



# The Complex World of Interstate Cases

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# Agenda

- Brief history of interstate child support
- Choice of Law
- Multiple orders
- Modification
- Tips for analyzing complex cases
- Scenarios



# Brief history of interstate child support



# Laws for interstate child support

- URESA/RURESALA
  - 1950, 1952, 1956/1968
- UIFSA
  - 1992
- Full Faith and Credit for Child Support Orders Act (FCCSOA) 28 USC 1738B
  - 1994, amended 1996 & 1997
- UIFSA
  - 1996
  - 2001
  - 2008



# UIFSA major concepts

- One order at a time: “controlling order”
- Continuing jurisdiction to enforce
- Continuing exclusive jurisdiction to modify



# UIFSA 2008: what's different

- Primary goal was to implement the Hague Convention and improve international case processing
- Definitions §102: “state” now includes only U.S. states and tribes; “foreign country”; “outside this state”; “record” includes non-written
- Non-disclosure changes in §312
- Evidence §316 – “penalty of perjury” replaces oath, electronic transmission, tribunal must grant telephonic hearing to non-resident



# Choice of Law



# Choice of Law (UIFSA Section 604)

## Duration and Interest

Law of the issuing state governs: (1) the nature, extent, amount, and **duration of current payments** under a registered support order; (2) the computation and payment of arrearages and **accrual of interest** on the arrearages under the support order; and (3) the existence and satisfaction of other obligations under the support order.

## Statute of Limitations

Law of issuing state or enforcing state, whichever is longer.



# Choice of Law (UIFSA Section 604)

- South Dakota has referred a case to Idaho requesting the enforcement of an order from North Dakota.
- The child receives Social Security payments based on the obligor's claim (Title II).
- According to the IRG, Idaho, North Dakota and South Dakota treat the receipt of such payments differently.
- Which state law determines how to address these payments?



# Interest scenario

- In 2010, California orders Ryan to pay Hannah \$500 per month in child support for their daughter Chloe.
- Under California law interest accrues at 10%.
- Ryan moves to Nevada where interest is charged on unpaid child support at the prime rate of the largest bank in the state plus 2%.
- In 2015 Hannah and Chloe move to Idaho where there is no interest charged on unpaid support.



# Questions

- If Hannah applies for child support services and the Idaho IV-D agency sends an intergovernmental case for enforcement to Nevada, what state law applies to the calculation of interest on unpaid arrearages to date?
- What state law applies to the calculation of interest on future unpaid support?



# Multiple Orders: What to do?



# Determination of Controlling Order for pre – FFCCSOA (1994) multiple orders

- Pre-FFCCSOA, URESA & RURESAs, multiple valid orders could exist
- UIFSA §207-Read Commentary!
- FFCCSOA 28 USC §1738B(f)
- Only occurs one time
- Individual or child support agency can request
- Requires personal jurisdiction over the parties
- Notice to affected parties
- Include all orders in effect & record of payments
- Tribunal makes decision
- Tribunal must determine consolidated arrears
- Tribunal determines controlling order for prospective support



# Post 1994 multiple orders *should not* exist, however...

- It still happens
- UIFSA: one-order world
- Tribunal not aware of existing order
  - Support order issued and then parents divorce or non-married parents have custody battle
  - A parent moves to another state
- Tribunal ignores existing order—unaware of UIFSA & FFCCSOA



# Now What?

- UIFSA does not answer question
- Can arise in different contexts—registration, legal action against agency, defense to enforcement
- PREPARE TIMELINE OF FACTS—THE FACTS ARE CRITICAL
- Seek legal advice
- Depends on your state law and procedures
- Void? Failure to follow UIFSA jurisdiction rules-lack of subject matter jurisdiction or procedural defect? *See OCS/Glenn Pappas v. O'Brien*, 67 A.3d 916, 924 n. 5 (Vermont 2013)
- Res judicata?
- Different approaches and views
  - Move to vacate invalid order?
  - Ask tribunal to determine valid order?
  - Registration?
  - Enforce “valid” order?



# Scenario

- 1984—Alaska issues order for father to pay \$300/mo for 2 children
- Father moves to Hawaii; mother and children remain in Alaska
- 1990—Hawaii issues order for father to pay \$175/mo
- Father does not pay any support; attempts to collect unsuccessful
- 1998—father returns to Alaska; father tells the Alaska child support agency that his arrears are wrong and he only has to pay \$175/mo in child support.

