



Nightmare Intergovernmental Cases

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October 16th 2018

Nightmare Case Scenarios

With the implementation of UIFSA 2008 and the Hague Convention, all child support cases are created equal -- or are they?

Effective intergovernmental case-processing in any multi-jurisdictional situation can be challenging.



Quick Review -- The Basics

- The Uniform Interstate Family Support Act (UIFSA) was first promulgated in 1992 by the Uniform Law Commissioners. They promulgated later versions in 1996, 2001, and 2008. All states now have the 2008 version, required by federal law.
- UIFSA was designed to facilitate intergovernmental case-processing by making sure there was one order controlling the child support terms for the same family.
- UIFSA allows:
 - for the use of long-arm jurisdiction and two-state establishment
 - direct, administrative and registered enforcement, and
 - modification by other states when all parties have left the state that issued the last order
 - Hague Convention rules to be followed for cases with countries that are signatories to the convention, and other rules for countries that have not signed the convention yet



Quick Review -- The Basics

- However, UIFSA does not apply to the tribal programs unless the tribe specifically has enacted UIFSA as tribal law
 - Most tribes have not although a couple have i.e. Eastern Shoshone
- At the federal level, both states and tribes are bound by the Federal Full Faith and Credit for Child Support Orders Act
- Public Law 280 can also impact IJ cases with tribes and between tribes
 - State can exert criminal and civil jurisdiction over individual tribal people
 - Concurrent with the tribe
- Complicated Interjurisdictional Cases still arise between tribe and state and tribe and tribe all of the time...



Two-state Case-processing

Under UIFSA, an initiating state may send a UIFSA packet to a responding state to:

- Establish an order using the guidelines of the responding state
- Enforce the controlling order using the enforcement tools of the responding state
- Modify (adjust) a controlling order if the responding state has jurisdiction under UIFSA Article 6 after a review shows a threshold change in circumstances under the responding state's laws



Modification

- The number one mistake in modification cases is to send a case to another state for modification even though a party (NCP, CP or child) still resides in the state that issued the controlling order – **this is a no no!** (unless the parties agree in writing)
- So, first, the state that issued the last controlling order has Continuing Exclusive Jurisdiction (CEJ) to modify if one or more parties still resides in that state
- If **everyone** has left the state that last had CEJ, the moving party must file for modification in the other parent's state
- If everyone moves to the same state, a modification action may be brought there
- The parties can agree in writing to bestow jurisdiction on a state where one of the parties resides or the controlling order state regardless of the above



International Non-Hague Modification

Non-Hague: UIFSA Article 6 governs modification

- §611(f) – *local US order* - if one party moves to another country and the other party moves to another state, the tribunal that issued the last controlling order has jurisdiction to modify its order even though the parties no longer reside in that state
- §615 – *foreign order* - if another country lacks or refuses to exercise jurisdiction to modify over its order, movant can go to movee's state and seek modification of the other country's order; the new order becomes the controlling order
- §616 – foreign country orders may be registered under Article 6 for enforcement and modification



International Hague Modification

Hague: UIFSA Article 7 governs modification –

- (Remember that the rest of the world uses the country of the child's residence to determine jurisdiction; the U.S. requires personal jurisdiction over the defendant where the defendant resides, or where he or she has other relevant minimum contacts)
- §711(a) – A U.S. state cannot modify another country's Hague order if the CP (obligee) still resides in that country, unless:
 - The obligee submits to the jurisdiction of the U.S. state intentionally or fails to question it, or
 - The issuing country refuses to or lacks jurisdiction to modify its order or issue a new one
- §711(b) – If the order is not recognized in the U.S. state because the country did not have personal jurisdiction over the defendant when the order was originally entered, the U.S. state tribunal may issue a new order

Where to go to Challenge another Court's Finding

- Paternity – state where paternity was determined; it could be the birth state or another state that received information from the birth state to determine paternity; your state can interpret the other state's laws
- Order – the controlling order state; regarding duration, the original issuing order state; your state can interpret the other state's laws
- Arrearages – if ordered, the state that ordered the arrears payback amount and calculated it; if not ordered, the enforcing state's payback amount; the amount of the arrears should be based on the payment record state's calculation as of a certain date
- Interest – the state that included interest in the order, added interest automatically as reflected in a payment record, or the state that registered the order for enforcement that has its own interest rate (should credit be given if the issuing and enforcing states both charge interest?)
- Payments made – the state that is the official payment recorder



Choice of Law -- Interest

- §604(d) requires that if there are multiple support orders, before a determination of controlling order, the arrears, INCLUDING INTEREST, under each order should be calculated using the law of the state or foreign country that issued the order.
- Once there has been a determination of controlling order and consolidation of arrears, all tribunals must prospectively apply the law of the state or foreign country that issued the controlling order, “including its law on interest on arrears, on current and future support, and on consolidated arrears.”



