



Intergovernmental Training Event

September 27, 2023

Moderator



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Recognition of Orders Outside of Registrations

This session will provide a discussion of how an order of support can be recognized by another jurisdiction if registration is not possible, especially with respect to orders from countries that are not members of the Hague Convention or which do not have a bi-lateral agreement with the U.S. Topics to be discussed include comity, administrative enforcement, recognition of foreign orders, and much more.

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Do You Even Need to Register an Order?



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Registration is a key component of UIFSA. It was developed out of a need to have a formal process for recognizing orders from other jurisdictions so as to avoid issues such as competing orders for the same family.



However, UIFSA provides authority for working a foreign order without first going through the process.

One-State Enforcement

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Section 501 allows for an income withholding order to be sent by one State to the obligor's employer without going through the registration process.



But then what?

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- The employer must provide a copy of the withholding order to the obligor (Section 502).
- The employer then is to withhold per the withholding order as if it had been issued by the State where the employer is located.
- Choice of law: The employer is to comply with the law of the State where the employer is located when it comes to:
 - Administering a fee for the withholding;
 - Consumer Credit Protection limits; and
 - The time component for withholding and forwarding payment

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- Kevin Costner is ordered to pay his ex-wife \$10,000.00 per month in child support for their two children. The order was entered in Wyoming.
- Kevin, tired of the “Yellowstone” fans, decides to move to South Carolina to work under the radar as a golf caddy at the Tin Cup Country Club.
- The ex-wife and children move to Texas.
- Texas sends a direct income withholding order to the employer in Myrtle Beach.



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- His pay begins to be garnished. He complains to Payroll that Wyoming has been deducting support from his bank account steadily since the order was put in place.
- What recourse does Kevin have?



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- Under Section 506, an obligor can contest the income wage withholding by registering the order as provided under UIFSA.
- The obligor must provide notice to his employer and the agency providing the obligee services.

*Note that the section does not contain language regarding an automatic stay.

Two-State Enforcement

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- Sofia Vergara had three children with her ex-husband, Joe Manganiello. She was ordered to pay him \$2,000.00 per month in current child support by a court in Allegheny County, Pennsylvania.
- After the divorce, Sophia moves to New York.
- PA sends a petition to NY to enforce the PA order.
- Can NY enforce the order without registering?

Section 507 – Administrative Enforcement of Orders

- Provides that the responding Agency has authority to pursue administrative enforcement, if appropriate, without first registering the support order.
- If the obligor contests, the Agency must use the formal registration process.

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
- Includes Section 507

IS REGISTRATION NECESSARY?

A Split Approach

Registration Necessary

- 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)

Formal Registration Not Required

- 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)

“DOUBLE SECRET” REGISTRATION?

- If formal registration is not necessary, is the process even needed in those states if you can show _____?
 - Notice?
 - Awareness?
 - Compliance?
 - Laches?
- Is there another path to registration?



Foreign "State" or "Country" Under UIFSA (Section 102[5])

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- A Country, other than the United States, that issues child support orders and
- Has been declared under the law of the United States to be a foreign reciprocating country
- Which has established a reciprocal arrangement for child support with this state
- Which has enacted a law or established procedures for the issuance and enforcement of child support orders which are substantially similar to the procedures under this article
- In which the Convention is in force with respect to the United States

Substantially Similar...

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- Where there isn't sufficient evidence that another foreign jurisdiction has enacted a law or established procedures for the issuance and enforcement of child support orders which are substantially similar to UIFSA, Courts may decline to register the foreign order since they would not fall under the definition of "state" or "foreign country." UIFSA, Section 102 (5) (iii); Haker-Volkening v. Haker, 143 N.C. App. 688 (Ct. of Appeals, 2001); Cresenzi v. Cresenzi, 2004 Conn. Super. LEXIS 3172 (Sup. Ct., Tolland, 2004)

Haker-Volkening v. Haker, 143 N.C. App. 688 (Court of Appeals, 1998)

