15TH ANNUAL

AB 1058 Child Support Training Conference

SEPTEMBER 6–9, 2011

Marriott Marquis Hotel

San Diego, California

For Child Support Commissioners, Family Law Facilitators, Title IV-D Administrative and Accounting Staff, Paralegals, and Court Clerks

ADMINISTRATIVE OFFICE OF THE COURTS

CENTER FOR FAMILIES, CHILDREN & THE COURTS

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We appreciate your attendance at the 15th Annual AB 1058 Child Support Training Conference. If you have any questions or comments, please contact the editors:

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TAB O

Case Law Update

Hon. JoAnn Johnson, Hon. Patrick Perry, and Ms. Mary Berkhoudt

PART ONE
MS. MARY BERKHOUDT, FLF MARIPOSA COUNTY

Attorney fees for UPA case
Validity of substitute service
Right to appointed counsel
Priority of child support
Dischargability of attorney fees

Kevin Q. v. Lauren W. (Kevin Q. II) 195 Cal.App.4th 633

Kevin Q. I (a UPA action) was filed in 2007 by Kevin to establish his paternity of Lauren's son.

Trial court had entered judgment for Kevin, but Fourth District reversed. In 2009, Lauren filed a motion for award of fees in both cases.

Trial court denied, noting that Lauren did not make use of FC 2032(d), but instead, went on ahead, incurring fees exceeding either party's ability to pay.

Lauren had incurred a total of $311,242 in fees, Kevin had incurred total of $141,384 in fees. Lauren claimed only income was from her father supporting her.

Kevin's income was from his law practice, and other assets, real and personal property. Lauren appealed, and Fourth District affirmed.

Statutes at issue:

FC 7605 (UPA code) paying of fees to be based upon (1) respective incomes and needs of the parties & (2) any factors affecting the parties' respective abilities to pay.

FC 7640 (UPA code) (court may order reasonable fees of counsel, experts ... in proportions and at times determined by the court.

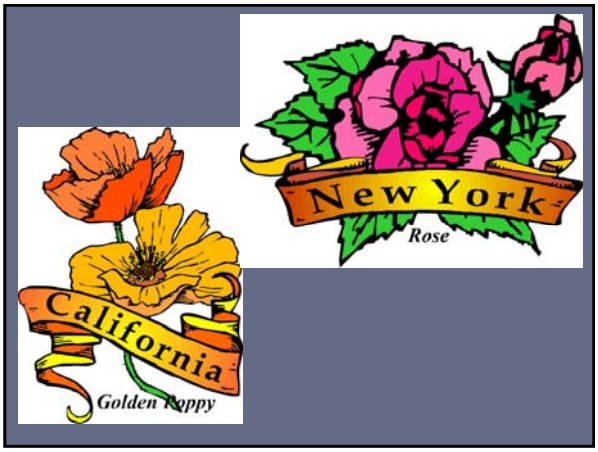
FC 2030 – FC 2032(for dissolution actions) based on income and needs assessments, whether there is a disparity in access to funds and ability to pay, court shall make an order awarding attorney fees. FC 2032 requires award to be just and reasonable, and parties can request case management, pursuant to CCP 639

Lauren argues court should not have applied FC 2032, but instead, should have applied UPA fee statutes.

When legislature enacted FC 7605, it also amended FC 2030, thereby creating "two virtually identical statutes", except that 2032 gives a more thorough comparative analysis of the parties' circumstances and abilities to pay.

Panel agreed that using FC7630 in conjunction with 2030 was not appropriate, because they are entirely dissimilar.

But that isn't true of 7605, so the lower court did not err on relying on 2032 to do a thorough comparative analysis of the parties circumstances.



Fresno County DCSS v. Gargiulo (Unpublished Opinion)

January 10th 2000 – Gargiulo's NY employer served with wage withholding

6/28/2000 Gargiulo (while residing in NY), in pro per, files motion to modify child support , as well as set aside arrears due to Def. never being served.

Matter continued so that Gargiulo's NY attorney can appear pro hac vice. In Oct. 2000, motion was denied.

1988 – Gargiulo served with S&C via substituted service Default entered 10/5/88

Gargiuolo claims he was living in St. Croix at the time, that the substituted service was on his ex, at her place of residence in Fresno.

He states he briefly visited CP in 1989, while he was staying at a motel, and that she had him arrested for trying to kidnap the kids.

He then states he went back to St. Croix shortly after that. He moved to NY in 1993.

11/2005, through a CA attorney, Gargiulo files motion to set aside the judgment and order of arrears.

He asserts he was never served.

Under CCP 473, must file within 6 months of judgment, if through mistake, inadvertence, surprise or excusable neglect.

Under CCP 473.5, must be no later than 2 years after entry of default, where defendant unaware of a default

Under FC 3690, no later than 6 months after actual notice

Under FC 17432, if action filed by LCSA, motion for relief must be filed within 1 year of 1st collection

Even if a motion to set aside is untimely under statutory provisions, trial court retains equitable powers to set aside judgment: if party can show extrinsic fraud.

Where party shows there was complete failure of service of process upon defendant, he has no duty to take affirmative action to preserve his right to challenge the judgment or order even if he later obtains actual knowledge, because what is initially void is ever void and life may not be breathed into it by lapse of time.

2000 motion was to modify and set aside the arrears, not set aside the judgment.

Only question left was equitable. Trial court found too many inconsistencies in Defendant's declaration.

DCSS records indicated that they had talked to him at mother's residence in May 1998, and defendant admitted he had talked to them.

He stated he had been arrested for trying to kidnap his children, in actuality, he was arrested for battery on CP.

Trial court found that he was not credible, he came to court with unclean hands, and the substituted service was proper and valid.

Trial court did not abuse its discretion.

Turner v. Rogers et al. USSC case, decided June 20, 2011-07-22

South Carolina case.

On 4 prior occasions, Turner had been found in contempt of court for non-payment of support.

Two he purged before serving time, 2 he purged after having served minimal time.

5th time he did not pay and served 6 months.

As soon as he released, he was served with a new show cause, and was sentenced to 12 months

Question was, does the Federal Constitution entitle a person to counsel if he/she is charged with civil contempt.

USSC made a very limited finding that : where the custodial parent is unrepresented by counsel, the State need not provide counsel to the noncustodial parent, with the very important caveat, that the State must nonetheless have in place alternative procedures that assure a fundamentally fair determination of the critical incarceration related question, whether the supporting parent is able to comply with the support order.

It stated it does not address civil contempt proceedings where the underlying support is owed to the state, or the question what due process requires in an unusually complex case where a defendant can fairly be represented only by a trained advocate.

In Turner's case, his incarceration violated due process because he received neither counsel nor the benefit of alternative procedures.

He did not have clear notice that his ability to pay would constitute the critical question in his civil contempt proceeding.

No one provided him with a form designed to elicit information about his financial circumstances.

And the trial court did not make a finding that he was able to pay his arrearage.

Court must make an express finding that the defendant has the ability to pay.

How does this affect LCSA enforcement:
Probably not at all

How does this affect represented cp?
Probably not at all

How does this affect In Pro Per cp's?
As long as court follows the 4 point process (notice that ability to pay is critical issue, use of a form to elicit relevant financial info, opportunity at the hearing to respond, and an express finding of ability to pay), probably NP will not be entitled to an attorney

But, see Santa Clara v. Superior Court (2 Cal.App.4th 1686). This 1992 case holds that when an indigent person may face a possible jail sentence in regards to non-payment of child support, the county must provide an attorney, at public expense, to represent the citee.

People v. Mozes (192 Cal.App. 4th 1124)

Question: does child support order have priority over restitution for crime victims when seeking the same assets.

Court held: no.

Brown was married to Mozes for 25 years.

In 2001, they formed Adoption International Program, Inc.

In 2006, Brown filed for dissolution of marriage.

In March of 2008, Mozes charged with 62 counts of theft by false pretense.

The named victims were prospective adoptive parents.

In April 2008, Brown was granted immunity in exchange for testimony.

Mozes was arrested in Florida in 2008, and assets over $300,000 were seized.

On 7/2/2009, Mozes pled guilty to 17 felony counts, and agreed to total amount of over $700,000 in restitution.

On 7/10, prosecution filed request to distribute seized assets to the victim.

On 7/14 Brown filed objection, stating that her claims for child and spousal support (now totaling over $300,000) should receive priority.

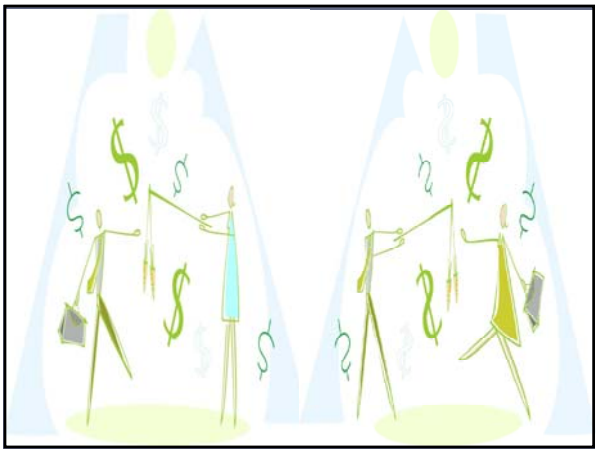
PC 186.11 restitution provision specifically aimed at preserving victims' claims to restitution prevail over the more general restitution statute, PC 1202.4.

FC 17523 (lien for child support arises by operation of law where LCSA enforces) was not really at issue here, because there was no LCSA at the time enforcing against Mozes.

They did not even get involved until after the first session on distribution of the assets.

Possible court found the way they did because Brown had unclean hands, as well as the funds to pay the child support from Mozes' share of the community estate.

Instead, she used his funds to pay the attorney fees and for reimbursements owed to Mozes.



In Re Phegley (443 B.R. 154 (2011)

John & Sheri married 5/9/98, divorced 6/3/09.

Court ordered $325/month CS, $1250 monthly maintenance for 48 months, equalizing payment of $32, 371 and Sheri's attorney fees of $9178 .

On 9/2/09, John filed Chapter 13, trying to discharge all these debts.

Sheri filed complaint to determine dischargeability of his monthly maintenance obligation and attorney's fee order.

U.S. BC for Western District of Missouri agreed, they are not dischargeable, and Eighth Circuit BAP affirmed.

Factors to consider:

a. Language and substance of the underlying agreement in the context of existing circumstances
b. The parties' relative financial condition
c. Parties' employment history and prospects for financial support
d. Marital property each received
e. Periodic nature of the payments
f. Difficulty the spouse and/or kids would have in subsisting without payment

Courts encourage liberal interpretation of 11 USC 523(a)(5) and favor those exceptions over giving debtor fresh start

Attorney's fee award interpreted as a way of balancing the disparities in the couple's education, training, employment history and earning capacity.

Part Two – Comm. JoAnn Johnson County of Ventura

- TAXES
- SOCIAL SECURITY / PATERNITY
- SANCTIONS
- SAME SEX BANKRUPTCY CASE
- PROP 8 / MARRIAGE CASES UPDATE

KEITH J. FESSEY v. COMMISSIONER

TAX COURT MEMO 2010-191

AUGUST 30, 2010

Business expenses
Filing status

After being assessed a deficiency, Fessey filed a Petition with the tax court to determine, among other things, his claimed business expenses and his right to amend his return to 'married filing joint'.

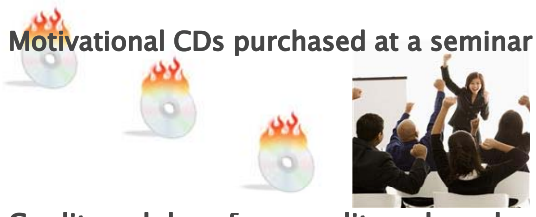
Business Expenses:

There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred in carrying on any trade or business.

The ordinary and necessary expenditures directly connected with or pertaining to the taxpayer's trade or business.

Depreciation on a desk, file cabinet, bookshelf and credenza without proof of how depreciated or proof of business use.

Motivational CDs purchased at a seminar



Credit card dues for a credit card used for both business and personal use.

Travel, meals and entertainment unless the taxpayer can show the item is directly related to or associated with the business.

Utility expenses used at a home office unless the tax payer can document the expense is over and above the cost for personal use.

$19,400.00 cash paid to his 18 year old son and 12 year old daughter to perform tasks at home and office.

Fessey filed 'Married filing Separately'.

He filed an Amended Return to 'Married Filing Jointly'. Commissioner said 'not allowed' but Tax Court said OK. Fessey was legally married – allowed to file 'Married Filing Jointly'.

IRS Code 6013(a)

MAURICE LOUIS v. COMMISSIONER

TAX COURT MEMO 2010-217

OCTOBER 7, 2010

- HEAD OF HOUSEHOLD FILING STATUS

Parties divorce decree provides for joint custody of two children. Mother's residence is primary. Decree is silent as to who claims dependency exemption and no agreement between the parties.

Louis claimed both children on taxes and claimed Head of Household.

An individual qualifies as a Head of Household if the individual is not married at the close of the taxable year and maintains as his home a household that constitutes for more than one-half of the taxable year the principal place of abode of an individual who qualifies as the taxpayer's dependent within the meaning of section 152.

Dependent per IRS Code Section 152:

- Relationship to taxpayer
- Same principal place of abode
- Under 19 (or 24 if student)
- Has not provided for own support

If both parents claim – the parent with whom child has resided for >50% of time will prevail.

To claim head of household, the taxpayer must have a qualifying dependent AND that dependent must have resided in the taxpayers household for more than 50% of the year.

Louis could not prove children lived with him more than 50% of time or that he provided for more than 50% of support.

If he has no qualifying dependents who lived in his home >50% of year, he cannot claim Head of Household nor is he entitled to the Child Tax Credit.

MICKEL and MARY BRISCOE
v. COMMISSIONER

TAX COURT MEMO – 2011-165

JULY 11, 2011

- DEPENDENCY EXEMPTION / IRS 8332

Parties' divorce decree states:

"Mickel Briscoe is hereby granted the right to claim the tax dependency exemption for the minor children." Mom signed the agreement but her social security number was not included.

Father claimed the child and claimed the child tax credit. He attached a copy of the divorce decree to the return.

Child did not meet the definition of qualifying child per IRS Code 152 because child did not reside in Father's home more than 50% of the year.

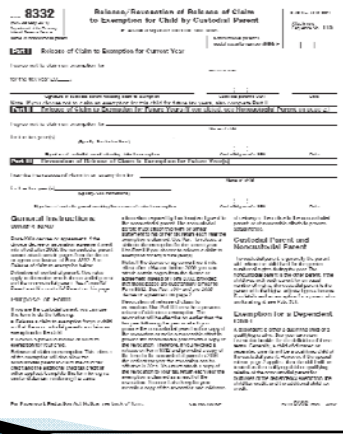
- Relationship to taxpayer
- Same principal place of abode
- Under 19 (or 24 if student)
- Has not provided for own support

Special rule for divorced parents:

The custodial parent must sign a written declaration in the proper form to release dependency exemption which contains the following information:

- Name of child
- Name and SS# of NCP
- SS# of CP
- Dated signature of CP
- Year for which the exemptions are released.

IRS form 8332 has all the required language.


8332

Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent

Part I Release of Claim to Exemption for Current Year

Part II Revocation of Release of Claim to Exemption for Future Year(s)

Custodial Parent and Noncustodial Parent

Exemption for a Dependent

A court order, stipulation contained in judgment or any other form will not suffice if it does not have all these requirements.

Child is not qualifying child – no dependency exemption or tax credit.

KAREN K CAPATO
v.
COMMISSIONER OF SOCIAL SECURITY

SOCIAL SECURITY ACT AND NEW REPRODUCTIVE TECNOLOGIES

"It goes without saying that these technologies were not within the imagination, much less the contemplation, of Congress when the relevant sections of the Act came to be, and that they present a host of difficult legal and even moral questions….We… cannot help but observe that this is, indeed, a new world."

Father was ill and was scheduled for chemotherapy which might leave him sterile. He deposited sperm in a sperm bank where it was frozen and stored. He died two years later.

Mrs. Capato began in vitro fertilization and gave birth to twins 18 months after Father's death.

She applied for Social Security benefits but was denied

Mrs. Capato appealed, but the Administrative Law Judge affirmed applying N.J. state law of intestacy. Because the twins could not inherit under N.J. laws, they couldn't receive Soc. Sec. benefits.

District Court affirmed!

United States Court of Appeals disagreed.

"Why should we, much less why *must* we, refer to (NJ intestacy law) where we have before us the undisputed biological children of a deceased wage earner and his widow."

"The term "child" …requires no further definition when all parties agree that the applicants here are the biological offspring of the Capatos."

The court noted that this case did not address more complicated issues of parentage not dependent on biology.

SANCTIONS And ATTORNEY FEES

IRMO Marci and Gary Wong
193 CA4th 278

IRMO Maureen Duris and William Urbany
193 CAth 510

IRMO Marci and Gary Wong 193 CA4th 278

- FC 2107 SANCTIONS
- ABILITY TO PAY 271 SANCTIONS
- STATEMENT OF DECISON

Husband appeals three rulings:

- Imposition of $200K in sanctions for failing to file disclosures alleging Wife didn't comply either so she can't collect as the 'complying party'.
- $100K in §271 sanctions alleging court failed to consider his ability to pay.
- Failure of the court to issue a statement of decision.

FC §2107 allows for remedies for the *complying party* if the other party has not filed / served required Declarations of Disclosure. – Wife had not fully complied with FC §2107 therefore she is precluded from receiving a sanction for the other party's failure to comply.

- Court reversed award of $200K to her.

FC §271 authorizes an award of attorney fees and costs as a sanction for uncooperative conduct that frustrates settlement and increases litigation costs.

The court shall not impose a sanction that imposes an unreasonable financial burden on the sanctioned party.

The court shall consider all evidence regarding income, assets, liabilities, in awarding sanctions pursuant to FC§271.

- Husband has nine rental properties, a ranch, ten cars, a yacht, savings and investment accounts, gold coins
- and other assets.

The court upheld the imposition of sanctions against Gary

Husband asserts he is entitled to a Statement of Decision which the trial court did not render.

➢A court trying a question of fact must issue a statement of decision explaining the factual and legal basis for its' decision on the principal controverted issues at trial if timely requested. (CCP §632)

Court of Appeal held:

➢References to "trial" in the code suggest that a statement of decision is required only in the event of a trial, as that term is commonly understood.

➢Courts have held that a statement of Decision ordinarily is not required in connection with ruling on a motion even if the motion involves an extensive evidentiary hearing.

➢SAME SEX MARRIAGE / BANKRUPTCY

➢'MARRIAGE CASES' / PROP 8 UPDATE

GENE DOUGLAS and CARLOS MORALES, Joint Debtors

US BANKRUPTCY COURT, CENTRAL DISTRICT
Case No. 2:11-bk-17831 TD

Gene and Carlos married on August 20, 2011 prior to the passage of Prop. 8 in California.

They filed a joint Chapter 13 Bankruptcy on Feb 24, 2011.

The BK Trustee moved to dismiss their petition because they are 'two males'.

"The only issue in this case is whether some legally married couples are entitled to fewer rights than other legally married couples, based solely on a factor (gender/ sexual orientation) that finds no support in the Bankruptcy Code or Rules and should be a constitutional irrelevancy"

The Trustee's motion was not brought under any of the enumerated causes for dismissal listed in the Bankruptcy Code (11 U.S.C. §1307) but solely on the basis that a petition can be filed by an individual and the individual's *spouse*.

The term 'spouse' for the purpose of applying federal law is defined as "a person of the opposite sex who is a husband or a wife" (Citing DOMA)

The decision contains a thorough discussion and analysis of DOMA and its' application to the debtors in this case.

The court found that the three interests advanced by DOMA – defending and nurturing traditional heterosexual marriage; defending traditional notions of morality; interest in preserving scarce governmental resources – do not stand up to any level of scrutiny in this case.

Conclusion of the court is that DOMA violates the debtors' equal protection rights afforded under the 5th Amendment of the US Constitution…There is no valid governmental basis for DOMA.

- The court finds that DOMA violates the equal protection rights of the debtors as recognized under the due process clause of the 5th Amendment.

PERRY v. SCHWARZENEGGER

PROPOSITION 8 APPEAL
KRISTEN PERRY; SANDRA STIER;
PAUL KATAMI; JEFFREY ZARRILLO,
PLAINTIFFS – APPELLEES

Question certified to the CA Supreme Ct.:
Whether under Article II, Section 8 of the California Constitution, or otherwise under California law, the official proponents of an initiative measure possess either a particularized interest in the initiative's validity or the authority to assert the State's interest in the initiative's validity,…

…which would enable them to defend the constitutionality of the initiative upon its adoption or appeal a judgment invalidating the initiative, when the public officials charged with that duty refuse to do so.

- Do the proponents of 'Prop 8' have standing to defend it's constitutionality?

- May 2008 – Court declared statutes limiting marriage to opposite sex couples were unconstitutional.
- May 2008 – November 2008, approximately 18,000 marriage licenses issued to same-sex couples.
- November 2008 – Prop 8 added a new section to the California Constitution "Only marriage between a man and a woman is valid or recognized in California."

Opponents of the measure filed a Writ of Mandate as an improper attempt to revise the Constitution.

The Respondents refused to defend the measure's constitutionality. Proponents were allowed to intervene and defend the measure.

The measure was upheld but the marriages which had already occurred were preserved as valid marriages.

Plaintiffs– Appellees filed this action in the US District Court alleging that Prop 8 violates the 14th Amendment to the US Constitution.

District Court found Prop 8 unconstitutional and issued an injunction from applying or enforcing the amendment to the state constitution.

9TH Circuit Court of Appeal stayed the injunction pending appeal = Prop 8 remains in effect.

The current issue is whether or not the proponents of the measure have legal standing to defend the constitutionality of the measure.

This issue must be resolved before any further proceedings can be heard.

The Court of Appeal certified this question to the State Supreme Court.

The California Supreme Court shortened the normal briefing schedule to accommodate oral argument as early as September 2011.

Argument is scheduled for Sept. 6, 2011

PART THREE
RECENT DEVELOPMENTS

Comm. Patrick Perry
County of San Luis Obsipo

MILITARY BENEFITS
HYPOTHETIC RETIREMENT
PATERNITY ISSUES
RETROACTIVE MOD OF SUPPORT

IRMO STANTON (2010) 190 CAL APP 4TH 547

- 12 year marriage
- One child
- H in military on active duty
- Issue: Federal pre-emption?
  - BAH— Basic Allowance Housing
  - BAS--- Basic Allowance Subsidence

MAY 2009 AUG 2009

Base Pay	$3,995	Base Pay	$4,474
BAH	$2,159	BAH	$2,199
BAS	$ 324	BAS	$ 324
Special Duty	$ 300	Special Duty	$ 300
Total	$6,778	Total	$7,297
H says	$4,295	H says	$4,774

- Husband says
- BAH and BAS
  - Nontaxable
  - Not subject to levy or garnishment

- Husband says
- BAH and BAS
  - Nontaxable
  - Not subject to levy or garnishment
- Therefore: Federal Preemption bars use of BAH and BAS as income for purposes of calculating Child Support.

- Husband says
- BAH and BAS
  - Nontaxable
  - Not subject to levy or garnishment
- Therefore: Federal Preemption bars use of BAH and BAS as income for purposes of calculating Child Support.
- TC: "If it looks like income, it is income no matter how its paid to you."

- CA holds: Affirmed
- Federal Preemption: Inapplicable
  - USSCT has held family law support matters are exclusively matters to be decided under state law "unless Congress has positively required by direct enactment that state law be pre-empted"
  - "We join courts across the nation in holding such allowances are included in a party's gross income for purposes of support…"

- Nontaxable status:
  - 1. Neither are recurring gifts (IRMO Alter)
  - 2. Federal tax law does not define what is "income" for support, it merely defines what might be taxed.
  - 3. Cal support laws are meant to ensure parents take "equal responsibility" to support children
  - 4. Fam Code 4053—GDL takes into account "actual income—not "taxable income."

- Finally: A Review of Other States
- CA notes
  - Oregon, New York and Louisiana have all found BAH/BAS to be income for CS
  - Tennessee held although not subject to garnishment, fact that BAH/BAS is received may provide basis for a contempt finding
  - Many other states have held allowances are includible in income for child support—see materials

Phantom Retirement

- IRMO KOCHAN (2011) 193 Cal.App. 4th 420
- ISSUE: Can You Have Your Cake and Eat It TOO... or put another way

- Can I Demand That YOU Retire to Maximize MY Retirement, But That YOU Keep Working to Maximize My Spousal Support

- TC finding:
  - H with 40 year employment with Cal State System could increase income by taking retirement and returning to work with the University under the Faculty Early Retirement Program.
  - TC imputes retirement and wage income

- H appeals: I don't want to retire, I want to continue working
- W responds: By continuing to work you are decreasing the value of my interest (H already at max multiplier) in the plan---and if H dies I get about 60% of my CP value

- Income from work and Social Security was $ 14,331
- Income if retired and FERP would be $18,390
- Your ruling?

- CA holds:
  - Cannot order a party to retire anymore than you can order a party to continue working past retirement age—even if it means more $$$
  - Citing IRMO Reynolds– see material
    - No orders to work past 65

- CA distinguished IRMO Padilla and Ilas
- Padilla—good faith quit to start new business---CA approved imputed former income for CS purposes
- Ilas—Quit to go to med school---CA imputed income for SS and CS

- CA "We decline to accept proposition that consideration of income from an alternative to long held employment is similar to consideration of income a party foregoes by walking away from current employment."

- W's remedies
  - Gilmore on pension
  - Segregated Accounts in PERS
  - Spousal Support based on actual earnings

PATERNITY PRESUMPTIONS

- T.P. v T.W. Is pending adoption necessary to terminate parental rights
- In re D.R. Rqts of POP Declaration
- In re M.C. Three's a crowd?
- In re Levi H. POP Dec v. 7611(d)

T.P. v T.W. 191 Cal App4th 1428

- Father--- Paternity Petition requesting
  - 1. Paternity finding
  - 2. Custody and Visitation Orders

  Mother responds
  --1. Find he is the father, and
  --2. Terminate his parental rights

- Father argues:
  - Mom has no standing to terminate parental rights as no adoption is pending
  - Fam Code 7841 requires that an "interested person" be a person who intends to free a child for adoption

- Mother responds:
- An "interested person" must include a biological parent with sole legal and physical custody who acts to free child from custody and control of the other parent.

- CA holds:
- For mother– She has standing– the right to make a legal claim--- conferred by Fam. Code 7841
- Fam Code 7841—"Interested person" includes, **but is not limited to**, persons intending to adopt

- By analogy
  - In re Eugene W. –social worker allowed to file against mentally ill mother
  - In re Marcel N. – proceedings to terminate parental rights not limited to cases where adoption contemplated

- And—Cal Supreme Court
  - In re Laura F – court noted absence of "authority for proposition that adopting parent is waiting in the wings"
  - In re Randi D – court refused to set aside a parental rights termination where adoption did not occur

IN RE D.R. 193 Cal App 4th 1494

- Highly contested Juvi proceeding
- Issue: Was Biological Father entitled to reunification services where he delayed and equivocated about parentage until, at last moment, he signed a POP Dec. witnessed by his attorney?

- Father refused to sign POP at hospital
- Juvi Crt ordered HLA testing—positive for father—he continues to express uncertainty about parentage
- Father did not file POP Dec until more than 6 months after detention—W&I 361.5(a)(1) limits reunification to 6 mos.

- CA holds:
- Where father wishes to rely on POP Dec it must meet statutory rqts
- Attorney appt'd in dependency case is NOT an individual who may "witness" voluntary declaration of paternity
- Not valid unless → DCSS w/in 20 days

- CA affirms denial of reunification
  - POP did not meet statutory rqt's
  - Father did not promptly come forward
  - POP filed beyond time limits for reunification services
  - Child's best interests served by adoption

In Re M.C. 195 Cal App 4th 197

- When is three a crowd?
- May a child have 3 presumed parents?
- Biology v Presumption v Kelsey S.

- Irene and Melissa RDP – then separate
- During separation– Melissa and Jesus have relationship --- Melissa pregnant
- Melissa and Jesus separate – Melissa reconciles with Irene
- Melissa and Irene marry on 10-15-08

- Child born 3-09 -- Only Melissa on birth certificate
- Irene and Melissa live together 3-4 weeks, then separate
- Irene files OSC for custody/visitation—Melissa responds with DV TRO—granted—no contact with minor

- Melissa contacts Jesus (in Oklahoma)—needs $$$ Jesus sends checks-- Melissa takes child to visit Jesus's family regularly
- Melissa and new BF Jose attack Irene and charged with attempted murder
- CWS detains minor

- Juvi Crt finds: 3 parents
  - Irene is presumed mother per marriage
  - Melissa is biological mother by birth
  - Jesus is "alleged father"

- CA holds:
  - Okay as to Melissa and Irene
  - Jesus is alleged but not presumed father
    - Only presumed father entitled to reunification services
    - Alleged father may become presumed father if he received child into home and held child out as his --- Jesus did not

- However, CA holds
  - Jesus is Kelsey S father--- unwed bio dad who comes forward at 1st opportunity to assert parental rights but has been prevented from becoming presumed father by unilateral acts of mother or a 3rd party's interference
  - Therefore, Jesus is a presumed father

- Where there are 3 "parents" ---only 2 may retain that status
- Crt must reconcile the presumptions to determine which of them are founded on weightier considerations of policy and logic---Remanded
- On remand—consider W&I 361.2 re Jesus non-offending noncustodial dad

In re LEVI H. Slip opinion filed 7/8/11

Juvi ct. designated Andrew H. as the presumed father of Levi based on a voluntary declaration of paternity.

Michael, the husband of Jade, Levi's mother, appeals. He asserts he held the child out as his own and his §7611(d) presumption trumps the POP Dec.

Michael relies on In re D.R. alleging that the POP Dec was not filed with DCSS and therefore was not valid. The court found that unlike in D.R., the POP Dec was executed as required by statute.

Michael further argues that the court must weight competing claims of paternity and it failed to do so.

The appellate court rejected this argument also.

Citing Kevin Q, the court held that presumed fatherhood based on a voluntary declaration of paternity is not to be weighed against other section 7611 presumptions.

The voluntary declaration trumps presumed father status under Section 7611(d) despite any inequities.

IRMO GRUEN 191 Cal App 4th 627

- "I'll make a temporary support order today on the basis of the information I have today and continue the matter to ____ and I will reserve jurisdiction to recalculate and establish support retroactive to today on the basis of the evidence I have at the continued OSC"

- CA 4th District
  - NOT allowed--- retroactive mod of support
  - Temporary support order is operative when made and is directly appealable (IRMO Skelly)
  - Modification requires "material change of circumstances"

- Even with material change
  - Court may not retroactively modify temporary support
  - Prospective modification of temp support order must be pursuant to Pending motion for modification
  - CA disapproves of lengthy continuances to obtain more information

- Once a temporary order is entered it may only be modified Prospectively pursuant to a proper motion or OSC filed after the date of the temporary order
- Your practices?

In re Marriage of Stanton (2010)
190 Cal. App. 4th 547

Other state opinions holding military allowances are includible in income:

Norman v. Norman (Ala.Civ.App. 2010) 50 So.3d 1107
Weibusch v. Weibusch (2010) 186 Ohio App.3d 237
Hixon v. Lundy (Iowa Cr. App. 2004) 695 N.W.2d 333
In re Marriage of Baylor (2001) 324 Ill.App.3d 213
State ex rel. Hopkins v. Batt (1998) 253 Neb. 852
In re Marriage of Long (Colo.App 1996) 921 P.2d 27
Meyer v. Meyer (Neb.Ct.App. 1995) 1995 WL 676409
Barnes v. ex rel. Cassady (Ala.Civ.App. 1994) 636 So.2d 425
In re Marriage of McGowan (1994) 265 Ill.App.3d 976
Hautala v. Hautala (S.D. 1988) 417 N.W.2d 879
Peterson v. Peterson (1982) 98 N.M. 744

IRMO Bodo (2011)
11 Cal. Daily Op. Serv. 10,333
Decided 8-12-2011

Issues:

1. Is a "substantial change of circumstances" different from a "material change of circumstances" in a modification of support?
2. What must be shown to modify a stipulated non-guideline child support order?

As part of a judicially supervised settlement of all issues in their divorce, H and W stipulated that income of $33,000 per month would be attributed to H resulting in a child support award of $7,000 per month. A few years later, H filed an OSC to modify child support claiming a reduction in income and changed time share. The commissioner reviewed the transcript of the stipulated proceeding and stated that the parties had agreed that there would be "no deviation downward" from $7,000 per month for child support "except on a substantial change of circumstances." After a hearing the court concluded that there was a substantial change of circumstances as to timeshare, but not as to income, and reduced support to $6,178. H appealed.

H argued that a modification of an above guideline child support order required proof of a "material' rather than "substantial" change of circumstances. Therefore, he argued, the court applied the wrong legal standard. The Court of Appeal disagreed. 1) There is no legally significant distinction between a "material" change of circumstances and a "substantial" change of circumstances. 2) Whatever the parties may agree to, the court always has the power to modify child support either upward or downward. Thus agreements setting an absolute minimum floor for child support do not prevent the court from modifying child support to a figure below the floor based on the parties respective circumstances.

The court went on to address the issue of what showing must be made to modify a stipulated child support order. The court noted two different standards depending on the nature of the stipulation.

1. Where parties stipulate to a below guideline child support order, NO change of circumstances is required to modify the order to a guideline order. (See IRMO Alter (2009) 171 Cal App 4th 718 and IRMO Laudemann (2001) 92 Cal App 4th 1009)
2. Where the parties stipulate to an above guideline child support order, the party seeking the reduction must show a significant change of circumstances justifying modification. It is insufficient to simply prove that the order was not a guideline order when made. (See IRMO Laudemann, supra)

The court went on to affirm factual findings of the trial court on disputed facts--- a not surprising result.

SUPPLEMENTAL MATERIALS for Part Two (Johnson)

1. ***Errata***: IRMO Marci and Gary **Fong** (2011) 193 CA4th 278 is erroneously cited as **Wong** in materials.

2. IRMO Duris and Urbany (2011) 193 CA4th 510 omitted from materials.

3. Orange Co. DCSS v. Carlson (tentative decision to grant writ) issued after presentation prepared.

IRMO Maureen Duris and William Urbany 193 CA4th 510

SANCTIONS WITHOUT NOTICE

Duris filed for a post judgment modification of custody and child support.

She subsequently obtained counsel who commenced discovery and filed to compel production.

At hearing, Duris appeared as SRL. At conclusion of the hearing, the court imposed $10,000.00 in sanctions against Duris for 'unnecessary legal activity'.

Duris appealed on three grounds:

- No notice;
- No hearing;
- No evidence to support findings.

The court of appeal reversed and remanded :

- There was no notice as required before imposition of sanctions.
- There was no hearing. The issue of sanctions was raised by the court during closing arguments precluding Duris from presenting evidence on the issue of sanctions.

- No evidence was presented to substantiate Urbany's claim that he had expended $25K in attorney fees. The issue of sanctions was mentioned in Urbany's brief. This is not a sufficient request. "The absence of evidence disclosing the nature and extent of counsel's services hampered the trial court's ability to make fact findings"

"However certain a court may be that a party or any attorney in a Family Law proceedings deserves sanctions, it must keep in mind an immutable principle that cuts across all areas of the law: sanctions may not be summarily imposed. Due process demands more."

Orange Co. DCSS v. Carlson O.C. case #30-2010-00424755-CU-WM-CJC

DCSS applied for a traditional writ of mandamus commanding the Clerk of the Superior Court of Orange County to process dismissals submitted after an Answer (FL-160) had been filed by Defendants.

This action involves four cases in which an Answer was filed denying paternity. DCSS subsequently sought to dismiss the cases without consent of the Defendants. The Clerk of the Court refused to enter the Dismissals, asserting the Answers constituted affirmative relief.

The question is whether an Answer denying paternity and requesting genetic testing asserts a claim for affirmative relief.

The court's tentative decision is:
A request for genetic testing in the Answer to a complaint for a judgment establishing the defendant's paternity and ordering him to pay child support does not constitute a request for affirmative relief.

F.C. §17400(d)(3)(A) allows for defenses to be raised in the answer but does not permit affirmative relief. Cross-complaints are not permitted and therefore affirmative relief cannot be requested in child support actions. (FC§17404(a)).

Conclusion:
A defendant's request for genetic testing in a form FL-610 is not a request for affirmative relief. The Clerk has no discretion to refuse to process DCSS's request for dismissal in the proceedings at issue and had a ministerial duty to dismiss the action.

TAB P

DCSS Guideline Calculator Training: Beginning/Advanced

Hon. David E. Gunn, Hon. Connie Jimenez, Hon. Adam Wertheimer, and Hon. Rebecca L. Wightman

TAB P

DCSS Guideline Calculator Training—Beginning

Hon. David E. Gunn and
Hon. Connie Jimenez

15th Annual Child Support Training Conference
September 6-9, 2011
San Diego Marriott Marquis Hotel

DCSS GUIDELINE CALCULATOR TRAINING

♦**Presenters' Contact Information (for questions):**

Hon. Rebecca Wightman, Superior Court, San Francisco: rwightman@sftc.org
Hon. Adam Wertheimer, Superior Court, San Diego County: adam.wertheimer@sdcourt.ca.gov
Hon. Connie Jimenez, Superior Court, Santa Clara County: cjimenez@scscourt.org
Hon. David Gunn, Superior Court, Butte County: dgunn@buttecourt.ca.gov

Public Guideline Calculator

Websites:
http://www.childsup.ca.gov [DCSS Home page – click "Calculate Child Support"]

http://www.childsup.ca.gov/Resources/CalculateChildSupport/tabid/114/Default.aspx
[Guideline Calculator Welcome page – contains Alerts, link to User Guide]

https://www.cse.ca.gov/ChildSupport/cse/guidelineCalculator
[Guideline Calculator "Portal" page – brings you directly to calculator program]

NOTE: On portal page – you must enter the # of children for whom you are calculating support. You cannot change this number after starting a calculation (must start over).

Basic rules of navigation and default settings:

- Better to click OK/CANCEL/CALCULATE vs. browser back/forth buttons
- 30-minute timeout unless click a hyperlink or refresh
- Timeshare is defaulted to a 20% visitation value
- To print out Results – must click View Printable Results button
- **Parent 1** = NCP (non-custodial parent); **Parent 2** = CP (custodial parent)
- CP tax settings defaulted to include # of children calculating support (must change if split custody case)

♦**What to do if you are having problems:**

E-mail DCSS: CCSASGC@dcss.ca.gov

For Bench Officers: If you are having password issues (internal GC) – Contact the AOC's CCTC helpdesk at 1-877-847-3042

TAB P

DCSS Guideline Calculator Training—Experienced

Hon. Adam Wertheimer and
Hon. Rebecca L. Wightman

ADVANCED GUIDELINE CALCULATION

2011 AB 1058 Conference

Adam Wertheimer, Commissioner, San Diego County
Rebecca Wightman, Commissioner, San Francisco County

WARM UP CALCULATION

- Assume you make the following findings:
  (All Amounts Monthly)
  - Timeshare with Ricky:
    - 10 yr. old Ethel = 24%
    - 5 yr. old Freddie = 5%
  - Gross monthly incomes:
    - Ricky: $10k S/E + $3k non-taxable + $1050 interest
    - Lucy: $5k W-2 + $12,500 bonus
  - Tax filing status:
    - Father: Single and one
    - Mother: Head of Household and three
  - Other factors:
    - Ricky $:2,200 mort. Int., $350 Prop tax + $375 pre-tax health ins + other child support of $675
    - Lucy: $ 2k mort. Int. + $275 Prop tax + $95 union dues + $575 post tax Health ins. + $275 non Roth IRA, Texas resident

WARM UP RESULTS

- Ricky net income: $9805
- Lucy net income: $12913
- Child Support:
- Freddie Support: $1413
- Ethel Support: $438

- Total Support: $1851

HYPO #1

- You have two cases left on your Monday calendar, line items 1and 2. Here are the facts:
- Both cases involve one child, with the same NCP father, but different mothers. Both are aided cases (public assistance being paid out to the CP mothers in lines 1 and 2). Father earns $2,500 in W-2 wages, and does not see either child. No other deductions, hardships, add-ons (i.e. no other facts).
- What is monthly guideline child support amount for:
- Line item 1? _____
- Line item 2? _____

HYPO #1 RESULTS

- Line item 1: $413
- Line item 2: $413

HYPO #2

- You have two cases left on your Tuesday calendar, line items 3 and 4. Here are the facts:
- Both cases involve the same NCP father, but different CP mothers, each with one child only.

Father (NCP):	Mother (line 3)	Mother (line 4)
$3,625/mo. (W-2)	$1,627/mo. (W-2)	$6,375/mo. (W-2)
Single 1	HH2	HH2
Timeshare → → → → →	0% w/F	25% w/F
$325 hlth ins. (post-tax)	$125 hlth ins. (pre-tax)	$315 hlth ins. (post-tax)
$50 nec. Job. Rel. exp.	$250/mo. Mand. Ret.	$50 union dues
$1,125 mortgage interest		
$275/mo. property taxes		

- Your ruling as to monthly guideline child support? (Assume no deviation issues raised)

HYPO #2 RESULTS

- Father net income:
  - Line 3: $2591
  - Line 4: $2069
- Line 3 Mother net income: $1444
- Line 4 Mother net income: $4595
- Child support Line 3: $648
- Child support Line 4: $126

HYPO #3

- Both you in County A and a commissioner in County B, at the opposite end of the State have a case with the same NCP, but different mothers.
- You initiate a telephone conference with the other commissioner to coordinate the setting of support.
- Partner with the person next to you and simulate that call and calculate support using the following facts:

HYPO #3 (cont.)

