party must file a certified copy of the determination order with each tribunal that had issued an earlier child support
Determining the Controlling Order

• The controlling order determination cannot be relitigated unless overturned on appeal.

• It is best practice that the tribunal with jurisdiction to determine the controlling order also reconciles the arrears among the existing cases.
  – This is required by states that have adopted UIFSA 2001
Arrears Reconciliation

- Arrears reconciliation consolidates arrears accumulated under multiple orders into a single amount that the obligor owes at a specific point in time.

- The process of calculation is based on:
  - The periodic amount of the support order
  - The number of unpaid periods
  - Any payments made
Calculating Arrears

• Arrears are calculated for each order, as needed, and the amount is aggregated.

• For any period of time when more than one order was actually in effect, the total amount of support due is based only on the highest order that was in effect during that period.

• That arrearage is collected through enforcement of the controlling order.
Paternity and Support Order Establishment

• Long-arm: Legal provision that permits one state to claim personal jurisdiction over someone who lives in another state.
• Must be some meaningful connection between the person and the state or district that is asserting jurisdiction
• Service of Process Issues
Jurisdiction

• Jurisdiction refers to the power of a tribunal to decide a case.
• There are several different types of jurisdiction
  – Subject-matter jurisdiction
  – Personal jurisdiction
  – Long-arm jurisdiction (also called extended personal jurisdiction)
  – In rem jurisdiction.
Extended Personal Jurisdiction (Section 201, 2001 version)

In an action to establish or enforce a support order or to determine parentage, a tribunal of this state may exercise personal jurisdiction over a non-resident if the individual:

- Is personally served within this State
- Consents to jurisdiction in this State
- Resided with the child in this State
Extended Personal Jurisdiction

- Resided in this State and paid the child’s prenatal expenses or provided support
- Caused the child to be living in this State
- Engaged in sexual intercourse in this State and the child may have been conceived by that act
- [The individual asserted parentage in the putative father registry]
- Or any other constitutionally valid basis
Establishment

- The tribunal that establishes the order applies its laws regarding the support amount and duration of the support obligation. § 303
- Long-arm jurisdiction cannot be used to modify an order unless the requirements of § 611 or § 615 are met. § 201(b) [01]
**One-State Interstate Establishment Tools:**

<table>
<thead>
<tr>
<th>Use long-arm to establish paternity and/or order</th>
</tr>
</thead>
<tbody>
<tr>
<td>Directly retain process server</td>
</tr>
<tr>
<td>Send interstate subpoenas to secure evidence</td>
</tr>
<tr>
<td>Quick locates</td>
</tr>
<tr>
<td>CSE Trans #3 to secure documents, including service of process, genetic testing, and assistance with discovery</td>
</tr>
</tbody>
</table>
Two-State Establishment

If a state cannot exercise long-arm jurisdiction, an interstate case must be filed to that party’s state of residence. This process includes:

1. Completing all UIFSA required paperwork
2. Forwarding the documents to the Central Registry of the responding state
3. Continued follow-up of case
4. The laws of the tribunal that establishes the order apply to the support amount and duration of the support obligation and enforces its order on behalf of the initiating state.
Direct Enforcement

• Multiple states can have or acquire continuing jurisdiction to enforce a support order. The jurisdiction is based on personal jurisdiction over the obligor or *in rem* jurisdiction over an asset.

• **Direct Income Withholding**
  – Make sure only one State tries it
  – Can use on any valid support order to any state
  – Keep issuing state informed of any payments
  – Options if there is a contest
Registration – Enforcement Only

- Allows the Petitioner to register the order in the Respondent’s state for the sole purposes of enforcement.
- Makes clear that registration does not subject the Petitioner to the personal jurisdiction of the responding state tribunal.
- Order is registered upon filing
- Confirmed in 20 days by operation of law unless the non-registering party files an objection (NO order, NO hearing)
Registration – Enforcement Only

- Confirmation is of validity of the order and the amount of the arrears alleged
- No objection can be made to the substantive provisions of the order in the registering state
- Laws of the registering state apply for enforcement only
Defenses to Registration

1. The issuing tribunal lacked personal jurisdiction over the contesting party
2. The order was obtained by fraud
3. The order has been vacated, suspended, or modified by a later order
4. The issuing tribunal has stayed the order pending appeal
5. There is a defense under the law of this State to the remedy sought
Defenses to Registration