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- Swiss Judgment of Divorce, including provision for child support
- Petitioner sought to register Swiss divorce with Transylvania County, North Carolina district court. On June 10, 1998, Clerk of Superior Court for Transylvania County filed Notice of Registration. On June 22, 1998, the respondent filed a motion challenging the validity and enforcement of the registration, in part, because Switzerland should not be considered a “state” or “foreign country” under UIFSA, triggering the substantially similar laws or procedures analysis
- Petitioner’s evidence of substantially similar laws and procedures:
- The Judgment of Divorce itself
- Submitted Switzerland law “Federal Act on Private International Law”
- Court here found that the evidence was insufficient as there was no evidence that Switzerland enacted a law similar to UIFSA, and that the order and the general law applying to foreign judgments generally was not enough to demonstrate that Switzerland should be considered a “state” or foreign country for purposes of UIFSA.
- The Court noted that there could be a private right of action to enforce the Judgment of Divorce in civil court under principles of comity.

Cresenzi v. Cresenzi, 2004 Conn. Super. LEXIS 3172 (Tolland JD Superior Court, October 13, 2004)

- Macedonia divorce in 1999, setting provisions for child support
- Petitioner sought to register divorce for enforcement in Connecticut, and Respondent timely challenged registration on bases that the registration was incomplete and Macedonia should not be considered a “state” or foreign country under UIFSA, among other bases
- Court determined it could not confirm registration because of the failure to provide essential documentation, but in dicta extensively discussed the applicability of foreign “state” or foreign country:
- Decided that there was insufficient evidence submitted to make a determination
- Opined that as part of any request to register an order from a foreign country, it really must be considered mandatory that the documents accompanying the registration include not only that jurisdiction’s law providing a similar procedure in the enforcement of child support orders, but all applicable domestic relations laws for the court to make a proper determination. This is especially important since the issuing jurisdiction would control the nature, extent, and duration of the support order.

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Comity

Definition:

- Friendly social atmosphere or social harmony
- A loose widespread community based on common social institutions
- The informal and voluntary recognition by court of one jurisdiction of the law and judicial decisions of another

"Comity." Meriam-Webster.com Dictionary,
<https://www.merriam-webster.com/dictionary/comity>.



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Comity Considerations

Personal Jurisdiction

- Country of Luxembourg ex rel. Ribiero v. Canderas, 338 N.J. Super. 192 (Chancery Div.-Fam. Part, Union Cty., 2000) (Parties lived together in Portugal, the respondent moved to Union County, NJ, so no nexus between the respondent and Luxembourg that would have provided personal jurisdiction over the respondent)
- New York declined to enforce an Israeli order because the Israeli court did not obtain jurisdiction over the wife in the divorce. Aranoff v. Aranoff, 226 A.D.2d 657 (2d Dept., 1996)

Registrations: the Definition of “State” or “Foreign Country”

- However, even where the Court declines to register the order under UIFSA, it may still grant comity to enforce the order. See, Haker-Volkening, supra; Rains v. DSHS, 98 Win. App. 127 (Ct. of Appeals of Wash., Div. 3, 1999)

Comity is Discretionary

- Comity is generally granted by the courts, and the burden of proof is on the party asserting that comity should not be granted to show illegitimacy of the order. In re Marriage of Ten, 2019 Wash. App. LEXIS 3058 (Ct. of Appeals of Wash., Div. 1, 2019); S.B. v. W.A., 38 Misc.3d 780 (Westchester Cty., 2012)

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SCENARIOS

Scenario – Runaway Registration?

Julia Roberts had three children with her ex-husband. He was ordered to pay her \$2,000.00 per month in current child support by a court in Los Angeles County, California. After the divorce Julia and the children move back to her hometown of Smyrna, GA. The ex moves to New York City. GA sends petition to NY to enforce the CA order.

Can NY enforce the order from GA without registering?



Scenario – Rocky Road to Registration

Dwayne “The Rock” Johnson had a child with his ex-wife. He was ordered to pay \$5,000.00 in current child support through a court in Florida. The Rock then moves to Atlanta, GA.



His ex-wife files pro se for enforcement of the support order in a GA court. Attached to her filing is a copy of the FL order. Dwayne files to dismiss the complaint on grounds that his ex did not comply with UIFSA.