- Father (NCP): "A" Mother (1 child) "B" Mother (2 kids)
- $4,425/mo. (W-2) $1,387/mo. (W-2) $2,425/mo. (W-2)
- Single & 1 HH & 2 HH & 4
  1 child different father
- Timeshare → → → 0% w/ Father 15% w/ Father
- $325 hlth ins. (pre-t) $125 hlth ins. (pre-t) $315 hlth ins. (post-t)
- $50 union dues $250/mo. child care $1,215 mortgage int.
- $225 other c/s $275/mo. property tax

- Your ruling as to monthly guideline child support? (Assume no deviation issues raised)

HYPO #3 RESULTS

- Father net income:
  - County "A": $2171
  - County "B": $2190
- "A" Mother net income: $1636
- "B" Mother net income: $2455
- Child support "A": $668
- Child support "B": $687
  - Eldest Child: $252
  - Youngest Child: $435
  - Total: $687

HYPO #4

- You're down to your *last* case on your Wednesday calendar, line item 5. Here are the facts:
- Two children – split custody. Both file HH & 2. Father has the youngest child and is receiving CalWorks and participating in the welfare to work program ; Mother has the older child, and earns $2775/mo. (W-2). Mother also has extraordinary medical expenses of $75/mo. Father does not see the older child at all. Mother sees the younger child 40% of the time.
- Your order? Guideline monthly child support: _____, payable from ____ to ____.
- Allocation? 1st born_____ 2nd born_____ (payable in what direction for each?)
- What if the younger child emancipates early (before older child)?

HYPO #4 RESULTS

- $383, payable from Mother to Father.
- 1st born $96 payable from Father to Mother
- 2nd born $479 payable from Mother to Father
- If the younger child emancipates early (before older child), each pays the other $0

HYPO #5

- In the middle of your long Monday afternoon calendar you get another split custody case for 3 children as follows:
- Father: $4,775 self emp. income plus $775 non- tax VA disab. plus $1,200 military ret., HH & 3 (has another natural child in the home for which you grant a full hardship). $475 post tax health ins., has youngest child 75% of time
- Mother: $5,500 W-2, HH & 3, $75 union dues, $325 pre-tax health is., $175 401(k), $1235 Mortgage int., $225 Prop. Tax, has eldest child 60% of time and middle child 50% of time
- Your order? Guideline monthly child support: _____, payable from ____ to ____.
- Allocation? 1st born___ 2nd born___ 3rd born___ (payable in what direction for each?)

HYPO #5 RESULTS

- $109, payable from Mother to Father.
- 1st born $261 payable from Father to Mother.
- 2nd born $122 payable from Father to Mother.
- 3rd born $492 payable from Mother to Father.

HYPO #6

- The first three matters on your Tuesday calendar, line items 5, 6 & 7, involve the same NCP mother and two separate CP fathers and one child in foster care, whose father is deceased. Mother has split custody with father 1 of 2 children and 2 children with father 2 who lives in Nevada. You make the following findings:
- Mother: $2,600, HH & 2, $335 post-tax health ins. $298 in mand. ret., pays $200 child care for child in her custody
- Father #1: $4,967, HH & 2, $576 pre tax health ins. Pays $300 child care, child care to be split with mother, mort. int, $1132, prop tax $208, 67% with eldest child, 5% with youngest child
- Father #2: $1560 MFJ & 4, new spouse $8760, mort. int. $2342, prop. tax $387, union dues $50. 90% time share
- 0 time share with child in foster care
- Your findings?

HYPO #6 RESULTS

- Mother net monthly income:
  #1: $1014, #2: $1585, #3: $1352
- Father #1 net monthly income: $3859
- Father #2 net monthly income: $1297
- Children with father #1:
  - $1095, payable from Father to Mother
  - 1st born $248 payable from Father to Mother
  - 2nd born $897 payable from Father to Mother
  - Child care: $50 net payable from Mother to Father
- Children with father #2:
  - Total: $571 from Mother to Father: 1st born: $214, 2nd born: $357,
- Child in foster care:
  - $338

TAB Q

Income Determination: Beginning/Advanced

Hon. Scott P. Harman and
Hon. Patrick Perry

TAB Q

Income Determination—
Child Support Calculations

Hon. Scott P. Harman and
Hon. Patrick Perry

Child Support and Income Determination

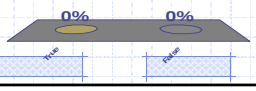
2011 AB 1058 Conference
SAN DIEGO, CA

Goal

- Ensure compliance with Federal regulations
- To provide consistency throughout the state ***where parties can not agree*** **!**
- To ensure children receive support consistent with the State's high standard of living and high cost of raising children compared to other states.
- To encourage settlements of conflicts and minimize litigation

A parents 1st & principal obligation above and beyond payment of their current debts and other monthly expenses is to support children according to their circumstances & station in life?

1. True
2. False



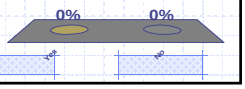
Principal Objectives

- Parents 1st & principal obligation to support child according to circumstances & station in life
- Both parents mutually responsible for support
- Considers each parents income and level of responsibility for children
- Children share the standard of living of both parents. Support may improve the standard of living of custodial household.
  - See Family Code Section 4053

Calculating Guideline Child Support

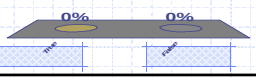
Is the calculation of guideline child support mandatory in all cases where child support is requested?

1. Yes
2. No



Bench Officer's can exercise discretion when calculating guideline child support?

1. True
2. False



Calculating Guideline Child Support

- It is not a guideline
  - Adherence is mandatory by the court!
- Presumptively correct
  - Rebuttable presumption
  - Exceptions will be discussed and agreements by parents are encouraged
    - Even if only on some points.

Rebuttable Presumption

- Guideline unjust or inappropriate because:
  - **Stipulate to different amount (FC 4065)**
  - Deferred sale of residence
  - Payor has extraordinary high income & GL amount exceeds needs of child
  - Party not contributing to needs of child consistent with custodial time
  - Application unjust or inappropriate due to special circumstances

Special Circumstances

- Include but not limited to:
  - Different custodial plans for different children
  - Substantially equal custodial time & one parent has higher or lower % of income used for housing
  - Children have special medical needs
- List is not exclusive !!

How is Child Support Calculated

- Family Code Section 4055
- CS=K[HN-(H%)(TN)]
- Components of Formula
  - Amount of each parents income allocated for CS
  - High wage earners net monthly disposable income
  - Approximate % high earner has child in their care
  - Total net monthly disposable income of both parents

Real World- How calculated

- Certified computer programs:
  - Guideline Calculator, Dissomaster, X-Spouse, Support-Tax, Nolo Press Program
- If calculating child support in a case involving the Dept of Child Support Services, the court must use:
  - Child Support Guideline Calculator-

CHILD SUPPORT AGENCY

- *"Can you help us get our support program to work?"*

Necessary Information

- Court order is only as accurate as the evidence received by the court !!
- While court is neutral, often requires bench officer to make inquiry of parties.
  - Frequently more hands on by bench officer in proper cases. Must balance with Canons.
- If you make inquiry of parties for inputs have clerk administer oath
  - # of children,
  - Parenting arrangement
  - Tax filing status- current as of year end.
  - Gross Income

Necessary Information (Con't)

- Deductions from Income
  - Taxes
  - Health Insurance (Pre or Post taxes)
  - Retirement Plans
  - Necessary job related expenses, union dues
- Mortgage Interest, Property Taxes, Charitable contributions
- Child Care expenses
- Statutory Hardships

Deductions which have tax effect

- Adjustments to income
  - IRA/ Pre-Tax 401K contributions
  - Pre-tax health insurance premiums or meet AGI threshold (uninsured costs)
  - Home Mortgage Interest
  - Property Taxes
  - Student Loan Interest
  - Charitable Contributions

Child Support Add-Ons

- Mandatory- FC4062
  - Child Care for employment or education
  - Uninsured health care costs.
    - Generally split equally, may also be proportional to net disposable income.
- Discretionary-
  - Education/Special Needs
    - Extra curricular activities
  - Visitation travel expenses

Responsibility for care

- Timeshare does not have to be exact-
  - Close approximation
  - Approved child support software programs have 'guideline' parenting time scenarios
  - Look to responsibility for care-
    - May be responsible for care even when child not with a particular parent (school).
  - Based upon what is actual arrangement, not necessarily what order says.

VOID CS Agreements

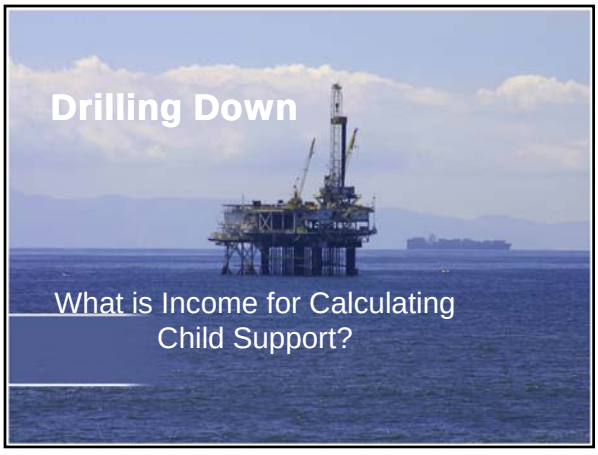
- Those agreements which deprive the court of jurisdiction, i.e. binding arbitration
  - IRMO Bereznak (2003) 110 CA4th 1062
- Waiver of arrears on a take it or leave it basis without good faith dispute as to amounts owed
  - IRMO Sabine & Toshio M. (2007) 153 Cal.App.4th 1203, 1213-1215

CS orders

- Always modifiable
  - Even Stipulated non–modifiable “floor”, subject to modification.
    - IRMO Alter (2009) 171 Cal.App.4th 718
  - Different than spousal support!

County and Judicial Differences

- Meet and Confer
- FLF
- Volunteer Attorneys
- Calendar Management
  - Mixed calendar or only financial issues



Income is.....

- "..income from whatever source derived" IRC language--Mandatory: FC 4058(a)(1)
  - Commissions, salary, wages, bonuses
  - Royalties, rents, dividends, interest, gifts maybe if recurring **IRMO Alter** (2009) 171 CA4 718
  - Pensions, annuities, social security benefits
  - Workers' comp., unemployment, disability
  - Spousal support from another relationship
  - Tribal payments paid directly to member
    - ***M.S v O.S*** (2009) 176 CA4th 548

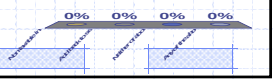
What is Income (con't)

- Gross income to business less operating expenses. FC 4058(a)(2)
  - Asfaw v. Woldberhan (2007) 147 CA4th 1407 Depreciation of rental property is not deductible in calculating child support under 4058 and 4059."

    Add-Backs—"was the expenditure necessary for the operation of the business"?

How do you generally treat depreciation when calculating income available for child support?

1. Non taxable income
2. Add back to self employment income as taxable
3. Neither of above but consider as factor for deviation
4. Any of the above depending on circumstances



HYPO

***F owns apt. complex. $200K/yr gross rental income and claims business expenses of $150K, $50K of which is depreciation. What is F's income* for CS?**

1. $50K taxable
2. $100K taxable
3. $50K taxable plus $50K non-tax
4. Something else

HYPO

F self employed & owns medical transcription business. $200K gross income, $150K business expenses, $50K of which is depreciation. ***What is F's S/E income***

1. $50K taxable
2. $100K taxable
3. $50K taxable plus $50K non tax
4. Whatever the tax return says
5. Possibly something else

What is Income (con't)

- Discretionary: FC 4058(a)(3) & (b)
  - Employment/self-employment benefits—consider benefit to employee, reduction in living expenses, other relevant factors
  - Earning capacity

What is Income (con't)

- Overtime: Predictable overtime *must* be included unless:
  - Evidence that not likely to continue; or
  - Overtime subjects party to an "excessively onerous work schedule". Parent only required to work "objectively reasonable work regimen". See Co. of Placer v Andrade (1997)55 CA4th 1396; IRMO Simpson (1992) 4 Cal.4th 225.

What is Income (con't)

- Military Allowances
  - BAH—Basic Allowance for Housing
  - BAS—Basic Allowance for Subsistence
    - Although non taxable, federal pre-emption does not apply
    - BAH and BAS are non taxable income for child support
    - IRMO Stanton (2011) 190 CA4th 547

What is Income (con't)

- SEVERANCE PAY
  - Smith Ostler order in effect
  - "35% of all income in excess of $25,000/mo
  - Payor receives severance pay of $309K
  - 5 Components

What is Income (con't)

- Yrs of Service $100,000
- Lump sum in lieu of commissions $152,000
- Qualitative Compensation $ 35,000
- Healthcare payout $ 1,500
- Retirement benefits $ 3,422
  - TC ruling: % applies to all

What is Income (con't)

- Yrs of Service (limit 12 mo) $100,000
- Lump $ in lieu 6mo commissions $152,000
- Qualitative Compensation $ 35,000
- Healthcare payout $ 1,500
- Retirement benefits $ 3,422
  - TC ruling: % applies to all
  - CA: reverses---Allocate rationally

What is Income (con't)

- Allocation of Severance Pay
  - TC discretion
  - May follow allocation stated in plan or other reasonable allocation
  - May not allocate all to one month
  - IRMO Tong & Sampson (2011) 197 CA4th 23

What is NOT Income?

- Child support
- Public assistance (AFDC, SSI, TANF, Adoptive Assistance)
- Gifts (maybe)... But see ***IRMO Alter*** (2009) 171 CA4th 718
- Inheritances, life insurance
- Appreciation in value of primary residence ***IRMO Henry*** (2004) 126 CA4 111
- New mate income—exception in extraordinary circumstances (FC 4057.5)
  - ***IRMO Knowles*** (2009) 178 CA4th 35

What is NOT Income? (Con't)

- Loans
- Undifferentiated lump sum PI awards
- Annuity purchased from undifferentiated lump sum PI award.
- However, just because not income, some of these facts may be basis to deviate from G/L CS.

Calculating Gross and Net Income

- **Calculation of "Net Disposable Income" FC 4058 (gross) and 4059 (deductions).**
  - 12-month average. IRMO Riddle (2005) 125 CA4th 1075, at 1083, facts may dictate longer or shorter period.
  - Court can adjust support to account for seasonal or fluctuating income. FC 4060-4064.

Calculating Income (cont.)

- Percentage of fluctuating income as child support?
  - Better practice to set base CS and percentage of income (bonuses, incentive pay) over base level.
    - **IRMO Mosley** (2008) 165 Cal.App.4th 1375
  - Contra authority if bonuses/commissions are consistent.
    - See **Co of Placer v. Andrade,** supra.

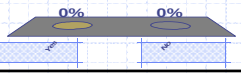
But Don't Forget.....

- Must consider appropriate deductions per FC 4059
  - Taxes
  - Health Insurance (Pre or Post tax)
  - Mandatory Retirement Plans (Pre or Post tax)
    - Vol. to extent ATI
  - Necessary job related expenses
  - Union dues
  - CS or SS
  - Hardship

Hardships

Must the court grant a hardship deduction to a parent who has a biological or adopted child from a different relationship in the home?

1. Yes
2. No



Allowable Deductions (con't)

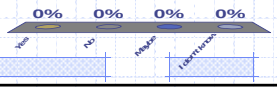
- Hardships
  - Extraordinary health expenses and uninsured catastrophic losses
  - Minimum basic living expenses for children residing with a parent for whom the parent has an obligation to support
    - Does not apply to step-children as there is no 'legal' duty of support owed.

HYPO

W works for State, tier 1 (e'ee contributes to mandatory retirement also subsidized by e'er). H works for HP and voluntarily contributes to 401K & matched by e'er. H has no other retirement.

Is H's 401K contribution an allowable deduction in calculating G/L Child Support?

1. Yes
2. No
3. Maybe
4. I don't know

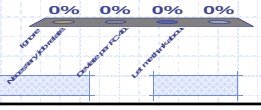


HYPO

Due to poor economy, F is laid off. Secures new wage employment but now commutes 100 miles each way to his office. F proves *increased* costs for commute $500/mo.

How do you treat the increased commute costs in the calculation of CS?

1. Ignore
2. Necessary job related expense
3. Deviate per FC 4057
4. Let me think about it



Beyond the Paycheck

- Section 4058 language is expansive but must limit application to money actually received or available; not appreciation of residence. IRMO Henry (2005) 126 CA4th 111, at 119, 23 CR3rd 707, at 712.
- IRMO Destein (2001) 91 CA4th 1385, 111 CR2nd 487, appreciation of real estate okay if investment asset, not residence.

Beyond the Paycheck con't

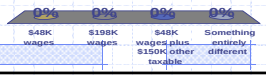
- Partnerships & S-Corps
  - K-1 vital
  - Need to understand various boxes.
  - Look not only to income but also to distributions- positive or negative

HYPO

F $48K W-2 from S-Corp. S-Corp also gives F a K-1 with $150K ordinary business income. M stay at home w/ twins- 6 months old.

For calculating G/L CS is F's income:

- $48K wages
- $198K wages
- $48K wages plus $150K other taxable
- Something entirely different

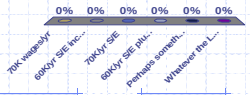


HYPO

Dad: General partner. Draw $60,000/yr. K-1 shows distribution of $70,000/yr.

For calculating G/L CS is Dad's income:

- 70K wages/yr
- 60K/yr S/E income
- 70K/yr S/E
- 60K/yr S/E plus 10K other taxable
- Perhaps something entirely different.
- Whatever the LCSA recommends



Stock Options

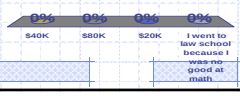
- Income when option exercised or sale of stock at a gain. IRMO Cheriton (2001) 92 CA4th 269, at 286, 111 CR2 755, at 767.
- Can option be income prior to being exercised? Murray v. Murray (1999) 128 Ohio App.3d 662, at 668-670, 716 NE2d 288, 293-295.

HYPO

W granted 20K options. Vest ratably 1/5 annually over 5 yrs. Price on grant date $10/share. 18 mo.'s later H files CS mod & req's. impute income on vested options. Price now $20/share.

What is income from stock options?

1. $40K
2. $80K
3. $20K
4. I went to law school because I was no good at math



Stock

- IRMO Pearlstein (2006) 137 CA4th 1361, 40 CR3rd 910 distinguishes stock *and cash* traded in sale of business—not income until stock sold or cash spent as opposed to reinvested—OK to impute reasonable rate of return
  - Stock options=compensation
  - Stock/cash sale of business=capital
  - Same result in IRC1031 exchange?

Inheritance

- County of Kern v. Castle (1999) 75 CA4th 1442, at 1453, 89 CR2 874, at 882.
- Corpus not income.
- Imputation of interest income to the corpus of the inheritance;
- actual rental income, plus reduction in living expenses, per FC 4058(a)(3)
  - Compare County of Orange v. Smith (2005) 132 CA4th 1434, at 1447-1448, 34 CR3rd 383, at 392-393.

Life Insurance

- Lump sum payment of life insurance benefits not income—may apply reasonable rate of return. IRMO Scheppers (2001) 86 CA4th 646,

Gambling Winnings

- Return on capital investment, include as income. IRMO Scheppers, supra, at 651 and 533.

Lottery Winnings

- County of Contra Costa v. Lemon (1988) 205 CA3rd 683, at 688, 252 CR2nd 455, at 459—AFDC case. Court held lottery winnings to be income and available for both AFDC reimbursement and ongoing child support.
  - See IRMO Scheppers, supra, at 651 and 533.

Benefits from Employment

- **Discretionary Add-ons**
  - **Automobile**. IRMO Schulze (1997) 60 CA4th 519, at 528, 70 CR2nd 488, at 494.
  - **Housing**. IRMO Schulze, supra, at 529 and 495.
  - **Meals**. Stewart v. Gomez (1996) 47 CA4th 1748, at 1756, 55CR2nd 531, at 536.

Annuity from Undifferentiated lump sum PI award

- IRMO Rothrock (2008) 159 Cal.App.4th 223, held annuity purchased from undifferentiated lump sum PI award not income.
  - BOP on person challenging
- IRMO Heiner (2006) 136 Cal.App.4th 1514 held undifferentiated lump sum PI award not income.

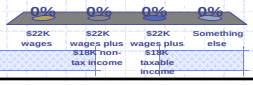
Imputing Income

- Gifts
- Earning Capacity
  - Unemployed/underemployed
- Assets
- Expense Theory
- New Mate Income
  - FC 4057.5

F receives gift of $18K every year from parents to pay his rent. F wages $22K/yr. M wages $48K/yr. Timeshare 0%.

What is F's income for calculating G/L CS?

1. $22K wages
2. $22K wages plus $18K non-tax income
3. $22K wages plus $18K taxable income
4. Something else



Would your answer to the previous question be different if the parents provided H free housing with an annual value of $18K instead of gifting him 18K?

1. Yes
2. No

Gifts

- One-time gifts are not includable as income unless failure to do so would provide inequitable result. IRMO Schulze, supra at 530 and 495.
  - Court has broad discretion to **deviate** *up or down* if in the best interests of the children. IRMO deGuigne (2002) 97 CA4th 1353, at 1361, 119 CR2nd 430, at 436.

Gifts (cont.)

- Recurring gifts may be treated as income for child support. IRMO Alter (2009) 171 CA4th 718
- IRMO Shaughnessy (2006) 139 CA4th 1225, held discretion to consider third party gifts in spousal support
  - [FC4057(b)(5)mentioned in dicta].

Earning Capacity

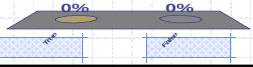
- FC4058(b) Discretion to consider in lieu of income if consistent with best interests
  - May consider EC along with parents receipt of disability benefits. Stewart v. Gomez (1996) 47 CA4th 1748
  - Burden on party seeking to impute to show ability (age, experience, health), and opportunity to work (job availability). IRMO Regnery (1989) 214 CA3rd 1367, 263 CR 243.

Earning Capacity (cont)

- Burden on responding party if employment terminated voluntarily. IRMO Ilas (1993) 12 CA3rd 1630; IRMO Padilla (1995) 38 CA4th 1212.
- Cannot 'automatically' impute to former level if termination involuntary, even if misconduct! IRMO Eggers (2005) 131 CA4th 695, 32 CR3rd 292.

Where a parent retires early & before normal retirement age when there are still minor children, the trial court must impute income as a matter of law to the pre retirement level when calculating an initial guideline child support order?

1. True
2. False



Earning Capacity (cont)

- Retirement scenario
  - IRMO Bardzik (2008) 165 CA4th 292
    - Reiterates BOP on parent who seeks to modify CS order to show parent has ability and opportunity.
    - Retirement distinguished from voluntary termination (IRMO Ilas & Padilla, supra;) ?!?
    - However, perhaps consider viability on Stewart v. Gomez, *infra*, if in best interests to impute and evidence to do so

Earning Capacity (cont.)

- Court may impute to one who is unable to find employer willing to hire them so long as there is a substantial likelihood income can be produced utilizing marketable skills. IRMO Cohn (1998) 65 CA4th 923, at 930, 76 CR2nd 866 at 871.
  - Tangible evidence needed; cannot be "drawn from thin air." IRMO Cohn (lawyer case); Oregon v. Vargas (incarcerated parent) 70 CA4th 1123. Want ads enough. LaBass and Munsee (1997) 56 CA4th 1331.

Earning Capacity(cont.)

- What if earning capacity greater than actual earnings, i.e. underemployed?
  - Ability to pay standard—if earning capacity greater than actual earnings court may base order on ability so long as in the children's best interests—sound discretion of the court. Moss v. Superior Court (Ortiz) (1998) 17 C4th 396, at 4245; IRMO Simpson (1992) 4 C4th 225, at 233; IRMO Smith (2001) 90 CA4th 74, at 81.

Earning Capacity(cont.)

- Remarriage and quit job
  - IRMO Paulin (1996) 46 Cal.App.4th 1378

Imputing Income

- Can impute reasonable rate of return on non- income-producing assets. IRMO Dacumos (1999) 76 CA4th 150, at 154-155, 90 CR2nd 159, at 161; IRMO Destein (2001) 91 CA4th 1385, at 1393-1396, 111CR2nd 487, at 492-496; IRMO deGuigne, supra, at 1363 and 437-438.
  - Rate of return? Substantial evidence test on review; Risk free (6%)--Destein, legal rate (10%)—Scheppers, 4.3 or 4.5 government bond rate—IRMO Ackerman (2006) 146 CA4th 191 all acceptable. Common sense "Theoretical rate" 4.5% IRMO Berger (2009) 170 CA4th 1070

Imputing Income (cont.)

- Brothers v. Kern (2007) 154 CA4th 126 confirms trial court imputing reasonable rate of return on liquidated proceeds already paid to third party.
  - Court also **deviated** from guidelines—payor incarcerated- considered child's needs for above guideline award.

Imputing Income (con't)

- Expenses Theory
  - Calculate guideline
  - Make credibility finding if I&E or other evidence of unbelievable income vis a vis expenses
    - Rule out other sources for payments as show by evidence
  - Re-calculate with expenses as non tax income- no tax consid. as expenses are paid after tax.
  - See IRMO Loh (supra); IRMO Calcattera (2005) 132 CA4th 28

Imputing Income(cont.)

- Exceptions to imputing income:
  - CalWorks participant Mendoza v Ramos (2010) 182 CA4th 680
  - IRMO Williams (2007) 150 CA4th 1221 confirms that court cannot impute reasonable rate of return on home equity in primary residence.
  - IRMO Schlafly (2007) 149 Cal.App.4th 747, confirms cannot impute income on mortgage free housing (FRV?) of primary residence
  - But consider Kern v Castle, supra.
  - Also discussed "add-ons" FC 4062

As a result of investments after new marriage H and new spouse have passive investment income of $5,000/mo. H recently laid off and collecting UI benefits of $1,950/mo. What is H's income for CS?

1. $1,950
2. $6,950
3. $4,450

Imputing Income (cont.)

- Remarriage—May impute income to custodial parent who terminates employment to care for new children of remarriage (IRMO Hinman (1997) 55 CA4th 988, 64CR2nd 383) or remarriage to wealthy spouse (IRMO Wood (1995) 37 CA4th 1059, 44 CR2nd 236)
  - **CAUTION** re FC 4057.5
    - Need finding of that exclusion of NMI would result in extreme of severe hardship to child
  - IRMO Knowles (2009) 178 CA4th 35

Summary—Determining Income

- Income = gross income from all sources, including commissions, bonuses, overtime
- May include benefits
- Does not include aid, spousal support, etc.
- Average when fluctuating or seasonal
- Imputing income may be available

In 2008 F receives $319K from Tribe and reports same as taxable income on his tax return. $35K of this figure is for legal fees paid directly to his attorneys and $80K represents bi-annual bonuses. The balance is regular monthly disbursements. What is F's income for calculating G/L CS?

1. $319K
2. $284K
3. $204K

Deviating from Guideline

- "The court is not supposed to punch numbers into a computer and award the parties the computer's result without considering the circumstances in a particular case which would make that order unjust or inequitable"
  - Marriage of Fini (1994) 26 CA4th 1033
- .....It's true, we are not mere robots or potted plants!

Deviating from Guideline (cont.)

- FC 4056
  - If deviating, must state findings and guideline CS and state reasons for deviation on record.
- FC 4057(a)

  The amount of child support established by the formula presumed to be the correct amount of child support.

Deviating from Guideline (cont.)

- FC 4057(b)

  The presumption of 4057(a) rebuttable-- may be rebutted by showing that formula unjust or inappropriate, consistent with FC 4053, based on one or more identified factors, list is not exclusive.

Deviating from Guideline (cont.)

- Calculation of guideline
  - No statutory exception to requirement that court determine guideline before addressing deviation. IRMO Hubner supra, at 184 and 652.

Deviating from Guideline (cont.)

Stipulation of the parties. FC4057(b)(1)
Guideline calculation &
FC 4065 inquiry/advisement required.

Deferred Sale of Residence FC4057(b)(2)

Discretionary. IRMO Braud (1996) 45CA4th 797, at 819, 53 CR 2d 179, at 192

Deviating from Guideline (cont.)

- High Income & G/L exceeds C's needs. Burden on high earner to establish that formula is "unjust or inappropriate" and would exceed needs. FC 4053(b)(3). IRMO Cheriton, supra,, at 297 and 776.
- Substantial evidence test—opposite result may be supportable. IRMO Wittgrove (2004) 120 CA4th 1317, at 1326 and 1328, 16 CR3rd 489, at 495 and 497.

Deviating from Guideline (cont.)

- May avoid need to calculate guideline if parties stipulate that paying parent is extraordinary high earner and on what is an appropriate amount of child support. Estevez v. Superior Court (Salley) (1994) 22 CA4th 423, at 431, 27 CR2nd 470, at 475-476. Court makes "assumptions least favorable to the obligor."

Deviating from Guideline (cont.)

- Establishing needs of children
  - Varies with standard of living of parent, per FC 4053(f). IRMO Hubner (2001) 94 CA4th 175, at 187, 114 CR2nd 646, at 655; IRMO Wittgrove, supra, at 1329 and 498; IRMO Chandler (1997) 60 CA4th 124, at 129, 70 CR2nd 109, at 113.

Deviating from Guideline (cont.)

- Future financial security may be considered. IRMO Kerr (1999) 77 CA4th 87, at 97, 91 CR2nd 374, at 381.
- Consideration of alternative resources may not be appropriate. IRMO Cheriton, supra at 293-294 and 773 (trust not to be considered unless actually satisfying needs of children).

Deviating from Guideline (cont.)

- Court needs information based in fact concerning obligor's actual gross income. Johnson v. Superior Court (Tate) (1998) 66 CA4th 68, at 75, 77 CR2nd 624, at 628; IRMO Hubner supra at 186-187 and 654-655.

Deviating from Guideline (cont.)

Contribution not commensurate with parenting time. FC4057(b)(4)

Clothing, extra curricular, etc.

Deviating from Guideline (cont.)

Guideline child support would be "unjust or inappropriate." FC4057(b)(5)

Including *but not limited to*....

(A) Different time-share with different children,

(B) Substantially equal time but housing expense greater for one parent, and

(C) Special medical or other needs for the children.

Above language is not words of limitation

Deviating from Guideline (cont.)

- Other Examples:
  - Broad discretion given court, as list of circumstances are inclusive, not exclusive. County of Lake v. Antoni (1993) 18 CA4th 1102, at 1106, 22 CR2nd 804, at 806; IRMO Wood (1995) 37 CA4th 1059, at 1069, 44 CR2nd 236, at 242; IRMO deGuigne supra, at 1361 and 436.

Deviating from Guideline (cont.)

- Edwards v Edwards (2008) 162 Cal.App.4th 136. Where jurisdiction exists to award post age of majority CS, application of GL formula is unjust or inappropriate where neither parent retains primary physical responsibility for adult child for any period of time.

Deviating from Guideline (cont.)

- Assets. IRMO Dacumos supra154-155 and 161; IRMO Destein supra at 1393-1396 and 492-496; IRMO deGuigne supra at 1363 and 437-438.
- Lavish lifestyle. IRMO deGuigne supra at 1360-1366 and 435-440.
- Nontaxable benefits. IRMO Loh supra at 335-336 and 900.
- Salary Deferral combined with lavish lifestyle. IRMO Berger (2009) 170 Cal.App.4th 1070

Deviating from Guideline (cont.)

-Extraordinarily low income. City and County of San Francisco v. Miller (1996) 49 CA4th 866, at 869, 56 CR2nd 887, at 888.

Federal Poverty Guideline

Concept used to reduce arrears in public assistance case. City and County of San Francisco v. Funches (1999) 75 CA4th 243, at 247, 89 R2nd 49, at 52.

Summary—Deviating from Guideline

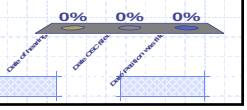
- Stipulation—findings required
- Deferred Sale of Residence
- Not Contributing commensurate with TS
- Extraordinarily High Income
- Guideline support unjust or inappropriate "catchall" clause

Putting it all together

- Now you have the framework to calculate Child Support
- Conceptually it's like graduating from law school and passing the bar.
- It's applying it in the real world that counts, and that's what has not been taught.

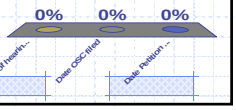
W files and 75 days later serves a Petition for DOM. Six (6) mo's later W files OSC for CS. To what date may the Court make the initial order retroactive to?

1. Date of hearing
2. Date OSC filed
3. Date Petition was filed



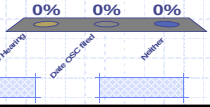
W's OSC also seeks spousal support, to what date may the court make the SS order retroactive to?

1. Date of hearing
2. Date OSC filed
3. Date Petition was filed



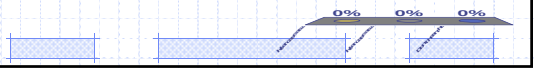
W's OSC seeks CS and SS, Court makes temporary order and continues to allow discovery. To what date may the court make the support order retroactive to at future hearing?

1. Date of initial hearing
2. Date OSC filed
3. Neither



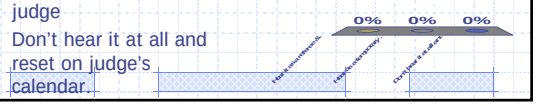
On the DCSS calendar both parties appear, all stipulate to you (Commish) per FC 4251(b). Party 1 is unhappy with ruling and timely files request for reconsideration but will not stipulate to you hearing case again. How do you proceed?

1. Hear case as a temp. judge.
2. Hear case as a referee.
3. Don't hear the case



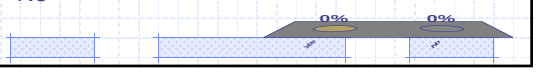
Same facts as previous question but no stipulation in the first instance. You hear as referee and judge ratifies recommendation. Now party timely files request for reconsideration and it's on your calendar. What do you do.

1. Hear it as a referee & make recommendation
2. Hear as a temporary judge
3. Don't hear it at all and reset on judge's calendar.



W files UPA action & checks box there is a vol. decl. of paternity but does not attach copy. Concurrently files OSC for CS. At OSC hearing H does not appear. Should the Court issue an order for child support?

1. Yes
2. No



Disso action in SAC Co. with judgment for CS & SS. Judgment is registered in Orange Co. by Obligee Mom who opens case with OC DCSS. Mom then files motion for modification of spousal support in Sac County. In what County is the spousal support "venued" for modification purposes?

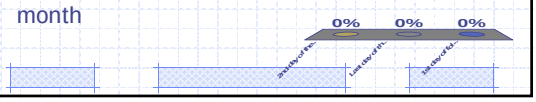
1. SAC County.
2. Orange County

An order for child support does not specify a "due date". On what day of the month is the child support "due"?

1. 1st day of the month
2. ½ 1st & ½ 15th
3. Last day of month

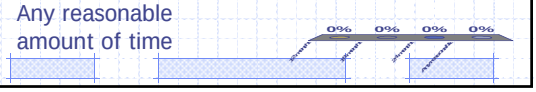
In an action enforced by the Department pursuant to FC 17400 et. seq., CS order is due on the 1st day of each month. When does interest begin to accrue on unpaid child support?

1. 2nd day of the month
2. Last day of the month
3. 1st day of following month



The court may order an obligor to establish a child support security trust account to ensure the payment of child support for what duration of time?

1. 12 months
2. 18 months
3. 24 months
4. Any reasonable amount of time

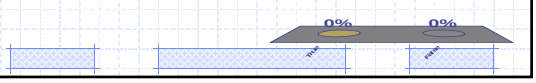


An Obligor must be in arrears before a Court may issue an order for a child support security deposit account?

1. True
2. False

An income withholding order must always be ordered for the payment of child support where the obligor is a wage employee?

1. True
2. False

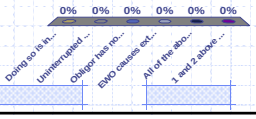


The Court may require a self employed obligor to designate an account for the purpose of paying CS by electronic funds transfer in both DCSS and non DCSS cases?

1. True
2. False

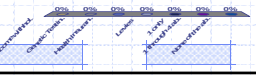
Which of the following must the Court find to stay issuance of an earnings withholding order?

1. Doing so is in BIC
2. Uninterrupted timely full pay history for previous 12 mo's
3. Obligor has no arrears
4. EWO causes extraordinary hardship
5. All of the above
6. 1 and 2 above only



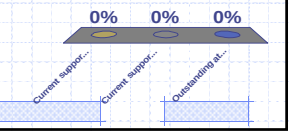
The Department of Child Support Services may issue their own administrative orders for what types of matters?

1. Income withholding Orders
2. Genetic Testing
3. Health Insurance
4. Levies
5. 1 only
6. 1 through 4 above
7. None of the above



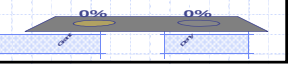
Generally when crediting a payment toward a money judgment for support, payments are credited in what order?

1. Current support, unsatisfied principal, accrued interest
2. Current support, accrued interest, unsatisfied principal
3. Outstanding attorney fees, accrued interest, current support



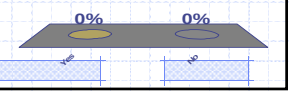
DCSS obtains levy for $3,000 against H for unpaid CS in amount of $75,000. H's sole source of funds is SSDI. H moves to quash? What do you do?

1. Grant
2. Deny



Is the Court required to count hours when determining parenting time to calculate guideline child support ?

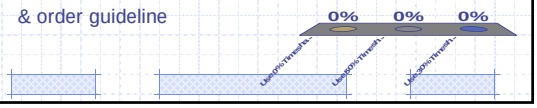
1. Yes
2. No



M & D 50/50 Custody Order. D deploys overseas. M seeks CS mod with 0% timeshare. Child spends significant time with D's family including weekends and some overnights and various meals (approx. 30% timeshare).

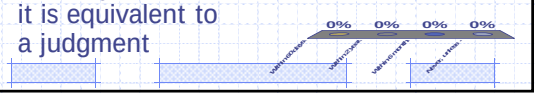
How do you calculate child support?

1. Use 0% Timeshare but deviate
2. Use 50% Timeshare & order G/L CS
3. Use 30% Timeshare & order guideline



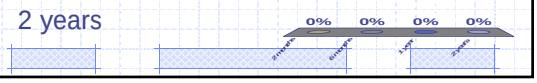
A voluntary declaration of paternity may be rescinded by either parent….

1. Within 60 days
2. Within 2 years
3. Within 6 months
4. Never, unless set aside by court as it is equivalent to a judgment



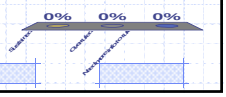
A motion to set aside a voluntary declaration of paternity must be filed within what period of time in relation to the child's birth?

1. 2 months
2. 6 months
3. 1 year
4. 2 years



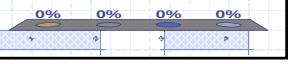
At trial on the issue of parentage, DCSS offers into evidence the paternity test results without calling any witnesses. Counsel objects on hearsay and lack of foundation. What is your ruling?

1. Sustained
2. Overruled
3. Need more info to rule either way



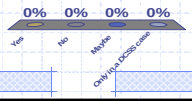
In law, how many different types (classifications) of fathers are recognized? Hint, the classifications are not “good”, “bad”, “absent” “deadbeat” or “Disneyland” ones!

1. 1
2. 2
3. 3
4. 4



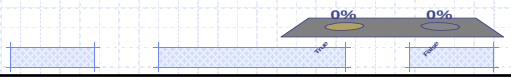
Is spousal support received by a payee includable in payee’s income when calculating child support?

1. Yes
2. No
3. Maybe
4. Only in a DCSS case



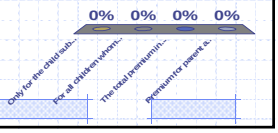
A person is entitled to a hardship deduction for the minimum basic living expenses of a natural or adopted child living in the home when calculating guideline CS?

1. True
2. False



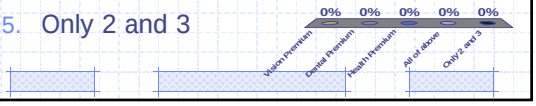
When calculating guideline child support the Court shall deduct from gross income of the parents the health plan premiums paid

1. Only for the child subject to the CS order
2. For all children whom their exists an obligation to support
3. The total premium including adults and children
4. Premium for parent and all children for whom their exists a legal obligation to support



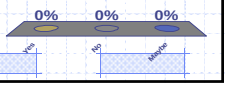
When calculating a party's net disposable income which of the following are considered health insurance deductions?

1. Vision Premium
2. Dental Premium
3. Health Premium
4. All of above
5. Only 2 and 3



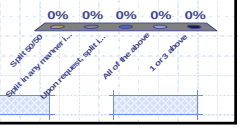
M has free child care to enable her to work. M chooses to put child, age 4, in early learning development program (ELDP) instead of free child care. Is the cost of the ELDP a mandatory child support add-on?

1. Yes
2. No
3. Maybe



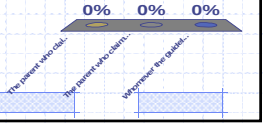
Assume the Court granted the ELDP costs in the previous question, how must the court allocate the costs between the parents?

1. Split 50/50
2. Split in any manner it chooses
3. Upon request, split in proportion to net disposable income if appropriate
4. All of the above
5. 1 or 3 above



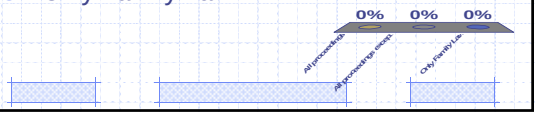
When calculating guideline CS, to whom is the child tax credit available?

1. The parent who claims Head of Household filing status
2. The parent who claims the dependency exemption for child
3. Whomever the guideline calculator assigns it to



The Servicemembers Civil Relief Act applies to what types of proceedings?

1. All proceedings
2. All proceedings except criminal
3. Only Family Law

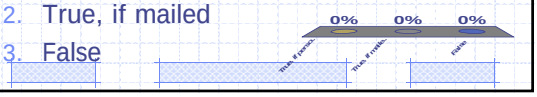


In a post judgment proceeding, personal service of the moving papers on the other party is required?

