

International Case Processing - Refresher

General

The Uniform Interstate Family Support Act (UIFSA) is a law enacted in some version in every State and can be used any time not all parties in the same State

The nationality or residence of a party to a child support action should not be an issue.

Communication from the federal Office of Child Support Enforcement (OCSE) specifically notes nationality and residence are not issues in conjunction with direct applications made by residents of foreign countries.

<http://www.acf.dhhs.gov/programs/cse/pol/PIQ/1999/piq-9901.htm>

Virtually all, if not all, States have “Open Courts” provisions which specifically provide that foreign nationals or residents can file and prosecute cases in the State’s courts.

Establishment

Whether the person seeking to establish the order resides in a “State” as defined by UIFSA is not an issue.

In setting support, it should be based on the guidelines and duration of the State establishing the order and not consider the “cost of living” in the other, foreign jurisdiction.

Enforcement

First and foremost, the IV-D agency does not have the authority to refuse to register and enforce a foreign judgment that is regular on its face. Some IV-D agencies have chosen to make a determination, without going to court, that the issuing foreign jurisdiction did not have personal jurisdiction complying with U.S. law. While this is a common issue because foreign jurisdictions accept “child based” jurisdiction and the U.S. does not, it is not a IV-D agency function to make refuse enforcement on this basis. This is a defense that must be raised by the obligor by objecting to the registration. And, although it may not be obvious by the application, there may be facts that would support jurisdiction of the foreign court.

For all reciprocating jurisdictions, whether under state or federal reciprocity, an order from the other jurisdiction may be registered under UIFSA.

UIFSA 96 defines a “state” to include a foreign jurisdiction and UIFSA 2001 expands and refines that definition.

SECTION 102. DEFINITIONS. In this [Act]:

(21) “State” means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes:

(A) an Indian tribe; and

(B) a foreign country or political subdivision jurisdiction that:

(i) has been declared to be a foreign reciprocating country or political subdivision under federal law;

(ii) has established a reciprocal arrangement for child support with this State as provided in Section 308; or

(iii) has enacted a law or established procedures for the issuance and enforcement of support orders which are substantially similar to the procedures under this [Act], the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

The issue of “State” should be related to the jurisdiction that issued the order and not whether the nonresident party currently resides in a “State.”

Even if the order is not issued by a “State”, it can still be enforced based on “Comity”.

No law has any effect, of its own force, beyond the limits of the sovereignty from which its authority is derived. The extent to which the law of one nation, as put in force within its territory, whether by executive order, by legislative act, or by judicial decree, shall be allowed to operate within the dominion of another nation, depends upon what our greatest jurists have been content to call “the comity of nations.” Although the phrase has been often criticized, no satisfactory substitute has been suggested.

“Comity,” in the legal sense, is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws.

Hilton v Guyon, 159 U.S. 113(1894) - Mr. Justice Gray

In some states, recognition under comity requires a different process. For example, in California, a summons and complaint must be filed, and the obligor must be personally served. A registration statement is served by mail.

If there is concern that the foreign order will not be recognized as valid for enforcement, a “business practice” alternative should be to plead for the establishment of an order and a request for retroactive support to the greatest extent possible.

Currency conversion for enforcement

Although implicit in UIFSA 96, UIFSA 2001 makes it explicit that both the IV-D agency and the child support tribunal have the power and duty to facilitate currency conversion.

SECTION 305. DUTIES AND POWERS OF RESPONDING TRIBUNAL.

(f) If requested to enforce a support order, arrears, or judgment or modify a support order stated in a foreign currency, a responding tribunal of this State shall convert the amount stated in the foreign currency to the equivalent amount in dollars under the applicable official or market exchange rate as publicly reported.

SECTION 307. DUTIES OF SUPPORT ENFORCEMENT AGENCY.

(c) A support enforcement agency of this State that requests registration of a child-support order in this State for enforcement or for modification shall make reasonable efforts:

(1) to ensure that the order to be registered is the controlling order; or

(2) if two or more child-support orders exist and the identity of the controlling order has not been determined, to ensure that a request for such a determination is made in a tribunal having jurisdiction to do so.

(d) A support enforcement agency of this State that requests registration and enforcement of a support order, arrears, or judgment stated in a foreign currency shall convert the amounts stated in the foreign currency into the equivalent amounts in dollars under the applicable official or market exchange rate as publicly reported.

The date to use for conversion of missed and ongoing support obligations is unresolved. The important thing to remember is that simply registering the order for enforcement does not modify the amount owed, or the currency in which it is owed. In other words, if the arrears sent from Germany are for 10,000 euros and current support is 150 euros per month, the conversion into U.S. dollars does not change those figures. The obligation is paid in full when the amount is paid off in the currency of the order.

Orders enforcing a foreign support obligation should express U.S. dollar “equivalence” to avoid overpayment or underpayment. The registration statement should include language making this clear, such as “the U.S. dollar equivalent as of January 12, 2007, is given for the convenience of the parties and the court, it does not modify the amount due under the order and may be adjusted to accommodate future currency exchange fluctuations.”

Modification

Although Comity is a legal basis for recognition and enforcement of a foreign support order, it is not a legal basis for modification of that order.

UIFSA 96 contains a one-sided provision for modification of a foreign support order; UIFSA 2001 revised the process.