Scenario – I'd like to buy an X (ex)

Tired of being a celebrity, Ryan Seacrest moves to the Republic of the Congo. He falls in love and was married through a religious ceremony. The couple had one child while living together in the Congo, but the marriage soon breaks down. After a contentious divorce that includes provisions for child support, Ryan moves back to New York for the limelight.

His ex would like to enforce the outstanding arrears from the Congo divorce and increase the child support obligation.



The UIFSA Top 4

1. Is the Republic of the Congo a signatory to the Hague?
2. Does the United States have a reciprocal agreement for child support with the Republic of the Congo?
3. Does New York have a state level reciprocal agreement for child support with the Republic of the Congo?
4. If none of these, what happens next?

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Scenario – Register? Yeah! Yeah! Yeah!

Atlanta resident, Usher, was married and had three children. Soon after the birth of his third child, he entered into a dissolution of marriage. The children would be raised in Atlanta by Usher. His ex-wife was ordered to pay \$900.00 per month in support. She then moved to California and immediately stopped making payments. GA. sent a petition to CA. to register and enforce the GA. order. CA. did so. Usher then moved with the children to his birth State, Tennessee. He had stopped recording music and wanted to have the order increased. TN. then sent a petition to CA. to register and modify the GA. order.

What happens next? Does CA. need to register the GA. order for modification purposes?



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Scenario – Res Bennifer-cata



New York residents, Jennifer Lopez and Ben Affleck decide after a year of marriage to adopt a child. Wedded bliss doesn't last, and Ben decides he wants a divorce to go back to his ex-wife, Jennifer Garner. Affleck and Lopez obtain a divorce and enter a shared parenting agreement.

Ben moves to Massachusetts and pursues rekindling the relationship with his first ex-wife. He is completely caught off guard when he receives a complaint to register and enforce a Georgia support order.

Ben tells his attorney that the shared parenting plan he signed off on did not contain a support provision. **What should happen next?**

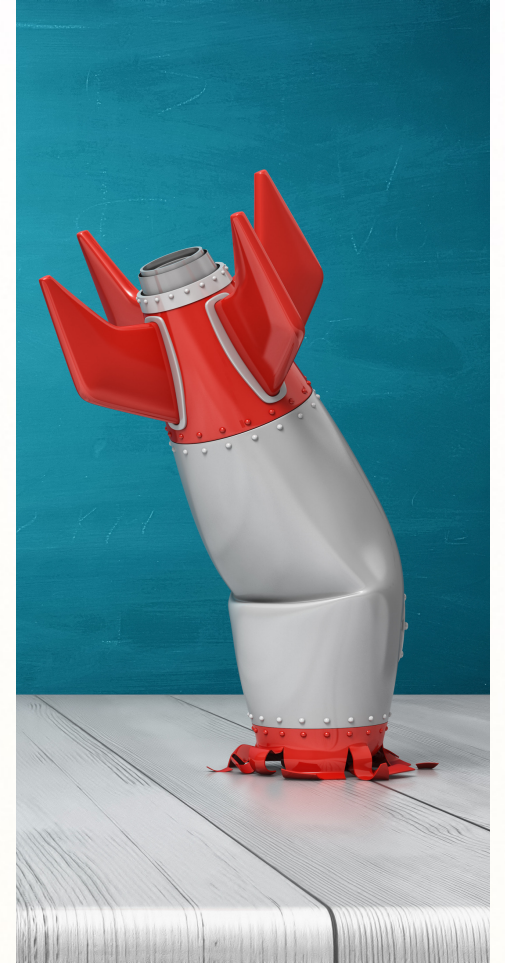
Scenario – Rocket Registration Man

A South-African billionaire uproots his car company in California and relocates it to Texas to be close to his space company. In doing so, he brings along a support order from South Africa for one child and a support order from California for another child. Both mothers are seeking enforcement and dad is wanting to modify. Discuss the role of registration.

Where does the enforcement and modification have to occur?

What if Mom contests the default decree?

What if Dad's modification wants to address custody and visitation?



Thank You



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