1. True
2. False

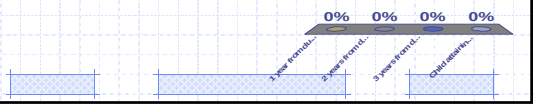
In a post judgment proceeding, service of the moving pleadings is valid if made upon the attorney of record?

1. True, if personally served
2. True, if mailed
3. False



What is the statute of limitations for enforcement by contempt of a child support order?

1. 1 year from due date
2. 2 years from due date
3. 3 years from due date
4. Child attaining age of majority

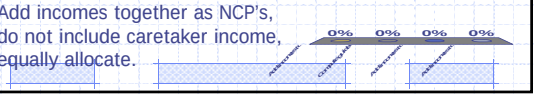


Dad receives Social Security Disability Insurance benefits in the sum of $1,000 per month.
What is Dad's income for calculating guideline child support?

1. $1,000 wages
2. $1,000 non-tax as disabilty
3. $1,000 taxable disability
4. $0

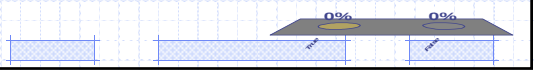
How do you calculate guideline CS owed by parents who reside together for a caretaker on aid?

1. Add incomes together as NCP's and include caretaker income then proportionally allocate
2. Compute guideline separately for each parent
3. Add incomes together as NCP's, do not include caretaker income, proportionally allocate
4. Add incomes together as NCP's, do not include caretaker income, equally allocate.



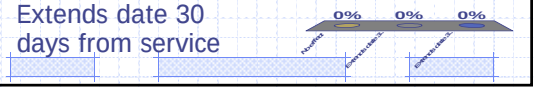
Once a final judgment has been entered in a Department action, a supplemental complaint may only be filed with leave (permission) of the Court?

1. True
2. False



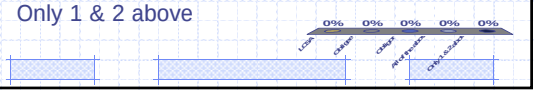
If the Department obtains new financial info within 30 days of service of complaint and proposed judgment they may file a declaration with new financial info and an amended proposed judgment.
The filing and service of such a pleading has what effect, if any, on the date the Defendant's default may be entered?

1. No effect
2. Extends date 30 days from filing
3. Extends date 30 days from service



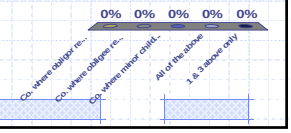
Who may register an order for child support obtained in another county in the State?

1. LCSA
2. Obligee
3. Obligor
4. All of the above
5. Only 1 & 2 above



In what county may an obligee register an order for child support?

1. Co. where obligor resides
2. Co. where obligee resides
3. Co. where minor child resides
4. All of the above
5. 1 & 3 above only

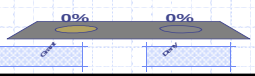


Commissioner hears a child support mod hrg. Although disgusted with the quality and quantity of evidence he orders g/l CS based upon the limited evidence. W prepares and submits order which is not served on Dad. 58 days after the order is filed Dad files motion to reconsider and or request for new trial. Over objection, Court grants. Is Dad's motion timely?

1. Yes
2. No

One year after entry of Judgment which provides for child support, Lucy requests Ricky provide her with an updated income and expense declaration and provide a copy of his most recent income tax return. He ignores the request. No motion for support is pending. Lucy files a motion to compel, your ruling?

1. Grant
2. Deny



DISCOVERY

- Limited discovery available without pending motion FC 3662 - 3663
- Discovery permitted to provide sufficient information to allow court to determine “net disposable income”-- extent of discovery is discretionary with the court. Johnson v. Superior Court (Tate) (1998) 66 CA4th 68, at 75-76.

TAB Q

Income Determination—Advanced

Hon. Scott P. Harman and
Hon. Patrick Perry

Hypo 1

Father is vice president at major "too big to fail" bank. His compensation varies from year to year. For the last several years his income has been as follows:

Current year: Dad gets $200,000 year salary and possible bonus up to $1,250,000. He also was granted stock options to purchase 100,000 shares at $5/share. The Market price of the stock is $15/share and the options vest in 2 year. He has other investment income of $450,000.

Prior year 1: salary $200,000; bonus awarded of $750,000; 70,000 options granted at 5/share(same vesting as current); other investment income $375,000

Prior year 2: salary $200,000; bonus $1.1 million; 70,000 options at $5/share; other income of $350,000

Prior year 3: salary $200,000; bonus $900,000; 70,000 options at $5/share; other income of $300,000

Mom is employed as a hedge fund manager. Her salary is $750,000 year. Her potential bonus income is based on the profits of the hedge fund. Her maximum bonus is $3,500,000. In past years her salary has been constant and her bonus income has been:

Current year: unknown

Prior year 1: $2,500,000

Prior year 2: $3,400,000

Prior year 3: $1,000,000

Analyze the various ways income might be determined and child support might be ordered.

Hypo 2

- Dad lives ½ time on the Central Coast of California. He flies an hour to work everyday in the Central Valley. The cost of the plane rental is $75/hr. and is paid by his employer. When there is bad weather or fog in the valley he uses a flight instructor as co-pilot. The cost of the plane and/or flight instructor is not charged to him as income. The other ½ of the time (when he doesn't have his kids) he flies to and from Lake Tahoe daily where his girlfriend lives. These flights are similarly paid for by his employer. The company provides a 7 Series BMW for Dad's business driving. He has no other car.
- His salary is $550,000 annually. He has potential performance bonus of $150,000. He also has negotiated a personal/retention bonus of up to $300,000 which is determined each year "in the sole discretion of the president" of the International corporation he works for. While the bonus is determined each year at year end it is not vested or payable for 3 years and Dad must be employed by the corporation at time of vesting. If Dad leaves early he is paid 30cents on the dollar on the retention bonus. Dad is in negotiation with a potential new employer.

Hypo 3

- Dad works as a bartender at the local watering hole, The Thirsty Truck. He has 2 children, Sally (age 13) and Mike (age 10) Over the past 10 years he has worked on writing a book based on the things he has seen and heard from patrons of the bar. His writing schedule has been from 9 AM to 4 PM six days a week. Over the past year he has submitted his manuscript to a number of publishing houses. The book, Tales From The Thirsty Truck, is a hilarious commentary on the raunchy lifestyles of his friends and family. He has just signed a contract providing for a $500,000 advance payment against royalties he will earn of $2.00 per book sold. He was also paid a lump sum payment of $250,000 which is not subject to repayment based on book sales. His editor wants to try to market it to movie companies as the basis for a movie.
- Dad's average income over the past 10 years has been $28,000 per year. The most he has ever made in a single year was $34,000. He has been behind on his child support for most of the last ten years although he pays every month what he can afford.
- What orders would you consider and why?

Hypo 4

- Mom is employed as an investment advisor. She has a large book of business consisting of wealthy individuals who have relied on her advice for years. She recently left her employer of many years to go to work for a new brokerage Merrill Grinch and Co. Her new employment contract provides that the employer will make her a $12 million dollar loan upon her execution of the employment agreement. The loan will bear interest at 4% per annum. For each month of her employment the company will forgive $100,000 of the loan principal. Mom is also required to maintain life insurance on her life in the amount of the outstanding loan. The cost of the life insurance this year is $50,000. If she leaves employment at any time within the first ten years of employment the entire then remaining balance is immediately due and payable.
- There are 3 children (ages 7,10 and 11)
- What are the issues you must consider? What would your order be if Mom left employment after year 5?

Hypo 5

- Father, with income of $2,500 gross per month, has three open cases with DCSS on calendar to allow child support to be fairly allocated among the cases. In the first case he has 25% time share of his three children and mom is on aid with no income; in the second case he has 0 time share of his one child and mother has income of $2,000 gross per month; in the third case he has 15% time share of his two children and mother has income of $4,000 gross per month. How do you determine the child support for each case? What if only one case is in your court and the other two are in other jurisdictions?

Hypo 6

- Noncustodial father is a professional football player with a $500,000 annual contract that includes extra compensation for any playoffs and incentives for performance. As the regular season is from August through December father receives his pay at $100,000 per month for those five months. Guideline child support is $3,733 per month. How do you structure payments?

Hypo 7

- Noncustodial father is currently unemployed and has a pending application for social security disability. He has medical documentation of his inability to work. At the hearing on his motion to modify child support to 0, what is your order? Assume that 18 months later benefits are awarded and father receives a check for retroactive benefits (mother also receives a check for derivative benefits), at the hearing for financial review what do you order? What if the derivative benefits are $230 per child, for two children, and the parents share 50/50 custody, but mother receives the derivative benefits, what effect does that have on your calculation?

Hypo 8

- NCP mother is securities broker with JP Morgan—previously employed by a brokerage that was merged with JP Morgan. Her income includes base pay of $80K and a percentage of profit from 8 different in-house investment programs. The income from the in-house investments vary by as much as 25% per year. What income do you use for calculating child support? Bonus schedule?
- As a result of the merger mother had to move offices 100 miles from her original job site. Her employer paid all moving expenses, paid her house payment while the first house was being sold and paid the down-payment on a new house in the new location. In addition, for 6 months she received $5,000 per month for "miscellaneous moving expenses." Any income here?

TAB R

UIFSA: Interjurisdictional Sites, Cites, and Sights/ Interjurisdictional Case Processing

Mr. Barry J. Brooks

TAB R

UIFSA—Interjurisdictional Sites, Cites, and Sights

Mr. Barry J. Brooks

INTERJURISDICTIONAL RESOURCES

INTERNET

Office of Child Support Enforcement

Home page - policy documents and other links
http://www.acf.hhs.gov/programs/cse/index.html

Intergovernmental Referral Guide
https://extranet.acf.hhs.gov/irgauth/login

International
http://www.acf.hhs.gov/programs/cse/international/

Tribal
http://www.acf.hhs.gov/programs/cse/resources/tribal/

Search OCSE and some State documents
https://ocse.acf.hhs.gov/necsrs/

Uniform Law Commission [NCCUSL]

Home - legislative fact sheet
http://www.nccusl.org/Default.aspx

Drafts and Final Acts
http://www.law.upenn.edu/bll/archives/ulc/ulc.htm

Hague

Home
http://www.hcch.net/index_en.php

Service Convention
http://www.hcch.net/index_en?act=conventions.text&cid=17

Maintenance Convention
http://www.hcch.net/index_en.php?act=conventions.text&cid=131

Currency Conversion
OANDA - current and historical converter
http://www.oanda.com/

Code of Federal Regulations
http://www.gpoaccess.gov/cfr/retrieve.html

United States Code

Browse by Title
http://www.gpoaccess.gov/uscode/browse.html
Search
http://uscode.house.gov/search/criteria.shtml

International Legal Information by Country
http://www.law.cornell.edu/world/

National Conference of State Legislatures
Marriage and Family Law resources
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International Family Support: Currency Conversion

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Background

The issue of how to approach currency conversion in international cases has existed as long as there has been international trade and commerce. A starting point for tracing the "modern" resolution of what exchange rate to use might begin with two US Supreme Court cases arising out of World War I; although, some reference is made to commercial transactions made during the Civil War. In discussing the issue, it is also necessary to discuss events tangential to the courts' decisions.

The precipitating event for the discussion is the Coinage Act of 1792. This was the first act by the fledgling federal Congress regarding coinage and money.

> SEC. 20. And be it further enacted, That the money of account of the United States shall be expressed in dollars or units, dismes or tenths, cents or hundredths, and milles or thousandths, a disme being the tenth part of a dollar, a cent the hundredth part of a dollar, a mille the thousandth part of a dollar, and that all accounts in the public offices and all proceedings in the courts of the United States shall be kept and had in conformity to this regulation. (Emphasis added)

This language was taken to mean that a judgment in a US court had to be stated in US currency. Thus, the development of an approach regarding the applicable conversion principle and date to be used had to take into account the fact there is always a time gap between the occurrence of the "wrong" and the "remedy" (judgment). The task of resolving the issue has taken place in both the federal and State courts. It is the federal judiciary which seems to have struggled most

In *Hicks v. Guinness*, 269 U.S. 71, 46 S.Ct. 46, 70 L.Ed. 168 (1925) a German company owed a debt to an American company based on an account stated in German marks. The American company brought suit in the United States and the Court held Hicks was entitled to not seek payment of the debt but to seek damages in equity. The Court affirmed that the damages the American company suffered should be determined in dollars as of the "breach date".

Almost a year to the date, the Court decided *Deutsche Bank Filiale Nurnberg v. Humphry*, 272 U.S. 517, 47 S.Ct. 166, 71 L.Ed. 383 (1926) which involved an American depositor in a German bank filing suit in the United States for the Bank's failure to pay him his deposited marks upon demand. The Court noted the event was not subject to US jurisdiction at the time it occurred. Thus, the Court opined that when a contractual obligation arises under and is payable in a foreign country in that country's currency, a "judgment day" conversion rule should apply.

Initially, the *Hicks* and *Deutsche Bank* cases were viewed as stating the principle that the rule to be applied is based upon the place the payment is to be made. That principle was revisited and revised in *In re Good Hope Chemical Corp.* 747 F.2d 806 (1st Cir.1984). The *Good Hope* court looked at the law that gives rise to the cause of action. If the cause of action arose entirely under foreign law such that damages are in the foreign currency, the "judgment day" rule should apply. If the cause of action arose under American law, the "breach day" rule applies.

As the federal courts were struggling with the development of two "bright line" rules, states were also attempting to resolve the issue. Early on, many states had adopted the "N.Y. Rule" of "breach date" regardless of where the cause of action arose. See *Hoppe v. Russo-Asiatic Bank*, 235 N.Y. 37, 138 N.E. 497 (1923); and, *Parker v. Hoppe*, 257 N.Y. 333, 178 N.E. 550 (1931), on rehearing, 258 N.Y. 365, 179 N.E. 770 (1932). The dual approaches being developed by the federal courts became more focused on the "breach date" approach when *Erie R. Co. v. Tompkins*, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938), decreed that federal courts should apply State law in most cases.

Significantly, while the federal courts and other State courts were struggling with development of some "bright line" rule, a Texas Court in *Butler v. Merchant*, 27 S.W. 193 (Tex. Civ. App. 1894, no writ.) articulated a very prescient resolution. It found the value of the Mexican peso had varied widely between the "breach date" and the ostensible "judgment date". Thus, it approved of a "blended" approach.

Although the "breach date" remains at the fore with the "judgment date" still an option, a third approach is developing, driven in part by a confluence of historical events combined with academic and judicial rethinking.

Towards the end of World War II, representatives from all 44 Allied nations met at the Mount Washington Hotel in Bretton Woods, New Hampshire. The task was to establish a framework for post-war cooperation in monetary and financial matters. A part of this process involved setting fixed par values for currency exchange that could only vary in a one percent range. This agreement lasted until 1971 when the US backed out of the agreement. By 1973, the other major currency issuers had abandoned the process as well.

In 1980, the court in *Baumlin & Ernst, Ltd. v. Gemini, Ltd.*, 637 F.2d 238 (4th Cir.1980) questioned whether the Coinage Act actually prohibited entry of a judgment stated in foreign currency. This issue became more moot when the Coinage Act was reenacted in 1982 without the questionable text.

> 31 U. S. C. § 5101. Decimal system
> United States money is expressed in dollars, dimes or tenths, cents or hundreths,[1] and mills or thousandths. A dime is a tenth of a dollar, a cent is a hundredth of a dollar, and a mill is a thousandth of a dollar.

The next institution to add to the discussion was the American Law Institute which in 1987 released its Restatement (Third) of Foreign Relations Law. The Reporter's Notes track the development of the law in the US as well as internationally. The Notes mention the often inconsistency of approaches while observing the focus of all decisions had been to make the injured party whole. Thus, the Restatement provides:

§ 823. Judgments On Obligations In Foreign Currency: Law Of The United States
(1) Courts in the United States ordinarily give judgment on causes of action arising in another state, or denominated in a foreign currency, in United States dollars, but they are not precluded from giving judgment in the currency in which the obligation is denominated or the loss was incurred.
(2) If, in a case arising out of a foreign currency obligation, the court gives judgment in dollars, the conversion from foreign currency to dollars is to be made at such rate as to make the creditor whole and to avoid rewarding a debtor who has delayed in carrying out the obligation.

However, it is the Comment to this Section which places the new concept of "**payment date**" into the lexicon.

d. Alternative conversion rules. Under Subsection (2), and Comment *c*, a judgment in dollars should be given on the basis of conversion at whichever date would serve the ends of justice in the circumstances.

(I) Breach date. When the breach date is applied for conversion of foreign obligations, Comment *c*, an obligation to pay a sum of money is convertible as of the date it was payable; an obligation to deliver goods or perform services is convertible as of the last date on which the obligation could be performed in compliance with the agreement on which it was based, or the date on which default was declared. For an obligation not arising out of contract, such as a tort or ships' collision, the date for conversion is the date of the event giving rise to the claim. When a judgment is based on multiple obligations, conversion should be made separately in respect of each obligation.

(ii) Judgment date. When the judgment date rule is applied for conversion of foreign obligations, the obligation is convertible into dollars as of the date on which the judgment is rendered, regardless of the duration of any appeal.

(iii) Payment date. When judgment is given in a foreign currency, it may be paid in that currency within the normal time for payment of judgments, or in the dollar equivalent on the date of payment.

Shortly after the Restatement, the National Conference of Commissioners of Uniform State Laws (NCCUSL) promulgated the Uniform Foreign-Money Claims Act in 1989. The Act has been adopted in 24 States. It, also, adopts the "payment date" approach although termed "conversion date".

SECTION 1. DEFINITIONS. In this [Act]:
. . .
(3) "Conversion date" means the banking day next preceding the date on which money, in accordance with this [Act], is:
(I) paid to a claimant in an action or distribution proceeding;
(ii) paid to the official designated by law to enforce a judgment or award on behalf of a claimant; or
(iii) used to recoup, set-off, or counterclaim in different moneys in an action or distribution proceeding.

Comment

3. "Conversion date." Exchange rates may fluctuate from day to day. A date must be picked for calculating the value of foreign money in terms of United States dollars. As used in the Act, "conversion date" means the day before a foreign-money claim is paid or set-off. The day refers to the time period of the place of the payor, not necessarily that of the recipient. The exchange rate prevailing at or near the close of business on the banking day before the day payment is made will be well known at the time of payment. See Comment 2 to Section 7.

SECTION 7. JUDGMENTS AND AWARDS ON FOREIGN-MONEY CLAIMS; TIMES OF MONEY CONVERSION; FORM OF JUDGMENT.
(a) Except as provided in subsection (c), a judgment or award on a foreign-money claim must be

> stated in an amount of the money of the claim.
> (b) A judgment or award on a foreign-money claim is payable in that foreign money or, at the option of the debtor, in the amount of United States dollars which will purchase that foreign money on the conversion date at a bank-offered spot rate.
> (c) Assessed costs must be entered in United States dollars.
> (d) Each payment in United States dollars must be accepted and credited on a judgment or award on a foreign-money claim in the amount of the foreign money that could be purchased by the dollars at a bank-offered spot rate of exchange at or near the close of business on the conversion date for that payment.
> . . .

The combination of the revision to the Coinage Act, Restatement, and Uniform Foreign-Money Claims Act resulted in most all courts recognizing not only the ability to enter a judgment in a foreign currency but also the advisability. *Comptex v. LaBow*, 783 F.2d 333 (2nd Cir. 1986); *Matter of Oil Spill by the Amoco Cadiz Off the Coast of France on March 16, 1978*, 954 F.2d 1279 (7th Cir 1992); *Mitsui & Co., Ltd. v. Oceantrawl Corporation*, 906 F.Supp. 202 (S.D. New York 1995)

To show the practical application of the payment date concept, the Prefatory Note to the Uniform Foreign-Money Claims Act provides an example from an actual case:

> An American citizen (A) owes 18,790 pounds sterling to a British corporation (BCo) suing in New York, and the pound is falling against the dollar. Due to the declining value of the pound, the three rules worked out as follows:
>
> | **Date Rate of Exchange** | **BCo Gets** |
> |---|---|
> | Breach day Pound = $2.20 | $41,338 |
> | Judgment day Pound = $1.50 | $28,185 |
> | Payment day Pound = $1.20 | $22,548 |
>
> A judgment of $41,338 may be entered based on the breach day rule. However, the payment in dollars was worth 34,449 pounds ($41,338 divided by $1.20) when eventually received, an excess of £15,659 over the actual loss.
> This example is adapted from an actual case. See *Comptex v. LaBow*, 783 F.2d 333 (2d Cir. 1986). The facts are simplified.

Of course the converse is true when the dollar is losing value in comparison to the applicable currency. The same 18,790 pounds sterling converts:

Breach day Pound = $1.20	$22,548
Judgment day Pound = $1.50	$28,185
Payment day Pound = $ 2.20	$41,338

In this situation, it is the obligor who has not made the payment when due or when the judgment is entered that must expend more dollars to satisfy the foreign denominated debt.

Family Support Applicability

Clearly, the above example can be changed to a situation where an obligor residing in America owes a fixed amount of family support to an obligee in another country based on a support order issued by that country. (While applicable to both child and spousal support, the term "child support" will be used to include either or both.) However, child support cases, especially with unpaid support, present some rather unique issues. Both these issues are related to the fact the support obligation is not a one time event.

• Ongoing support. Obviously, for prospective support, there has been no breach date nor has there been a judgment date. Whether by judicial or administrative process, whenever an amount of child support stated in a foreign currency is "restated" in US$, it must be considered an equivalence. Otherwise, the obligor will almost always be either underpaid or overpaid at the time the obligation ends. Thus, to achieve the objective of making both the obligor and obligee whole over time, the payment date must be utilized.

• Unpaid support. Although cumbersome, it is certainly possible to use a breach date approach for missed support payments. The blended or an annual average approach is also viable; as is the judgment date. The approach of the Restatement, Uniform Foreign-Money Claims Act, and current case law is that the US judgment should be stated in the foreign currency. This really makes the breach versus average versus judgment date discussion moot. The foreign currency amount used in the judgment should have been derived by subtracting the foreign currency amount received on the "payment date" from the foreign currency amount accrued on that date. As shown by the example above, considering the arrears to be paid in full when based on the payment date is the best way to assure both obligor and obligee are made whole while acknowledging that fluctuations over time will have an adverse impact on at least one of the parties.

The entire body of law relating to foreign currency conversion is premised on a situation where an obligation is not being met or some injury has occurred. If there is no dispute regarding the support obligation, it would seem axiomatic that the obligor would tender whatever amount of US$ is needed to provide the amount of foreign currency ordered, i.e. the payment date approach. It is only when the obligation is not being met that these issues become relevant.

To establish the requirements necessary for effective enforcement, the US court will obviously need to set a fixed US$ equivalence. To measure compliance with the order, the focus must be on the timely payment of the US$ equivalence. However, the court and parties must not loose sight of the fact the obligation is not paid in full until the final payment equates to the total amount of foreign currency due on that payment date. An obligor can make each and every payment of current support and a payment on the arrears when due and still be under or over paid regarding the obligation up until the date the entire obligation ends and is paid in full. Obviously, an obligor who pays the stated equivalence should not be punished or held on contempt if the rate of exchange on the payment date does not cover the full amount of order currency due on that date.

Because support is an ongoing obligation, the issue can arise regarding the correct currency conversion application for ongoing payments. The Uniform Foreign-Money Claims Act addresses this issue at some length.

> SECTION 11. DETERMINING UNITED STATES DOLLAR VALUE OF FOREIGN-MONEY CLAIMS FOR LIMITED PURPOSES.
> (a) Computations under this section are for the limited purposes of the section and do not affect computation of the United States dollar equivalent of the money of the judgment for the purpose of payment.
> (b) For the limited purpose of facilitating the enforcement of provisional remedies in an action, the value in United States dollars of assets to be seized or restrained pursuant to a writ of attachment, garnishment, execution, or other legal process, the amount of United States dollars at issue for assessing costs, or the amount of United States dollars involved for a surety bond or other

court-required undertaking, must be ascertained as provided in subsections (c) and (d).
. . .

Comment (d) to the Restatement § 823 states it more succinctly:

> If payment was to be made on more than one date, the conversion must be made separately on each date of payment. If execution is levied against the property of a judgment debtor in the case of a judgment expressed in foreign currency, the conversion should be made as of the date of levy.

It is immutable that income withholding is the best mechanism for the enforcement of ongoing support and one of the best for obtaining payments towards any arrears. Thus, it makes legal and financial sense to give the obligor credit for the amount of foreign currency that is applied to the official payment record of the order issuing country on the date the currency is posted, i.e. payment date.

Regardless of the approach chosen, there will always be an issue regarding the gain or loss of purchasing power, i.e. dollars to diapers. To make up for the loss of use of the currency, countries can, and do, impose interest or other periodic "fees" on the missed obligation.

Practical Implementation

The challenge becomes to keep the closest exchange approximation in effect at all times. Both administrative and judicial processes used to collect support will need the flexibility to implement periodic adjustments. These must be accomplished not in the context of a "modification" but rather a "re-conversion". To the extent the payments are resulting in a shortfall, this can be resolved by utilizing the enforcement processes currently in place for increasing payments on "arrears". To the extent the payments are resulting in an overage, the same basic principle will have the obligor "pre-paid" and the total support obligation may end prior to the child being emancipated.

The task of setting a converted amount for payments towards arrears should be able to utilize existing intrastate and interstate processes. Virtually all states have an administrative mechanism for adjusting the amount paid towards arrears. Some states use an annual "super notice". Others have a periodic review process, some linked to new employment information. The common feature of all the approaches is that they provide the obligor with due process through some type of contest process.

The challenge is to have a procedure for adjusting the conversion amount for the prospective support. The critical element is that the obligor be afforded due process with both notice and a right to be heard; albeit this can be by contest. There are two existing methods that would seem to suffice:

- UIFSA § 507 provides for an administrative process to implement enforcement actions, including income withholding, for orders not issued by the enforcing state.

> SECTION 507. ADMINISTRATIVE ENFORCEMENT OF ORDERS.
> . . .
> (b) Upon receipt of the documents, the support enforcement agency, without initially seeking to

register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this State to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this [Act].

The due process requirement is met through the ability to contest with the onus of Registration placed on the support enforcement agency. The ability of the support enforcement agency to initially take an enforcement action that includes converting a currency amount would seem implicit and is explicit in UIFSA 2001 § 307.

SECTION 307. DUTIES OF SUPPORT ENFORCEMENT AGENCY.

. . .

(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 issue that remains is the authority of the support enforcement agency to make periodic re-conversion of the prospective support. While it is an ability that certainly seems to derive from the initial administrative enforcement powers, policy and procedural issues may militate against its use.

• The second approach is to treat the fluctuation in currency exchange as a form of "cost of living". There are a few states that currently have a process in place to adjust the prospective support based upon an established index set out in the support order. Implementing the adjustment involves sending a notice to the obligor of the re-calculation based upon the index and giving the obligor a period in which to contest before the new amount becomes effective. Given the paucity of international enforcement cases, having states adding or revising statutory authority to utilize this approach is problematic.

While the examples above are instructive in a single incident situation, the impact on an ongoing support obligation requires a more extended demonstration. A couple of examples can illustrate the conundrum in a varying exchange rate environment. Both examples start with an order issued in euros (€) 5 years ago in the amount of € 200 per month due the first day of the month. An agreed resolution was achieved 25 December of last year stipulating that the arrears as of 5 December were € 900.

In both examples, the obligor fully pays the ongoing support and fully complies with the agreement regarding payment of the arrears. The only variable is the change in the exchange rate. The approach is to use the "payment date" and for simplicity it is assumed the date the dollars are paid is the date the euro equivalence is applied. Admittedly, this makes the payment date the same as the conversion date. Obviously, this will seldom occur in the normal processing of payments; however, the operative conditions shown below will still exist.

Example 1					
On 25 December, € 1 = $ 1.20 Ongoing support of € 200 = $ 240 Arrears of € 900 = $ 1080 to be paid in 9 months @ $ 120 Total $ to be paid per month = $ 360					
Date	$ paid	€ 1 = $	€ credit	€ to arrears	$ 240 = €
1/1	360	1.22	295.08	95.08	196.72
2/1	360	1.25	288.00	88.00	192.00
3/1	360	1.28	281.25	81.25	187.50
4/1	360	1.30	276.92	76.92	184.62
5/1	360	1.32	272.73	72.73	181.82
6/1	360	1.35	266.67	66.67	177.78
7/1	360	1.34	268.66	68.66	179.10
8/1	360	1.38	260.87	60.87	173.91
9/1	360	1.40	257.14	57.14	171.43
Totals	3240		2467.32	667.32	1644.88
Total € owed			2700.00	900.00	1800.00

In this example, the value of the dollar is declining relative to the euro; that is, it takes more dollars to purchase the same, fixed amount of euros. This example shows that even full compliance with the dollar equivalence will leave a euro shortfall of € 232.68 or an additional $ 325.75 on 9/1. It should be noted that even if no arrears were owed to start and all dollar equivalent payments were made, there is still a shortfall of € 155.12 ($ 217.17) on 9/1.

Having paid over time does inure to the obligor's benefit. Had no payments been made during the interim, the full obligation of arrears and ongoing support of € 2700 would require payment on 9/1 of $ 3,780. Instead, getting current as of 9/1 will involve a total outlay of $ 3,565.75.

This situation is the circumstance discussed above where a US enforcing agency could use existing enforcement remedies to increase the amount of dollars paid towards the arrears to assure the gap caused solely by the exchange rate does not widen.

This example also demonstrates the inequity of applying the "judgment date" rule to even the arrears. Were the $ 1080 to have not been paid until 9/1, that amount would be the 9/1 equivalent of € 771.43. As discussed below, the imposition of interest would play a role in increasing the ultimate amount owed in euros.

Example 2					
On 25 December, € 1 = $ 1.40 Ongoing support of € 200 = $ 280 Arrears of € 900 = $ 1260 to be paid in 9 months @ $ 140 Total $ to be paid per month = $ 420					
Date	$ paid	€ 1 = $	€ credit	€ to arrears	$ 280 = €
1/1	420	1.38	304.35	104.35	202.90
2/1	420	1.34	313.43	113.43	208.96
3/1	420	1.35	311.11	111.11	207.41
4/1	420	1.32	318.18	118.18	212.12
5/1	420	1.30	323.08	123.08	215.38
6/1	420	1.28	328.13	128.13	218.75
7/1	420	1.25	336.00	136.00	224.00
8/1	420	1.22	344.26	144.26	229.51
9/1	420	1.20	350.00	150.00	233.33
Totals	3780		2928.54	1128.54	1952.36
Total € owed			2700.00	900.00	1800.00

In this example, the value of the dollar is increasing relative to the euro; that is, it takes less dollars to purchase the same, fixed amount of euros. As a result, the obligor is overpaid using the same time period as Example 1.

It is true this example could be used to argue that an obligor is better off waiting until absolutely compelled to pay the accruing support since payment of the full € 2700 on 9/1 would only cost $ 3240 instead of the $ 3780 paid in compliance with the agreement.

It is well known that applying interest to a child support obligation exacerbates the ability to ultimately pay the full amount owed. However, in the situation where the is a foreign order and an increasing dollar vis-a-vis the currency of the order, it is the imposition of interest on the debt that becomes an incentive to pay timely. The numbers chosen for the example show an increase in value of around 14% over the nine months. This is unrealistically high. An interest rate in the 5% - 8% range should be sufficient to exceed most currency fluctuations and provide the impetus to pay when the obligation becomes due.

The last aspect of the practical implementation to be discussed is the wording that should be used to accomplish the currency conversion. What must be avoided is any suggestion that the tribunal is to substitute a dollar amount for the foreign currency amount. Particularly with respect to ongoing support, any attempt to "fix" the exchange rate should be viewed as an attempt to impose an impermissible modification on the order.

While it is certainly possible to apply the breach or judgment date rule to an arrears determination, it is not advisable. The breach date approach has the obvious problem that the

tribunal making the determination would have to convert the currency for each missed payment. As the examples demonstrate, while a judgment date approach has perhaps a greater viability than the breach date, it is the payment date that does the most to make both parties closer to being "made whole".

To achieve the goal of using the payment date, the Restatement contains some suggested language for orders.

> **SECTION 7. JUDGMENTS AND AWARDS ON FOREIGN-MONEY CLAIMS; TIMES OF MONEY CONVERSION; FORM OF JUDGMENT.**
>
> . . .
>
> (f) A judgment substantially in the following form complies with subsection (a):
>
> [IT IS ADJUDGED AND ORDERED, that Defendant (insert name) pay to Plaintiff (insert name) the sum of (insert amount in the foreign money) plus interest on that sum at the rate of (insert rate - see Section 9) percent a year or, at the option of the judgment debtor, the number of United States dollars which will purchase the (insert name of foreign money) with interest due, at a bank-offered spot rate at or near the close of business on the banking day next before the day of payment, together with assessed costs of (insert amount) United States dollars.] [Note: States should insert their customary forms of judgment with appropriate modifications.]

Certainly, this language appears more than sufficient. However, for child support cases, some additions and revisions might be suggested. There are also some practical and logistical factors that come into play. One significant factor is whether the documents being used to process the case include some form of "official" or "verified" computation that also includes a currency conversion. If so, the allegations should conform to the equivalence provided.

When no conversion to dollars is provided, the default should be "document preparation" date. However, this does have some pitfalls. Caution must be taken when the computation date is different from the document preparation date. The examples below use the values in Example 1 above and posit that the document is being prepared on 9/1 using data provided with a calculation date of 12/25

Using the UIFSA registration process as a model, the following paragraphs are suggestions for possible use.

NOTICE OF REGISTRATION OF FOREIGN SUPPORT ORDER (UIFSA)

¶ The amount of the alleged arrearage is € 900 (Euros) having a United States of America Dollar equivalence of $ 1080 as of 12/25/YYYY.

OR

¶ The amount of the alleged arrearage is € 900 (Euros) as of 12/25/YYYY having a United States of America Dollar equivalence of $ 1260 as of 9/1/YYYY.

MOTION FOR ENFORCEMENT (UIFSA)

PRIOR ORDERS

¶ On 1/10/99 a tribunal ordered *Obligor* to pay regular child support of € 200 (Euros) monthly, beginning 1/1/99, and monthly thereafter. The amount and frequency of *Obligor*'s child support obligation remains unchanged.

CHILD SUPPORT ARREARAGE

¶ *Obligor* failed to pay court ordered child support. The amount of the alleged arrearage is € 900 (Euros) having a United States of America Dollar equivalence of $ 1080 as of 12/25/YYYY.

OR

¶ *Obligor* failed to pay court ordered child support. The amount of the alleged arrearage is € 900 (Euros) as of 12/25/YYYY having a United States of America Dollar equivalence of $ 1260 as of 9/1/YYYY.

[**NOTE**: Using the same "as of" dates in the enforcement pleading presupposes the Registration documents are prepared at the same time as the Motion. If there is a significant time gap between the filings, the best practice is to seek an updated arrears calculation and use that date in the remedy pleading. In either situation, the pleadings should recite the support in the currency of the order along with an alleged dollar equivalence.]

ARREARAGE JUDGMENT

¶ The Court should confirm and enter judgment for the child support arrearage and accrued interest and order income withholding to liquidate the judgment.

[NOTE: The request for confirmation of the arrearage is combined with the request in the next paragraph for the tribunal to convert the current and arrears amounts into equivalent US dollars. At this point, the concepts of " judgment date" and "payment date" are merged. The tribunal in setting an equivalence is going to have to operate as if the prospective support and arrears amount is to be paid on the date of judgment. Using this approach, the amounts found most likely will be different than those used when the Registration or Enforcement pleadings were prepared.**]**

EXCHANGE RATE

¶ The Tribunal should find the United States of America Dollar equivalence of any foreign currency ordered payable by an appropriate foreign tribunal pursuant to [UIFSA § 305(f)]. The Tribunal should make all further monetary findings in United States of America Dollars based on the finding of United States of America Dollar equivalence.

[NOTE: Logistically, unless internet access is available immediately prior to or at court, it is impractical to use the conversion rate on the hearing date in setting the current support equivalence. Still, the best practice is to use the most recent information available. Fortunately, UIFSA 2001 § 102(15) provides the mechanism:

> (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.

This definition fits perfectly with the ability to print an Internet page. The use of Internet sites to obtain currency conversion information is permissible based upon UIFSA 2001 § 305(f):

> (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.

The internet site should be considered a source of a market exchange rate that is publically reported. The copy of the conversion computations along with web page prints showing the rate used should be submitted to the court as a "commercial publication" admissible under a state rule comparable to the Federal Rules of Evidence, Rule 803(17).

> Rule 803. Hearsay Exceptions; Availability of Declarant Immaterial
> 1. The following are not excluded by the hearsay rule, even though the declarant is available as a witness:
> . . .
> (17) Market reports, commercial publications. Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

The major sites used for currency conversion are clearly utilized by currency traders.**]**

FOREIGN LAW
[Use only if applicable]

\# Pursuant to Rules of Evidence/Civil Procedure, Rule XXX, notice is hereby given of intent to raise an issue concerning the law of a foreign country. A copy of said foreign law is attached as Exhibit "?" and incorporated by reference.

[NOTE: This is **not** the conversion calculation mentioned above. This paragraph would be inserted if there is some provision of the law of the other nation that the court needs to be aware of. Examples might include: duration, interest, defenses, or limitations. The citation would be to the applicable law of the enforcing forum. Whether found in the Rules of Civil Procedure or Rules of Evidence, most states have a provision comparable to the Federal Rules of Civil Procedure, Rule 44.1

> Rule 44.1.Determination of Foreign Law
> A party who intends to raise an issue concerning the law of a foreign country shall give notice by pleadings or other reasonable written notice. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Federal Rules of Evidence. The court's determination shall be treated as a ruling on a question of law.

While it is certainly the best practice to provide the specific law, it is important to note that the ability to determine foreign law is an inherent power of the court and one that can be exercised by considering sources beyond those submitted by the parties. If the law is not attached or provided, the advocating party should assure that a request is made to take notice and the substance and citation is provided.**]**

ORDER ENFORCING CHILD SUPPORT OBLIGATION (UIFSA)

PRIOR ORDERS

The Court FINDS that on 1/10/99 a tribunal ordered *Obligor* to pay regular child support of € 200 (Euros), monthly, beginning 1/1/99 and monthly thereafter. The Court finds that the United States of America legal tender equivalent of the prospective child support ordered payable in foreign currency by the support ordering tribunal in this cause is $ 250.00.

All further monetary findings regarding the support obligation, including prospective support and arrears, are stated in United States of America Dollar equivalency.

[NOTE: The most important aspect of obtaining enforcement of a foreign support order is to assure that nothing in the US order can be construed as an impermissible "modification" of the support amount or a "fixing" of the currency exchange. A statement by the tribunal that all US dollar recitations are an equivalence should make this clear. However, in an abundance of precaution, the attorney may want to repeat the approach of stating the order amount in the foreign currency with the dollar equivalency. The equivalency language should make clear that it applies to every payment recitation including the periodic payment on arrears. The only exception, noted above, is that court costs and fees incurred in the US court should be stated in US dollars only.**]**

JUDGMENT ON ARREARS

The Court FINDS and confirms that *Obligor* is in arrears in the amount of $ 1,150.49 as of _____, 20_____. This includes all unpaid child support and any balance owed on previously confirmed arrearage or retroactive support judgments as of the specified date, but does not include application of any child support paid on that date. The judgment for this amount is a cumulative judgment.

Court GRANTS and RENDERS judgment against *Obligor* and in favor of *Obligee* in the amount of $ 1,150.49, with interest at the rate provided by the law of the jurisdiction that issued the controlling order, for collection and distribution according to law.

[NOTE: Like an interstate case, the law of the issuing tribunal determines the interest rate and methodology.**]**

The sites below have "publicly reported market exchange" rate information and provide historical rates as well as conversion calculators. The first two addresses have a conversion application that can be used to convert historical data.

www.oanda.com
www.fxtop.com
www.exchangerate.com
www.x-rates.com
www.xe.com

Conclusion

As opposed to the difficulties encountered in determining the correct amount of damages, a support obligation is akin to a debt expressed as a sum certain. Having made this sum certain

determination, the problem with converting the debt owed in one currency into another currency had existed for centuries. No "perfect" solution has or is available that will completely satisfy the competing interests of the creditor and debtor.

The developing, modern view is that satisfaction of the debt should be based upon payment of the amount of "local" currency needed to obtain the amount owed as of the date the debt is actually paid. This creates special problems for ongoing support obligations. The solution requires recognition that the exchange rate will vary over time. Thus, the amount to be paid in the currency of the enforcing forum must be stated as an equivalent to the currency ordered by the establishing forum.

The Interstate Child

UCCJEA & UIFSA

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The Interstate Child

(As used in this paper, “family” means one child, at least, and the parents of that child, regardless of the marital status of the parents.)

Background

Historically, family law is a matter of state rather than federal law. However, for various reasons, people travel more. As a result, family law has to take on an interstate, and international component. The National Conference of Commissioners on Uniform State Laws (NCCUSL) is tasked with drafting laws on various subjects that attempt to bring a uniformity across state lines.

With respect to family law, different states had adopted different approaches to issues related to custody and visitation, a.k.a. “parenting time”, that often resulted in conflicting resolutions. To seek harmony in this area, the NCCUSL has promulgated the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).

Likewise, it also promulgated the Uniform Interstate Family Support Act (UIFSA) to govern issues related to family support. In doing so, the UIFSA was specifically written to stop the existing practice of creating multiple valid orders with differing support amounts that could be entered as an obligor moved around the country.

While each Act is deals with a different family related issue, they share very common features. Often, there are virtually identical provisions although the placement within the act and within a certain section varies.