(UIFSA 96) SECTION 611. MODIFICATION OF CHILD-SUPPORT ORDER OF ANOTHER STATE.

(a) After a child-support order issued in another State has been registered in this State, the responding tribunal of this State may modify that order only if Section 613 does not apply and after notice and hearing it finds that:

(2) the child, or a party who is an individual, is subject to the personal jurisdiction of the tribunal of this State and all of the parties who are individuals have filed written consents in the issuing tribunal for a tribunal of this State to modify the support order and assume continuing, exclusive jurisdiction over the order. However, if the issuing

State is a foreign jurisdiction that has not enacted a law or established procedures substantially similar to the procedures under this [Act], the consent otherwise required of an individual residing in this State is not required for the tribunal to assume jurisdiction to modify the child-support order.

(UIFSA 2001) SECTION 615. JURISDICTION TO MODIFY CHILD-SUPPORT ORDER OF FOREIGN COUNTRY OR POLITICAL SUBDIVISION.

(a) If a foreign country or political subdivision that is a State will not or may not modify its order pursuant to its laws, a tribunal of this State may assume jurisdiction to modify the child-support order and bind all individuals subject to the personal jurisdiction of the tribunal whether or not the consent to modification of a child-support order otherwise required of the individual pursuant to Section 611 has been given or whether the individual seeking modification is a resident of this State or of the foreign country or political subdivision.

(b) An order issued pursuant to this section is the controlling order.

Implicit in UIFSA 96 and explicit in UIFSA 2001 is the prohibition against modification of the duration of the support obligation which has special significance for foreign support orders which can often provide for support well beyond traditional, US emancipation.

SECTION 611. MODIFICATION OF CHILD-SUPPORT ORDER OF ANOTHER STATE.

(c) ~~A~~ Except as otherwise provided in Section 615, a tribunal of this State may not modify any aspect of a child-support order that may not be modified under the law of the issuing State, including the duration of the obligation of support. If two or more tribunals have issued child-support orders for the same obligor and same child, the order that controls and must be so recognized under Section 207 establishes the aspects of the support order which are nonmodifiable.

(d) In a proceeding to modify a child-support order, the law of the State that is determined to have issued the initial controlling order governs the duration of the obligation of support. The obligor's fulfillment of the duty of support established by that order precludes imposition of a further obligation of support by a tribunal of this State.

Process

The ability of a foreign resident to participate in the proceeding is the same as for a resident in another US State.

SECTION 316. SPECIAL RULES OF EVIDENCE AND PROCEDURE.

(a) The physical presence of the ~~[petitioner]~~ a nonresident party who is an individual in a responding tribunal of this State is not required for the establishment, enforcement, or modification of a support order or the rendition of a judgment determining parentage.

(b) ~~A verified petition~~; An affidavit, a document substantially complying with federally mandated forms, and or a document incorporated by reference in any of them, which would not be excluded under the hearsay rule if given in person, is admissible in evidence if given under oath ~~penalty of perjury~~ by a party or witness residing in another State.

(c) A copy of the record of child-support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is

evidence of facts asserted in it, and is admissible to show whether payments were made.

(d) Copies of bills for testing for parentage, and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least [ten] days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary, and customary.

(e) Documentary evidence transmitted from another State to a tribunal of this State by telephone, telecopier, or other means that do not provide an original ~~writing~~ record may not be excluded from evidence on an objection based on the means of transmission.

(f) In a proceeding under this [Act], a tribunal of this State ~~may~~ shall permit a party or witness residing in another State to be deposed or to testify under penalty of perjury by telephone, audiovisual means, or other electronic means at a designated tribunal or other location in that State. A tribunal of this State shall cooperate with tribunals of other States in designating an appropriate location for the deposition or testimony.

(g) If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

(h) A privilege against disclosure of communications between spouses does not apply in a proceeding under this [Act].

(i) The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this [Act].

(j) A voluntary acknowledgment of paternity, certified as a true copy, is admissible to establish parentage of the child.

A new definition in UIFSA 2001 for “Record” should make it easy to get screen prints of web sites that show currency conversion calculations admitted into evidence.

SECTION 102. DEFINITIONS. In this [Act]:

(15) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

The processing of payments can have some operational issues. Options can include:

- Payee is the Individual and payments sent to Individual’s address
- Payee is the Individual and payments sent to the foreign Agency/Court address
- Payee is the foreign Agency/Court and payments sent to the Agency/Court address

Debit or “Stored Value” cards are a payment option.

Resources

OCSE

<http://www.acf.dhhs.gov/programs/cse/international/>

NCSEA

<http://www.ncsea.org/content.asp?contentid=419>

Good sites for currency conversion that include calculators

oanda.com

fxtop.com

As of April 22, 2007, the following have been federally declared to be a foreign reciprocating country or political subdivision becoming a “state” pursuant to UIFSA 2001 § 102(21)(B)(i).

Australia

Czech Republic

Finland

Hungary

Ireland

Netherlands

Norway

Poland

Portugal

Slovak Republic

Switzerland

Canada

Alberta

British Columbia

Manitoba

New Brunswick

Newfoundland/Labrador

Northwest Territories

Nova Scotia

Nunavut

Ontario

Saskatchewan