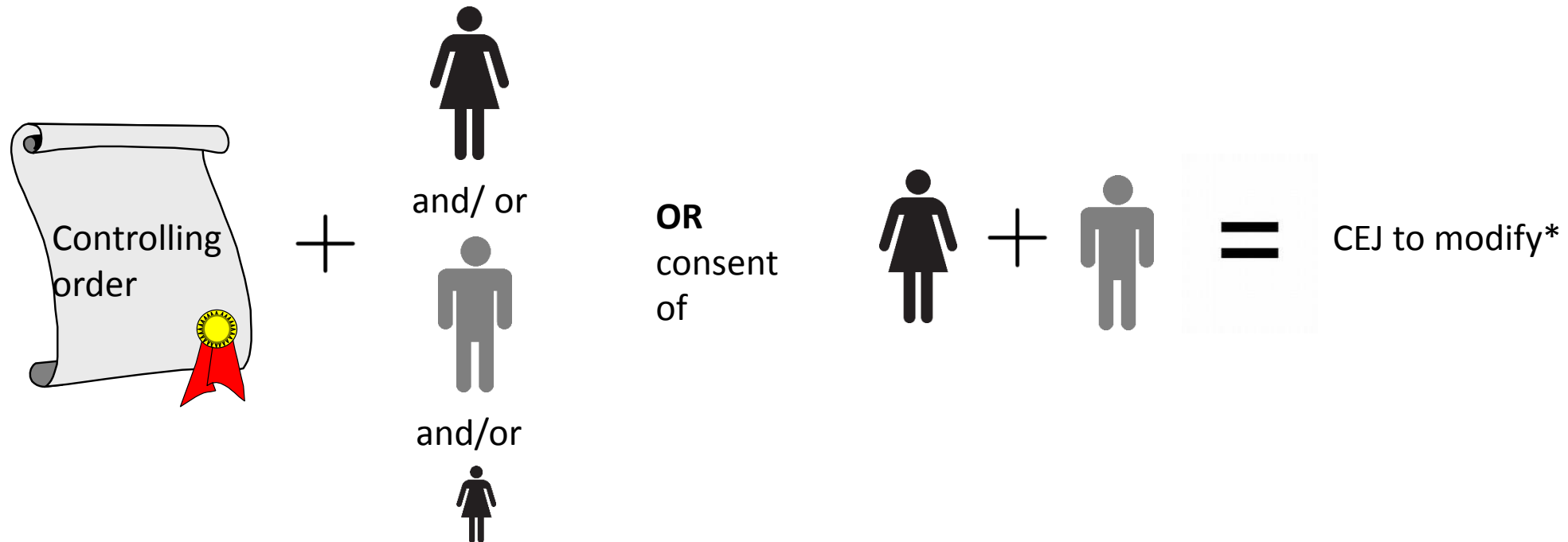


# Modification



# Modification: Step 1- determine jurisdiction

- Determine if a state has CEJ to modify: UIFSA §205



- Residence at time of filing is what counts.

\*see next page for exception



# Modification: Role of consent - §205

- §205(a)(2) The issuing tribunal may modify its order even if no party resides there if the parties consent in a record or in open court for the tribunal to continue to exercise jurisdiction.
- §205(b)(1) Even if a party resides in the issuing state, the issuing tribunal may not exercise CEJ to modify if all parties file consent with the issuing tribunal that a tribunal in another state with jurisdiction over at least one of the parties or the state of the child's residence may assume CEJ and modify



# Modification of another state's order – §611 & §613

- §613: If no one resides in the order-issuing state, and both individuals reside in the same state, that state can modify, applying UIFSA Articles 1&2 only. Articles 3,4,5,7&8 do not apply.
- If §613 doesn't apply, Tribunal must find:
  - There is no CEJ state
  - The petitioner is nonresident
  - The respondent is subject to the personal jurisdiction of the registering tribunal
- Also known as the “play away” rule
- Order must be registered.
- Duration of support cannot be modified.



# Scenario

- Jason and Rachel divorce in Texas where the law provides for support until 18. Jason is ordered to pay child support for Noah.
- Jason moves to Colorado and gets a job making a lot more money.
- Rachel and Noah move to Hawaii. She knows Jason is making more money and wants an increase in current support. Noah won't graduate by the time he turns 18 and she wants support until he graduates.
- What state can modify? Is there more than one?