UIFSA	**UCCJEA**
• is the successor to the Uniform Reciprocal Enforcement of Support Act (URESA) & the the Revised Uniform Reciprocal Enforcement of Support Act (RURESA) which had been adopted by different states with differing versions	• is the successor to the Uniform Child Custody Jurisdiction Act (UCCJA)
• was “mandated “ for adoption by all states under the provisions of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996	• is not mandated for adoption
• all states* have enacted the version promulgated in 1996 and 18 states have enacted the 2001 version	• 45 states have adopted the UCCJEA with the others having some version of the UCCJA
• is in harmony with the federal Full Faith and Credit for Child Support Orders Act (FFCCSOA), 28 U.S.C.A.1738B	• is in harmony with the federal Full Faith and Credit Given to Child Custody Determinations more commonly known as the Parental Kidnaping Prevention Act (PKPA), 28 U.S.C.A. 1738A

* the “states” subject to the mandate are all 50 States plus the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands

The UCCJEA was approved by the NCCUSL in 1997 and has been unchanged. The UIFSA is more of a "work in progress". Originally approved in 1992, it underwent revisions in 1996 primarily to accommodate the needs expressed by employers regarding the new ability to seek implementation of income withholding across state lines. The UIFSA was also revised in 2001 with the main focus on the processing of international cases. The excerpts used in this paper are from the UIFSA 2001, unless noted otherwise. Because not all states have adopted the 2001 revisions, to identify the changes made by UIFSA 2001, additions are underlined and deletions appear in ~~strikeout~~. It should be noted that a section of text that appears deleted in one section is most often found in a new or revised section. The revisions made in UIFSA 2001 were not intended to make any substantive changes from the 1996 version.

Part A - Basic Concepts

A-1 Subject Matter Jurisdiction

Both the UCCJEA and the UIFSA make clear exactly what aspects of the family dynamic are governed by which act. They do so using both inclusive and exclusive language. The most important feature of both acts is the specific exclusion of the subject matter covered by the other act. The UCCJEA also deliberately omits adoption proceedings and there are several Interstate Compacts that cover this issue.

One shared element that each act must deal with is the issue of parentage. Parentage may arise in the context of either getting a custody order or obtaining a support order. While parentage issues under the Uniform Parentage Act (UPA) are beyond the scope of this paper, the UPA is drafted to work in harmony with both the UCCJEA and the UIFSA.

While the primary focus of the UIFSA is upon child support, it is also the legal mechanism through which spousal support can be established, modified, and enforced.

UCCJEA	UIFSA
SECTION 102. DEFINITIONS. In this [Act]: **(3)** "Child-custody determination" means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual. **(4)** "Child-custody proceeding" means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under [Article] 3.	[Section 101 of UIFSA 96] **SECTION 102. DEFINITIONS.** In this [Act]: **(23)** "Support order" means a judgment, decree, ~~or~~ order, or directive, whether temporary, final, or subject to modification, issued by a tribunal for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, arrearages, or reimbursement, and may include related costs and fees, interest, income withholding, attorney's fees, and other relief. [Section 106 of UIFSA 96] **SECTION 104. REMEDIES CUMULATIVE.** **(a)** Remedies provided by this [Act] are cumulative and do not affect the availability of remedies under other law, including the recognition of a support order of a foreign country or political subdivision on the basis of comity. **(b)** This [Act] does not: **(1)** provide the exclusive method of establishing or enforcing a support order under the law of this State; or

SECTION 103. PROCEEDINGS GOVERNED BY OTHER LAW. This [Act] does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.	**(2)** grant a tribunal of this State jurisdiction to render judgment or issue an order relating to [child custody or visitation] in a proceeding under this [Act].

A-2 Status vs Personal Jurisdiction

The most fundamental difference between the UCCJEA and the UIFSA is the approach to the "other" jurisdiction needed. In addition to the requisite subject matter jurisdiction, the UCCJEA requires a court have "status" jurisdiction vis-a-vis the child. This status jurisdiction is based on the location of the child and the significant connection the child has with the forum state. The ultimate determining factor is the "home state" of the child. The historical basis for the home state approach is that a state has an interest in the protection and use of "property" located in that state. While a state is empowered to make a custody determination without having personal jurisdiction over every individual, the UCCJEA recognizes that a binding effect can only be imposed on those who have been served or notified.

To impose a financial obligation upon an individual, the U. S. Constitution requires the forum to have "personal" jurisdiction over the obligor. However, the requirement for personal jurisdiction does not mean the obligor has to be currently residing in the forum state. The inquiry is whether the individual has taken some purposeful act which would create a reasonable expectation that the forum would have a justiciable interest in the action or the result of the action. In promulgating the UIFSA, the NCCUSL set forth several bases that are intended to encompass all conduct that is legally sufficient for personal jurisdiction.

UCCJEA	UIFSA
SECTION 102. DEFINITIONS. In this [Act]: **(7)** "Home State" means the State in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child-custody proceeding. In the case of a child less than six months of age, the term means the State in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period. **SECTION 201. INITIAL CHILD-CUSTODY JURISDICTION.** **(a)** Except as otherwise provided in Section 204, a court of this State has jurisdiction to make an initial child-custody determination only if: **(1)** this State is the home State of the child on the date of the commencement of the proceeding, or was the home State of the child within six months before the commencement of the proceeding and the child is absent from this State but a parent or person acting as a parent	**SECTION 201. BASES FOR JURISDICTION OVER NONRESIDENT.** **(a)** In a proceeding to establish~~,~~ or enforce~~, or modify~~ a support order or to determine parentage, a tribunal of this State may exercise personal jurisdiction over a nonresident individual [or the individual's guardian or conservator] if: **(1)** the individual is personally served with [citation, summons, notice] within this State; **(2)** the individual submits to the jurisdiction of this State by consent ~~in a record~~, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction; **(3)** the individual resided with the child in this State; **(4)** the individual resided in this State and provided prenatal expenses or support for the child; **(5)** the child resides in this State as a result of the acts or directives of the individual; **(6)** the individual engaged in sexual intercourse in this State and the child may have been

continues to live in this State; **(2)** a court of another State does not have jurisdiction under paragraph (1), or a court of the home State of the child has declined to exercise jurisdiction on the ground that this State is the more appropriate forum under Section 207 or 208, and: **(A)** the child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this State other than mere physical presence; and **(B)** substantial evidence is available in this State concerning the child's care, protection, training, and personal relationships; **(3)** all courts having jurisdiction under paragraph (1) or (2) have declined to exercise jurisdiction on the ground that a court of this State is the more appropriate forum to determine the custody of the child under Section 207 or 208; or **(4)** no court of any other State would have jurisdiction under the criteria specified in paragraph (1), (2), or (3). **(b)** Subsection (a) is the exclusive jurisdictional basis for making a child-custody determination by a court of this State. **(c)** Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child-custody determination. **SECTION 106. EFFECT OF CHILD-CUSTODY DETERMINATION.** A child-custody determination made by a court of this State that had jurisdiction under this [Act] binds all persons who have been served in accordance with the laws of this State or notified in accordance with Section 108 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.	conceived by that act of intercourse; ~~[or]~~ **(7)** [the individual asserted parentage in the [putative father registry] maintained in this State by the [appropriate agency]; or **(8)**] there is any other basis consistent with the constitutions of this State and the United States for the exercise of personal jurisdiction. **(b)** The bases of personal jurisdiction set forth in subsection (a) or in any other law of this State may not be used to acquire personal jurisdiction for a tribunal of the State to modify a child support order of another State unless the requirements of Section 611 or 615 are met. **SECTION 202. ~~PROCEDURE WHEN EXERCISING JURISDICTION OVER NONRESIDENT~~ DURATION OF PERSONAL JURISDICTION.** Personal jurisdiction acquired by a tribunal of this State in a proceeding under this [Act] or other law of this State relating to a support order continues as long as a tribunal of this State has continuing, exclusive jurisdiction to modify its order or continuing jurisdiction to enforce its order as provided by Sections 205, 206, and 211. ~~A tribunal of this State exercising personal jurisdiction over a nonresident under Section 201 may apply Section 316 (Special Rules of Evidence and Procedure) to receive evidence from another State and Section 318 (Assistance with Discovery) to obtain discovery through a tribunal of another State. In all other respects, Articles 3 through 7 do not apply and the tribunal shall apply the procedural and substantive law of this State, including the rules on choice of law other than those established by this [Act].~~ [moved to Section 210 in UIFSA 2001}

A-3 ECJ/CEJ

The historical problem addressed by both the UCCJEA and the UIFSA was the practice of different courts or tribunals issuing different orders. The pervasive practice pre-UIFSA was for a state with current jurisdiction over an obligor to issue its own order setting a support amount even when there were previous orders in one or more states. The fundamental problem was that each of those orders was valid which resulted in the ultimate support obligation being a consolidation of the various amounts ordered, using the highest order in effect at the time. Often, the higher order was not the most recent order and not the order being actively enforced. The multiple order situation was confusing to both the obligor and obligee.

A similar problem existed when the current home state entered a custody or visitation order

different from the order entered in a previous home state. A federal attempt using the Parental Kidnaping Prevention Act (PKPA), 28 U.S.C.A. 1738A, had not resolved the problem.

Thus, both the UCCJEA and the UIFSA adopted a concept recognized in many states that there should be only one tribunal with the exclusive jurisdiction to modify the current arrangement. The UIFSA uses the term "continuing, exclusive jurisdiction"; the UCCJEA uses "exclusive, continuing jurisdiction". It should be noted that the exclusivity to modify does not preclude another forum from enforcing the existing order. Especially for support, nothing precludes several forums from taking simultaneous enforcement actions based upon the location of the obligor or an obligor's asset. Of course, the enforcement actions must be co-ordinated in order to prevent double payment by the obligor or one action having some preclusive effect on the other action.

UCCJEA	**UIFSA**
SECTION 202. EXCLUSIVE, CONTINUING JURISDICTION. **(a)** Except as otherwise provided in Section 204, a court of this State which has made a child-custody determination consistent with Section 201 or 203 has exclusive, continuing jurisdiction over the determination until: **(1)** a court of this State determines that neither the child, the child's parents, and any person acting as a parent do not have a significant connection with this State and that substantial evidence is no longer available in this State concerning the child's care, protection, training, and personal relationships; or **(2)** a court of this State or a court of another State determines that the child, the child's parents, and any person acting as a parent do not presently reside in this State. **(b)** A court of this State which has made a child-custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under Section 201.	**SECTION 205. CONTINUING, EXCLUSIVE JURISDICTION TO MODIFY CHILD-SUPPORT ORDER.** **(a)** A tribunal of this State ~~issuing~~ that has issued a child-support order consistent with the law of this State has and shall exercise continuing, exclusive jurisdiction ~~over a~~ to modify its child-support order if the order is the controlling order and: **(1)** ~~as long as~~ at the time of the filing of a request for modification this State ~~remains~~ is the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or **(2)** ~~until all of the parties who are individuals have filed written consents with the tribunal of this State for a tribunal of another State to modify the order and assume continuing, exclusive jurisdiction~~ even if this State is not the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued, the parties consent in a record or in open court that the tribunal of this State may continue to exercise jurisdiction to modify its order. **(b)** A tribunal of this State ~~issuing~~ that has issued a child-support order consistent with the law of this State may not exercise ~~its~~ continuing, exclusive jurisdiction to modify the order if ~~the order has been modified by a tribunal of another State pursuant to this [Act] or a law substantially similar to this [Act].~~: **(1)** all of the parties who are individuals file 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 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; or **(2)** its order is not the controlling order. **(c)** ~~If a child-support order of this State is modified~~

	~~by a tribunal of another State pursuant to this [Act] or a law substantially similar to this [Act], a tribunal of this State loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in this State, and may only:~~ ~~(1) enforce the order that was modified as to amounts accruing before the modification;~~ ~~(2) enforce nonmodifiable aspects of that order; and~~ ~~(3) provide other appropriate relief for violations of that order which occurred before the effective date of the modification. (d) A tribunal of this State shall recognize the continuing, exclusive jurisdiction of~~ If a tribunal of another State ~~which~~ has issued a child-support order pursuant to ~~this~~ [the Uniform Interstate Family Support Act] or a law substantially similar to ~~this~~ [that Act] which modifies a child-support order of a tribunal of this State, tribunals of this State shall recognize the continuing, exclusive jurisdiction of the tribunal of the other State. **(d)** A tribunal of this State that lacks continuing, exclusive jurisdiction to modify a child-support order may serve as an initiating tribunal to request a tribunal of another State to modify a support order issued in that State. **(e)** A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal. ~~(f) A tribunal of this State issuing a spousal support order consistent with the law of this State has continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation. A tribunal of this State may not modify a spousal support order issued by a tribunal of another State having continuing, exclusive jurisdiction over that order under the law of that State.~~ [location of (f) in UIFSA 2001] **SECTION 211. CONTINUING, EXCLUSIVE JURISDICTION TO MODIFY SPOUSAL-SUPPORT ORDER.** **(a)** A tribunal of this State issuing a spousal-support order consistent with the law of this State has continuing, exclusive jurisdiction to modify the spousal-support order throughout the existence of the support obligation. **(b)** A tribunal of this State may not modify a spousal-support order issued by a tribunal of another State having continuing, exclusive jurisdiction over that order under the law of that State. **(c)** A tribunal of this State that has continuing,

	exclusive jurisdiction over a spousal-support order may serve as: **(1)** an initiating tribunal to request a tribunal of another State to enforce the spousal-support order issued in this State; or **(2)** a responding tribunal to enforce or modify its own spousal-support order.

Part B - The Process

B-1 Courts, Tribunals, and Private Attorneys

The task of the NCCUSL is to draft uniform Acts for general use and applicability. It is certainly anticipated these will be used by private practitioners. However, in drafting the UIFSA, the NCCUSL was acutely aware of the role the state-based child support agencies (a.k.a. IV-D agencies, based on the section of the Social Security Act that created them) play in the establishment, modification, and enforcement of child support obligations. To seek harmony between the way these agencies operate and the legal structure imposed by the UIFSA, the Drafting Committee invited numerous Observers to participate.

One of the early issues identified is the fact that many states operate their child support programs using an administrative or quasi-judicial process. As a result, the UIFSA uses the term "tribunal" to describe the entity with the authority to handle support issues. Each state designates its particular tribunal. Some states have designated courts for some functions and administrative agencies for others.

Another area the drafters of the UIFSA were sensitive to was a possible perception that the Act could only be used by the child support agencies. To allay any concerns, the UIFSA contains a specific provision regarding private counsel representation.

As a general matter, the Title IV-D child support agencies are precluded from active involvement in child custody matters; however, local Domestic Relations Offices may offer these services. Due to the absence of most IV-D issues, the UCCJA contains neither the tribunal concept nor any specific language about private counsel involvement. The term "tribunal" will be used to include courts unless there is a need for a distinction.

UCCJEA	**UIFSA**
SECTION 102. DEFINITIONS. In this [Act]: **(6)** "Court" means an entity authorized under the law of a State to establish, enforce, or modify a child-custody determination.	[Section 101 of UIFSA 96] **SECTION 102. DEFINITIONS**. In this [Act]: **(24)** "Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage. [Section 102 of UIFSA 96] **SECTION 103. TRIBUNAL OF STATE.** The [court, administrative agency, quasi-judicial entity, or combination] [is the tribunal] [are the tribunals] of this State.

	SECTION 309. PRIVATE COUNSEL. An individual may employ private counsel to represent the individual in proceedings authorized by this [Act].

B-2 Information Provided to the Tribunal

Both the UCCJEA and the UIFSA recognize they are inheriting a world in which some information must be shared and other information protected. Both acts also recognize they became effective in a world that had created multiple orders dealing with the same rights and duties. As a result, the UCCJEA requires the existence of other orders or other proceedings involving the child be revealed in the initial pleading. The court can then decide if it is appropriate for it to assert any jurisdiction.

The UIFSA dynamic regarding multiple orders contemplates the registration process will be utilized. [see C-1] In the UIFSA 96, a strict reading might lead to the conclusion that submission of all existing orders to the tribunal was duplicated by having them included both at the time of registration and when a pleading was filed, which could be simultaneously. The UIFSA 2001 revises this to provide a "fall back" requirement to include copies of multiple orders only if they have not been tendered as part of the registration process.

With respect to nondisclosure of identifying information to protect a person from potential harm or abuse, the UIFSA 96 adopted a process that was soon seen to be unworkable. Ostensibly, the party seeking protection had to pursue getting an order for nondisclosure in that person's state. In the UIFSA 2001, the drafters adopted the process already in the UCCJEA, i.e. based upon a sworn affidavit or pleading filed in the state ruing on the custody or support issues, the tribunal would order the information not be disclosed unless the other party demonstrates a need for disclosure.

UCCJEA	UIFSA
SECTION 209. INFORMATION TO BE SUBMITTED TO COURT. **(a)** [Subject to [local law providing for the confidentiality of procedures, addresses, and other identifying information], in] [In] a child-custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party: **(1)** has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number, and the date of the child-custody determination, if any; **(2)** knows of any proceeding that could affect the	**SECTION 311. PLEADINGS AND ACCOMPANYING DOCUMENTS.** **(a)** ~~A~~ In a proceeding under this [Act], a [petitioner] seeking to establish ~~or modify~~ a support order, ~~or~~ to determine parentage ~~in a proceeding under the [Act]~~, or to register and modify a support order of another State must ~~verify the~~ file a [petition]. Unless otherwise ordered under Section 312 ~~(Nondisclosure of Information in Exceptional Circumstances)~~, the [petition] or accompanying documents must provide, so far as known, the name, residential address, and social security numbers of the obligor and the obligee or the parent and alleged parent, and the name, sex, residential address, social security number, and date of birth of each child for ~~whom~~ whose benefit support is sought or whose parentage is to be determined. ~~The~~ Unless filed at the time of registration, the [petition] must be accompanied by a ~~certified~~ copy of any support order ~~in effect~~ known to have been

current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding; and **(3)** knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons. **(b)** If the information required by subsection (a) is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished. **(c)** If the declaration as to any of the items described in subsection (a)(1) through (3) is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case. **(d)** Each party has a continuing duty to inform the court of any proceeding in this or any other State that could affect the current proceeding. [**(e)** If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice.]	issued by another tribunal. The [petition] may include any other information that may assist in locating or identifying the [respondent]. **(b)** The [petition] must specify the relief sought. The [petition] and accompanying documents must conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency. **SECTION 312. NONDISCLOSURE OF INFORMATION IN EXCEPTIONAL CIRCUMSTANCES.** ~~Upon a finding, which may be made ex parte, that the health , safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information, or if an existing order so provides, a tribunal shall order that the address of the child or party or other identifying information not be disclosed in a pleading or other document filed in a proceeding under this [Act].~~ If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of specific identifying information, that information must be sealed and may not be disclosed to the other party or the public. After a hearing in which a tribunal takes into consideration the health, safety, or liberty of the party or child, the tribunal may order disclosure of information that the tribunal determines to be in the interest of justice.

B-3 Choice of Law/Service of Process

Section 201(c) of the UCCJEA states that personal jurisdiction over a particular person is not necessary in order to enter a child custody determination. To effectuate this concept, the UCCJEA links when notice or joinder are required, and the effects of failure to join or notify, to the laws and procedures applicable to intrastate cases. However, it recognizes that an order entered without notice may not be enforceable against the person who did not receive the notice. For the initial establishment of an order under § 205, the UCCJEA provides that the method of service can be in accordance with the law of the forum or the location of the nonresident person. For enforcement of any custody determination, service must be in accordance with the law of the enforcing state. § 309.

Needing to have all affected parties properly noticed, the UIFSA specifies simply that the law of the forum state applies to all aspects. To obtain valid service, it must be accomplished in compliance with the forum's law. With respect to the establishment of the initial order or the

modification of the tribunal's own order, § 303 states the law of the forum will apply, but with exceptions. Those exceptions involve the modification or enforcement of another state's order.

When enforcing another state's order, basic choice of law concepts distinguish between the law applicable to substantive issues versus the law applicable to procedural aspects. Section 604 of the UIFSA sets out in detail the resolution. One interesting choice is that the statute of limitations of the order issuing or order enforcing forum, whichever is longer, applies. Clearly, the most vexing problem, particularly for the IV-D agencies, is interest. The collection of interest is a matter of substantive law; thus, linked to the law of the order issuing forum. When pursuing enforcement in another jurisdiction, the calculation can be problematic. The issue is compounded when there are multiple orders contributing portions to the consolidated arrears and is exacerbated when one jurisdiction modifies the order of another state. To give some clarity, the UIFSA 2001 provides that the law of the state whose order will govern prospective support should apply to the interest to be applied not only on missed payments in the future but also to the arrears.

UCCJEA	**UIFSA**
SECTION 205. NOTICE; OPPORTUNITY TO BE HEARD; JOINDER. **(a)** Before a child-custody determination is made under this [Act], notice and an opportunity to be heard in accordance with the standards of Section 108 must be given to all persons entitled to notice under the law of this State as in child-custody proceedings between residents of this State, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child. **(b)** This [Act] does not govern the enforceability of a child-custody determination made without notice or an opportunity to be heard. **(c)** The obligation to join a party and the right to intervene as a party in a child-custody proceeding under this [Act] are governed by the law of this State as in child-custody proceedings between residents of this State. **SECTION 108. NOTICE TO PERSONS OUTSIDE STATE.** **(a)** Notice required for the exercise of jurisdiction when a person is outside this State may be given in a manner prescribed by the law of this State for service of process or by the law of the State in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective. **(b)** Proof of service may be made in the manner prescribed by the law of this State or by the law of the State in which the service is made. **(c)** Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.	**SECTION 303. APPLICATION OF LAW OF STATE.** Except as otherwise provided ~~by~~ in this [Act], a responding tribunal of this State shall: **(1)** ~~shall~~ apply the procedural and substantive law~~,~~ ~~including the rules on choice of law,~~ generally applicable to similar proceedings originating in this State and may exercise all powers and provide all remedies available in those proceedings; and **(2)** ~~shall~~ determine the duty of support and the amount payable in accordance with the law and support guidelines of this State. **SECTION 604. CHOICE OF LAW.** (a) ~~The~~ Except as otherwise provided in subsection (d), the law of the issuing State governs: (1) the nature, extent, amount, and duration of current payments ~~and other obligations of support and~~ 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. (b) In a proceeding for ~~arrearages~~ arrears under a registered support order, the statute of limitation ~~under the laws~~ of this State or of the issuing State, whichever is longer, applies. (c) A responding tribunal of this State shall apply the procedures and remedies of this State to enforce current support and collect arrears and interest due on a support order of another State registered in this State. (d) After a tribunal of this or another State determines which is the controlling order and issues an order consolidating arrears, if any, a

SECTION 309. SERVICE OF PETITION AND ORDER. Except as otherwise provided in Section 311, the petition and order must be served, by any method authorized [by the law of this State], upon respondent and any person who has physical custody of the child.	tribunal of this State shall prospectively apply the law of the State issuing the controlling order, including its law on interest on arrears, on current and future support, and on consolidated arrears.

B-4 Evidence, Discovery, and Procedure

Some of the more significant provisions of both the UCCJEA and UIFSA are those that provide for use of technology in conducting hearings with parties and witnesses in places other than the hearing room.

Both Acts permit telephonic testimony and participation. However, there is a significant difference regarding the compulsion to appear. The UCCJEA makes specific provisions that enable a court to compel the appearance of a party with or without the child. This is appropriate since the matter to be resolved involves custody of the particular child and having the physical presence of the parent with physical possession of the child at the hearing may increase the ability to actually enforce the determination.

The UIFSA, especially in the 2001 version, takes the opposite approach in stating that physical presence is not required and telephonic testimony shall be used. Note that the language in the UIFSA should not be taken to mean physical presence is not required when the remedy sought requires it, i.e. when contempt is sought, the physical presence of the person is compelled to avoid a capias or arrest warrant being issued.

Recognizing the interstate aspects of the issues involved, both acts allow the admission of documents and records without the requirement for production of the original. As use of technology and the internet increases, especially in child support cases, these Acts seek to make both custody and support proceedings as "user friendly" as possible while still assuring the due process and other rights of all parties.

Both Acts abolish any privilege or immunity deriving from the family relationship and the assertion of the right against self- incrimination can result in a negative inference.

The UIFSA contains a rather unique provision regarding the use of "standard forms". Because of the substantial involvement of IV-D agencies in processing interstate support cases, the federal Office of Child Support Enforcement (OCSE) was authorized to promulgate forms that are routinely used. These include a General Testimony and Affidavit in Support of Establishing Paternity. They serve the purpose of providing evidence in the absence of the nonresident party. There is nothing in the UIFSA that prohibits use by private practitioners and the forms are readily available from the OCSE website.

UCCJEA	UIFSA
SECTION 111. TAKING TESTIMONY IN ANOTHER STATE. **(a)** In addition to other procedures available to a party, a party to a child-custody proceeding may offer testimony of witnesses who are located in	**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

another State, including testimony of the parties and the child, by deposition or other means allowable in this State for testimony taken in another State. The court on its own motion may order that the testimony of a person be taken in another State and may prescribe the manner in which and the terms upon which the testimony is taken. **(b)** A court of this State may permit an individual residing in another State to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that State. A court of this State shall cooperate with courts of other States in designating an appropriate location for the deposition or testimony. **(c)** Documentary evidence transmitted from another State to a court of this State by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission. **SECTION 210. APPEARANCE OF PARTIES AND CHILD.** **(a)** In a child-custody proceeding in this State, the court may order a party to the proceeding who is in this State to appear before the court in person with or without the child. The court may order any person who is in this State and who has physical custody or control of the child to appear in person with the child. **(b)** If a party to a child-custody proceeding whose presence is desired by the court is outside this State, the court may order that a notice given pursuant to Section 108 include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party. **(c)** The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section. **(d)** If a party to a child-custody proceeding who is outside this State is directed to appear under subsection (b) or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child. **SECTION 310. HEARING AND ORDER.** **(c)** If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.	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.

(d) A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under this [article].	**SECTION 210. APPLICATION OF [ACT] TO NONRESIDENT SUBJECT TO PERSONAL JURISDICTION.** A tribunal of this State exercising personal jurisdiction over a nonresident in a proceeding under this [Act], under other law of this State relating to a support order, or recognizing a support order of a foreign country or political subdivision on the basis of comity may receive evidence from another State pursuant to Section 316, communicate with a tribunal of another State pursuant to Section 317, and obtain discovery through a tribunal of another State pursuant to Section 318. In all other respects, Articles 3 through 7 do not apply and the tribunal shall apply the procedural and substantive law of this State.

B-5 Communication between tribunals

To have a legal structure that is designed for situations where not all parties reside in the same state, it is critical that tribunals in different states be able to communicate and assist each other. This is particularly true in custody and visitation disputes. Thus, in many situations under the UCCJEA, communication and co-ordination is required: § 204 - Temporary Emergency Jurisdiction, § 206 - Simultaneous Proceedings, and § 307 - Simultaneous Proceedings [see B-7].

Both acts go beyond basic communication and empower courts in one state to assist courts in other states with obtaining evidence. The UCCJEA contemplates another court can conduct hearings and order evaluations even when it is not the forum where the issues will be resolved.

UCCJEA	UIFSA
SECTION 110. COMMUNICATION BETWEEN COURTS. **(a)** A court of this State may communicate with a court in another State concerning a proceeding arising under this [Act]. **(b)** The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made. **(c)** Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication. **(d)** Except as otherwise provided in subsection (c), a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record. **(e)** For the purposes of this section, "record"	**SECTION 317. COMMUNICATIONS BETWEEN TRIBUNALS.** A tribunal of this State may communicate with a tribunal of another State or foreign country or political subdivision in ~~writing~~ a record, or by telephone or other means, to obtain information concerning the laws ~~of that State~~, the legal effect of a judgment, decree, or order of that tribunal, and the status of a proceeding in the other State or foreign country or political subdivision. A tribunal of this State may furnish similar information by similar means to a tribunal of another State or foreign country or political subdivision. **SECTION 318. ASSISTANCE WITH DISCOVERY.** A tribunal of this State may: **(1)** request a tribunal of another State to assist in obtaining discovery; and **(2)** upon request, compel a person over whom it has jurisdiction to respond to a discovery order

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. **SECTION 112. COOPERATION BETWEEN COURTS; PRESERVATION OF RECORDS.** **(a)** A court of this State may request the appropriate court of another State to: **(1)** hold an evidentiary hearing; **(2)** order a person to produce or give evidence pursuant to procedures of that State; **(3)** order that an evaluation be made with respect to the custody of a child involved in a pending proceeding; **(4)** forward to the court of this State a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and **(5)** order a party to a child-custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child. **(b)** Upon request of a court of another State, a court of this State may hold a hearing or enter an order described in subsection (a). **. . .** **(d)** A court of this State shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child-custody proceeding until the child attains 18 years of age. Upon appropriate request by a court or law enforcement official of another State, the court shall forward a certified copy of those records.	issued by a tribunal of another State.

B-6 Immunity

Both Acts recognize the interplay of support and custody/visitation issues. All too frequently, one issue may be raised as a "defense" to the other. The UIFSA specifically states that custody and visitation issues should not be "linked" with the duty to pay support. Certainly, when one tribunal has both ECJ under the UCCJEA and CEJ under the UIFSA, it will be one place where both issues can be appropriately raised. The concern is when a tribunal without the required subject matter jurisdiction tries to enter an order that is void. The drafters of the UIFSA were particularly concerned about the potential to "ambush" the party exercising a visitation right by filing a motion to modify support.

In addition to the substantive restrictions on where an existing order can be modified, both acts provide a procedural "shield" so that a participant in a court action under that act is immune from most other civil process.

UCCJEA	UIFSA
SECTION 109. APPEARANCE AND LIMITED	**SECTION 305. DUTIES AND POWERS OF**

IMMUNITY. **(a)** A party to a child-custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child-custody determination, is not subject to personal jurisdiction in this State for another proceeding or purpose solely by reason of having participated, or of having been physically present for the purpose of participating, in the proceeding. **(b)** A person who is subject to personal jurisdiction in this State on a basis other than physical presence is not immune from service of process in this State. A party present in this State who is subject to the jurisdiction of another State is not immune from service of process allowable under the laws of that State. **(c)** The immunity granted by subsection (a) does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this [Act] committed by an individual while present in this State.	**RESPONDING TRIBUNAL.** **(d)** A responding tribunal of this State may not condition the payment of a support order issued under this [Act] upon compliance by a party with provisions for visitation. **SECTION 314. LIMITED IMMUNITY OF [PETITIONER].** **(a)** Participation by a [petitioner] in a proceeding under this [Act] before a responding tribunal, whether in person, by private attorney, or through services provided by the support enforcement agency, does not confer personal jurisdiction over the [petitioner] in another proceeding. **(b)** A [petitioner] is not amenable to service of civil process while physically present in this State to participate in a proceeding under this [Act]. **(c)** The immunity granted by this section does not extend to civil litigation based on acts unrelated to a proceeding under this [Act] committed by a party while physically present in this State to participate in the proceeding.

B-7 Emergency and Simultaneous Proceedings/ "Clean Hands"

The paramount concern of both acts is to make determinations that are in the best interest of the children involved. While it is certainly important to provide for the support of a child (or spouse in appropriate situations), it is more important to provide the child with a safe and stable physical environment. The UCCJA provides a structure that enables a court to enter temporary emergency orders when needed while acting consistently with the concept that there is to be one court with exclusive, continuing jurisdiction. The UIFSA has no such compelling need for a second tribunal to enter a temporary emergency support order.

Given the emotional subject matter combined with the interstate aspect, a "race to the courthouse" is a very real possibility under both the UCCJA and the UIFSA. The resolutions taken by each act are slightly different. Under the UCCJEA, the simultaneous proceeding issue should most often be moot as there will be only one "home state" at a time. Modifications are completely finessed by the ECJ concept. If there is no home state, no court with ECJ and both courts are in states with a "significant connection"; then, the first court to have the proceeding commenced is the "winner".

The UIFSA resolution takes a couple of additional steps. When a pleading is filed in the first state, the second pleading must be filed in the second state within the time allowed for a responsive pleading challenging the jurisdiction of the first state and an timely challenge must be made to the original filing. At that point, if the matter is purely one of subject matter or personal jurisdiction, it should be able to be resolved based upon prevailing law. More commonly, both states may have the requisite subject matter and personal jurisdiction. In those situations, the "home sate" of the child will be the "winner". It should be noted that this one time use of the "home state" concept in the UIFSA is based upon the same definition of "home state" which appears in and is used throughout the UCCJEA. The UIFSA section is also limited to only establishment actions in recognition that the CEJ concept precludes simultaneous filings for modification.

In resolving both the potential need for temporary emergency orders and well as which court prevails when simultaneous proceedings are filed, the UCCJEA imposes the requirement that the person seeking the relief not have engaged in "unjustifiable conduct" (more often described as "having clean hands"). This same doctrine is applicable when resolving the Inconvenient Forum issue discussed in B-8. Such a person is also potentially subject to extensive costs and other remedies. [see B-9] There is no comparable provision in the UIFSA.

As mentioned in B-5, there is also the requirement under the UCCJEA that a court being asked to issue and emergency order or that becomes aware of simultaneous proceedings is to communicate with other appropriate courts to make the appropriate resolution. There is no comparable requirement for tribunal communication under the UIFSA; however, there is also no prohibition . Ostensibly, the timing of the UIFSA related pleadings filed in the other state can be used to resolve the issue. Nevertheless, the tribunals in an action under the UIFSA may want to communicate to assure the support issue is timely resolved by some tribunal.

UCCJEA	UIFSA
SECTION 204. TEMPORARY EMERGENCY JURISDICTION. **(a)** A court of this State has temporary emergency jurisdiction if the child is present in this State and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse. **(b)** If there is no previous child-custody determination that is entitled to be enforced under this [Act] and a child-custody proceeding has not been commenced in a court of a State having jurisdiction under Sections 201 through 203, a child-custody determination made under this section remains in effect until an order is obtained from a court of a State having jurisdiction under Sections 201 through 203. If a child-custody proceeding has not been or is not commenced in a court of a State having jurisdiction under Sections 201 through 203, a child-custody determination made under this section becomes a final determination, if it so provides and this State becomes the home State of the child. **(c)** If there is a previous child-custody determination that is entitled to be enforced under this [Act], or a child-custody proceeding has been commenced in a court of a State having jurisdiction under Sections 201 through 203, any order issued by a court of this State under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the State having jurisdiction under Sections 201 through 203. The order issued in this State remains in effect until an order is obtained from the other State within the period specified or the period expires.	**SECTION 204. SIMULTANEOUS PROCEEDINGS ~~IN ANOTHER STATE~~.** **(a)** A tribunal of this State may exercise jurisdiction to establish a support order if the [petition] or comparable pleading is filed after a pleading is filed in another State only if: **(1)** the [petition] or comparable pleading in this State is filed before the expiration of the time allowed in the other State for filing a responsive pleading challenging the exercise of jurisdiction by the other State; **(2)** the contesting party timely challenges the exercise of jurisdiction in the other State; and **(3)** if relevant, this State is the home State of the child. **(b)** A tribunal of this State may not exercise jurisdiction to establish a support order if the [petition] or comparable pleading is filed before a [petition] or comparable pleading is filed in another State if: **(1)** the [petition] or comparable pleading in the other State is filed before the expiration of the time allowed in this State for filing a responsive pleading challenging the exercise of jurisdiction by this State; **(2)** the contesting party timely challenges the exercise of jurisdiction in this State; and **(3)** if relevant, the other State is the home State of the child.

(d) A court of this State which has been asked to make a child-custody determination under this section, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of a State having jurisdiction under Sections 201 through 203, shall immediately communicate with the other court. A court of this State which is exercising jurisdiction pursuant to Sections 201 through 203, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of another State under a statute similar to this section shall immediately communicate with the court of that State to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

SECTION 206. SIMULTANEOUS PROCEEDINGS.

(a) Except as otherwise provided in Section 204, a court of this State may not exercise its jurisdiction under this [article] if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another State having jurisdiction substantially in conformity with this [Act], unless the proceeding has been terminated or is stayed by the court of the other State because a court of this State is a more convenient forum under Section 207.

(b) Except as otherwise provided in Section 204, a court of this State, before hearing a child-custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to Section 209. If the court determines that a child-custody proceeding has been commenced in a court in another State having jurisdiction substantially in accordance with this [Act], the court of this State shall stay its proceeding and communicate with the court of the other State. If the court of the State having jurisdiction substantially in accordance with this [Act] does not determine that the court of this State is a more appropriate forum, the court of this State shall dismiss the proceeding.

(c) In a proceeding to modify a child-custody determination, a court of this State shall determine whether a proceeding to enforce the determination has been commenced in another State. If a proceeding to enforce a child-custody determination has been commenced in another State, the court may:

(1) stay the proceeding for modification pending the entry of an order of a court of the other State

enforcing, staying, denying, or dismissing the proceeding for enforcement; **(2)** enjoin the parties from continuing with the proceeding for enforcement; or **(3)** proceed with the modification under conditions it considers appropriate. **SECTION 208. JURISDICTION DECLINED BY REASON OF CONDUCT.** **(a)** Except as otherwise provided in Section 204 [or by other law of this State], if a court of this State has jurisdiction under this [Act] because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless: **(1)** the parents and all persons acting as parents have acquiesced in the exercise of jurisdiction; **(2)** a court of the State otherwise having jurisdiction under Sections 201 through 203 determines that this State is a more appropriate forum under Section 207; or **(3)** no court of any other State would have jurisdiction under the criteria specified in Sections 201 through 203. **(b)** If a court of this State declines to exercise its jurisdiction pursuant to subsection (a), it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child-custody proceeding is commenced in a court having jurisdiction under Sections 201 through 203. . . .	

B-8 Inconvenient or Inappropriate Forum

The UCCJEA has several sections that establish when it is appropriate for a court to exercise its jurisdiction. As discussed in B-7, resolution of the issue can also be affected by the "clean hands" of a person seeking relief. Even if it is determined that the court is an appropriate forum and there is no compelling basis to refuse to assert jurisdiction, the court may still decline jurisdiction. While specific factors to consider are enumerated, the abiding concern is to have the matter resolved in a forum with the best ability to obtain the information necessary while also considering the relative impact on the participants. One interesting consideration is (b)(5) with allows the parties to agree on a preferred jurisdiction. There appears to be no time limit such that the agreement could be made prior to the litigation.

The UIFSA makes no provision for an inconvenient forum. Presumably, the general concept of *forum non conveniens* would be applicable. What the UIFSA does provide is for one tribunal to forward documents to another tribunal when appropriate. This provision recognizes the difficulty often faced by an obligee in trying to obtain a support remedy against a person who will frequently move to intentionally avoid the process.

UCCJEA	UIFSA
SECTION 207. INCONVENIENT FORUM. **(a)** A court of this State which has jurisdiction under this [Act] to make a child-custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another State is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or request of another court. **(b)** Before determining whether it is an inconvenient forum, a court of this State shall consider whether it is appropriate for a court of another State to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including: **(1)** whether domestic violence has occurred and is likely to continue in the future and which State could best protect the parties and the child; **(2)** the length of time the child has resided outside this State; **(3)** the distance between the court in this State and the court in the State that would assume jurisdiction; **(4)** the relative financial circumstances of the parties; **(5)** any agreement of the parties as to which State should assume jurisdiction; **(6)** the nature and location of the evidence required to resolve the pending litigation, including testimony of the child; **(7)** the ability of the court of each State to decide the issue expeditiously and the procedures necessary to present the evidence; and **(8)** the familiarity of the court of each State with the facts and issues in the pending litigation. **(c)** If a court of this State determines that it is an inconvenient forum and that a court of another State is a more appropriate forum, it shall stay the proceedings upon condition that a child-custody proceeding be promptly commenced in another designated State and may impose any other condition the court considers just and proper. **(d)** A court of this State may decline to exercise its jurisdiction under this [Act] if a child-custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.	**SECTION 306. INAPPROPRIATE TRIBUNAL.** If a [petition] or comparable pleading is received by an inappropriate tribunal of this State, ~~it~~ the tribunal shall forward the pleading and accompanying documents to an appropriate tribunal in this State or another State and notify the [petitioner] where and when the pleading was sent.

B-9 Costs

It has been a requirement for interstate support cases since the promulgation of URESA in

1950 that there be no filing fee assessed. Under URESA and RURESA, the provision specifically applied to fees assessed against an obligee. Recognizing that obligors may also utilize the UIFSA, it provides for no filing fees from the petitioner. While usually considered in the context of a nonresident party seeking relief, the section could be read as applying when a resident files the petition seeking relief against a nonresident. When it comes to enforcement under the UIFSA, it allows costs to be assessed against the obligor if the obligee prevails with no corresponding assessment if the obligor prevails.

The UCCJEA has the more balanced approach. Although stated in different ways, the UCCJEA provides that the "winner" recover costs from the "loser".

Neither act can serve as the legal basis for imposition of costs against a state agency involved in the case although other state law's may allow for the assessment.