6. Full or partial payment has been made
7. The statute of limitation under Section 604 (Choice of Law) precludes enforcement of some or all of the alleged arrearage
8. The alleged controlling order is not the controlling order

Important Note: Nonparentage is not a defense - UIFSA§ 315
Continuing Exclusive Jurisdiction to Modify

- Continuing Exclusive Jurisdiction (CEJ) pertains specifically to modification.
- A petitioning party must file for modification in the state with CEJ.
- If the CP, NCP and child have all left the issuing state, under UIFSA and FFCCSOA, the issuing state loses CEJ and modification must be filed in the state of the party that is not asking for the modification (Playing Away).
Modification

• Once the order is modified, the state that modified the order acquires CEJ and will continue to exercise CEJ as long as one of the parties or child continues to reside there.

• The petitioner must file with the issuing tribunal a certified copy of the modified order within 30 days of its entry.
Important Points on CEJ

- Continuing Exclusive Jurisdiction (CEJ) is only relevant when one of the parties wants to modify the controlling order.
- Under UIFSA, only the state with CEJ has the right to modify an existing support order.
  - When CEJ is lost, the issuing state loses the ability to modify the child support order.
- As long as one individual party or the child resides in the state which entered the original order, that state retains the exclusive jurisdiction to modify...
Modification

• Only the terms that are modifiable in the controlling order state can be modified.
• Even if another state gains CEJ, it may not modify terms of the original controlling order that are non-modifiable
  – duration of the obligation
  – age of emancipation
Case 3

PAY $250/mo
Case 4

- PAY $500/mo
- PAY $300/mo
Resources

• UIFSA 2001 found at www.nccusl.org

• OSCE website: www.acf.dhhs.gov/programs/cse/
  – Interstate forms can be found here on the Forms link
  – A link to NECSRS: http://ocse.acf.hhs.gov/necsrspub/
  – IM 01-08 is the One-State and Limited Services Interstate Case Processing Tempo and other policy information
Resources - IRG

http://ocse.acf.hhs.gov/ext/irg/sps/selectastate.cfm

Click on any state for that state’s information.
UIFSA 2001 States

Arizona
California
Colorado
Connecticut
Delaware
District of Columbia
Idaho
Illinois
Maine
Maryland
Mississippi
Nebraska
Nevada
New Mexico
Oklahoma
Rhode Island
South Carolina
Texas
Utah
Virginia
Washington
West Virginia
Wyoming
1. The Controlling Order refers to:

A. The order that was issued by the controlling jurisdiction.
B. The order that was issued prior to the enactment of UIFSA.
C. The order that governs the case from this time forward.
D. The first order issued in a case with multiple orders.
C is correct.

- The controlling order governs the case from this time forward. UIFSA specifies which order is controlling.
2. The following statements are true except:

A. All child support cases after January 1, 1998 should have only one order.

B. When the controlling order is determined, arrears can no longer be collected under any previous orders.

C. For cases prior to January 1, 1998, the controlling order must be determined before an action can be taken.

D. The controlling order is the order to be prospectively enforced.
B is correct.

• When the controlling order is determined it sets the ongoing support amount, but arrears that accumulated under the other orders can still be collected.
3. The determination of controlling order is based on:

A. The most recently issued order.
B. The caseworker’s personal judgment.
C. Rules set forth by UIFSA and the Full Faith and Credit Act.
D. The order having the highest amount set for child support.
C is correct.

- UIFSA specifies which order is controlling. Once the controlling order is determined it remains controlling until it is modified.
4. Continuing, exclusive jurisdiction means the authority to:

A. Establish the controlling order
B. Enforce the controlling order
C. Modify the controlling order
D. All of the above
$C$ is correct.

- Continuing, exclusive jurisdiction only refers to the authority to modify the controlling order.
5. A State has CEJ if it issued the controlling order and:

A. That State is where the child just moved

B. Either the child, the individual obligee, or the obligor lives in that State

C. That State has personal jurisdiction over the obligor
B is correct.

- If the State issued the order and one of the parties or child(ren) lives in that State, then it has continuing, exclusive jurisdiction.
6. The following statements are correct except:

A. Only one state can have CEJ to modify an order.
B. A State can lose CEJ if all of the parties leave that State.
C. A State can gain CEJ if the order is registered for modification in that State and is subsequently modified.
D. If a State loses CEJ, the controlling order no longer governs the obligation and a new order must be established.
D is correct

• If a State loses CEJ, the controlling order still governs the obligation. The obligor must still pay support and the order can still be enforced.