# Tips



# Tips for analyzing complex interstate cases

- What action is requested?
  - Enforcement only?
  - Modification?
- Gather orders
  - Read them
- Know the facts---Prepare a timeline!
  - When, who, where
  - One fact can change the analysis and result
- Read relevant sections of UIFSA/FFCCSOA
- Review IRG
- Consider any related case law in your state



# Scenarios



# Scenario 1 – Arrearages – Choice of Law

- Colorado completes a referral to Arizona requesting registration and enforcement of a Colorado order.
- The child is 23 years old and only arrearages are due.
- Arizona registers the order and sets the arrears. However, in setting the arrearages, Arizona did not include any current support due after the age of 18 (Arizona's age of majority).
- Under Colorado law, support is due until age 19. The arrearages set by Arizona are \$6000 less than what Colorado's records show.
- What happens?



# Scenario 2

Padme and Anakin live in Washington with their two children, Luke and Leia. Padme becomes increasingly frustrated with Anakin's obsession with car racing and she and the children move to her mother's house. She applies for public assistance benefits (TANF) and Washington sets a support order for Anakin to pay \$450/mo for two children. In 2016, Padme lands her dream job of working at Denali National Park and moves to Alaska with the children. A year later, in 2017, she files for divorce in Alaska. The Alaska court grants a divorce, awards Padme custody of the children, and issues a child support order for Anakin to pay \$600/mo based on his actual income.



## Scenario 2, cont.

Padme brings the child support order from her divorce to the Alaska child support agency to enforce. During case set up, the agency discovers the Washington order.

- Which order should the agency enforce?
- What steps should the agency take?

Fact Change: Anakin moves to Alaska in 2016 to become a pilot. He participates in the divorce action.

- Does this change the agency action?



# Scenario 3 -

- Michael and Jessica divorced in California in 2008 when Emily was 10. Michael moved to Colorado in 2013. Jessica and Emily moved to Washington in 2015 when Jessica got a job with Amazon. Michael quit sending support regularly so Jessica applied for IV-D services from Washington. Washington sent an interstate request for enforcement of the California order to Colorado.
- Colorado registered the California order and issued an IWO to pay off the arrears in 6 months. Colorado then reduced the IWO to current only.
- Michael contacted his caseworker in September 2016 asking why money was still being withheld from his pay since Emily turned 18 in June – and graduated from high school that month. He believes he has overpaid and wants the money returned to him.
- Colorado audited the case.



# Scenario 3 Questions

- Is it likely that they determined Michael had overpaid the child support?
- What is the age of emancipation in California? Has the child support obligation ended under California law? Under Colorado law?
- What about interest? When Colorado completed the audit, did they use California law regarding the interest rate on unpaid support?



# Scenario 4 – Interest – Choice of Law

- In 2002, the CP, Susan, was in California and the obligor, Jake was in Nevada. California referred a case to Nevada, and Nevada established a support obligation for Jake to pay Susan \$300 per month.
- In 2004, Jake moves to Arizona. California asks Nevada to close its case and sends a referral to Arizona requesting registration, enforcement and modification.
- Arizona registers the Nevada order, sets arrearages and modifies the current support obligation.
  - ❖ Which states' law applies to the arrearages?
  - ❖ Which states' law applies to future arrearages?



# Scenario 5

Mary and Harry are married in Washington and have one child, Pickachu. Shortly after Pickachu's birth, Mary leaves Harry and moves to Alaska. She applies for public assistance benefits (TANF) in Alaska. She completes an application for child support services (a sworn document), and explains that her husband, Harry, is not Pickachu's father. When she was visiting Alaska the previous year to watch the Iditarod, she met Bob and had an intimate relationship with him.

- How should the agency proceed?
- Who owes support? Harry or Bob?



# Scenario 6

Minnie and Mickey get divorced in Alaska. The court grants Minnie custody of Madeline and Manny and issues a support order for Carl to pay \$1,000/mo for 2 children. Minnie is in a car accident and dies. The children move to Washington to live with their maternal grandparents, Daphne and Donald. Daphne asks the Washington child support agency to collect support.

- What steps should the agency take?



# Thank you for attending!

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