UCCJEA	UIFSA
SECTION 112. COOPERATION BETWEEN COURTS; PRESERVATION OF RECORDS. **(c)** Travel and other necessary and reasonable expenses incurred under subsections (a) and (b) may be assessed against the parties according to the law of this State. **SECTION 208. JURISDICTION DECLINED BY REASON OF CONDUCT.** **(c)** If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection (a), it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs, or expenses against this State unless authorized by law other than this [Act]. **Article 3 - Enforcement** **SECTION 310. HEARING AND ORDER.** **(b)** The court shall award the fees, costs, and expenses authorized under Section 312 and may grant additional relief, including a request for the assistance of [law enforcement officials], and set a further hearing to determine whether additional relief is appropriate. **SECTION 312. COSTS, FEES, AND EXPENSES.** **(a)** The court shall award the prevailing party, including a State, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses,	**SECTION 313. COSTS AND FEES.** **(a)** The [petitioner] may not be required to pay a filing fee or other costs. **(b)** If an obligee prevails, a responding tribunal may assess against an obligor filing fees, reasonable attorney's fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. The tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or the responding State, except as provided by other law. Attorney's fees may be taxed as costs, and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs and expenses. **(c)** The tribunal shall order the payment of costs and reasonable attorney's fees if it determines that a hearing was requested primarily for delay. In a proceeding under Article 6 ~~(Enforcement and Modification of Support Order After Registration)~~, a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.

attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate. **(b)** The court may not assess fees, costs, or expenses against a State unless authorized by law other than this [Act]. **SECTION 317. COSTS AND EXPENSES.** If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the [prosecutor or other appropriate public official] and [law enforcement officers] under Section 315 or 316. 317	

Part C - Going Interstate

C-1 Registration

When an action is taken regarding an order issued by a tribunal in one state, a procedure is needed to bring the order to the attention of the tribunal in another state. Classically, the taking of judicial notice under the second state's Rules of Evidence is the process. However, both the UCCJEA and the UIFSA established a "registration" process. Except for some difference in the information to be contained in the respective documents, the procedures for registration are basically the same:

A. The proponent of the order requests the Clerk of the appropriate court or tribunal issue a Notice of Registration

B. The Notice of Registration asserts the validity of the order (and includes a calculation of arrears under the UIFSA) and puts the nonregistering party on notice that the nonregistering party must contest the assertions regarding the validity of the order (and the arrears)

C. Failure of the nonregistering party to contest results in confirmation of the validity of the order (and the arrears) by operation of law.

D. If contested, there are limited defenses.

The major change wrought by the Registration process is a shifting of the burden to obtain confirmation of the order (and arrears).

The Registration process is made explicit in the UIFSA for either enforcement or modification actions. While explicit only for enforcement under the UCCJEA, it should be considered a viable procedure regarding modifications as well.

Actions for support can often involve the enforcement of several orders issued by different tribunals over time. The procedure for this in the UIFSA 96 was an implicit registration of each order. Under the UIFSA 2001, only the alleged "controlling" order for prospective support is actually registered along with an assertion of the consolidated arrears. Failure to contest either the controlling order assertion or the consolidated arrears amount results in confirmation by operation of law. For a greater discussion of the multiple order issues, see D-3.

UCCJEA	UIFSA
SECTION 305. REGISTRATION OF CHILD-CUSTODY DETERMINATION. **(a)** A child-custody determination issued by a court of another State may be registered in this State, with or without a simultaneous request for enforcement, by sending to [the appropriate court] in this State: **(1)** a letter or other document requesting registration; **(2)** two copies, including one certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and **(3)** except as otherwise provided in Section 209, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child-custody determination sought to be registered. **(b)** On receipt of the documents required by subsection (a), the registering court shall: **(1)** cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and **(2)** serve notice upon the persons named pursuant to subsection (a)(3) and provide them with an opportunity to contest the registration in accordance with this section. **(c)** The notice required by subsection (b)(2) must state that: **(1)** a registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this State; **(2)** a hearing to contest the validity of the registered determination must be requested within 20 days after service of notice; and **(3)** failure to contest the registration will result in confirmation of the child-custody determination and preclude further contest of that determination with respect to any matter that could have been asserted. **(d)** A person seeking to contest the validity of a registered order must request a hearing within 20 days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that: **(1)** the issuing court did not have jurisdiction under [Article] 2; **(2)** the child-custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under [Article] 2; or	**SECTION 601. REGISTRATION OF ORDER FOR ENFORCEMENT.** A support order or ~~an~~ income-withholding order issued by a tribunal of another State may be registered in this State for enforcement. **SECTION 602. PROCEDURE TO REGISTER ORDER FOR ENFORCEMENT.** **(a)** A support order or income-withholding order of another State may be registered in this State by sending the following ~~documents~~ records and information to the [appropriate tribunal] in this State: **(1)** a letter of transmittal to the tribunal requesting registration and enforcement; **(2)** two copies, including one certified copy, of ~~all orders~~ the order to be registered, including any modification of ~~an~~ the order; **(3)** a sworn statement by the ~~party seeking~~ person requesting registration or a certified statement by the custodian of the records showing the amount of any arrearage; **(4)** the name of the obligor and, if known: **(A)** the obligor's address and social security number; **(B)** the name and address of the obligor's employer and any other source of income of the obligor; and **(C)** a description and the location of property of the obligor in this State not exempt from execution; and **(5)** except as otherwise provided in Section 312, the name and address of the obligee and, if applicable, the ~~agency or~~ person to whom support payments are to be remitted. **(b)** On receipt of a request for registration, the registering tribunal shall cause the order to be filed as a foreign judgment, together with one copy of the documents and information, regardless of their form. **(c)** A [petition] or comparable pleading seeking a remedy that must be affirmatively sought under other law of this State may be filed at the same time as the request for registration or later. The pleading must specify the grounds for the remedy sought. **(d)** If two or more orders are in effect, the person requesting registration shall: **(1)** furnish to the tribunal a copy of every support order asserted to be in effect in addition to the documents specified in this section; **(2)** specify the order alleged to be the controlling order, if any; and **(3)** specify the amount of consolidated arrears, if

(3) the person contesting registration was entitled to notice, but notice was not given in accordance with the standards of Section 108, in the proceedings before the court that issued the order for which registration is sought. **(e)** If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation. **(f)** Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration. **SECTION 306. ENFORCEMENT OF REGISTERED DETERMINATION.** **(a)** A court of this State may grant any relief normally available under the law of this State to enforce a registered child-custody determination made by a court of another State. **(b)** A court of this State shall recognize and enforce, but may not modify, except in accordance with [Article] 2, a registered child-custody determination of a court of another State	any. **(e)** A request for a determination of which is the controlling order may be filed separately or with a request for registration and enforcement or for registration and modification. The person requesting registration shall give notice of the request to each party whose rights may be affected by the determination. **SECTION 603. EFFECT OF REGISTRATION FOR ENFORCEMENT**. **(a)** A support order or income-withholding order issued in another State is registered when the order is filed in the registering tribunal of this State. **(b)** A registered order issued in another State is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this State. **(c)** Except as otherwise provided in this article, a tribunal of this State shall recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction. **SECTION 605. NOTICE OF REGISTRATION OF ORDER.** **(a)** When a support order or income-withholding order issued in another State is registered, the registering tribunal shall notify the nonregistering party. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order. **(b)** ~~The~~ A notice must inform the nonregistering party: **(1)** that a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this State; **(2)** that a hearing to contest the validity or enforcement of the registered order must be requested within [20] days after notice; **(3)** that failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages; and **(4)** of the amount of any alleged arrearages. **(c)** If the registering party asserts that two or more orders are in effect, a notice must also: **(1)** identify the two or more orders and the order alleged by the registering person to be the controlling order and the consolidated arrears, if any; **(2)** notify the nonregistering party of the right to a determination of which is the controlling order; **(3)** state that the procedures provided in subsection (b) apply to the determination of which

	is the controlling order; and **(4)** state that failure to contest the validity or enforcement of the order alleged to be the controlling order in a timely manner may result in confirmation that the order is the controlling order. **(d)** Upon registration of an income-withholding order for enforcement, the registering tribunal shall notify the obligor's employer pursuant to [the income-withholding law of this State]. **SECTION 606. PROCEDURE TO CONTEST VALIDITY OR ENFORCEMENT OF REGISTERED ORDER**. **(a)** A nonregistering party seeking to contest the validity or enforcement of a registered order in this State shall request a hearing within [20] days after notice of the registration. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to Section 607 ~~(Contest of Registration or Enforcement)~~. **(b)** If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law. **(c)** If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties of the date, time, and place of the hearing. **SECTION 607. CONTEST OF REGISTRATION OR ENFORCEMENT**. **(a)** A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving one or more of the following defenses: **(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; **(6)** full or partial payment has been made; ~~or~~ **(7)** the statute of limitation under Section 604 ~~(Choice of Law)~~ precludes enforcement of some or all of the alleged arrearages; or **(8)** the alleged controlling order is not the controlling order. **(b)** If a party presents evidence establishing a full

	or partial defense under subsection (a), a tribunal may stay enforcement of the registered order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered order may be enforced by all remedies available under the law of this State. **(c)** If the contesting party does not establish a defense under subsection (a) to the validity or enforcement of the order, the registering tribunal shall issue an order confirming the order. **SECTION 608. CONFIRMED ORDER**. Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration. **SECTION 609. PROCEDURE TO REGISTER CHILD-SUPPORT ORDER OF ANOTHER STATE FOR MODIFICATION.** A party or support enforcement agency seeking to modify, or to modify and enforce, a child-support order issued in another State shall register that order in this State in the same manner provided in Part 1 if the order has not been registered. A [petition] for modification may be filed at the same time as a request for registration, or later. The pleading must specify the grounds for modification. **SECTION 610. EFFECT OF REGISTRATION FOR MODIFICATION.** A tribunal of this State may enforce a child-support order of another State registered for purposes of modification, in the same manner as if the order had been issued by a tribunal of this State, but the registered order may be modified only if the requirements of Section 611, 613, or 615 ~~(Modification of Child Support Order of Another State)~~ have been met.

C-2 Assuming Modification Jurisdiction

Both the ECJ and CEJ concepts have the **exclusive** jurisdiction to **modify** remain with the issuing state so long as one of the parties (parent per UCCJEA; obligor/obligee per UIFSA) or the child continues to reside in the order issuing state. However, since both acts are focused upon situations where not all family members reside in the same state, provisions are made for the assumption ("transfer") of jurisdiction to modify.

Under general "transfer" provisions, transfer is sought by returning to the original tribunal for an order transferring the case from that tribunal to another tribunal. The UCCJEA retains this return to the original court approach in the situation where either all family members have left

the state or not all members have left but there is a "more convenient" forum. UIFSA does not vest the original tribunal with the ability to transfer the case to a tribunal in another state based on the "more convenient" concept.

The major change to "moving" jurisdiction in both the UCCJEA and the UIFSA is when all family members have left the original order issuing state. The tribunal where one on the parties resides is empowered, under certain circumstances, to "assume" jurisdiction. Under the UCCJEA, the assumption would be most often by a court in the child's "home state". Under the UIFSA, the party seeking the support modification has to have modification jurisdiction assumed by the tribunal where the other party resides. When all parties have left the original jurisdiction and the assumption action is taken by the tribunal in the successor jurisdiction, the "losing" tribunal has no authority to stop the assumption.

There is one significant change to the movement of jurisdiction that has occurred under the UIFSA. The general principle is that subject matter jurisdiction can not be conferred upon a tribunal by agreement. The original version of the UIFSA created an exception by allowing the parties to agree for the jurisdiction where the child currently resides or that has personal jurisdiction over one of the parties to assume CEJ even though someone remained in the original order issuing state. This "choice of forum" capability was expanded by UIFSA 2001 to allow the parties to agree the issuing forum retains jurisdiction even when all parties have left that state. See § 205(a)(2) in A-3.

Upon assuming jurisdiction to modify, there is an important limitation under the UIFSA to the tribunal's powers. The assuming tribunal is to apply its support guidelines in determining the amount of prospective support. However, the tribunal is not empowered to modify the duration of the support obligation.

UCCJEA	**UIFSA**
SECTION 102. DEFINITIONS. In this [Act]: **(11)** "Modification" means a child-custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination. **SECTION 203. JURISDICTION TO MODIFY DETERMINATION.** Except as otherwise provided in Section 204, a court of this State may not modify a child-custody determination made by a court of another State unless a court of this State has jurisdiction to make an initial determination under Section 201(a)(1) or (2) and: **(1)** the court of the other State determines it no longer has exclusive, continuing jurisdiction under Section 202 or that a court of this State would be a more convenient forum under Section 207; or **(2)** a court of this State or a court of the other State determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other State.	**SECTION 611. MODIFICATION OF CHILD-SUPPORT ORDER OF ANOTHER STATE.** **(a)** ~~After~~ If Section 613 does not apply, except as otherwise provided in Section 615, upon [petition] a tribunal of this State may modify a child-support order issued in another State ~~has been~~ which is registered in this State~~, the responding] tribunal of this State may modify that order only if Section 613 does not apply and~~ if, after notice and hearing ~~it~~, the tribunal finds that: **(1)** the following requirements are met: **(A)** neither the child, nor the ~~individual~~ obligee who is an individual, ~~and~~ nor the obligor ~~do not~~ resides in the issuing State; **(B)** a [petitioner] who is a nonresident of this State seeks modification; and **(C)** the [respondent] is subject to the personal jurisdiction of the tribunal of this State; or **(2)** this State is the State of residence of 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 ~~a written~~ consents in a record 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 law~~. **(b)** Modification of a registered child-support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this State and the order may be enforced and satisfied in the same manner. **(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. **(e)** On the issuance of an order by a tribunal of this State modifying a child-support order issued in another State, ~~a~~ the tribunal of this State becomes the tribunal having continuing, exclusive jurisdiction. **SECTION 613. JURISDICTION TO MODIFY CHILD-SUPPORT ORDER OF ANOTHER STATE WHEN INDIVIDUAL PARTIES RESIDE IN THIS STATE.** **(a)** If all of the parties who are individuals reside in this State and the child does not reside in the issuing State, a tribunal of this State has jurisdiction to enforce and to modify the issuing State's child-support order in a proceeding to register that order. **(b)** A tribunal of this State exercising jurisdiction under this section shall apply the provisions of Articles 1 and 2, this article, and the procedural and substantive law of this State to the proceeding for enforcement or modification. Articles 3, 4, 5, 7, and 8 do not apply.

C-3 Enforcement

With respect to enforcing an existing order, the differences between the UCCJEA and the UIFSA are based on the ultimate goal of each. When custody or visitation issues are involved, the focus of the court is getting the child into the appropriate physical possession. Thus, the emphasis for the UCCJEA is orders granting possession with the ability to issue warrants to take physical custody of the child. To prevent a person who is in wrongful possession of the child from getting a favorable, "home town" order, courts in one state are to give full faith and credit to enforcement orders entered by another state. In appropriate circumstances, the enforcing court does have the ability to enter emergency orders. See B-7.

The enforcement objective under the UIFSA is for the obligor to pay the current and back support owed. To effectuate that goal, the tribunal is given a panoply of remedies. In situations where the obligor is charged with criminal non-support, the governor of the charging state can seek the extradition of the obligor from the state where the obligor currently resides.

UCCJEA	UIFSA
SECTION 303. DUTY TO ENFORCE. **(a)** A court of this State shall recognize and enforce a child-custody determination of a court of another State if the latter court exercised jurisdiction in substantial conformity with this [Act] or the determination was made under factual circumstances meeting the jurisdictional standards of this [Act] and the determination has not been modified in accordance with this [Act]. **(b)** A court of this State may utilize any remedy available under other law of this State to enforce a child-custody determination made by a court of another State. The remedies provided in this [article] are cumulative and do not affect the availability of other remedies to enforce a child-custody determination. **SECTION 307. SIMULTANEOUS PROCEEDINGS.** If a proceeding for enforcement under this [article] is commenced in a court of this State and the court determines that a proceeding to modify the determination is pending in a court of another State having jurisdiction to modify the determination under [Article] 2, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding. **SECTION 308. EXPEDITED ENFORCEMENT OF CHILD-CUSTODY DETERMINATION.** **(a)** A petition under this [article] must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a	**SECTION 305. DUTIES AND POWERS OF RESPONDING TRIBUNAL.** **(a)** When a responding tribunal of this State receives a [petition] or comparable pleading from an initiating tribunal or directly pursuant to Section 301(b)~~(c) (Proceedings Under this [Act])~~, it shall cause the [petition] or pleading to be filed and notify the [petitioner] where and when it was filed. **(b)** A responding tribunal of this State, to the extent ~~otherwise authorized~~ not prohibited by other law, may do one or more of the following: **(1)** issue or enforce a support order, modify a child-support order, determine the controlling child-support order, or ~~render a judgment~~ to determine parentage; **(2)** order an obligor to comply with a support order, specifying the amount and the manner of compliance; **(3)** order income withholding; **(4)** determine the amount of any arrearages, and specify a method of payment; **(5)** enforce orders by civil or criminal contempt, or both; **(6)** set aside property for satisfaction of the support order; **(7)** place liens and order execution on the obligor's property; **(8)** order an obligor to keep the tribunal informed of the obligor's current residential address, telephone number, employer, address of employment, and telephone number at the place of employment; **(9)** issue a [bench warrant; capias] for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the [bench warrant; capias] in any local and State

certified copy of an order may be attached instead of the original.

(b) A petition for enforcement of a child-custody determination must state:

(1) whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;

(2) whether the determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision must be enforced under this [Act] and, if so, identify the court, the case number, and the nature of the proceeding;

(3) whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding;

(4) the present physical address of the child and the respondent, if known;

(5) whether relief in addition to the immediate physical custody of the child and attorney's fees is sought, including a request for assistance from [law enforcement officials] and, if so, the relief sought; and

(6) if the child-custody determination has been registered and confirmed under Section 305, the date and place of registration.

(c) Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing must be held on the next judicial day after service of the order unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The court may extend the date of hearing at the request of the petitioner.

(d) An order issued under subsection (c) must state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child and the payment of fees, costs, and expenses under Section 312, and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

(1) the child-custody determination has not been registered and confirmed under Section 305 and that:

(A) the issuing court did not have jurisdiction under [Article] 2;

(B) the child-custody determination for which

computer systems for criminal warrants;

(10) order the obligor to seek appropriate employment by specified methods;

(11) award reasonable attorney's fees and other fees and costs; and

(12) grant any other available remedy.

(c) A responding tribunal of this State shall include in a support order issued under this [Act], or in the documents accompanying the order, the calculations on which the support order is based.

. . .

(e) If a responding tribunal of this State issues an order under this [Act], the tribunal shall send a copy of the order to the [petitioner] and the [respondent] and to the initiating tribunal, if any.

(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 801. GROUNDS FOR RENDITION.

(a) For purposes of this article, "governor" includes an individual performing the functions of governor or the executive authority of a State covered by this [Act].

(b) The governor of this State may:

(1) demand that the governor of another State surrender an individual found in the other State who is charged criminally in this State with having failed to provide for the support of an obligee; or

(2) on the demand ~~by~~ of the governor of another State, surrender an individual found in this State who is charged criminally in the other State with having failed to provide for the support of an obligee.

(c) A provision for extradition of individuals not inconsistent with this [Act] applies to the demand even if the individual whose surrender is demanded was not in the demanding State when the crime was allegedly committed and has not fled therefrom.

SECTION 802. CONDITIONS OF RENDITION.

(a) Before making a demand that the governor of another State surrender an individual charged criminally in this State with having failed to provide for the support of an obligee, the governor of this State may require a prosecutor of this State to demonstrate that at least [60] days previously the obligee had initiated proceedings for support pursuant to this [Act] or that the proceeding would be of no avail.

(b) If, under this [Act] or a law substantially

enforcement is sought has been vacated, stayed, or modified by a court having jurisdiction to do so under [Article] 2; **(C)** the respondent was entitled to notice, but notice was not given in accordance with the standards of Section 108, in the proceedings before the court that issued the order for which enforcement is sought; or **(2)** the child-custody determination for which enforcement is sought was registered and confirmed under Section 304, but has been vacated, stayed, or modified by a court of a State having jurisdiction to do so under [Article] 2. **SECTION 310. HEARING AND ORDER.** **(a)** Unless the court issues a temporary emergency order pursuant to Section 204, upon a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that: **(1)** the child-custody determination has not been registered and confirmed under Section 305 and that: **(A)** the issuing court did not have jurisdiction under [Article] 2; **(B)** the child-custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a State having jurisdiction to do so under [Article] 2; or **(C)** the respondent was entitled to notice, but notice was not given in accordance with the standards of Section 108, in the proceedings before the court that issued the order for which enforcement is sought; or **(2)** the child-custody determination for which enforcement is sought was registered and confirmed under Section 305 but has been vacated, stayed, or modified by a court of a State having jurisdiction to do so under [Article] 2. . . . **SECTION 311. WARRANT TO TAKE PHYSICAL CUSTODY OF CHILD.** **(a)** Upon the filing of a petition seeking enforcement of a child-custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is immediately likely to suffer serious physical harm or be removed from this State. **(b)** If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be removed from this State, it may issue a	similar to this [Act], ~~the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act~~ the governor of another State makes a demand that the governor of this State surrender an individual charged criminally in that State with having failed to provide for the support of a child or other individual to whom a duty of support is owed, the governor may require a prosecutor to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the governor may delay honoring the demand for a reasonable time to permit the initiation of a proceeding. **(c)** If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the governor may decline to honor the demand. If the [petitioner] prevails and the individual whose rendition is demanded is subject to a support order, the governor may decline to honor the demand if the individual is complying with the support order

warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by Section 308(b). **(c)** A warrant to take physical custody of a child must: **(1)** recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based; **(2)** direct law enforcement officers to take physical custody of the child immediately; and **(3)** provide for the placement of the child pending final relief. **(d)** The respondent must be served with the petition, warrant, and order immediately after the child is taken into physical custody. **(e)** A warrant to take physical custody of a child is enforceable throughout this State. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour. **(f)** The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian. **SECTION 313. RECOGNITION AND ENFORCEMENT.** A court of this State shall accord full faith and credit to an order issued by another State and consistent with this [Act] which enforces a child-custody determination by a court of another State unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so under [Article] 2.	

C-4 Agency Involvement

The drafters of both acts recognized a major impediment to processing interstate cases is the inability of the nonresident person to obtain legal services in the state where an action needs to be taken. Thus, both Acts build upon common structures in each state for obtaining necessary services.

Under the UCCJEA, agency involvement does not occur until an order is being enforced. At that point, a local prosecutor or some other public official is permitted ("may") to assist in the enforcement of the order. And, as expected, law enforcement personnel in the enforcing state may be called upon for assistance.

The UIFSA inherits the IV-D agency structure. Pursuant to federal regulations, each state has a "state information agency", often referred to as the "central registry". Compatible with these regulations, the UIFSA empowers this information agency to provide information and receive and process documents. It then applies the same duties in an interstate case to the "support enforcement agency" that provides services in intrastate cases. Lastly, it designates a public official to oversee and assure both the state information agency and state enforcement agency perform their respective duties and functions.

An issue that has raised concerns, particularly in the IV-D community, is the legal relationship between attorneys employed by the IV-D agency and the individual who is being provided services. Most often, the attorneys may be providing services to someone they have never met. Like prosecutors, the IV-D agency attorneys are employed by their respective agency and sometimes the agency may have a position different from that of the person receiving services. Acknowledging the situation, both the UCCJEA and the UIFSA specifically provide that agency or government attorneys do no have an attorney-client relationship with the person receiving services under either Act.

Because of the availability of numerous support enforcement remedies that are automated (lottery, unemployment benefits, and tax intercepts; passport denial), the support enforcement agencies are empowered to begin these actions without the necessity of registering another state's order. It is only when the enforcement action is contested that registration is necessary. In many instances, the contest can even be resolved without the necessity for registration.

UCCJEA	**UIFSA**
SECTION 315. ROLE OF [PROSECUTOR OR PUBLIC OFFICIAL]. **(a)** In a case arising under this [Act] or involving the Hague Convention on the Civil Aspects of International Child Abduction, the [prosecutor or other appropriate public official] may take any lawful action, including resort to a proceeding under this [article] or any other available civil proceeding to locate a child, obtain the return of a child, or enforce a child-custody determination if there is: **(1)** an existing child-custody determination; **(2)** a request to do so from a court in a pending child-custody proceeding; **(3)** a reasonable belief that a criminal statute has been violated; or **(4)** a reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction. **(b)** A [prosecutor or appropriate public official] acting under this section acts on behalf of the court and may not represent any party. **SECTION 316. ROLE OF [LAW ENFORCEMENT].** At the request of a [prosecutor or other appropriate public official] acting under Section 315, a [law enforcement officer] may take any	**SECTION 307. DUTIES OF SUPPORT ENFORCEMENT AGENCY.** **(a)** A support enforcement agency of this State, upon request, shall provide services to a [petitioner] in a proceeding under this [Act]. **(b)** A support enforcement agency <u>of this State</u> that is providing services to the [petitioner] ~~as appropriate~~ shall: **(1)** take all steps necessary to enable an appropriate tribunal in this State or another State to obtain jurisdiction over the [respondent]; **(2)** request an appropriate tribunal to set a date, time, and place for a hearing; **(3)** make a reasonable effort to obtain all relevant information, including information as to income and property of the parties; **(4**) within [two] days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written notice <u>in a record</u> from an initiating, responding, or registering tribunal, send a copy of the notice to the [petitioner]; **(5)** within [two] days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written communication <u>in a record</u> from the [respondent] or the [respondent's] attorney, send a copy of the communication to the [petitioner]; and **(6)** notify the [petitioner] if jurisdiction over the [respondent] cannot be obtained.

lawful action reasonably necessary to locate a child or a party and assist [a prosecutor or appropriate public official] with responsibilities under Section 315.	**(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. **(e)** A support enforcement agency of this State shall [issue or] request a tribunal of this State to issue a child-support order and an income-withholding order that redirect payment of current support, arrears, and interest if requested to do so by a support enforcement agency of another State pursuant to Section 319 of the Uniform Interstate Family Support Act. **(f)** This [Act] does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency. **SECTION 308. DUTY OF [~~ATTORNEY GENERAL~~ STATE OFFICIAL OR AGENCY].** **(a)** If the ~~Attorney General~~ [appropriate state official or agency] determines that the support enforcement agency is neglecting or refusing to provide services to an individual, the ~~Attorney General~~ [state official or agency] may order the agency to perform its duties under this [Act] or may provide those services directly to the individual. **(b)** The [appropriate state official or agency] may determine that a foreign country or political subdivision has established a reciprocal arrangement for child support with this State and take appropriate action for notification of the determination. **SECTION 310. DUTIES OF [STATE INFORMATION AGENCY].** **(a)** The [Attorney General's Office, State Attorney's Office, State Central Registry or other information agency] is the state information agency under this [Act].

	(b) The state information agency shall: **(1)** compile and maintain a current list, including addresses, of the tribunals in this State which have jurisdiction under this [Act] and any support enforcement agencies in this State and transmit a copy to the state information agency of every other State; **(2)** maintain a register of names and addresses of tribunals and support enforcement agencies received from other States; **(3)** forward to the appropriate tribunal in the ~~place~~ [county] in this State in which the ~~individual~~ obligee who is an individual or the obligor resides, or in which the obligor's property is believed to be located, all documents concerning a proceeding under this [Act] received from an initiating tribunal or the state information agency of the initiating State; and **(4)** obtain information concerning the location of the obligor and the obligor's property within this State not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers, and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver's licenses, and social security. **SECTION 507. ADMINISTRATIVE ENFORCEMENT OF ORDERS.** **(a)** A party or support enforcement agency seeking to enforce a support order or an income-withholding order, or both, issued by a tribunal of another State may send the documents required for registering the order to a support enforcement agency of this State. **(b)** Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this State to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this [Act].

Part D - Unique Provisions

From the analyses above, it can be seen that the UCCJEA and UIFSA share many common concepts and processes. However, there are certain aspects of each act that have no counterpart.

D-1 UCCJEA - Expedited Processing

Certainly mindful of due process considerations, the goal of the UCCJEA is to resolve custody and visitation disputes so the child is residing with the proper party as quickly as possible. Thus, determining whether a court is initially empowered to act is to be resolved expeditiously. Likewise, appeals are to be expedited to obtain finality.

UCCJEA

SECTION 107. PRIORITY. If a question of existence or exercise of jurisdiction under this [Act] is raised in a child-custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously.

SECTION 314. APPEALS. An appeal may be taken from a final order in a proceeding under this [article] in accordance with [expedited appellate procedures in other civil cases]. Unless the court enters a temporary emergency order under Section 204, the enforcing court may not stay an order enforcing a child-custody determination pending appeal.

D-2 Temporary Visitation

The primary focus of the UCCJEA is resolution of custody issues. Nevertheless, being able to exercise visitation is an important right as well. If the custody order has a specific visitation schedule, it can, and should, be enforced. If visitation is authorized in the custody order but the details are not specified, an enforcing court can enter a temporary visitation order while a specific order is sought in the court with ECJ.

UCCJEA

SECTION 304. TEMPORARY VISITATION.
(a) A court of this State which does not have jurisdiction to modify a child-custody determination, may issue a temporary order enforcing:
(1) a visitation schedule made by a court of another State; or
(2) the visitation provisions of a child-custody determination of another State that does not provide for a specific visitation schedule.
(b) If a court of this State makes an order under subsection (a)(2), it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in [Article] 2. The order remains in effect until an order is obtained from the other court or the period expires.

D-3 UIFSA - Multiple Orders

One of the major challenges facing the drafters of the UIFSA was dealing with the multiple support orders that were created under URESA and RURESA. Based on a series of cases holding an order for support could always be modified as circumstances changed, an existing

order was not entitled to full faith and credit. Assuming the issuing court had subject matter and personal jurisdiction, it could enter an order that set a different amount of support as well as a different duration.

The task under the UIFSA became to set out a process to make one of the existing multiple orders be the "controlling" order. The resolution is founded upon what state is in the best situation to address the needs of the child or the ability of the obligor to pay. As a starting point, if there is only one order, it is the controlling order even if no one currently resides in the state that issued it. When there are at least two orders:

A. The order issued by a "home " state is the controlling order.
B. If only one of the states that issued one of the orders has a person residing in that state, it is the controlling order.
C. If no one resides in any of the states that entered the orders, there is no controlling order *per se* and a tribunal that currently has subject matter and personal jurisdiction is to establish a "replacement" order that will be the controlling order.

The important aspect of a controlling order determination is that it determines the one order entitled to prospective enforcement. Attached to this prospective enforcement is the exclusivity to modify the prospective support obligation, i.e. the controlling order establishes the tribunal with CEJ to modify.

What a controlling order determination does not do is impact the amount of the consolidated arrears. Case law and a specific provision in RURESA established the concept that a successive order did not nullify or supercede the existing order(s) so that support continued to accrue. What does occur is the support amounts accrue simultaneously and not in the aggregate. The UIFSA and its predecessors specifically provide that payments made pursuant to one order are to be applied to the support accruing under another order in existence during the same time period.

UIFSA

SECTION 207. ~~RECOGNITION~~ DETERMINATION OF CONTROLLING CHILD-SUPPORT ORDER.
(a) If a proceeding is brought under this [Act] and only one tribunal has issued a child-support order, the order of that tribunal controls and must be so recognized.
(b) If a proceeding is brought under this [Act], and two or more child-support orders have been issued by tribunals of this State or another State with regard to the same obligor and same child, a tribunal of this State having personal jurisdiction over both the obligor and individual obligee shall apply the following rules ~~in determining~~ and by order shall determine which order controls ~~to recognize for purposes of continuing, exclusive jurisdiction~~:
(1) If only one of the tribunals would have continuing, exclusive jurisdiction under this [Act], the order of that tribunal controls and must be so recognized.
(2) If more than one of the tribunals would have continuing, exclusive jurisdiction under this [Act]:
(A) an order issued by a tribunal in the current home State of the child controls; ~~and must be so recognized,~~ but
(B) if an order has not been issued in the current home State of the child, the order most recently issued controls ~~and must be so recognized~~.
(3) If none of the tribunals would have continuing, exclusive jurisdiction under this [Act], the tribunal of this State ~~having jurisdiction over the parties~~ shall issue a child-support order, which controls ~~and must be so recognized~~.
(c) If two or more child-support orders have been issued for the same obligor and same child, ~~and if the obligor or the individual obligee resides in this State, an individual~~ upon request of a party who is an individual or a support enforcement agency, ~~may request~~ a tribunal of this State having personal jurisdiction over both the obligor and the obligee who is an individual shall ~~to~~ determine which order

controls ~~and must be so recognized~~ under subsection (b). ~~The request must be accompanied by a certified copy of every support order in effect. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.~~ The request may be filed with a registration for enforcement or registration for modification pursuant to Article 6, or may be filed as a separate proceeding.

(d) A request to determine which is the controlling order must be accompanied by a copy of every child-support order in effect and the applicable record of payments. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.

(e) The tribunal that issued the controlling order under subsection (a), (b), or (c) ~~is the tribunal that~~ has continuing~~, exclusive~~ jurisdiction ~~under Section~~ to the extent provided in Section 205 or 206.

(f) A tribunal of this State ~~which~~ that determines by order ~~the identity of~~ which is the controlling order under subsection (b)(1) or (2) or (c), or ~~which~~ that issues a new controlling order under subsection (b)(3), shall state in that order:

(1) the basis upon which the tribunal made its determination;

(2) the amount of prospective support, if any; and

(3) the total amount of consolidated arrears and accrued interest, if any, under all of the orders after all payments made are credited as provided by Section 209.

(g) Within [30] days after issuance of an order determining ~~the identity of~~ which is the controlling order, the party obtaining the order shall file a certified copy of it ~~with~~ in each tribunal that issued or registered an earlier order of child support. A party ~~who obtains~~ or support enforcement agency obtaining the order ~~and~~ that fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order.

(h) An order that has been determined to be the controlling order, or a judgment for consolidated arrears of support and interest, if any, made pursuant to this section must be recognized in proceedings under this [Act].

SECTION 209. CREDIT FOR PAYMENTS.

~~Amounts~~ A tribunal of this State shall credit amounts collected ~~and credited~~ for a particular period pursuant to ~~a support order~~ any child-support order against the amounts owed for the same period under any other child-support order for support of the same child issued by a tribunal of this or another State ~~must be credited against the amounts accruing or accrued for the same period under a support order issued by the tribunal of this State~~.

D-4 UIFSA - Minor as a Party

The immutable fact is that minors are the parents of children. Lest there be doubt about the capacity of a minor to bring an action for support, the UIFSA makes it clear a minor can pursue obtaining support without the necessity of going through a “next friend”.

UIFSA

SECTION 302. ~~ACTION~~ PROCEEDING BY MINOR PARENT. A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor’s child.

D-5 UIFSA - Defense of Nonparentage

There are several defenses that can be raised at the time of registration of another state’s order. See C-1. There are other defenses that can be raised to the specific remedy sought. One issue that can not be raised collaterally is parentage. Any attack on that issue must be made in the forum that issued the original order.

UIFSA
SECTION 315. NONPARENTAGE AS DEFENSE. A party whose parentage of a child has been previously determined by or pursuant to law may not plead nonparentage as a defense to a proceeding under this [Act].

Part E - Interjurisdictional applications

E-1 Tribes

The Indian Child Welfare Act (ICWA) applies primarily in custody situations where placement is being sought in institutions or with persons other than the parents. The UCCJEA seeks harmony with the ICWA by deferring to tribal proceedings and recognizing a tribal order when appropriate. The UIFSA recognizes the authority of tribal courts to enter valid support orders and treats a tribe the same as other "states". It should be noted that FFCCSOA applies both to states and tribes.

UCCJEA	UIFSA
SECTION 104. APPLICATION TO INDIAN TRIBES. **(a)** A child-custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., is not subject to this [Act] to the extent that it is governed by the Indian Child Welfare Act. [**(b)** A court of this State shall treat a tribe as if it were a State of the United States for the purpose of applying [Articles] 1 and 2.] [**(c)** A child-custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this [Act] must be recognized and enforced under [Article] 3.]	**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

E-2 International

The UCCJEA provides a general legal framework for recognition and enforcement of foreign custody and visitation decrees originating from foreign jurisdictions. It specifies that a decree made by a party to the Hague Convention on the Civil Aspects of International Child Abduction will be enforced and the United State is a party to Hague Convention on the Civil Aspects of International Child Abduction.

The United State is not a party to any international convention or agreement regarding child or spousal support. However, the UIFSA does provide for recognition of foreign support orders. The basis for recognition under the UIFSA 96 was solely a substantial similarity between the laws and procedures. The UIFSA 2001 was revised to implement federal law that empowers the State Department in conjunction with OCSE to declare a foreign jurisdiction to be a reciprocating "state". It also empowers a State to make such a declaration in the absence of a federal declaration. One the foreign jurisdiction is declared to be a "state", the other provisions of the UIFSA apply.

One issue that does have distinct treatment is the ability of a U. S. State to modify the support order of a foreign jurisdiction. If no one resides in the foreign jurisdiction that issued the order, the general modification provisions apply. The issue arose when one party remained in the foreign jurisdiction with the order. In the UIFSA 96 § 611(a)(2), a foreign resident could almost unilaterally obtain a modification in the U. S.. [see C-2] In the UIFSA 2001, either party was given the opportunity to seek a modification in the U. S., but only upon a showing that the foreign jurisdiction where the party resides "will not or may not" modify it's order.

UCCJEA	UIFSA
SECTION 105. INTERNATIONAL APPLICATION OF [ACT]. **(a)** A court of this State shall treat a foreign country as if it were a State of the United States for the purpose of applying [Articles] 1 and 2. **(b)** Except as otherwise provided in subsection (c), a child-custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this [Act] must be recognized and enforced under [Article] 3. **(c)** A court of this State need not apply this [Act] if the child custody law of a foreign country violates fundamental principles of human rights. **SECTION 302. ENFORCEMENT UNDER HAGUE CONVENTION.** Under this [article] a court of this State may enforce an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child-custody determination.	**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: . . . **(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~~. **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.

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Kamala D. Harris, Attorney General

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INSIDE THIS ISSUE

In this edition, you will find a summary of *Gruen v. Gruen* where the Fourth District Court of Appeal ruled that the lower court erred when it retroactively modified a pendente lite child support order and when it prospectively modified the support obligation without a pending motion or order to show cause. There is also a summary of *People v. Mozes* where the Second District found that monies from the seized assets of a man convicted of theft should be paid to his victims rather than to his ex-wife for child support. This decision was based in part on the court's finding that the ex-wife was not innocent. In the Utah Court of Appeals, *Lilly v. Lilly* was remanded to the lower court for a ruling on whether the father's domicile was in Utah or California in order to determine which state had jurisdiction to modify a California child support order. In this case, the father was on active duty in the Marine Corps and was stationed in California but claimed his permanent residence was Utah. We have also included a brief summary of an unpublished California decision, *Bulcao v. Bulcao,* where the Fourth District ruled that a judge must issue a statement of decision if a party requests it.

In the California Legislature, there are three new bills addressing the issue of presumed fathers, voluntary declarations of paternity, and the timing of requests for genetic testing. Of particular interest, S.B. 375 would allow a presumed father to ask for genetic testing "within a reasonable time" after he learns he may not be the biological father. This would be a change from current law that only allows testing within the first two years after the birth of the child.

We hope you enjoy this issue of *Family Support News*. Please let us know if there are any additions or changes you would like to see in future issues.

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SUMMARY OF COURT DECISIONS

CALIFORNIA COURTS OF APPEAL

Retroactive and Prospective Modification Reversed on Appeal

***Deborah Gruen v. Arthur Gruen* (2011) 191 Cal.App.4th 627; 120 Cal.Rptr.3d 184.**

Deborah Gruen appealed the trial court's retroactive and prospective modification of a temporary child and spousal support order. The 4DCA reversed with directions.

Deborah and Arthur Gruen were married in 1989. In August 2007, Deborah filed for separation and requested child and spousal support. At the time, they had four minor children. Arthur is a physician. Deborah has a PhD in epidemiology, but became a stay-at-home mom in 2004. In October 2007, Deborah and Arthur entered into a stipulation that gave Deborah primary custody of the children, and required Arthur to make money available to Deborah to cover all living expenses incurred by Deborah and the minor children. In May 2008, Arthur filed an order to show cause (OSC) regarding child and spousal support. In August 2008, the court entered an interim support order requiring that Arthur promptly pay all monthly expenses and $40,000 per month directly to Deborah. The court also appointed an expert to determine Arthur's available income for support. Arthur then asked the court to take his OSC off calendar and to continue the 2008 support order pending completion of the report by the court-appointed expert. When the expert filed a report showing that Arthur had a monthly cash flow that was less than the amount used to set the temporary support order, Arthur filed a motion for retroactive reimbursement of the monies he claimed to have overpaid. He also unilaterally reduced the $40,000 in monthly support that he was paying Deborah. In response, Deborah filed an OSC to enforce the 2008 order and asked for $351,332.68 in arrears. She also opposed modification of the August 2008 support order to any date before Arthur filed a new OSC for modification. At a hearing in April 2009, the court denied Deborah's OSC for enforcement, and ordered total support for three different periods beginning on August 1, 2008, based on the expert's report of Arthur's income and the time he spent with the children. The court also stated that from January 2009, Arthur would receive credit against his spousal support for any month that he also paid the mortgage. In June 2009, the court again reduced the support award and ordered Deborah and Arthur to share the cost of auto insurance for the children. Deborah was also ordered to pay her own insurance and, retroactive to August 2008, Deborah was to pay 25 percent of Arthur's reunification counseling. Deborah appealed.

The 4DCA noted that a support order, be it temporary or permanent, may only be prospectively modified if there is a pending motion or OSC for modification, and that it may never be retroactively modified. The 4DCA found that the court had exceeded its jurisdiction when it retroactively modified the August 2008 support order. The appeals court also found that Deborah was entitled to rely on the amount of support ordered in August 2008 without the concern of having to repay or credit Arthur for any portion of it. In response to Arthur's arguments that the August 2008 support order was only a temporary or interim order made without prejudice, the 4DCA noted that retroactive modification is never allowed for any type of support order.

With regard to the prospective modification ordered by the court, the 4DCA found that the lower court again exceeded its jurisdiction as there was no pending motion or OSC for modification since Arthur's original OSC was taken off calendar and the matter was not continued. In addition, the court found Arthur would have needed to file a motion or OSC after the 2008 order was entered in order

to request prospective modification, which he did not do. The 4DCA ruled that once the August 2008 temporary support order was entered, Arthur was limited to prospective modification based on changed circumstances shown by the expert's final report. The 4DCA reversed the lower court's orders modifying the August 2008 order, and remanded the case for reconsideration of Deborah's OSC for enforcement.

Seized Assets to Go to Victim Restitution, Not Child Support

***The People v. Orson Mozes* (2011) 192 Cal.App.4th 1124; 121 Cal.Rptr.3d 808.**

Orson Mozes pled guilty to 17 counts of theft and agreed to release his interest in seized assets so the monies could be distributed to his victims. Christen Brown, Mozes' ex-wife, sought a share of the assets to satisfy Mozes' child support obligation. The superior court denied her claim. On appeal, the 2DCA affirmed.

In 2001, Brown and Mozes formed a company called Adoption International Program (AIP). Brown was president and executive director until 2004, and a member of its board of directors until 2006. AIP posted pictures of children on its Internet site for viewing by people wishing to adopt. Although AIP's contract stated that it could not guarantee that a child would be placed with a family, Mozes assured prospective parents that he could "hold" a specific child for them. Based on these assurances, people paid AIP thousands of dollars to adopt a specific child only to be informed that child was no longer available. Testimony by former AIP employees showed that Brown actively participated in dealing with unhappy clients.

Brown filed for dissolution in 2006. Mozes continued to operate AIP until he fled California in June 2007, taking the AIP computer and the money in AIP's accounts with him. In April 2008, a warrant for Mozes arrest was issued on 62 charges of theft by false pretenses. Two weeks later, the court issued an order compelling Brown's testimony and granting her use immunity.

In August 2008, the family court issued child support, spousal support, and property distribution orders. Brown was awarded all proceeds from the sale of the home, and Mozes' community interest in the house was put in a community account. Mozes was ordered to pay child and spousal support. Brown was authorized to withdraw the monthly support from the community account.

Mozes was arrested in Florida in December 2008, and all his assets were seized. In July 2009, Mozes pled guilty and agreed to release his interest in the seized assets for distribution to the victims. Brown objected to the distribution, alleging that her child support claims should have priority. Shortly thereafter, Brown contacted the Santa Barbara County Department of Child Support Services (DCSS). At the first distribution hearing, an attorney from DCSS was introduced by Brown's counsel, but the judge denied DCSS's request to participate in the proceedings because it was untimely. The denial was without prejudice, but DCSS did not renew its request or file any documents. In October 2009, the court ruled that the only people with a "legitimately acquired interest" in Mozes' frozen assets were his victims. The court found that Brown was not innocent. Brown appealed.

The 2DCA noted that the purpose of Penal Code section 186.11 is to pay restitution to the victims of people convicted of white collar crimes. Under that section, a claimant must establish that he or she is innocent and not involved in the commission of the criminal activity. The 2DCA found that Brown did not meet her burden of establishing that she was an innocent third person. The court noted that Brown's claims that she was not significantly involved in AIP during the time Mozes was accepting money from the victims was not substantiated by the facts because she

communicated with unhappy AIP clients and hired AIP employees.

The court then addressed Brown's argument that the combined wording in Penal Code section 1202.4, subdivision f, and Family Code section 4011 required that the distribution to victims was only to include monies not exempt for spousal or child support. Brown contended that these statutes proved child support orders had priority to all funds or assets of a delinquent obligor. The 2DCA observed that Brown's argument failed to consider that Penal Code section 1202.4 supports the state's constitutional policy to ensure that, "all persons who suffer losses as a result of criminal activity shall have the right to seek and secure restitution from the persons convicted of the crimes causing the losses they suffer." (Cal. Const., art. 1, § 28, subd. (b)(13)(A).) The 2DCA agreed with the lower court's findings that the frozen assets were the product of Mozes' criminal activity; that the only people with a legitimate interest in the funds were the victims of his crimes; and that Brown was not an innocent person and did not have a "legitimately acquired interest" in the seized assets. As for Brown's reliance on Family Code section 17523, which authorizes the use of a lien if a support obligor is delinquent and a local child support agency is enforcing, the 2DCA noted that the statute was not relevant because DCSS was not enforcing Mozes' child support obligation. The 2DCA affirmed the lower court's order.

CASES FROM OTHER JURISDICTIONS

Jurisdiction Requirements of FFCCSOA and UIFSA

***In the Matter of Rebecca Bowman v. Jason Bowman* (N.Y. App.Div. 2011) 917 N.Y.S.2d 379.**

Rebecca Bowman appealed the lower court's decision to grant Jason Bowman's motion to dismiss her petition to upwardly modify a Washington support order. The New York Supreme Court, Appellate Division, reversed.

Rebecca and Jason were married in Washington and have a daughter. After they separated in 2007, Rebecca and the child moved to New York, and Jason moved to California. The judgment of divorce was entered in Washington, and Jason was ordered to pay $479 per month in child support until their daughter reached age 18. In 2009, Rebecca filed a petition in New York to modify visitation. Jason filed a cross-petition for sole custody. A New York court modified the Washington custody order to provide Jason with more time with his daughter. At about the same time, Rebecca registered the Washington support order in New York and requested upward modification. Jason moved to dismiss on the ground that New York did not have personal jurisdiction over him or subject matter jurisdiction over the Washington support order. The New York court granted Jason's motion to dismiss for lack of subject matter jurisdiction. Rebecca appealed.

The Appellate Division noted that there appeared to be a conflict between the Uniform Interstate Family Support Act (UIFSA) and the federal Full Faith and Credit for Child Support Orders Act (FFCCSOA). Under both acts, the state issuing a child support order retains continuing, exclusive jurisdiction over that order as long as one of the parties resides in the issuing state. In this case, since none of the parties lived in Washington, that state no longer had continuing exclusive jurisdiction. Under UIFSA, however, New York did not have jurisdiction to modify the Washington order because Rebecca, the party seeking modification, lived there. FFCCSOA provides that a state with jurisdiction over the non-moving party may modify after the order is registered in that state. The dispute in this case centers on the phrase "jurisdiction over the nonmovant." Rebecca argued this meant personal jurisdiction, not subject matter

jurisdiction. She also argued that insofar as there is a disagreement between UIFSA and FFCCSOA, the Supremacy Clause of the U.S. Constitution demands that FFCCSOA preempts UIFSA. Jason argued that the term should be interpreted as referring to both personal and subject matter jurisdiction, and that FFCCSOA should be read as incorporating the subject matter jurisdiction requirements of UIFSA. The Appellate Division agreed with Rebecca that FFCCSOA was referring to personal, not subject matter, jurisdiction. The court then looked at whether FFCCSOA preempts the provision in UIFSA requiring that the party seeking modification not live in the state where they are requesting it. The Appellate Division determined that the congressional directive and legislative history of FFCCSOA supported a finding that FFCCSOA established a policy of federal preemption in modification and enforcement of out-of state child support orders. In light of this finding, the jurisdictional requirements of UIFSA are preempted by those of FFCCSOA under the Supremacy Clause.

The court then addressed the issue of whether New York had personal jurisdiction over Jason and determined that it did. The court found that Jason had invoked the aid of the New York courts when he filed the action to modify the Washington custody and visitation order and had benefitted from the New York court's decision to modify visitation. Therefore, the jurisdictional requirements of FFCCSOA were satisfied and the New York court had jurisdiction to modify the Washington child support order. The Appellate Division reversed the lower court's order.
(NOTE: Most experts would disagree with this court's reasoning. The New York court lacked subject matter jurisdiction to modify the Washington order under both FFCCSOA and UIFSA because the requestor [Rebecca] resided in New York. When no one resides in the issuing state, the person requesting a modification must file it in the state where the other party resides.)

1979 Texas Order Unenforceable
***Debra Thornton v. Edward Thornton* (Okla. 2011) 247 P.3d 1180.**

In 2009, Debra Thornton sought to register a 1979 Texas child support order in Oklahoma. The trial court granted Edward Thornton's objection to the registration. The Oklahoma Court of Civil Appeals reversed, and the Oklahoma Supreme Court, on certiorari, affirmed the trial court's decision.

Debra and Edward Thornton were divorced in Texas in 1979. Edward was ordered to pay monthly child support of $160. Their child turned 18 in 1993. Between 1979 and 2009, Deborah did not enforce the 1979 child support order. In 2009, Debra filed a motion to register the Texas order in Oklahoma pursuant to UIFSA. Debra claimed Edward owed $72,570 in arrears as of June 2008. Edward objected to the registration, noting that 16 years had passed since their child emancipated and Debra's claim was barred by the Texas statute of limitation. The trial court granted Edward's objection because the order was no longer valid in Texas. On appeal, the Court of Civil Appeals reversed, ruling that Oklahoma had no statute of limitations on enforcement of a child support order, and Oklahoma law was controlling under UIFSA.

On certiorari, The Oklahoma Supreme Court ruled that a foreign order that is unenforceable in the state that issued it cannot be registered and enforced in Oklahoma. The court ruled that UIFSA required that Oklahoma apply Texas law as to the nature, extent, amount, and duration of payments. Based on Texas law, Edward's child support obligation became dormant in 2005--12 years after their child reached 18 years of age. The Oklahoma Supreme Court reversed the Court of Civil Appeals and affirmed the trial court's order.
(NOTE: This court was wrong. "In a proceeding for arrearages, the statute of limitation under the laws of this state or of the issuing state, whichever is longer, applies." (Fam. Code § 4953; UIFSA 1996, § 604.) The

wording changed in UIFSA 2001 but the meaning remains the same. FFCCSOA includes similar language. (28 U.S.C. §1738B (h)(3).) Under both UIFSA and FFCCSOA, the Texas order was enforceable in Oklahoma.)

Arizona Lost Jurisdiction When All Parties Moved Out of State

***State of Arizona, Department of Economic Security v. Ralph Tazioli* (Ariz. Ct.App. 2011) 246 P.3d 944.**

The State of Arizona (state) appealed the Arizona superior court's modification of a child support order. The Arizona Court of Appeals vacated the order and remanded with instructions.

In February 2000, an Arizona court ordered Ralph Tazioli to pay $514 per month to his former wife (Mother) for child support. Shortly after the Arizona court issued the order, Tazioli, Mother, and their child moved out of Arizona. The address for Mother and child is protected. In 2008, after failing to pay child support and accumulating a substantial arrearage, Tazioli petitioned an Arizona court for a downward modification of his monthly support obligation. At the hearing held in 2009, Tazioli and the state appeared, but Mother refused to submit to the jurisdiction of Arizona. The parties were ordered to submit memoranda concerning jurisdiction and other issues, and a new hearing was scheduled. At the next hearing, Mother was not present and was not represented by counsel. In June 2009, the court asserted continuing exclusive jurisdiction and modified Tazioli's child support order. The state appealed, arguing that the Arizona court lacked jurisdiction to modify the order because the parties no longer lived in that state.

The Arizona Court of Appeals ruled that Arizona lost its continuing exclusive jurisdiction over Tazioli's child support order when all the parties moved out of state, and Mother had refused to consent to Arizona's jurisdiction. With regard to Tazioli's argument that he was unable to file in the proper jurisdiction because he did not know where Mother currently lived, the Court of Appeals noted that both the state and the clerk of the superior court had been in contact with her. The superior court was directed to forward Tazioli's petition to the appropriate tribunal or support enforcement agency for consideration of his request for downward modification. The appeals court vacated the lower court's order.

Non-Parentage Not a Defense When Order Is Registered for Enforcement

***Department of Human Resources, ex rel. Andrea Allison v. Keith Mitchell* (Md.Ct.App 2011) 12 A.3d 179.**

The Maryland Department of Human Resources, Office of Child Support Enforcement (DHR), appealed the lower court's decision to vacate the registration of both a New York child support order and a subsequent Maryland consent order, and to nullify Keith Mitchell's child support arrears for his daughter. The Court of Special Appeals of Maryland reversed and remanded.

Mitchell and Andrea Allison were divorced in New York in March 1992. The divorce decree gave custody of their two children to Allison, and Mitchell was ordered to pay $62 per week in support. In January 2007, DHR filed the New York support order in Maryland pursuant to UIFSA. In March 2007, DHR requested modification of the child support order based on changes in incomes. In his answer, Mitchell denied any material change that would warrant an increase in support. He also raised the matter of their son's emancipation and asked the court to reduce the number of minor children to one. Mitchell later withdrew his opposition. In June 2007, DHR and Mitchell filed a consent modified child support order. In the consent order, Mitchell's child support obligation increased to $483 per month for the daughter but eliminated ongoing support for the son. The consent order set arrears for both children at $41,346. On the same day the consent order was filed, Mitchell filed a request to set aside the declaration of

paternity and requested modification of child support with regard to their daughter, claiming he was in the military when she was conceived. Mitchell requested a DNA test. DHR filed no response, and the court granted his request for testing. DHR filed the test results excluding Mitchell as the daughter's father as well as a response to Mitchell's request to set aside the declaration of paternity and to modify support. In its response, DHR argued that Mitchell's paternity of the daughter had been determined by New York law, and the issue of paternity could not be raised in a UIFSA action. A hearing was held and the court ruled there had been no determination of paternity by New York, that the defense of paternity was available to Mitchell, and it was "kind of a logical absurdity to require him to continue paying" for a child who was not his. An order issued in February 2008 excluding Mitchell as the daughter's father; vacating both the registration of the New York support order and the consent order; and nullifying arrears owed for the daughter. DHR appealed.

The Maryland Court of Appeals relied on New York decisions where the courts ruled that the determination of paternity was necessarily made prior to an order of support being issued because only a parent can be ordered to support his or her child. In Mitchell's case, the divorce decree refers to both the son and daughter as "the children of the marriage," and orders Mitchell to pay support for both of them. Therefore, the Maryland appeals court found that the divorce decree was a determination of Mitchell's paternity for both children, and not merely a presumption. With regard to the lower court's finding that UIFSA provided an opportunity for Mitchell to challenge paternity, the Maryland appeals court found that Mitchell was barred from raising this defense. In a UIFSA proceeding, a party may not plead non-parentage if the party has already been determined to be the parent by another state. The court found that Mitchell's argument that he could raise the defense under Maryland law because the presumption of parentage created by the marriage was rebutted by the genetic test was not persuasive. In enacting UIFSA, the Maryland Legislature had expressly stated that "non-parentage is not 'a defense under the laws of this State' to the validity or enforcement of a registered order under UIFSA." The court also found that even if Mitchell could have raised such a defense, he waived that right when he withdrew his opposition to the registration in April 2007. In addition, Mitchell failed to raise the paternity issue in his February 2007 answer to the filing of the New York child support order in Maryland, and his June 2007 request to set aside the declaration of paternity was filed too late. Thus, the registration of the New York order was confirmed.

The court then looked at Mitchell's contention that Maryland became the state with continuing exclusive jurisdiction when the consent order was filed. Mitchell argued that the order was now a Maryland order, the matter was no longer a UIFSA proceeding, and the defense of non-parentage was no longer barred. The Maryland appeals court found no support for Mitchell's proposition that UIFSA no longer applied to registered foreign orders that have been modified by another state. While UIFSA "empowered the circuit court to modify the New York support order," Maryland did not have the power to vacate the New York order or render a determination of paternity. The appeals court reversed and remanded.

Louisiana Has No Authority to Modify Georgia Order

***Honei Otwell v. Jody Otwell* (La. Ct.App. 2011) 56 So.3d 1232.**

Jody Otwell appealed the Louisiana court's modification of a Georgia child custody and support order. The Louisiana Court of Appeal reversed.

Jody and Honei Otwell were divorced in Georgia in 2009, and have two minor children. Shortly after the divorce, Honei and the children

moved to Louisiana, but Jody remained in Georgia. In 2010, Honei filed a motion to modify visitation and child support in Louisiana. Jody claimed Louisiana lacked subject matter jurisdiction. In July 2010, the Louisiana court substantially modified the Georgia order. Jody appealed.

The Louisiana Court of Appeal ruled that, under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) and UIFSA, Louisiana lacked subject matter jurisdiction to modify either custody or child support in this case. With regard to the modification of child support, the court found that the tenets of UIFSA gave Georgia continuing exclusive jurisdiction over child support matters as long as Jody lived there. Therefore, Louisiana lacked authority to modify the Georgia order. The appeals court reversed the lower court's decision and reinstated the unmodified Georgia order.

UIFSA Did Not Apply to 1991 Kansas Order
***Diane Dandurand v. Kevin Underwood* (Mo. Ct.App. 2011) 332 S.W.3d 907.**

Kevin Underwood appealed the lower court's denial of his motion to terminate child support. The Missouri Court of Appeals affirmed.

Underwood and Diane Dandurand were divorced in Kansas in 1991, and had two minor children. In the divorce decree, Underwood was ordered to pay $466 per month "until further order of the Court." In 1992, Dandurand and the children moved to Missouri. In 1996, Dandurand requested modification of the child support order in Missouri. Underwood contested jurisdiction and filed a motion to dismiss. The court denied the motion to dismiss and set Dandurand's motion to modify for trial. Shortly thereafter, Dandurand registered the Kansas decree in Missouri. In 1997, the Missouri court increased Underwood's child support to $587 per month. Underwood did not appeal the modified order or the denial of his motion to dismiss.

In 2004, Dandurand filed another motion in Missouri to increase child support. Underwood contested the merits of the motion, but did not contest Missouri's personal or subject matter jurisdiction. He also did not request that his child support obligation terminate when his children turned 18. In 2005, the Missouri court increased Underwood's child support to $741 per month. Underwood did not appeal that order.

In 2009, Underwood filed a motion in Missouri to terminate child support because their oldest child was 21 and the youngest child had just turned 18. Underwood requested that his children be declared emancipated under Kansas law. In response, Dandurand argued that Missouri law controlled, and under Missouri law the youngest had not yet emancipated because he was under the age of 20 and attending school. In 2010, the court denied Underwood's request to terminate child support. Underwood appealed, claiming UIFSA prohibited Missouri from modifying his child support beyond the durational limits set by Kansas law.

The Missouri Court of Appeals first noted that the order was registered in Missouri under the Uniform Reciprocal Enforcement of Support Act (URESA) that existed prior to the January 1, 1997, adoption of UIFSA. As a result, UIFSA's rule that the duration of child support is set by the issuing state and cannot be modified by an enforcing state was not applicable to this case. The court found no merit to Underwood's argument that UIFSA applied because the decree was modified after Missouri adopted UIFSA. The court noted that Missouri law clearly states that UIFSA applies only to orders "filed or received" after January 1, 1997, and any modification of the order had no bearing on which act applied. The court also ruled that there was no "bright line" rule in determining whether the Full Faith and Credit Clause required an enforcing state to follow the duration laws of the issuing state. The appeals court noted that a balancing test

was needed to determine whether Missouri's interest in protecting its resident child outweighed Kansas's interests in protecting its sovereignty. In addition, Underwood submitted to two modifications by Missouri without contesting or appealing the results, and he had continued to pay child support for the older child until he turned 21. Based on the facts of the case, the Missouri Court of Appeals ruled that the Full Faith and Credit Clause did not require Missouri to apply Kansas law with respect to duration of support. The appeals court affirmed the lower court's order. (NOTE: This case is limited to its facts. Generally, UIFSA applies to all child support obligations including orders issued before its enactment. However, Missouri appears to have a specific statute limiting retroactive application. In addition, the parties accepted Missouri's jurisdiction and litigated the issues several times in that state.)

Modification of Child Support Improper in a Contempt Proceeding

***Jami Baars v. Richard Freeman* (Ga. 2011) 708 S.E.2d 273.**

Jami Baars appealed the trial court's modification of a divorce decree and its rulings regarding contempt. The Georgia Supreme Court affirmed in part, reversed in part, and remanded.

Baars and Richard Freeman were divorced in Georgia in 2001, and a settlement agreement was incorporated into their divorce decree. Baars was given legal and physical custody of the child, and Freeman was ordered to pay weekly child support. In 2003, Baars filed for contempt against Freeman for failing to pay child support. At a hearing in 2004, Freeman failed to appear and he was found in contempt. That same year, Freeman moved to England. Baars and their son moved to Holland where they remained until they returned to Georgia in 2008. At that time, Baars asked Georgia's Department of Human Resources (DHR) to assist her in filing for reciprocal enforcement of child support in England. In 2009, Freeman filed a motion for contempt in Georgia because Baars had terminated his telephone contact with their child. A short time later, Baars filed a petition for contempt against Freeman in Georgia for failing to pay child support and comply with the settlement agreement. At the hearing on the contempt motions filed by both parties, Freeman testified by telephone from England. The trial court found Baars in contempt for denying Freeman visitation and communication, found both parties in contempt for disparaging one another, and declined to find Freeman in contempt for failing to pay child support. The court also modified the divorce decree by splitting medical expenses not covered by insurance between the two parties instead of having Freeman be responsible for all of them. Baars appealed.

The Georgia Supreme Court found that the trial court did not have authority in a contempt proceeding to modify the terms of a divorce decree. The court then addressed Baars's contention that the lower court erred when it declined to find Freeman in contempt for failure to pay child support due to "a lack of evidence of an amount certain and those proceedings in the Courts of the United Kingdom." The Georgia Supreme Court noted that the parties had stipulated to an amount Freeman owed in child support prior to the hearing, so there was an "amount certain" at issue. In addition, by concluding that the proceeding in England precluded a Georgia court from ruling on the issue of failure to pay support, the lower court failed to follow the provisions outlined in UIFSA. In this case, Georgia had continuing exclusive jurisdiction over the divorce decree, and England was being asked to assist in enforcement. Therefore, the Georgia court was authorized to decide whether Freeman was in contempt for failing to pay child support and to impose any sanctions necessary. As for Baars's argument that the lower court should have dismissed Freeman's contempt motion because he testified by telephone, the Georgia Supreme Court found

that UIFSA allows for a party who resides in another jurisdiction to testify by telephone. In addition, the court found that Baars's failure to allow Freeman to communicate with his child was a violation of the settlement agreement, and the lower court did not abuse its discretion when it found Baars to be in contempt. The Supreme Court remanded the case for further proceedings.

Determination of Domicile Needed to Establish Jurisdiction

***Korilee Lilly v. Aaron Lilly* (Utah Ct.App. 2011) 250 P.3d 994.**

Aaron Lilly appealed the lower courts dismissal of his petition to modify a California child support order. The Utah Court of Appeals reversed and remanded.

Aaron Lilly was born and raised in Utah and lived there prior to being stationed in California while on active duty in the U.S. Marine Corps. Lilly claims his residence is still Utah because he pays Utah taxes, votes in Utah, has a Utah driver's license, and plans to return to Utah when he is no longer in the Marine Corps.

In 2001, Aaron married Korilee in Utah and they had one child. In 2005, Korilee filed for divorce in California where they were living at the time. The divorce was final in 2006. The decree ordered Aaron to pay $1,000 per month in child support. Prior to the decree being issued, Korilee and their child moved back to Utah where they currently reside. In 2007, Aaron requested modification of the California child support order in Utah, arguing that Utah had jurisdiction to modify because it was the resident state of all the parties. In 2008, a Utah court denied Aaron's petition for lack of subject matter jurisdiction because Aaron physically lived in California. At the same time, Korilee filed a petition to modify in California. The California court granted her petition based on its personal jurisdiction over Aaron, and raised Aaron's monthly obligation to $1,225. Aaron appealed the Utah court's decision that it lacked subject matter jurisdiction.

On appeal, Aaron argued that Utah had jurisdiction because the terms "residence" and "reside" as used in UIFSA mean a person's legal residence or domicile. Korilee countered that the terms mean physical residence. The Utah court noted that "residence" and "reside" were open to a wide array of interpretations and could mean either domicile or physical residence. In this case, however, the court's determination would rest on what definition best supported the purpose of UIFSA. The Utah appeals court summarized a California case, *In re Marriage of Amezquita* (2002) 124 Cal.Rptr.2d 887, where the 3DCA ruled that the term "residence" as written in UIFSA meant domicile because it was the purpose of UIFSA to ensure that only one state had jurisdiction over an order at any given time. Thus each party could have only one "residence" or domicile. The Utah court agreed with the 3DCA's reasoning, and found that "interpreting the terms 'residence' and 'reside' to mean domicile ensured that the authority to modify a child support order was confined to one jurisdiction" and coincided with the purpose of UIFSA. In addition, the Utah appeals court noted that several other states had agreed with this analysis, and no other state has offered a different interpretation.

The appeals court next looked at the issue of whether the modification made by the California court deserved full faith and credit in Utah under either the Full Faith and Credit Clause (Clause) or the Full Faith and Credit for Child Support Orders Act (FFCCSOA). After a review of the provisions under both the Clause and FFCCSOA, the court found that California's modification of its order was only entitled to full faith and credit if California continued to have exclusive jurisdiction over the original child support order, and that UIFSA governed the determination. The Utah appeals court noted that California had determined only that it had personal jurisdiction over Aaron and

had not adjudicated the issue of subject matter jurisdiction. Therefore, the Utah court found it was necessary to remand the case back to Utah's lower court for a determination of whether Aaron's domicile was California or Utah, keeping in mind that military service members can maintain a domicile in a place where they do not physically reside. The appeals court reversed the lower court's decision that it lacked subject matter jurisdiction and remanded the case for further proceedings.
(NOTE: The writers of UIFSA and other experts disagree with *IRMO Amezquita* and its progeny. The term "residence" was intended to mean the place where the person physically resides. UIFSA authors have stated, "If we had meant 'domicile,' we would have used that term instead of 'residence.'" For a military member, the intent was that the state where the member was stationed would be the state with subject matter jurisdiction under UIFSA.)

CIVIL PROCEDURE

Notice of Appeal Not Late When Order Not "In a Public Place"
***Dawn Mosley v. Paul Mosley* (2010) 190 Cal.App.4th 1096; 119 Cal.Rptr.3d 11.**

The 4DCA declined to dismiss the appeal Dawn Mosley filed 13 days after the 180-day time limit.

In 2008, Paul Mosley successfully appealed a post-support modification order, and the case was remanded to the lower court for further proceedings. After several hearings on the matter, the judge signed a child and spousal support order on April 1, 2010, but the order was not filed in the court file, entered on the computerized case management system, or served on the parties. On two occasions, once in June and again in July 2010, Dawn contacted a superior court clerk by telephone and was told the order had not been filed. When Dawn went to the court to ask about its status, she was told the papers had been lost and to resubmit everything from both parties. In response, Dawn hand-carried Paul's proposed order and her objections to the superior court clerk. On September 13, 2010, the April 1 order was served on Paul's counsel with a notation that it had been located on August 20, 2010. Dawn was served with a copy of the April 1 order by Paul's attorney on September 18, 2010. Dawn filed her notice of appeal on October 1, 2010. The 4DCA considered dismissing the appeal because it appeared to be untimely. In response, Dawn filed a letter brief documenting the above facts. Paul did not submit a responsive brief and did not contradict or question Dawn's assertions.

The issue before the 4DCA was whether Dawn's notice of appeal, filed on the 193rd day after the April 1, 2010 order had been file-stamped, was untimely under California Rules of Court, rule 8.104(a)(3). This rule states that if there is no notice of entry of judgment, the notice of appeal must be filed within 180 days after the entry of judgment. Ordinarily orders are entered on the date the signed order is filed, and courts of appeal have no jurisdiction to extend the time to file a notice of appeal or to hear untimely appeals. However, the 180-day time limit presupposes that the filed order is available to the public even if a notice of entry of judgment is not served on the parties. In this case, the facts showed that the April 1, 2010 order was file-stamped but not accessible to the public. Thus the 180-day limit did not begin to run until the order was filed in a public place where Dawn could locate it. The 4DCA ruled against dismissing the appeal.

QUARTERLY QUOTATION: "In spite of the cost of living, it's still popular." Kathleen Norris

OF INTEREST

Statement of Decision Must Issue if Requested

Bulcao v. Bulcao [Unpublished], 2011 WL 193391 (Cal.App. 4 Dist.).

In this child support proceeding, the father requested a written statement of decision after the trial court modified his child support order. In reply to his request, the court stated that the findings would be contained in the computer-generated printout and no further written findings would issue. When the father made a second request for a statement of decision, the court again denied it.

The 4DCA cited Family Code section 3654 that states, "At the request of either party, an order modifying, terminating, or setting aside a support order shall include a statement of decision." It also noted that in *In re Marriage of Sellers* (2003) 110 Cal.App.4th 1007, the court found that a statement of decision was the appeal court's "touchstone to determine whether or not the trial court's decision is supported by the facts and the law." In this case, the computer printout did not explain what evidence the court relied on in determining the parties' incomes. The 4DCA reversed the lower court decision and remanded for, among other things, the issuing of a statement of decision.

STATE LEGISLATION

A.B. 1349

Summary: This bill provides that a voluntary declaration of paternity would be invalid if the child already had a presumed parent at the time the declaration was signed. This bill would allow the presumed parent to bring a motion to set aside the voluntary declaration of paternity. This proceeding would be included among the current exceptions to the provision that a voluntary declaration of paternity has the force and effect of a judgment of paternity. This bill would also allow a sperm donor to be treated as a natural father if it was agreed to in writing by both the donor and the woman prior to conception of the child.

Status: Enrolled in July 2011.

S.B. 375

Summary: This bill would allow a presumed father to request genetic testing within a reasonable time after he first learns that he may not be the biological father of the child. Currently, a man must request testing within two years of the birth of the child. This bill would also change the compelling state interest from determining paternity for all children to determining biological paternity for all children. This bill takes the position that establishing paternity for biological fathers increases respect for the judicial system, while imposing support obligations on a man who is not the biological father generates disrespect for the courts.

Status: Hearing cancelled by author in May 2011.

S.B. 377

Summary: This bill would invalidate a voluntary declaration of paternity signed by a minor unless it was also signed by the minor's parent or guardian. The Department of Child Support Services would be required to provide oral and written information about voluntary declarations of paternity to the parent or guardian.

Status: Hearing cancelled by author in April 2011.

FEDERAL LEGISLATION

H.R. 89

Summary: This bill, called the American Child Support Enforcement Immigration Act of 2011, would amend the Immigration and Nationality

Act to prohibit approval of a family-based immigration petition or a fiancé/fiancée nonimmigrant petition by a person who is behind in his or her child support payments. It would also allow the Secretary of Homeland Services to revoke a previously approved petition if a visa has not been issued or a status adjustment has not been effected.
Status: Referred to the Subcommittee on Immigration Policy and Enforcement in January 2011.

S. 195
Summary: This bill, referred to as the Child Support Protection Act of 2011, would reinstate federal matching of state spending of child support incentive payments.
Status: Referred to the Committee on Finance in January 2011.

CHILD SUPPORT IN THE NEWS

CALIFORNIA: Los Angeles attorney Mark Baer has found a unique way of reducing conflict when discussing child support with divorcing parents. Baer uses the U.S. Department of Agriculture's (USDA) annual Expenditures on Children by Families. Because the USDA report details how much it costs to raise a child for 17 years, Baer says it comes in handy as a neutral starting point for determining support. The USDA also has an interactive calculator on its website that allows parents to tailor a yearly estimate according to geography, income level, and other factors. Baer believes the USDA estimates give parents needed insight into the actual cost of raising a child. (See http://www.cnpp.usda.gov/expenditureson childrenbyfamilies.htm)

GEORGIA: A small child's godmother used her to run a child support scam on a former boyfriend. While babysitting the child at her house, the godmother convinced the man that he was the father. Since that time, he has paid more than $1,600 in child support. The girl, who was learning to talk, told him that he was not her dad. The godmother has been charged with five counts of theft.

LOUISIANA: An attorney who acts as a child support hearing officer took down two postings from his Facebook page after questions arose about the judicial ethics of making the statements. One post read: "Just had a fellow leave child support court. He works as a bouncer and has 23 children! I think he needs another job as he has way too much time on his hands!" The other post said his son thought his father should put, "Wanna know who's the baby daddy, stop this caddy," on the side of his Cadillac. Under the Louisiana Code of Judicial Conduct, a judge should act "in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

MASSACHUSETTS: In 1999, while presiding over a divorce involving child support and custody, Judge Robert Scandurra noted that there was more animosity between the attorneys representing the parties than there was between the divorcing parents. Acting on an impulse, Scandurra asked if he could meet with the father and mother in his chambers without the lawyers. To his surprise, everyone agreed to the idea. In the next two hours, the judge and the parents worked out support payments and a parenting schedule. In addition, Scandurra encouraged them to suggest wrestling when discussing sports participation with their reluctant 11-year-old son. Five years later, the boy went on to win first place at the National Wrestling Championships. The boy's father says of Scandurra, "When he brought us into chambers, we all turned the corner that day. . . . Wrestling brought everyone together."

ALSO IN MASSACHUSETTS: The Massachusetts Department of Revenue (DOR) has reduced the interest rate for past-due child support from 18 to 9 percent. At the hearing about the rate, members of Fathers and Families presented personal stories on the effects of interest charges on past-due child support. One father said he fell behind by $375 and ended up paying interest of $1,240. The DOR also relied on a 2007 study by the Urban Institute. The study found that arrears in states that did not charge interest on late child support increased by six times between 1987 and 2006, while the arrears in states that did charge interest increased tenfold, arguably demonstrating that charging interest did not reduce arrearages.

MICHIGAN: Lawrence Beck's children were made wards of the court in 2007 because their parents were chronic drug abusers. Both Beck and the children's mom were ordered to pay child support to the grandmother. The children were later returned to their mother. Beck, however, made no progress toward reunification, and his parental rights were terminated in 2009. The court continued his child support obligation. Beck appealed the continuing child support payments, claiming a violation of his right to due process. The Michigan Court of Appeals ruled that the termination of parental rights did not terminate parental obligations. The court noted that the two are not interdependent as parents can be ordered parenting time even if they are unable to pay support. Likewise, a child has the fundamental right to receive support from a parent regardless of whether that parent retains parental rights. Beck appealed to the Michigan Supreme Court and it affirmed, ruling that the Legislature's definition of parental rights does not include parental obligations. Thus, Beck's duty to support would continue until the child support order was modified or terminated. Because the trial court declined to modify or terminate Beck's order and there was no showing of abuse of discretion, Beck's obligation to pay child support remained intact. (*Dept. of Human Services v. Beck* (Mich. 2011) 793 N.W.2d 562.)

MINNESOTA: When Timothy and Jean Hanratty divorced in 1999, Jean was appointed conservator of their 21-year-old disabled son. The court ordered Hanratty to pay $2,000 per month in child support. In 2009, Jean placed the son in a group home that was paid primarily by the county medical assistance program. However, the son was required to contribute a monthly "spenddown" which was calculated by using Hanratty's child support payments as income. After the son moved into the group home, Hanratty filed a motion to terminate his child support obligation due to changed circumstances. Hanratty argued that the cost of the group home would be entirely covered by state and federal funding if there was no child support. Hanratty reasoned that because he paid so much in taxes, he was effectively funding his son's care twice by paying support. Hanratty also contended that his son was now self-supporting since he no longer lived with Jean and was eligible for a variety of services. The lower court denied Hanratty's motion because the son's disabilities had not changed since the 2002 child support order. Hence it would be unfair to allow Hanratty to shift the burden of supporting his son to the taxpayers. Hanratty appealed, and the appeals court affirmed, finding that the son continued to require 24-hour care, and it was neither unreasonable nor unfair to require a father with over $1.2 million in annual income to contribute to his disabled adult child. (*In re the Marriage of Hanratty*, 2011 WL 891178 (Minn.App.).)

TENNESSEE: When Mary Jean and Dean Cain were divorced in 1999, Mary Jean was awarded custody of their four sons and Dean was ordered to pay child support. Dean was also required to maintain a life insurance policy that designated Mary Jean as sole beneficiary

for as long as he was liable for child support. In 2000, Mary Jean, her boyfriend, and the two sons that lived with Dean made several attempts to kill Dean: (1) they boiled tobacco down to its poisonous form and put it in his tea; (2) they bought a gun and attempted to shoot his tires while he was driving; and (3) they planned to push him out of his fishing boat knowing that he could not swim. In their fourth and final attempt, one of the sons beat Dean with a baseball bat in his apartment and, with the help of the other brother, dragged him to the parking lot. When their plan to dump him in the river failed, they left him in the parking lot to be discovered by a neighbor the next day. As a result of the attack, Dean suffered permanent and disabling injuries, but he survived. Mary pled guilty to conspiracy to commit first degree murder and was sentenced to 20 years in prison. As a result of the attack, the superior court "vacated on a permanent basis" Dean's child support obligation to Mary. Instead, the oldest son was awarded child support to care for the youngest son, neither of whom had been involved in the conspiracies to kill Dean. Dean then removed Mary as the beneficiary of his life insurance policy and replaced her with his oldest son. Five years later, Dean passed away. From prison, Mary sought the life insurance proceeds, arguing that the divorce decree required Dean to leave her as beneficiary as long as he was liable for child support. When the lower court denied her motion, Mary appealed. The U.S. Court of Appeal, Eleventh Circuit, affirmed, finding that when Mary conspired to kill Dean and the superior court vacated the child support awarded to her, the provision requiring Dean to designate her as beneficiary was also vacated. The court found that it would make no sense to make a life insurance policy payable to a woman who no longer had any role in supporting the child. (*Hartford Life and Accident Insurance Company v. Cain,* 2011 WL 661496 (C.A.11 (Ga).)

TEXAS: Texas high schools are trying new initiatives to encourage teenagers not to have babies before they are ready. One of the programs is called Parenting and Paternity Awareness (PAPA). PAPA's focus is teenaged boys. It is one of the first large-scale efforts to educate kids on parental responsibilities using child support and paternity as the basis for the program. The other program, No Kidding, includes a Price Is Right-type exercise on the cost of baby items. Both programs invite teen parents to talk about the financial realities of raising a baby. Texas has the third-highest teen birth rate (63.4 per thousand teens). Mississippi is first, and New Mexico is second.

POLAND: DNA testing has resulted in the discovery that a rare set of fraternal twins do not share the same father. There are only seven sets of twins like this in the world. The mother divorced the father of the male twin and lives with the father of the female twin. Child support obligations are being worked out.

UNITED KINGDOM: Shortly after he was born in 1992, Brryan Jackson was in the hospital suffering from asthma. His father Brian, a blood transfusion specialist, was on the brink of divorcing Brryan's mom. Because of worry over paying child support, Brian went to the boy's hospital room and injected his son with HIV-tainted blood. When Brryan became ill in 1996, the doctors were shocked when he tested positive for AIDS. Although the doctors gave Brryan only five months to live, he is still alive today and planning to go to prom with his girlfriend. Brian was convicted of first-degree assault in 1998, and received a life sentence.

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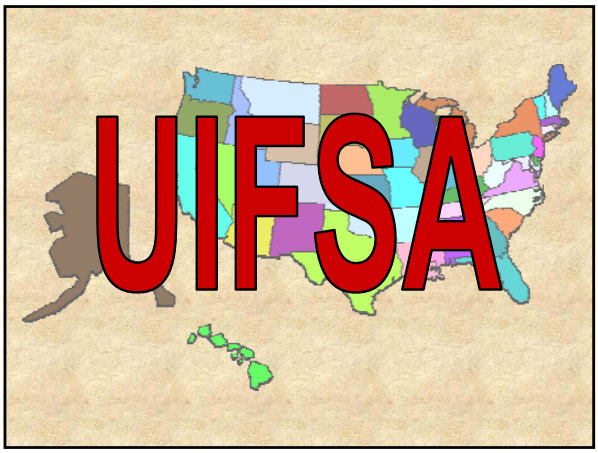
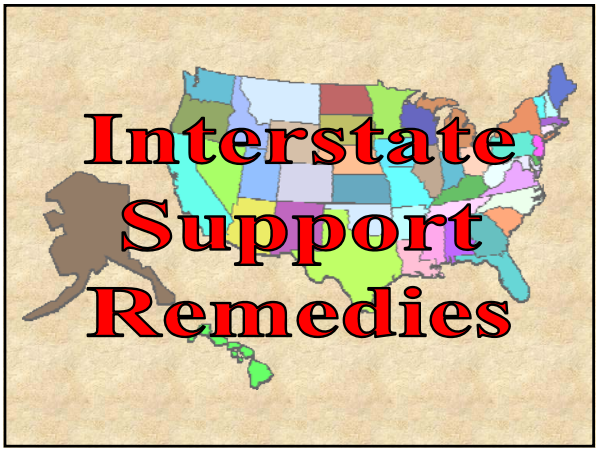
TAB R

UIFSA—Interjurisdictional Case Processing

Mr. Barry J. Brooks


UIFSA

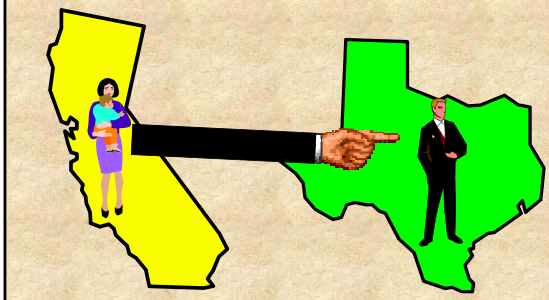

Interstate
Support
Remedies

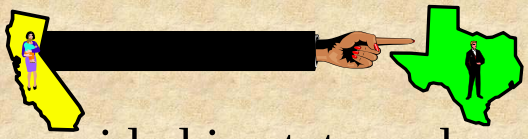

ONE ORDER
CEJ

C E J

Jurisdiction

- Subject Matter
- Personal





resided in state and
[illegible]
agreement
[illegible]
expenses or support
directives?
for the child

C E J

Continuing

Until “lost”

C E J

Exclusive

To

Modify

Enforcement

☺ Against the PERSON

☺ Against an ASSET

☺ Simultaneously in multiple States

☹ Interstate Income Withholding

Enforcement

↓

Registration

Registration

- Notice
- No Contest - Confirmation
- Contest - Limited Defenses

Enforcement

UIFSA

- Issuing State Law
  - Nature, Extent, Amount
  - Computation of Arrears
  - Interest Rate and Method
  - Defenses to Judgment

Enforcement

UIFSA

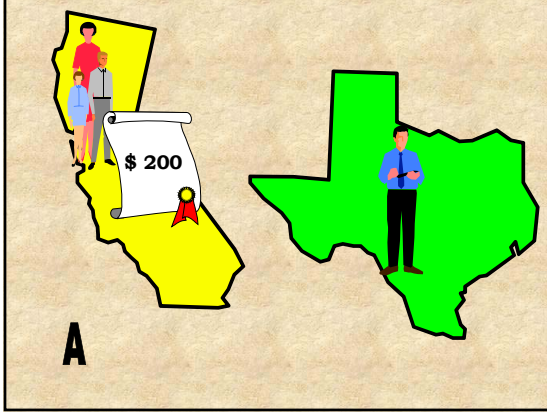
- Enforcing State Law
  - Defenses to Remedy
- Statute of Limitation
  - Longer of Issuing or Enforcing

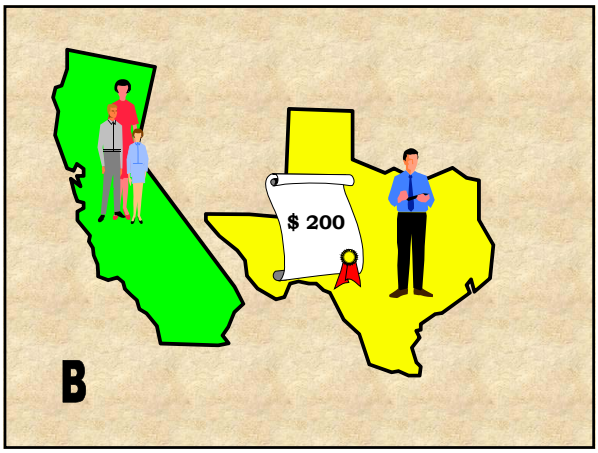
C E J

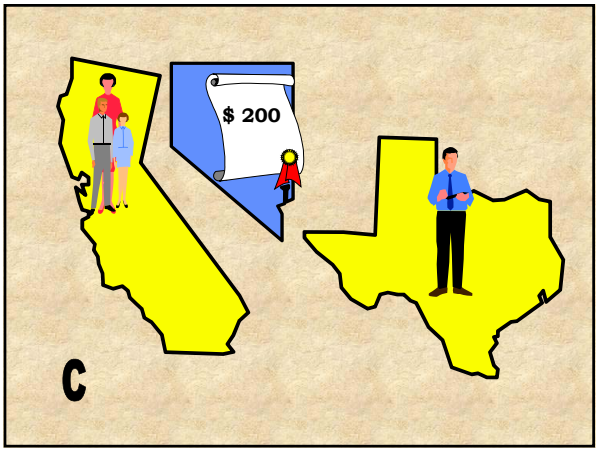
Exclusive

To

Modify







Modification

- Assumption Upon Showing
  - All Parties Left Issuing State
  - Petitioner is Nonresident
  - Jurisdiction over Respondent
- Agreement

Modification

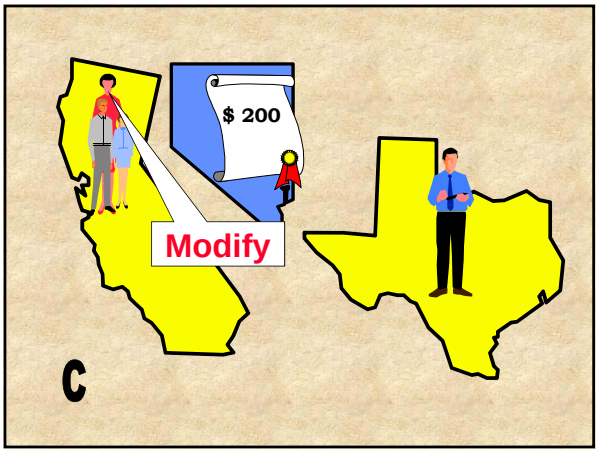
↓

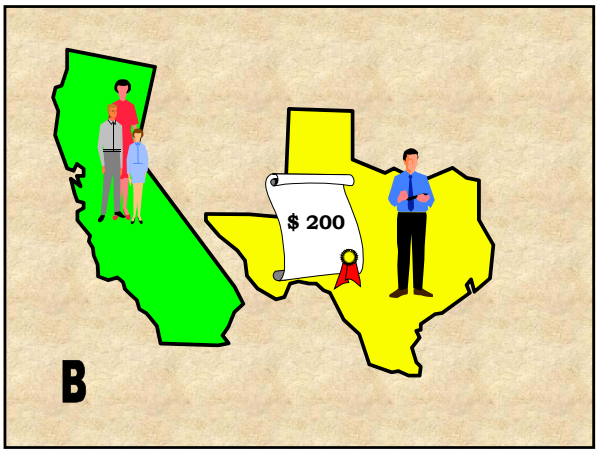
Registration

Modification

UIFSA

- Upon Assuming
  - Modify CHILD Support
  - NOT Spousal Support
  - Assuming State's Guidelines
- Can NOT Modify Duration

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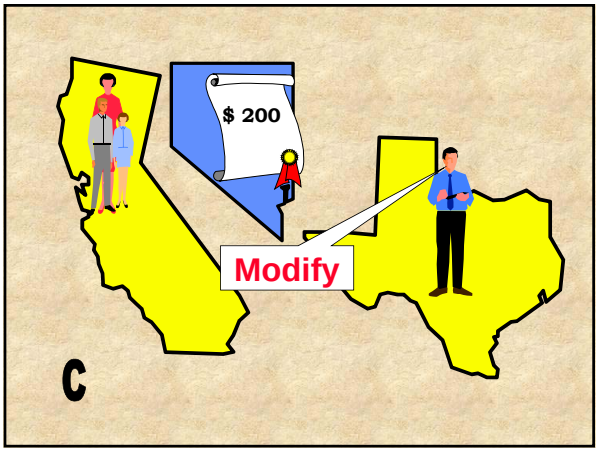
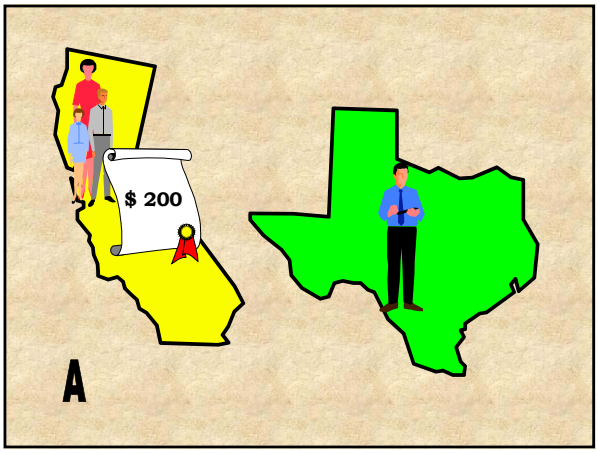

$ 200
Modify
C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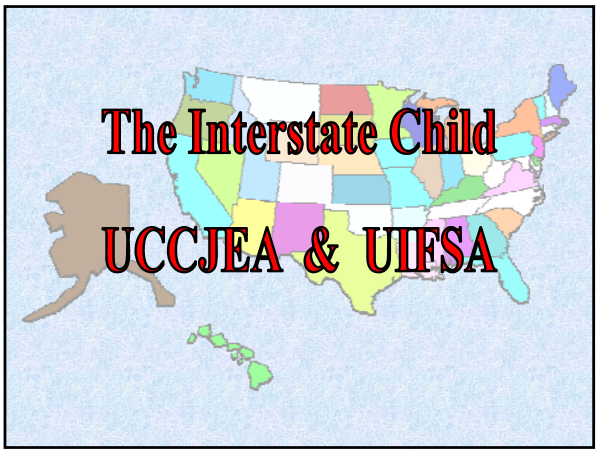


Origins

UIFSA ⟷ FFCCSOA

UCCJEA ⟷ PKPA

Jurisdiction
Subject Matter

UCCJEA	UIFSA
► Custody	Support
► Visitation	► Child
	► Spousal

Jurisdiction Additional

UCCJEA

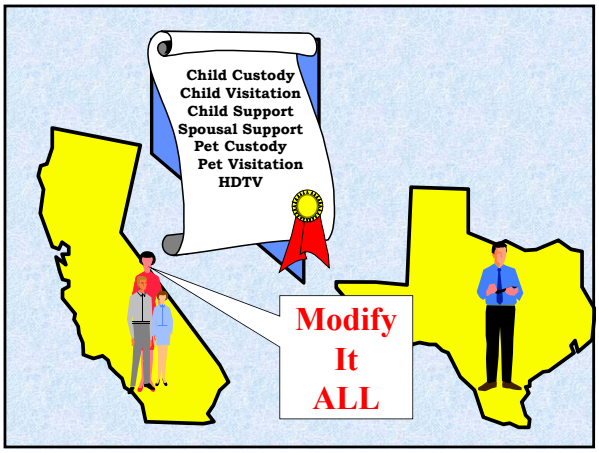
- "Status"
- Home State
- Significant Contacts

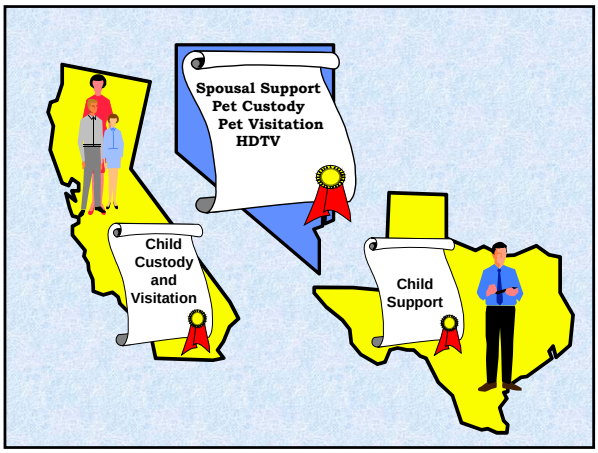
UIFSA

- Personal
- Long-Arm

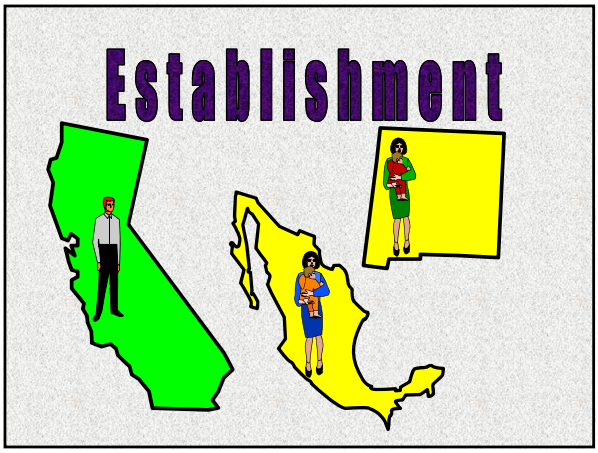
ONE ORDER

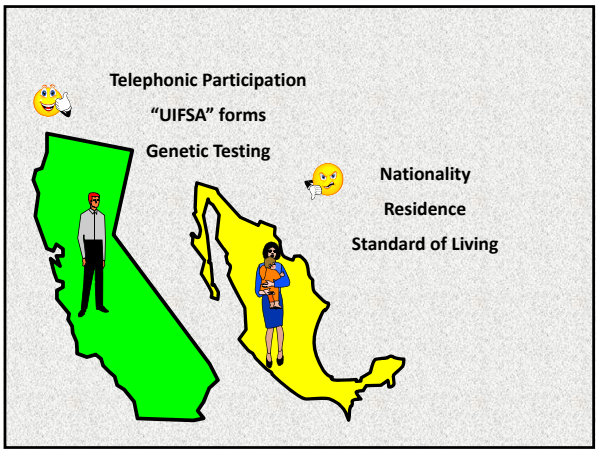
Exclusive Jurisdiction to **MODIFY**




Spousal Support
Pet Custody
Pet Visitation
HDTV
Child Custody and Visitation
Child Support


UIFSA
GOES
Interjurisdictional


Establishment



Enforcement

UIFSA 96

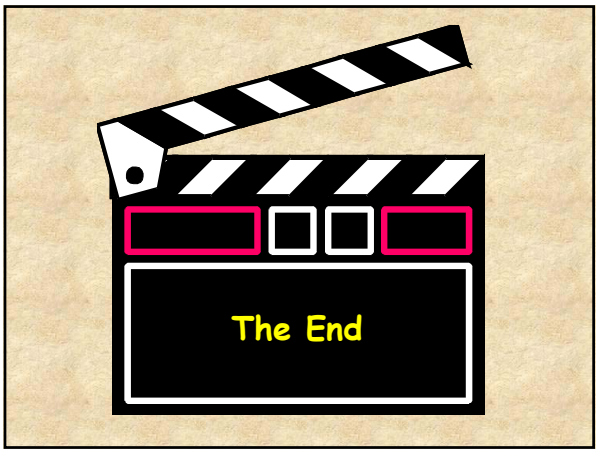
★ Similar to UIFSA, URESA or RURESA

★ (Comity)

Modification

UIFSA 96

If the "State" is a foreign jurisdiction that has not enacted a law substantially similar, consent to assume not required of the individual in this state.



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UIFSA - the Basics

I. **U**niform

A. Pursuant to **PRWORA** (Personal Responsibility Work Opportunity Recognition Act), all states were required to adopt UIFSA 96 by January 1, 1998 .

B. It is the only **NCCUSL** (National Conference of Commissioners on Uniform State Laws) Act to be federally mandated for adoption.

C. During the time states were adopting UIFSA, **FFCCSOA** (Full Faith and Credit for Child Support Orders Act, 28 U.S.C. 1738b) was enacted October 20, 1994, and contains similar provisions to UIFSA.

D. UIFSA was revised in 2001 and states can adopt UIFSA 2001 by obtaining a waiver from **OCSE** (Office of Child Support Enforcement) while awaiting federal legislation mandating its adoption.

E. UIFSA was revised again in 2008 to have it comport with the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance which the US Senate has approved. Implementation requires the enactment of **UIFSA 2008** by all states. Federal legislation to mandate adoption of UIFSA 2008 has not been introduced.

II. **I**nterstate

A. Applies any time not all parties are residing in the same state. EX: parties both in State O at the time of the divorce; one party now in another state and either party wants a modification.

B. Applies when a state is exercising long-arm jurisdiction.

C. UIFSA has always had the ability to apply to cases involving international residents or foreign jurisdiction orders and UIFSA 2001 enhances the ability.

D. Remedies are cumulative. § 103 [96], § 104 [01]

III. **F**amily **S**upport

A. "Family support" includes child and spousal support. § 101(21) [96], § 102(23) [01]

B. UIFSA does not apply to custody or visitation issues. § 104 [01]

IV. Users

A. UIFSA creates a State information agency to process incoming requests. § 310

B. UIFSA sets out the duties of the support enforcement (IV-D) agency in interstate cases. § 307

C. UIFSA is the law to be used by private practitioners. § 309

V. CEJ - Continuing, Exclusive Jurisdiction § 205

A. "Exclusive" means the exclusive jurisdiction to modify the prospective support obligation. Any tribunal with personal or *in rem* jurisdiction can enforce the obligation.

B. Having exclusivity results in ONE order.

1. **URESA** (Uniform Reciprocal Enforcement of Support Act) and **RURESA** (Revised Uniform Reciprocal Enforcement of Support Act) allowed for the creation of subsequent valid orders as the obligor moved from state to state. There was no requirement that the previous order be given full faith and credit as to prospective support. However, the obligation continued to accrue.

2. UIFSA & FFCCSOA contain the rules for determining the one prospectively "controlling" order when multiple, valid orders exist. § 207

3. Case law has held that subsequent orders created after the adoption of UIFSA or FFCCSOA are VOID since the tribunal lacked subject matter jurisdiction to enter them.

C. A tribunal may lose the exclusivity to modify child support, but will still retain the continuing jurisdiction to enforce the support obligation. § 206 [01]

D. The tribunal that issued the spousal support order retains the exclusive jurisdiction to modify it regardless of the location of the parties. § 205(f) [96], § 211 [01]

VI. Establishment

Long-arm Jurisdiction

A. UIFSA created a uniform set of criteria for asserting long-arm personal jurisdiction over a non-resident. § 201

1. The individual is personally served with summons within this state;

2. The individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;

3. The individual resided with the child in this state;

4. The individual resided in this state and provided prenatal expenses or support for the child;

5. The child resides in this state as a result of the acts or directives of the individual;

6. The individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;

7. [the individual asserted parentage in the [putative father registry] maintained in this state by the [appropriate agency];] or

8. There is any basis consistent with the Constitution of this state and the United States for the exercise of the personal jurisdiction.

B. While most of the bases are relevant to child support, these can also serve as a basis to assert personal jurisdiction for spousal support.

C. The long-arm bases are also the bases for establishing paternity under the **UPA** (Uniform Parentage Act). UPA § 604(b)

D. The tribunal that establishes the order applies its laws regarding the support amount and duration of the support obligation. § 303

E. Long-arm jurisdiction under this section of UIFSA cannot be used to modify an order unless the requirements of § 611 or § 615 are met. § 201(b) [01]

Two-State Case:

F. If a state cannot exercise long-arm jurisdiction over the non-resident to establish paternity and/or support, 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 tribunal that establishes the order applies its laws regarding the

support amount and duration of the support obligation and typically continues to enforce its order on behalf of the initiating state.

VII. Enforcement

A. 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.

B. UIFSA "legalized" the practice of sending a support order issued in a case in State O to an employer in State E. §§ 501-506

1. An employer who receives an order that appears "regular on its face" is to honor the order as if it was issued in the employer's state.

2. OCSE has promulgated a "federal form" to implement income withholding.

3. The terms of the obligation are fixed by the law of the state that issued the support order.

4. The process to be followed by the employer is determined by the law of the obligor's principle place of employment.

a. One component is the maximum that can be withheld.

b. Another component is the allocation of support when there are multiple obligees.

5. UIFSA allows for a withholding order to be sent from state A to an employer in state B based on a support order not issued by state A. The payment destination cannot be changed from that of the underlying support order. OCSE PIQ 01-01.

6. If the employee wishes to contest the withholding order, it may be done in the employer state, in the same manner as if the order had been issued in the employer state. § 506

C. UIFSA provides processes for enforcement and modification but is not the exclusive enforcement remedy.

1. Administrative enforcement without Registration is limited to support enforcement agencies. § 507

2. Other non-UIFSA remedies:

a Lien

b. **UEFJA** (Uniform Enforcement of Foreign Judgments Act), but not **UFMJRA** (Uniform Foreign Money Judgments Recognition Act)

c. FIDM, IRS intercept and passport denial – available to IV-D agencies

VIII. Registration §§ 601- 603, §§ 605 - 610

A. The initial process for enforcement and modification.

1. The registering party provides the tribunal with a certified copy of the order and an arrears calculation.

2. The clerk of the tribunal sends the nonregistering party a Notice that includes the amount of asserted arrears along with a copy of the order.

3. The Notice informs the nonregistering party that failure to contest in the statutory time allowed results in confirmation, by operation of law of:

a. The validity of the order

b. The amount of arrears

B. A remedy can be sought simultaneously with Registration

C. A limited number of 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

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

9. Nonparentage is not a defense § 315

IX. Modification § 611, § 613, § 615 [01]

A. The tribunal that issued the spousal support order retains the exclusive jurisdiction to modify regardless of the location of the parties.

B. The tribunal that issued the child support order retains the exclusive jurisdiction to modify:

1. So long as the obligor, individual obligee, or child resides in the state at the time of filing.

2. The parties who are individuals have filed written consent for the issuing tribunal to continue the exclusive jurisdiction. § 205 [01]

C. Another tribunal can assume the exclusive jurisdiction to modify child support

1. If it determines:

a. The obligor, individual obligee, and the child have left the issuing state;

b. The party seeking the modification is not a resident of the state being asked to assume jurisdiction; and

c. The tribunal has jurisdiction over the respondent to the motion to modify.

2. The parties agree that a tribunal with jurisdiction over at least one individual party can assume jurisdiction

3. No consent is needed if all parties move to the same state.

D. If the conditions for assumption of jurisdiction are met, the consent of the original issuing tribunal is not an issue.

E. Upon assuming jurisdiction, the tribunal

1. Can prospectively modify the support amount in accordance with the guidelines of the assuming state

2. Cannot modify the duration of the support obligation unless it was modifiable in the original issuing state.

F. When all parties have left the issuing state with one in another US state and the

other in another country, the original order state retains the exclusive jurisdiction to modify and the "play away" requirement does not apply § 611(f) [08]

X. Multiple Orders § 207

A. URESA and RURESA allowed for the creation of subsequent valid orders as the obligor moved from state to state. There was no requirement that the previous order be given full faith and credit as to prospective support. However, the initial obligation continued to accrue. In applying UIFSA, a consolidated arrears amount should be obtained. This is accomplished by accruing at the highest amount in existence at the time.

B. UIFSA & FFCCSOA contain similar rules for determining the one prospectively "controlling" order when multiple, valid orders exist. (Note: this process applies to original orders issued before 10/20/94.)

1. If only one issuing state still has a person residing in it, that state's order controls.

2. The order in the "home state" of the child always controls.

3. If there are multiple orders, none in the child's home state, but orders in both the obligee's and obligor's states, the most recent order controls. (This most often occurs when the obligee and child have moved within the last six months, so the child doesn't have a "home state".)

4. If there are multiple orders and no one (obligor, individual obligee, or child) resides in any state that issued an order, a tribunal with jurisdiction must establish a new, controlling order and apply its guidelines and duration.

5. In determining the prospectively controlling order or issuing a new controlling order, the tribunal should make a finding of the consolidated arrears under all previous, valid orders.

Resources

The home website of the National Conference of Commissioners of Uniform State Laws which contains information about the adoption of Acts:
http://www.nccusl.org/Update/

The latest version of Uniform Acts as well as copies of drafts of those acts:
http://www.law.upenn.edu/bll/ulc/ulc.htm#drafts

The Office of Child Support Enforcement has
http://www.acf.dhhs.gov/programs/cse/index.html

a link to the Online Interstate Roster and Referral Guide (IRG)
http://ocse3.acf.hhs.gov/ext/irg/sps/selectastate.cfm

a link to Forms, Reports, & Other Resources [withholding, lien, and "UIFSA" forms] choose "Selected ACF/OCSE Forms"
http://www.acf.hhs.gov/programs/cse/forms/

NCSEA also has helpful resources
http://www.ncsea.org/resources/links.php3

John J. Sampson & Barry Brooks, *Uniform Interstate Family Support Act (2001) With Prefatory Note and Comments (With Still More Unofficial Annotations)*, 36 FAM. L. Q. 329 (2002) (Available on Westlaw and Lexis).

John J. Sampson, *Uniform Interstate Family Support Act (1996) (with More Unofficial Annotations by John J. Sampson)*, 32 FAM. L. Q. 385 (1998).

According to the NCCUSL website, as of August 10, 2011, the following 22 states have enacted UIFSA 2001:

Arizona
California
Colorado
Connecticut
Delaware
District of Columbia
Idaho
Illinois
Maine
Mississippi
Nebraska
Nevada
New Mexico
Oklahoma
Rhode Island
South Carolina
Texas
Utah
Virginia
Washington
West Virginia
Wyoming

According to the NCCUSL website, as of August 10, 2011, the following 9 states have enacted UIFSA 2008:

Florida
Maine
Missouri
New Mexico
Nevada
North Dakota
Tennessee
Utah
Wisconsin

International Child Support Cases under UIFSA 2001

Barry J. Brooks

When a State enacts the revisions to the Uniform Interstate Family Support Act promulgated by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 2001 (UIFSA 2001)[1], the ability of attorneys and courts to prosecute international child support cases is enhanced. Before discussing the international aspects, several general observations are appropriate.

UIFSA in general

Since it's original version, UIFSA has provided a legal construct for interstate and international family support cases. With regards to support, there is one tribunal that has the exclusive jurisdiction to modify the existing support order.[2] The exclusive jurisdiction to modify child support remains with the original order issuing tribunal except in very specific circumstances when another tribunal can assume the jurisdiction. The exclusive jurisdiction to modify spousal support always remains with the original order issuing tribunal.[3] This continuing, exclusive jurisdiction (CEJ) has been held to be subject matter jurisdiction. Thus, subsequent orders entered contrary to the provisions are void.[4]

UIFSA applies in all cases where not all of the parties reside in the same State. This can include actions in the order issuing State to modify that order. UIFSA sets out the procedures available to all parties - residents, non-residents, obligors, obligees, petitioners, and respondents. The parties can reside in another State or another country. Use of UIFSA is not restricted to support enforcement agencies. It also is available to private practitioners.[5]

UIFSA only applies to issues related to family support. Family support does include spousal support.[6] In determining whether there is a duty of support to a child, the issue of paternity may also be involved. What are not in issue in a UIFSA case are custody and visitation.[7] In the situation where not all parties reside in the same State, custody and visitation matters are governed in most States by the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). The UCCJEA has separate and distinct jurisdictional requirements that must be met independent of those related to support. These requirements also involve subject matter jurisdictions. An attempt to commingle custody and support often can result in a partially void order.

In discussing the various scenarios, it is posited that the child resides with the obligee who is the mother of the child. It is also assumed that the obligee is the party requesting the action, unless otherwise noted. Lastly, the discussion will be in the context of seeking child support. As mentioned above, UIFSA is the statute by which a nonresident can also seek to establish or modify a spousal maintenance order.

Because of distinctions that will impact enforcement issues, the term "U.S." includes States of the United States, the District of Columbia, Puerto Rico, Guam, and the United State Virgin Islands and is used synonymously with "IV-D state". "Foreign" denotes residence in a

non-"IV-D state" or an order issued by a tribunal in a foreign jurisdiction that is not a "IV-D state". For the illustrations, the State of Texas is used.

Establishment - Obligor is a resident of Texas; Obligee is a foreign resident

Perhaps the easiest situation to explain and handle is where there is no existing order and the potential obligor resides in Texas. The nonresident obligee can submit to the personal jurisdiction of Texas just as she can in any other civil action. Whether the nonresident resides in another "UIFSA state" is not relevant to the personal jurisdiction issue. The "UIFSA state" issue will be discussed later in connection with enforcement actions. When the nonresident obligee submits to the personal jurisdiction of Texas, Texas courts will also have personal jurisdiction over the resident, potential obligor and subject matter jurisdiction over the duty of support issue.

After obtaining the requisite personal and subject matter jurisdiction, an interstate or international establishment case is pursued the same as an intrastate child support case. Texas courts apply the applicable provisions of the Texas Family Code (TFC), including the Uniform Parentage Act (UPA).[8] There are no choice of law issues. The amount of support is set in accord with Texas child support guidelines and the duration of the support obligation is in accord with Texas law.

As noted above, the nonresident obligee has only submitted to the personal jurisdiction of Texas for purposes of obtaining child support. This does not confer the requisite subject matter jurisdiction needed to establish a custody or visitation order.

Establishment - Obligor is a foreign resident

UIFSA also sets forth the legal basis for Texas to establish a support order when the potential obligor is not a resident of Texas. Again, whether the nonresident resides in another "state" is not relevant. In fact, it is possible for Texas to establish an order in a case where neither the obligor nor obligee currently reside in Texas. The relevant factor is whether the obligor has taken some action related to his duty of support that provides a sufficient "nexus" with Texas. Seeking to make the assertion of personal jurisdiction as broad as possible while still adhering to fundamental U.S. Constitutional standards, UIFSA specifies:

> § 201(a) In a proceeding to establish or enforce a support order or to determine parentage, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:
>
> (1) The individual is personally served with summons within this state;
>
> (2) The individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
>
> (3) The individual resided with the child in this state;
>
> (4) The individual resided in this state and provided prenatal expenses or support for the child;

> (5) The child resides in this state as a result of the acts or directives of the individual;
>
> (6) The individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;
>
> (7) the individual asserted parentage in the [parentage registry] maintained in this state by the [bureau of vital statistics]; or
>
> (8) There is any basis consistent with the Constitution of this state and the United States for the exercise of the personal jurisdiction.

In setting out what actions may be sufficient for obtaining personal jurisdiction, a caveat remains that the action must be timely and meet a "minimum contacts" scrutiny. Thus, having one sex act in Texas that possibly resulted in conception or last residing with the child twelve years ago may not be sufficient. The minimum contacts issue is an inquiry into whether there is some course of conduct or ongoing relationship with the forum state. A component is the timeliness of the contacts relative to the time of filing the action. Perhaps a better example is the fact that the Drafting Committee specifically rejected as a basis for long-arm jurisdiction the fact the father acknowledged the child in the birth records of the state. It was thought that many people cross state lines for better birthing facilities and that basis alone should not create personal jurisdiction.

While the bases are more focused on child support, items (1), (2), and (8) may be used for the establishment of a spousal support obligation. Of all the ways to obtain personal jurisdiction, perhaps the most overlooked on both sides of the litigation is the fact that personal jurisdiction can be obtained by conscious submission to the jurisdiction or by inadvertence in failing to properly raise the issue. Or, submission may be an informed decision based upon considerations of the amount and duration standards for Texas versus some other venue.

The list of actions supporting personal jurisdiction attempts to be as inclusive as possible. However, there is another omission that is deliberate and has impact in the international situation. United States jurisprudence does not recognize jurisdiction based solely on the nationality or "home state" of the child. A child being born to one or more Texans or having resided in Texas for a number of years does not confer jurisdiction upon a Texas court to order a person with no other or current contacts with Texas to pay child support. This issue does arise and will be discussed later in regards to the enforcement of another nation's order.

Conversely, there is a basis for personal jurisdiction that may create difficulties for future enforcement in another country. The assertion of personal jurisdiction based on serving the person while in Texas is sometimes referred to as "tag jurisdiction". Some nations do not recognize this as a sufficient basis. It should also be noted that a one-time visit to Texas without other "minimum contacts" may not be sufficient under U.S. law.

In establishing a Texas order against a resident of another country, the practitioner must be mindful of service of process issues. Initially, to be a valid Texas order, the service laws of Texas must be followed. This may include obtaining a private process server in another country. Even when only domestic enforcement is contemplated, the service of process must not violate the laws of the country where the service is accomplished. If there is any contemplation that the

Texas order obtained against the nonresident will be enforced in another nation, service of process acceptable to the laws of the potential enforcing country must be accomplished. This may include service under The Hague Service Convention or Inter-American Convention on Letters Rogatory. The U.S. is a member of both service conventions.

Like the establishment case against a resident of Texas, the issues when the obligor is a nonresident subject to personal jurisdiction are resolved the same. The laws and procedures of Texas apply to all issues. Assuming Texas is the "home state" of the child, a proceeding against a nonresident for support under UIFSA may be joined with a proceeding for custody and visitation under the UCCJEA.

Enforcement - U.S. Order

Enforcement of a child support order is generally premised on the enforcing tribunal having either personal jurisdiction over the obligor or *in rem* jurisdiction over some asset of the obligor. With the proliferation of multinational employers and the advent of rather intrusive databases, *in rem* enforcement actions against an asset are increasing. Often a foreign resident obligor may own property or have financial institution accounts in the U.S.

When the order being enforced has been issued by another U.S. "state", UIFSA and other laws provide various procedures by which that order is to be given "full faith and credit". Because of case law that supported the establishment of multiple orders for prospective support instead of giving prospective full faith and credit to an existing order, the federal Full Faith and Credit for Child Support Orders Act (FFCCSOA at 28 U.S.C.A. 1738B) was enacted in 1994. Consistent with UIFSA, it provides an expansive definition of the "states" to which it applies:

> "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and Indian country (as defined in section 1151 of title 18).

Because it is a federal law, appropriately absent is any inclusion of foreign nations as "states". As a federal statute, it reaffirms the U.S. Constitutional principle that one State will honor the child support judgments of another State and not re-litigate the core issues. When FFCCSOA and UIFSA are read in conjunction, they provide the framework for the one order, CEJ concept.

If a Texas court is being asked to enforce a Texas order, long standing rules of judicial notice and transfer of venue enable the enforcing tribunal to know the contents of the order being enforced. UIFSA implemented a "registration" process for non-Texas orders to achieve the same result.[9] However, the process has some significant additional components. The UIFSA registration process is a shifting of the traditional burdens regarding the validity of an order. The registering party has the Clerk of the Court send a Notice of Registration to the nonregistering party, usually the obligor. Along with a copy of the order, the Clerk notifies the nonregistering party of an alleged arrears amount. The nonregistering party is given 20 days in which to contest either the validity of the order or the amount of the alleged arrears. Failure of the nonregistering party to contest results in confirmation of not only the validity of the order but also the amount of arrears by operation of law.

It is not always necessary that the registration process be utilized. UIFSA allows an income withholding (garnishment) order issued in another state to be sent directly to a Texas employer. If the order contains the essential elements (amounts, frequency, *etc.*), the Texas employer should honor the order and send the withheld amounts to the proper registry or individual.

UIFSA enables the support enforcement agency to take "administrative" enforcement actions based on another state's order without initially registering the order.[10] These can include intercepts of unemployment benefits, and lottery winnings as well as submissions for denial of a passport. If the action is challenged, the order must then be registered with a tribunal that is able to resolve the underlying enforcement issues.

UIFSA provides it is not the exclusive enforcement remedy.[11] Thus, liens on financial institution accounts or real property can be asserted by following the other applicable laws of the State where the asset is located. While not always specifically articulated, registration is a process available to have the tribunal that is going to resolve the enforcement issues become aware of the terms of the order. Classic judicial notice is also available.

Enforcement - nonUS Order

When it comes to enforcement of child support obligations imposed by a tribunal in a foreign jurisdiction, it is as important to know what remedies are not available as well as those that are. As noted above, FFCCSOA is a federal U.S. law that does not apply. Neither it nor the Constitutional principle upon which it is based require any State to give "full faith and credit" to the order of a foreign jurisdiction.

For other civil litigation, most States have some version of the Revised Uniform Enforcement of Foreign Judgments Act which only applies to judgments of other States. It can apply to child or spousal support judgments. In addition, many states have a version of the Uniform Foreign Money-judgments Recognition Act; however, it provides in Section 1:

> (2) "foreign judgment" means any judgment of a foreign state granting or denying a sum of money other than a judgment for taxes, a fine, or other penalty; or a judgment for support in a matrimonial or family matter. [emphasis supplied]

Thus, the challenge becomes finding a legal approach that can be used that not only will pass Constitutional scrutiny but also will be supported by statutory or case law. A fundamental Constitutional requirement is that the court be assured proper notice and due process have been afforded the obligor. This goes directly to the issue of the foreign jurisdiction's order being based solely on the child's "state" or nationality. Even if the foreign jurisdiction's order recites that it is based on this concept, if there is some other "nexus" such as conception or residence with the child in the foreign jurisdiction, the U.S. court should uphold the order assuming other due process safeguards have been followed.

In seeking enforcement of a foreign order in Texas, the residence or citizenship "state" of the obligee is not relevant. So long as Texas can obtain personal or in *rem* jurisdiction, enforcement actions can be taken by the nonresident obligee either through private counsel or by requesting the services of the state enforcement agency.

In addition to having a recognized basis for personal jurisdiction, due process requires proper notice and a meaningful ability to participate. Basically, the scrutiny of a foreign order is similar to the scrutiny of a domestic order. Default orders raise potential challenges. Default orders after notice by citation by publication are most often lacking the requisite notice and due process.

Assuming the foreign jurisdiction's order meets Constitutional requirements, there are several legal approaches available for a tribunal to recognize the order for enforcement. This is where the foreign "state" issue arises. It relates to the status of the jurisdiction issuing the order. Reiterating, it is not an issue linked to the residence or citizenship of the individual either submitting to the personal jurisdiction of Texas or over whom Texas is able to assert personal jurisdiction.

National Reciprocal Declaration

The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) empowered the State Department and the Office of Child Support Enforcement (OCSE) to enter into reciprocal declarations with foreign jurisdictions regarding international enforcement of support orders. Recognizing this capability, UIFSA 2001 defines "state" to include foreign jurisdictions declared to be a federal reciprocating country or political subdivision.[12] The declaration is still subject to fundamental Constitutional requirements. The major issue is the necessity for personal jurisdiction. However, if Constitutional requirements are met, an order entered by a foreign reciprocating "state" is enforceable in a State even if the procedures used to obtain the order would not be followed in that State. A State is not able to refuse enforcement absent some fundamental Constitutional defect in the process. Negotiations are ongoing and, as of June 2008, there are federal declarations with 13 nations and 11 Canadian provinces.

State Reciprocal Declaration

Recognizing that federal declarations might take time, PRWORA reserved to each U. S. state the authority to enter into reciprocal declarations with foreign jurisdictions. These state-based declarations also are subject to fundamental Constitutional requirements. Being state-based, the declaration can only provide that the order entered by a foreign jurisdiction is enforceable in the specific U.S. state. UIFSA 2001 considers a foreign jurisdiction subject to a state reciprocating declaration to be a "state".[13] The Texas version of UIFSA 2001 empowers the Governor of Texas to make such declarations.[14] The Governor can certainly insist on additional due process, notice, or other requirements beyond those Constitutionally mandated. Once made, the declaration is binding on all courts in Texas. Since the enactment of UIFSA in 1993, Texas has made reciprocating declarations with the Mexican states of Coahuila, Nuevo Leon, and Tamaulipas and the Canadian province of New Brunswick. In 1980, there was also a declarations of reciprocity made by the then Attorney Generals regarding Germany.

Substantially Similar Laws and Procedures

A determination that a foreign jurisdiction has laws and procedures that are "substantially similar" to UIFSA is sufficient to make that jurisdiction a "state" for purposes of enforcing the order issued by it.[15] The operable concept for "substantially similar" should be whether the other

nation has "legal reciprocity", *i.e.* similar concepts of due process and notice. It should not be "operational reciprocity" such as having equivalent agencies providing legal services or the waiving of fees and costs. Initially, the finding will most often be applied on a case-by-case basis involving a specific foreign jurisdiction. However, this standard does allow for a "ruling" of similarity to obtain precedential authority to be applied throughout the state. To date, Texas does not appear to have utilized this approach in any reported case.

Comity

Comity is a case specific finding, usually based on elements of similarity of process and reciprocity, that it would not be "unfair" to enforce the foreign order. Obviously, considerations of notice, due process, and appropriate personal jurisdiction are involved. But, the essential inquiry should be whether the parties were afforded a fair opportunity in an impartial forum to fully litigate the issues. The court would then find that the principle of comity obviates the need for the court to re-litigate the issues. While such a ruling might be persuasive in a similar case involving an order from the same foreign jurisdiction, it does not create a binding precedent. An important distinction regarding recognition of an order based on comity is that is does not require a finding that the issuing foreign jurisdiction is a "state" under other UIFSA definitions.

Being an equitable remedy, comity is not prescribed by statue. Nevertheless, UIFSA 2001 seeks to provide improvements to the process. A foreign jurisdiction support order can be registered under the provisions of UIFSA and enforcement sought on the basis of comity. This process not only should shift the burden of contesting the order but is less cumbersome than requesting a court take judicial notice. UIFSA 2001 does contain provisions making the ability to obtain discovery and evidence in long-arm or "two-state" interstate cases also applicable to international cases being tried under this doctrine.[16]

Nonresident participation

One focus of the on-going development of UIFSA is creating a set of rules of evidence and procedure that will maximize actual participation by nonresident parties. Based upon the reported experiences since UIFSA was first enacted by states in 1993, UIFSA 2001 tires to improve upon the procedures and deal with issues that were identified in the interim. Not all improvements were driven by international case considerations, but all improvements were discussed in the context of international cases.

It was always contemplated that the nonresident would not be required to physically attend proceedings. Thus, the original language concerning the "petitioner" was revised to apply to any nonresident individual party.[17] However, this provision should not be read to mean that courts can hold an obligor in contempt *in absentia*. If the remedy requires the presence of the obligor, nothing in UIFSA 2001 changes this requirement.

For international cases, several of the improvements have been in place since the original Act. Evidence presented using the OCSE promulgated General Testimony or Affidavit in Support of Establishing Paternity is admissible over a hearsay objection.[18] Probably the most important change wrought by UIFSA 2001 is the changing of a single word. A tribunal shall permit a party or witness to testify by telephonic or other electronic means.[19] Given the time

zone differences, this provision should greatly facilitate the meaningful participation by persons not residing in the U.S.

International provisions

While improvements for all cases were certainly an impetus, a major focus of the UIFSA 2001 revisions was international cases. The statutory framework for how a foreign jurisdiction could be considered a "state" was set out. Lest it be argued that UIFSA is the only way to enforce a foreign support order, it acknowledges the validity of pursuing other means including the long standing principle of comity discussed above.[20] One of the most important considerations involves the issue that is one of the most beguiling - currency conversion.

While it has always been an implied power of a court to convert a debt denominated in a foreign currency into a U.S. dollar equivalence, UIFSA 2001 makes this an explicit duty.[21] A couple of observations concerning this duty are in order. First, the applicable date of conversion is deliberately not specified. UIFSA provides for the conversion using "the applicable official or market exchange rate as publicly reported".[22] This is in recognition that case law has upheld the concept that the determination may depend and vary based upon currency fluctuation.[23] The flexibility is based on general civil debt principles and does not fully take into account the unique features of child support. One argument goes that the conversion should be fixed at the time of the judgment which should be the date of the confirmation of arrears. Another argument is for conversion on the date of the "breach". For child support this would mean a calculation that varies monthly over several years. The most pragmatic approach is to allege the converted amount as of the date the arrears are verified for the Registration process. If appropriate, the amount of converted arrears can be redetermined on the date the court makes the finding regarding the applicable rate for prospective support.

Whichever approach is used, if the UIFSA process is used it must be remembered who has what burdens. The proponent should assert a converted arrears amount as part of the Registration process. The respondent then has the option to agree to the figure by not contesting or has the burden to contest by demonstrating what the correct calculation should be. The same is true for prospective support. The ultimate resolution is obtained from the official records of the order issuing nation. Most nations give credit based upon the conversion rate at the time of receipt, i.e. the "payment" date. Thus, a case involving a foreign support order should be monitored by both sides for either overpayment or increasing arrears. To accommodate currency fluctuation, the one finding neither side should seek is a U.S. court ruling that the arrears or prospective support are a fixed U.S. dollar amount. At best, it is an accounting nightmare; at worst, it may be considered an impermissible modification.

While the actual standard to be used is flexible and leaves room for advocacy, presenting the issue to the Texas court is facilitated by UIFSA. Most publicly reported market exchange rates are now found on the Internet. Documentary evidence under UIFSA is based upon the concept of a "record" which includes information stored in an electronic medium that can be presented in perceivable form.[24] Simply stated, copies of the Internet obtained conversion rate and calculation should be admissible evidence.

Modification of a Foreign Support Order

Because of currency conversion issues as well as cost of living and social services issues, the temptation to seek to modify another county's order may be very compelling. While it can be done, the process is specific and quite limited in all cases. For cases involving a foreign jurisdiction's order, UIFSA has made a special accommodation.

As a general principle under UIFSA, a tribunal in one state can only modify the order of another state if all parties (including the child) have left the order issuing state or both obligor and obligee agree in a record in the order issuing tribunal. If these requirements are not strictly adhered to, the successor tribunal will not have subject matter jurisdiction and the resulting order is void.[25] It should also be noted that the original tribunal that issues a spousal support continues to always have subject matter jurisdiction over the issue and it can not be assumed under any circumstances.

When foreign jurisdiction support orders were discussed, an inequity arose. The Drafting Committee was informed that certain nations would not modify their order unless both parties were physically present and the tribunal had no way to compel the appearance of the nonresident. In 1996, UIFSA was revised to provide that Texas could assume jurisdiction to modify a foreign jurisdiction's order where someone (usually the obligee) continued to live in that jurisdiction upon a showing that the foreign jurisdiction did not have a process similar to UIFSA, *i.e.* the ability of the issuing tribunal to modify it's own order when not all parties resided in the issuing jurisdiction. The Texas resident could not block the process by refusing to consent. The process was deemed cumbersome and possibly inequitable since the Texas resident could only obtain a modification by returning to the issuing tribunal. Thus, UIFSA 2001 revised the process to provide that either party can request a Texas court assume jurisdiction over the child support issue upon a showing that the foreign jurisdiction can not or may not modify it's order.[26] The ability of Texas to modify a foreign jurisdiction's order is further limited to only those jurisdictions that are "states". An order being enforced on the basis of comity is not subject to modification.

To prevent subsequent claims regarding the continued viability of the original order, UIFSA 2001 makes it clear that the resulting Texas order is the only one that will be prospectively recognized. There is one "quirk" in UIFSA regarding subsequent modifications that may have significant impact in international cases. UIFSA provides when Texas assumes jurisdiction and modifies another State's order, the support is set in accordance with Texas guidelines. However, Texas can not modify the duration of the support obligation.[27] Most U.S. states have duration in the 18 to 21 year range. There are foreign jurisdictions where the duration goes significantly beyond this.

Conclusion

International support cases present issues and challenges not often encountered in family law. However, UIFSA provides the framework to work the cases and assure that all children regardless of location are able to receive the support they deserve and are entitled to.

Resources

Complete versions of UIFSA 2001 and other Uniform Acts with Official Comments are available at the NCCUSL web site: http://www.law.upenn.edu/bll/ulc/ulc_frame.htm

Information about what states have enacted what Uniform Acts is available at the NCCUSL home page: http://www.nccusl.org/Update/

John J. Sampson & Barry J. Brooks, ***Uniform Interstate Family Support Act (2001) With Prefatory Note and Comments (With Still More Unofficial Annotations),*** 36 FAM. L .Q. 329 (2002) - also available on Westlaw and Lexis

The OCSE home page
http://www.acf.dhhs.gov/programs/cse/

provides links to the federally promulgated UIFSA forms
http://www.acf.dhhs.gov/programs/cse/forms/

and a link to International Resources
http://www.acf.dhhs.gov/programs/cse/international/index.html

NCSEA also has an International Child Support section
http://www.ncsea.org/international/

The sites below have "publicly reported market exchange" rate information and provide historical rates as well as conversion calculators. The first two addresses have a conversion application that can be used to convert historical data.

www.oanda.com
www.fxtop.com
www.exchangerate.com
www.x-rates.com
www.xe.com

Sample Pleadings

Notice of Registration of Foreign Support Order (UIFSA)

The amount of the alleged arrearage as of January 9, 2004, is DM 24,000.00 Federal Republic of Germany Currency having a United States of America Dollar equivalence of $ 16,188.87.

Motion for Enforcement (UIFSA)

Prior Orders

On 1/10/91 a tribunal ordered {Obligor Name} to pay regular child support of DM 300 Federal Republic of Germany Currency monthly, beginning 1/1/91, and monthly thereafter. The amount and frequency of {Obligor Name}'s child support obligation remains unchanged.

Exchange Rate

The Court should find the United States of America Dollar equivalence of any foreign currency ordered payable by an appropriate foreign tribunal. The court should make all further monetary findings in United States of America Dollars based on the finding of United States of America Dollar equivalence.

Order Enforcing Child Support Obligation (UIFSA)

The Court FINDS that on 1/10/91 a tribunal ordered {Obligor Name} to pay regular child support of DM 300.00 Federal Republic of Germany Currency, monthly, beginning 1/1/91 and monthly thereafter. The Court finds that the United States of America legal tender equivalent of the prospective child support ordered payable in foreign currency by the tribunal in this cause is $ 192.98. All further monetary findings are stated in United States of America Dollars.

Notes

1. The cites in this paper are those in the NCCUSL version of UIFSA.
2. § 205
3. § 211
4. *Thompson v. Thompson,* 893 S.W.2d 301 (Tex. App.-Houston (1 Dist.), Feb 16, 1995); *Moore v. Moore,* 2001 WL 1390921 (Tex. App.-Dallas, Nov 09, 2001)
5. § 309
6. § 102(23)
7. § 104(b)(2)
8. Although the most recent version of the UPA has only been enacted in 9 states as of September 25, 2009, all states have statutory provisions for determinations of parentage.
9. § § 601 - 610
10. § 507
11. § 104
12. § 102(21)(B)(i)
13. § 102(21)(B)(ii)
14. § 308
15. § 102(21)(B)(iii)
16. § 210
17. § 316(a)

18. § 316(b)

19. § 316(f)

20. § 104

21. § 305(f)

22. § 305(f)

23. *El Universal v. Phoenician Imports*, 802 S.W.2d 799 (Tex. App.- Corpus Christi, Dec. 6, 1990)

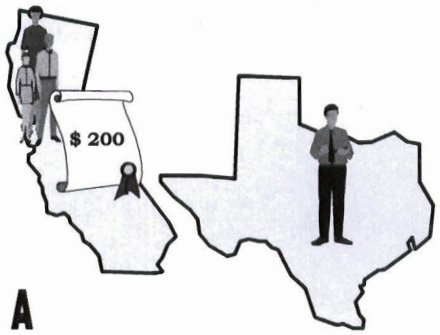
24. § 102(15)

25. *Moore v. Moore*, 2001 WL 1390921 (Tex. App.-Dallas, Nov 09, 2001)

26. § 615

27. § 611

UIFSA Modification Scenarios



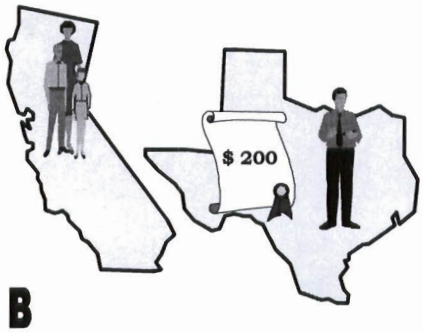
A

One Order = CEJ state = controlling order

Obligee/ "home" state

Enforcement - anywhere with jurisdiction over obligor's person or property; can have simultaneous enforcement in multiple states

Modification - CEJ state, unless all parties agree in writing for another state (obligor) to assume CEJ



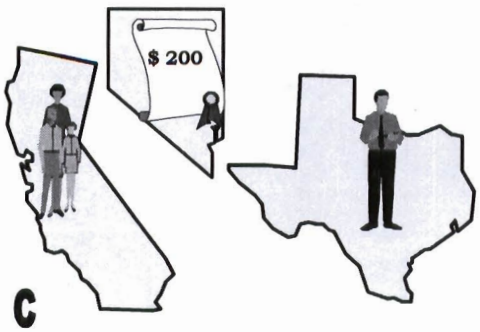
B

One Order = CEJ state = controlling order

Obligor state

Enforcement - anywhere with jurisdiction over obligor's person or property; can have simultaneous enforcement in multiple states

Modification - CEJ state, unless all parties agree in writing for another state (obligee) to assume CEJ



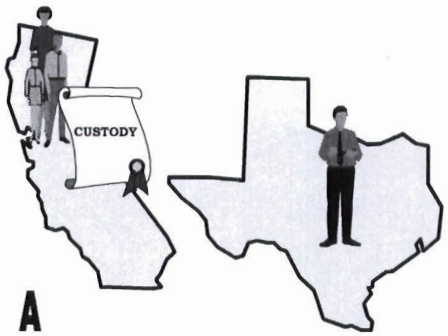
C

One Order = CEJ state = controlling order

Enforcement - anywhere with jurisdiction over obligor's person or property; can have simultaneous enforcement in multiple states

Modification - Petitioner must "play away" and have respondent state assume CEJ, unless all parties agree in writing for CEJ to go to petitioner's state or (2001) remain in issuing state.

UCCJEA Modification Scenarios



A

One Order = ECJ State

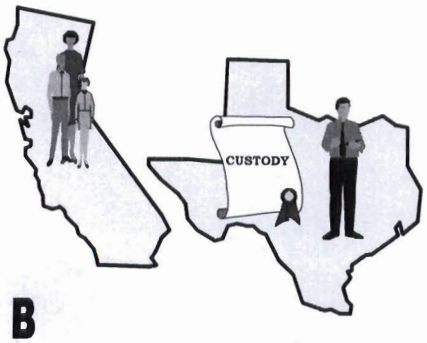
Custodian/ "Home" State of child

Modification - ECJ State

unless the ECJ Court transfers the custody issue to a new state finding:

Neither child, nor child and one parent, nor child and person acting as a parent have a significant connection with ECJ State and there is no substantial evidence in ECJ State

OR New State is more convenient



B

One Order = ECJ State

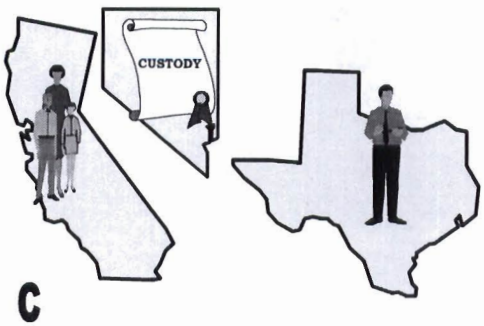
Non-Custodian State

Modification - ECJ State

unless the ECJ Court transfers the custody issue to a New State finding:

Neither child, nor child and one parent, nor child and person acting as a parent have a significant connection with ECJ State and there is no substantial evidence in ECJ State

OR New State is more convenient



C

One Order = ECJ State

Modification – ECJ State

Unless

ECJ State transfers finding no one (child, parent, or person acting as a parent) resides in Order State

OR

New State assumes finding no one (child, parent, or person acting as a parent) resides in Order State and New State is "Home" State or there are significant connections

TAB S

Decision-Making and Child Support: Merging New Case Law and Fairness

Ms. Kimberly Papillon

MATERIALS WERE DISTRIBUTED, NOT AVAILABLE ONLINE

TAB T

DCSS Presents

Mr. George Chance and
Ms. Becky Stilling

15th Annual AB 1058 Child Support Training Conference

September 9, 2011

DCSS Presents

George Chance, Branch Chief and Tribal Liaison
Statewide Training Branch
California Department of Child Support Services

Becky Stilling, CIO and Deputy Director
Technology Services Division
California Department of Child Support Services

- The Department of Child Support Services (DCSS) is the single state agency responsible for administering California's child support enforcement program
- Statutory Authority - Child Support Reform Act of 1999 Family Code Sections 17200 - 17306 (Division 17, Chapter 1, Article 2 and 3)
- DCSS' early focus was the design and implementation of a single statewide automation system

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- DCSS successfully completes implementation of the automation system with Los Angeles County's conversion (2008)
- The federal Office of Child Support Enforcement certifies California's automation system (2009)

- DCSS collaborates with the Child Support Directors Association (CSDA) and forms Business Plan workgroups to consider various statewide program improvement strategies (2009)

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- One of the workgroups formed is the *Working Effectively With Tribal Governments*
- DCSS is committed to establishing open and respectful communication with tribal governments
- A major element in establishing government to government relations with tribes is recognition of their inherent right to self-rule (Tribal sovereignty)

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- Education and understanding are key to positive state – tribal relations
- Promotion of mutual respect and trust is a long term commitment

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Tribal IV-D Program

- The Federal Office of Child Support Enforcement approved, effective October 1, 2011, a two year Tribal IV-D start-up application from the Yurok Tribe
- The Yurok Tribe is the largest Tribe in California
  - Approximately 5000 members
  - Located on 5500 acres in Humboldt and Del Norte Counties
- Yurok Tribal Court Chief Judge is Abby Abinanti

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- DCSS establishes Tribal Liaison position
- Provides statewide IV-D program leadership in building and strengthening relationships, trust, and mutual respect with tribes/tribal organization

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- Disseminates educational and other tribal resource material
- Coordinates the development and delivery of tribal training curriculum
- Assists with the development of DCSS tribal policy positions

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- Supports coordination among local child support agencies (LCSA) and Tribal TANF programs in support of high quality, coordinated, and efficient service delivery to tribal families

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- DCSS requires each LCSA to identify a Tribal Liaison to serve as local expert on tribal matters and to promote cooperative relations with tribes and tribal organizations; encourages Tribal Liaison to:
  - Convene regular meetings to discuss areas of mutual concern
  - Identify common goals, share experiences, learn from each other

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- Cooperative Agreement/Memorandum of Understanding between an LCSA and a tribal government can be helpful in the coordination of services to tribal children and families
  - Tribal TANF
  - Tribal Court Orders

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- Humboldt County LCSA established Memorandum of Understanding with Hoopa Valley and Karuk Tribes on procedures to modify and enforce tribal court orders
- LCSA is the enforcing agency but tribal court continues to have exclusive jurisdiction to modify its support order

Questions?

Presenter Contact Information

- **George Chance**
  Phone: (916) 464-1012
  Email: George.Chance@dcss.ca.gov

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Expanding Self Service to Customers

- E-Correspondence
  - More information
  - More convenient
  - Reduces cost
- Mobil Access to www.childsup.ca.gov
  - Check account information
  - Make payments

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Update on Changes to the State Disbursement Unit (SDU)

- In December, DCSS will transition to a new SDU Provider – Affiliated Computer Services (ACS)
  - 5 yr base contract @ $47m
  - Cost per transaction will be 76¢ less than the prior contract
- 11.6 million collections received totaling $2.6 billion in 2010-11

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Update on Changes to the State Disbursement Unit (SDU) (Continued)

- 65% or about $1.6 billion come income withholding orders
- $502,000 (1,086 payments) come from foreign countries – 65% from Canada
- In 10-11, CA State Lottery payouts numbered 2,036 for a total of $1.2 million

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SDU Vendor Transition - Overview

- Current Service Provider (SP) - Bank of America contract expires in December 2011
- ACS State and Local Solutions, Inc. was awarded the new contract effective April 1, 2011
- ACS will be the new SP effective December 5, 2011, with Wells Fargo Bank as the Banking Partner

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What Will Not Change

- Direct Deposit: Custodial Parents
  - CSE maintains all banking information for direct deposits
- EFT Collections: EFT Remitters
  - DCSS will continue using the Bank of America bank account that receives all EFT collections

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What Will Not Change (Continued)

- SDU Payments – PO Box 989067
- Three Phone Lines to be transitioned:
  - SDU Fax Line: 888-587-5471
  - SDU LCSA Help Desk: 888-556-2702
  - SDU Employer Help Desk: 866-380-0368
- SDU Website URL:
  - www.casdu.com remains the same, with an updated look

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What Will Change

Image Cash Letters (ICL)

- The SP currently prepares checks for manual deposit with the Centralized Treasury System (CTS) banks. The checks are couriered to the banks for deposit
- ACS will utilize Image Cash Letter processing and electronically transmit check images and associated data to each of the CTS Banks

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What Will Change (Continued)

Monthly Statements On-line

EPC Cards

- Cardholders are currently scheduled to begin receiving new Wells Fargo MasterCard cards on 11/10/11 (staggered mailing)
- Bank of America Visa Cards will continue to accept money through the month of December

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What Will Change (Continued)

Customers & LCSAs will contact the new SP through our the DCSS Enterprise Customer Service Solution (ECSS)

- December 1, 2011: eliminating 1010 phone number
- A message will advise callers of the ECSS IVR number until December 31, 2011:
  - (866) 901-3212

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What Will Change (Continued)

DCSS ECSS IVR Phone Tree

- An upfront prompt in the ECSS IVR will provide a single customer option for callers who need to contact the SDU
- A routing point in the ECSS Softphone is being added to allow agents to transfer callers directly to the SDU IVR

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What Will Change (Continued)

Imaging & Folders

- County correspondence received at the current SP will now be imaged and available on-line through the KidStar application
- Exceptions: subset of original legal documents will continue to be forwarded to the LCSAs (i.e. death and birth certificates)

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What Will Change (Continued)

Check Template

- Removal of payment source on checks
- New look with Wells Fargo as the banking partner

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Website and IVR Re-enrollment

- Employers and NCPs who utilize the Web and IVR to submit collections will need to re-enroll before December 5, 2011 to continue making payments electronically
- Temporary website will be available to re-enroll effective October 3, 2011:

https://www.childsup.ca.gov/SDUOutreach

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Website and IVR Re-enrollment

- Extensive Outreach planned starting at the end of September
- 18,652 employers & 89,168 NCPs
- Includes multi-communication vehicle approach
  - Calls
  - Postcards
  - Text messaging
  - Email reminders

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In-process Transactions

All in-process transactions will be coordinated by DCSS Business Solutions. These transactions include:

- Foreign Currency conversion initiated by BofA
- Stop Payments on BofA checks
- SDU Suspense
- Stale-dated checks from BofA

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Training Schedule

T 4 T Regional Training for LCSAs

- 3 sessions in Sacramento (10/25, 10/26, 11/15)
- 1 session in Shasta (10/27)
- 2 sessions in Alameda (11/9, 11/10)
- 1 session in Fresno (11/8)
- 2 sessions in Los Angeles (11/1, 11/2)
- 1 session in Riverside (11/3)

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Outreach Timeframes

- EPC Outreach Time Line
  - 60 days before Go Live: Postcard–"Change is Coming"
  - November 4, 2011: Flyer– "Card is in the Mail"
  - November 10, 2011: Cards issued to cardholders
- Remitter Outreach Time Line
  - 60 days before Go Live– Postcard mailing
  - 15 days before Go Live: NCP/Employer letters

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Cutover Activities

- Planning is underway to identify and plan a comprehensive schedule for all activities to support cutover weekend
- Cutover activities are scheduled from November 26 – December 6, 2011

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Website Information

- https://www.casdu.com - Bank of America SDU website. DCSS will resume ownership of this domain name during cutover and will redirect to: https://www.childsup.ca.gov/sdu
- https://www.childsup.ca.gov/SDUOutreach - DCSS public website page which will contain ACS website, Release 1 – October 3, 2011
- https://www.childsup.ca.gov/sdu - DCSS public website page which will contain ACS website, Release 2 – December 5, 2011

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Thank You

- Since the inception of DCSS in 2000 the Child Support Program has collected almost $25 Billion in current and past due support - the majority of which goes directly to families!
- This is roughly equivalent to the annual Gross Domestic Product for the nation of Latvia.
- Your work positively impacts the lives of California's children. Thank you for all that you do.

Questions?

Presenter Contact Information

- **Becky Stilling**
  Phone: (916) 464-5472
  Email: Rebecca.Stilling@dcss.ca.gov

TAB U

Helping the Military Member – Representation of Active Duty Service Members under the SCRA, Collaboration for Homelessness Prevention and Outreach to Homeless Veterans (Stand Down, VA Outreach Project)

Hon. Adam Wertheimer, Prof. Steve Berenson, Ms. Susan Groves, Mr. John Schweitzer, and Ms. Shannon Welton

15TH ANNUAL AB 1058 CHILD SUPPORT TRAINING CONFERENCE

Mission: Helping the Military Member

County of San Diego
Department of Child Support Services
Shannon Welton
Supervising Attorney

Shannon.Welton@sdcounty.ca.gov

Stand Down San Diego

- Three day event held each July in San Diego
  - First event held in 1988
  - 190 similar events held nationwide and serving more than 42,000 veterans (National Coalition for Homeless Veterans, Stand Down guide)
- San Diego Stand Down was developed by Veteran's Village of San Diego (VVSD)
  - Based on Vietnam era concept of "Stand Down" which gave soldiers a safe location to rest, enjoy camaraderie and take care of personal health and well-being needs.

Stand Down San Diego

- VVSD erects an army style camp with tents, cots, showers, mess hall and services such as:
  - AA, NA and other addiction meetings
  - Medical, dental, optical, massage, hair cutting
  - VA and Social Security assistance
  - Legal assistance, on-site court proceedings
  - Homeless provider and rehabilitation services
  - Clothing, shoes and shower kits

Stand Down San Diego

Stand Down 2000-2008

- Participation by DCSS 2000 - 2008
  - Veterans apply for Stand Down
    - VA verifies veteran status
      - Copies of approved applications provided to DCSS prior to the event
    - Stand Down applications screened by DCSS for open child support cases
    - DCSS staff attended Stand Down for two of the three days
      - walk-in assistance only
        - » License releases
        - » Legal education
        - » Referrals to case worker, Family Law Facilitator

Stand Down 2000- 2008

Stand Down follow up:

- Appointments at DCSS were set
- Applicable motions were filed on behalf of veterans
  - Limited results
    - » Minimal follow through by veterans
    - » Inability to serve veterans or contact them post-Stand Down

A New Opportunity is Identified:

- Superior Court was already on site for criminal cases (misdemeanors, infractions, etc).
  - IV-D Commissioner Patti Ratekin toured Stand Down in 2008 and proposed a joint project with DCSS that would bring child support hearings to Stand Down

Stand Down 2009 to Present

- DCSS coordinated the development of IV-D court proceedings at Stand Down:
  - Family Law Facilitator, Superior Court Business Office, IV-D Commissioner and Veteran's Clinic created cooperative plan
  - Stand Down IV-D application developed
  - Outreach at veteran's winter shelter
    - DCSS and Thomas Jefferson School of Law

Stand Down 2009 to Present

- Stand Down applications reviewed by paralegal or attorney staff
  - Every application reviewed
  - Referrals made to other states and counties
- Motions filed on all applicable San Diego IV-D cases
  - All parties served, custodial parties granted telephonic on all cases due to inability to attend Stand Down
  - Case list provided to Family Law Facilitator and Veteran's Clinic

Stand Down 2009 to Present

- Stand Down Preparation
  - Coordinate site needs with VVSD:
    - Internet and phone lines, space, tables, chairs, signage
    - Walk-through day before to ensure all technical needs are in place
  - Prepare cases for Stand Down
    - Litigation files
    - Follow up with Out of County/State case workers
    - Gather all on-site supplies
    - Brief staff for on-site/in - office support
    - Prepare case overview and check-in lists

Stand Down 2009 to Present

Technical:

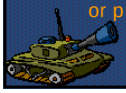
- Laptops, printers, fax, phone, sounds system
  - Hardwiring, WiFi, land lines

Staffing:

- At Stand Down:
  - Attorney and Paralegal staff:
    1. Meet and confer
    2. Walk-ins
  - Clerical support: License releases, wage assignment reduction letters, case overview for late registrants
  - Technical support
- Support at DCSS offices:
  - Attorney, Paralegals and Child Support Officers

Stand Down 2009 to Present

- Meet and Confer with veterans and pro bono counsel before hearing
  - Run guideline
  - Discuss custodial party position
  - All cases heard on the record
- Majority of cases resolved without continuance
  - Continuance set for job contacts, license review or proof of disability



Stand Down 2009 to Present

Stand Down 2009 - Present

Stand Down 2009 to Present

o Three Year Combined Statistics:

- Number of active DCSS cases = 253
- Number of veterans assisted = 231
  - 3 veteran Custodial Parties
- Number of Motions Filed = 135
  - Additional 35 cases referred to other jurisdictions
- Amount of arrears resolved = About $1,750,000
  - Due to SSI, F.C. 17432 review, voluntary case closure by custodial party

Stand Down 2009 to Present

- Demographics:
  - Majority of veterans with child support cases are Vietnam or Gulf War era
    - Increase in Iraq and Afghanistan veterans in the last two years.
    - Number of veteran non-custodial mothers at Stand Down has increased from zero in 2009 to nine in 2011

Stand Down 2009 to Present

- Human Story
  - First apartment leased
  - Veteran becomes eligible for veteran's assisted living
  - Custodial parents close arrears only cases in the hopes of helping the veterans and reuniting them with children
  - Custodial party and veteran plan to meet for dinner so he can see child for the first time in over 10 years
  - Employment is obtained and maintained

Commissioner Wertheimer will be adding photos to the overall presentation – we will add before seminar

Stand Down Photos Go Here

Representing the Veterans

THOMAS JEFFERSON SCHOOL OF LAW SAN DIEGO

Stand Down 2011

Representing the Veterans

Receive Case File From DCSS

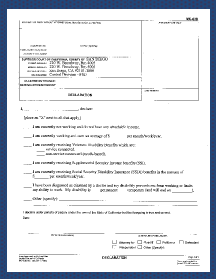
- Motion papers
- Prior court orders
- Stand Down application
- Request for Child Support Case Review

Prepare Case in Advance

- Meet with client
- Response (FL – 685)
- Income and Expense Declaration (FL-150)
- Limited Scope Representation (FL – 950)
- Prepare argument
- Only able to contact 10-15% of veterans in advance

Prepare Case at Stand Down

- Stand Down Declaration



Present the Case at Stand Down

- Meet and Confer With DCSS
- Appear Before Commissioner Wertheimer

Counsel for the Veterans

- TJSL Students – current clinic students and "alumni"
- TJSL & Clinic Alumni
- Volunteer Members of San Diego Bar

Outreach to Homeless Veterans

- Veteran's Winter Shelter Outreach
  - VVSD inquiries
- Veteran's Administration Training
  - Direct referral process
- Homeless Provider trainings
  - Direct referral process

VETERANS OUTREACH

Thomas Jefferson Veterans
Legal Assistance Clinic

VETERANS OUTREACH

The Clinic

- 8 students per semester
  - 20 hours per week case work (4 credits)
  - 2 hour seminar (2 credits)
- Cal. State Bar Certified
- 1 Professor; 1 Clinic Fellow

VETERANS OUTREACH
The Clients

- Veterans Village of San Diego
- Veterans Rehabilitation Center – SD
- New Resolve – Escondido
- Welcome Home Family Program – SD
- Mahedy House – SD
- On Point Apartments – SD
- VVSD Alumni

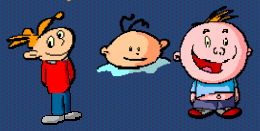
VETERANS OUTREACH
The Cases

- Child Support
- Other Family Law – Dissolutions; Custody
- Disability & Other Benefits – VA; SSI; SDI, UI
- Offender Re-entry – Expungements; Fees and Costs
- Credit/Debt/Bankruptcy
- Landlord - Tenant

VETERANS OUTREACH
Statistics

- Nationally - 15% of the homeless are veterans (even though only 10% of population as a whole are vets)
- San Diego – 18% of the homeless are veterans
- San Diego – Approximately 30,000 OEF/OIF veterans reside in SD (next largest concentration in US is in LA – approximately 17,000)

VETERANS OUTREACH
Project: CHALENGE



Assistance with child support issues is the # 2 unmet need among homeless veterans.

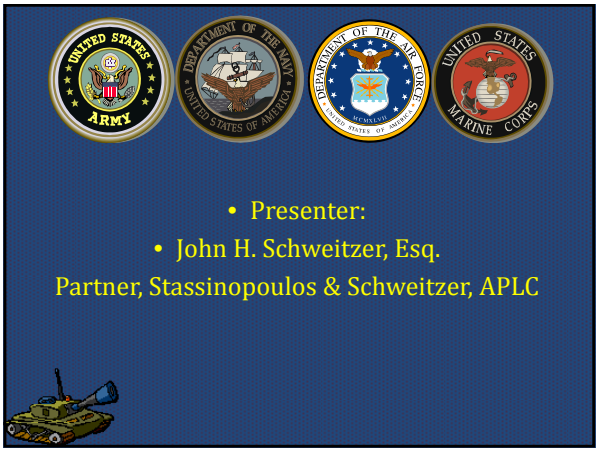
VETERANS OUTREACH
The Collaboration

- American Bar Association (ABA)
- U.S. Department of Veterans Affairs (VA)
- U.S. Department of Health and Human Services – Office of Child Support Enforcement (HHS/CSE)
- 10 Pilot Cities
  - San Diego is one of them

VETERANS OUTREACH
Necessary Elements

1. Veterans Services Organization (VVSD/VA)
2. Legal Services Provider (TJVLAC/Legal Aid)
3. Local Child Support Agency


Servicemembers Civil Relief Act (SCRA)


• Presenter:
• John H. Schweitzer, Esq.
Partner, Stassinopoulos & Schweitzer, APLC


Pro Bono Panel
• Pro Bono Panel: A Collaborative Panel
– SDCBA
– Bar Association Northern San Diego County (BANSDC)
– The Navy
– The Marine Corps
– The San Diego Superior Court

Pro Bono Panel

- Available November 10, 2009 for Family Law and Civil (Limited and Unlimited) Cases
  - Administered through the SDCBA's LRIS and the BANSDC's LRS
  - Cases filed in El Cajon, South Bay or Central will be sent to the Program Administrator for SDCBA-LRIS (scralris@sdcba.org)
  - Cases filed in the North County will be sent to the Program Administrator for BANSDC-LRIS (bansdc@bansdc.org)
  - Value of Program is in its contacts with the branches of the military to locate Servicemembers

Pro Bono Panel

- All appointed attorneys will have met the LRIS and LRS's stringent requirements. Efforts will be made to assign family law attorneys to family law cases, and civil attorneys to civil cases.

Attorney Appointment Orders

- Prepared by the San Diego Superior Court for your use
- One for family law cases, and one for civil cases
- Provide for clerk to transmit certain information to LRIS and LRS
- Set next hearing date (90 days for family law cases, 120 days for civil cases)
- Waive fees
- Set parameters for end of engagement for attorneys (limited scope representation)
- Language included from SCRA that protects servicemembers (no consent to jurisdiction, etc.)

History of the SCRA

- On December 19, 2003, President Bush signed the SCRA, a complete revision of the Soldiers' and Sailors' Civil Relief Act (SSCRA). The SCRA was written to:
  - Clarify the language of the SSCRA
  - Incorporate and codify many years of judicial interpretation of the SSCRA
  - Update the SSCRA to reflect developments in American life since 1940

Section 502 Purpose

- The purposes of this Act 50 USCS Appx §§ 501 are –
- (1) to provide for, strengthen, and expedite the national defense through protection extended by this Act [50 USCS Appx §§ 501 et seq.] to servicemembers of the United States to enable such persons to devote their entire energy to the defense needs of the Nation; and
- (2) to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service.

Focus of Pro Bono Panel

- 50 U.S.C. Appx. sections 521 and 522 (there are many other sections; statute poorly written?)
- Obtaining stays for <u>served</u> Servicemembers in military service (a.k.a. active duty)
  - There are no issues or need for pro bono representation if person is not served

Who is a Servicemember?

- Members of the Army, Navy, Air Force, Marine Corps, and Coast Guard on active duty under 10 U.S.C. § 101 (d)(1)
- National Guard members called to active duty by the President or the secretary of defense for over thirty days under 32 U.S.C. § 502 (f) (national emergency declared by the president and supported by federal funds)
- Commissioned members of the Public Health Service and the National Oceanographic and Atmospheric Administration

What is "Military Service"?

- A servicemember is in "military service" if he or she is a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard and is active duty, as defined in section 101(d)(1) of title 10, United States Code. Additionally, for members of the National Guard, he or she must be under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of title 32, United States Code, for purposes of responding to a national emergency declared by the President and supported by Federal funds. For servicemembers who are commissioned officers of the Public Health Service or the National Oceanic and Atmospheric Administration, they must be on active service. Finally, any servicemember "military service" any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause.

Who Qualifies, and When

- In order to qualify for a stay, you generally have to be a "Servicemember" in "military service."
- There is one provision allowing the stay after military service ends.

Section 521

- Purpose of section 521 [former 50 USCS Appendix § 520(1)] is to protect persons in military service from having default judgments entered against them without their knowledge. *Title Guarantee & Trust Co. v Duffy* (1944) 267 App Div 444, 46 NYS2d 441.
-
- NOTE: Sections 521 and 522 are mutually exclusive.

Section 521

- § 521. Protection of servicemembers against default judgments
- (a) Applicability of section. This section applies to any civil action or proceeding, including any child custody proceeding, in which the defendant does not make an appearance.

Section 521

- Comments:
  - Only for defendants
  - Intended for defendants who have been served but not yet appeared
  - Confusingly, a served defendant who has not yet appeared could elect relief under 522 if the person has "actual notice" (personal service as opposed to service by publication?)

"Appearance" Defined

- What constitutes an "appearance"?
  - Defined by state law
- Code of Civil Procedure §1014. Appearance.
- A defendant appears in an action when the defendant answers, demurs, files a notice of motion to strike, files a notice of motion to transfer pursuant to Section 396b, moves for reclassification pursuant to Section 403.040, gives the plaintiff written notice of appearance, or when an attorney gives notice of appearance for the defendant. After appearance, a defendant or the defendant's attorney is entitled to notice of all subsequent proceedings of which notice is required to be given. Where a defendant has not appeared, service of notice or papers need not be made upon the defendant.

Section 521

- Situation: A served defendant who has not yet appeared
  Usual Request: Default judgment
- 521 Requirement: Special Affidavit
-
- § 521. Protection of servicemembers against default judgments
- (b) Affidavit requirement.
- (1) Plaintiff to file affidavit. In any action or proceeding covered by this section, the court, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit--
- (A) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or
- (B) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.

Section 521 Affidavit

-
- So, technically, it is *always* required when default judgment requested.
-
- This is MORE than is required to be disclosed by plaintiff's counsel on on Judicial Council Form for Entry of Default (CIV-100).

Important Note

- SCRA default guidance applies to all of the following:
  - Final Judgments
  - Interim Orders
  - Court Orders
  - Administrative Support Orders but not to administrative enforcement remedies, such as liens, wage withholdings, etc.

Section 521

- § 521. Protection of servicemembers against default judgments
- (b)(2) Appointment of attorney to represent defendant in military service. If in an action covered by this section it appears that the defendant is in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant. If an attorney appointed under this section to represent a servicemember cannot locate the servicemember, actions by the attorney in the case shall not waive any defense of the servicemember or otherwise bind the servicemember.

Section 521

- Comment on 521(b)(2):
  - Pro Bono Panel Guidelines state that the matter may be sent to the Program if the defendant has been served and if the Court" reasonably believes" the defendant qualify.

Section 521

- § 521. Protection of servicemembers against default judgments
- (b)(3) Defendant's military status not ascertained by affidavit. If based upon the affidavits filed in such an action, the court is unable to determine whether the defendant is in military service, the court, before entering judgment, may require the plaintiff to file a bond in an amount approved by the court. If the defendant is later found to be in military service, the bond shall be available to indemnify the defendant against any loss or damage the defendant may suffer by reason of any judgment for the plaintiff against the defendant, should the judgment be set aside in whole or in part. The bond shall remain in effect until expiration of the time for appeal and setting aside of a judgment under applicable Federal or State law or regulation or under any applicable ordinance of a political subdivision of a State. The court may issue such orders or enter such judgments as the court determines necessary to protect the rights of the defendant under this Act [50 USCS Appx §§ 501 et seq.].

Section 521

- Comments on 521(b)(3):
  - This provides the option of requiring a bond before allowing if there is an issue.
  - Practically, these questionable cases will usually come to the Pro Bono Panel.

Section 521

- § 521. Protection of servicemembers against default judgments
- (d) Stay of proceedings. In an action covered by this section in which the defendant is in military service, the court shall grant a stay of proceedings for a minimum period of 90 days under this subsection upon application of counsel, or on the court's own motion, if the court determines that--
- (1) there may be a defense to the action and a defense cannot be presented without the presence of the defendant; or
- (2) after due diligence, counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists.

Section 521

- Comments on 521(d):
  - No required form for application; may be by way of pleadings, or verbally at hearing.
  - Stay is mandatory if person qualifies.
  - Stay can be 90 days, but can be longer.
  - Stay should be granted if appointed counsel cannot contact the person (appointed counsel required by the Program Guidelines to "exhaust all efforts to determine whether the person is a servicemember, whether the person is in military service, and to contact the person.")
  - Assuming no appearance, subsequent stays fall under this section as well.

Section 521

- Recap of Section 521
  - A plaintiff is required by the court to file an affidavit stating whether or not the defendant is in military service or that the plaintiff is unable to determine whether the defendant is in military service.
  - If it appears that the defendant is in military service, the court may not enter a default judgment until after appointing an attorney to represent the defendant.

Section 521

- Recap of Section 521
  - If the court is unable to determine whether the defendant is in military service, it may require the plaintiff to file an indemnity bond before entering a default judgment.
  - Appointed counsel may request and the court must grant a stay of proceeding for a minimum period of 90 days if a defense cannot be presented without the presence of the defendant or counsel cannot contact the defendant.

Section 522

- § 522. Stay of proceedings when servicemember has notice
- (a) Applicability of section. This section applies to any civil action or proceeding, including any child custody proceeding, in which the plaintiff or defendant at the time of filing an application under this section--
- (1) is in military service or is within 90 days after termination of or release from military service; and
- (2) has received notice of the action or proceeding.

Section 522

- Comments on 522(a):
  - Confusion as to when 521 vs. 522 apply. Again, they are mutually exclusive.
  - Practically speaking, only 522 (not 521) can apply in the following situations:
    - If it is a plaintiff at issue (the Pro Bono Panel does not represent plaintiffs).
    - If the defendant has actually appeared.
    - If the party is not in military service currently, but was within the last 90 days.
  - Note that 521(f) gives a defendant an election under 521 or 522 if the defendant has "actual notice."

Section 522

- § 522. Stay of proceedings when servicemember has notice
- (b) Stay of proceedings.
- (1) Authority for stay. At any stage before final judgment in a civil action or proceeding in which a servicemember described in subsection (a) is a party, the court may on its own motion and shall, upon application by the servicemember, stay the action for a period of not less than 90 days, if the conditions in paragraph (2) are met.
- (2) Conditions for stay. An application for a stay under paragraph (1) shall include the following:
- (A) A letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the servicemember's ability to appear and stating a date when the servicemember will be available to appear.
- (B) A letter or other communication from the servicemember's commanding officer stating that the servicemember's current military duty prevents appearance and that military leave is not authorized for the servicemember at the time of the letter.

Section 522

- Comments on 522(b):
  - No required form for application; just need a writing, which usually has (A) and (B) elements in it (unclear whether (A) and (B) are required).
  - 4 elements for letter:
    1) Stating the manner in which current military duty requirements materially affect the servicemember's ability to appear
    2) Stating a date when they will be able to appear
    3) Stating that the servicemember's current military duty prevents appearance
    4) Stating that military leave is not authorized for the servicemember at the time of the letter

Section 522

- Continued Comments on 522(b):
  - Stay is mandatory if person qualifies.
  - Stay can be 90 days, but can be longer.

Section 522

- § 522. Stay of proceedings when servicemember has notice
- (d) Additional stay.
- (1) Application. A servicemember who is granted a stay of a civil action or proceeding under subsection (b) may apply for an additional stay based on continuing material affect of military duty on the servicemember's ability to appear. Such an application may be made by the servicemember at the time of the initial application under subsection (b) or when it appears that the servicemember is unavailable to prosecute or defend the action. The same information required under subsection (b)(2) shall be included in an application under this subsection.
- (2) Appointment of counsel when additional stay refused. If the court refuses to grant an additional stay of proceedings under paragraph (1), the court shall appoint counsel to represent the servicemember in the action or proceeding.

Section 522

- Comments on 522(d):
  - Servicemembers can keep requesting these stays over and over again.
  - Generally same information as required by (b)(2).
  - These are within the discretion of the Court, but if the stay is denied, then the Court "shall" appoint counsel.
  - What does this mean? Counsel can come in and give it another shot?
  - Reverts back to (b) and becomes mandatory if the requirements are met!

Section 522

- § 522. Stay of proceedings when servicemember has notice
- (c) An application for stay does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense. section 522(c)
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Closing Points

- When attorney appears at scheduled hearing per the Appointment Order, he or she will either confirm eligibility for relief or indicate that there is no confirmation one way or the other, and that he or she could not contact the person (because the attorney has no way of ever confirming and cannot confirm the person is not a Servicemember or not in military service unless the attorney has actually spoken to the party). 521 stay can still be granted it the attorney cannot contact the person.
- Protections in place for Servicemembers in the event that they need permanent representation.
- Again, Appointment Orders indicate when attorneys are relieved of the assignment (after the initial scheduled hearing, or the hearing after that, at the latest; more discretion in family law)

TAB V

Judicial Ethics for Child Support Commissioners

(For child support commissioners and judicial officers only)

Hon. Yvette Durant, Hon. Nancy Staggs, and Mr. Rod Cathcart

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