Calculating Interest

- Mandatory interest states – State that issued the order should add interest if registering its order for enforcement, and provide a payment record
- Optional interest states – If not fixed in an order or a later money judgment, interest is not usually added to the balance, which should be or not be reflected in the payment record
- Issuing state at X% and enforcing state at Y% interest charge. If a mandatory interest state, issuing state's interest should be collected by enforcing state; if not mandatory, follow payment record. If enforcing state also charges interest, credit should be given for the interest paid so there is no double charging of interest



Basic Modification Scenarios

- *Order in Colorado. NCP in Colorado. CP and child move to Nebraska. Who modifies?*
 - Colorado since a party remains in the state with the order
- *Order in Nebraska. NCP moves to Wyoming. CP and child move to Wyoming. Who modifies?*
 - Wyoming since all the parties moved to the Cowboy state
- *Order in Wyoming. NCP moves to Colorado. CP and child move to Nebraska. Who modifies?*
 - If NCP requests modification, the review and possible adjustment is in the Cornhusker State (Nebraska).
 - If CP requests modification, the review and possible adjustment is in the Centennial State (Colorado).



Complicated Modifications – Add a Child

Scenario: Mom and child live in Wyoming; Dad lives in Nebraska; Paternity and support order issued in Colorado. Dad vacations with mom and child in Florida, and 9 months later child #2 is born. Which state should pursue paternity and support? (Mom applies for add-a-child services in Wyoming.)

- Can Colorado add a child to the order based on its earlier jurisdiction over Mom and Dad?
- Can Florida enter an order using long-arm if Wyoming asks?
- Can Wyoming enter an order based on residence of Mom and child? What if Dad has no minimum contacts with Wyoming?
- Can Nebraska enter an order based on Dad residing there (traditional two-state UIFSA)?
- If more than one state can enter an order based on valid claims of jurisdiction, what factors should be considered when selecting the forum state?

Complicated Modifications – Tribal Member and Non-Tribal Member

Scenario: Annie and Bernie are unmarried and have a child, Carnie. Annie is an enrolled member of the Lac Courte Oreilles Band and is employed by the Tribe. Bernie is not enrolled in any tribe nor is he eligible for enrollment in any tribe. Carnie lives full time with Bernie off of the reservation.

- Where should Bernie apply for establishment of child support order, State or Tribe?
- If there is already a child support order through the State and Annie petitions the State to transfer the case to the tribe, register the order and modify it, will she be successful?
- Other factors?



Complicated Modifications – Physical/Legal Custody Change

Scenario: Angie and Brad were married and had two children – Justin and Jennifer. They divorced in California. Angie got 100% custody of both children, and moved to Florida. Brad moved to Colorado. When Justin turned 13 he wanted to move in with Dad. Dad and Mom agreed to try it out for a while to see if it worked. After six months they decided Justin could stay with Dad. No legal custody change was started. Jennifer wanted to stay with Mom.

- Is a change in legal custody required? If not, when did the permanent physical custody change occur?
- What happens to support payments during the physical custody change?
- What state can entertain a change in support? Is a new application needed? What if Jennifer moved in with Dad too?



Complicated Modifications – SCRA and Military Active Duty

Scenario: Arnold and Marie have one child born out of wedlock, Danny. Arnold is in the Army and is about to be deployed to Fort Bragg, North Carolina. Marie wants a paternity/child support order quickly before Arnold is deployed, for TriCare and support purposes.

- How does the Servicemember Civil Relief Act play into this?
- What is Arnold's state of residence? What can be considered as income?

Scenario #2: Arnold is deployed to Afghanistan for 9 months in a combat zone and has an extra 30% in pay as a result.

- Should a modification be sought?
- How does the SCRA play into this situation?



Complicated Jurisdictions – Tribal Members of Different Tribes

Scenario: Dolly and Johnny are unmarried and have a child, Reba. Dolly is an enrolled member of the Lac Courte Oreilles Band and is employed by that Tribe. Johnny is an enrolled member of the Ho-Chunk Nation and is employed by that Tribe and receives per capita from that Tribe. Reba is not enrolled in either tribe but is eligible for enrollment in each. Reba lives with Mom, Dolly, full time on the Lac Courte Oreilles Reservation.

- Who has jurisdiction, either LCO, Ho-Chunk, or the State?
- If Dolly applies to Lac Courte Oreilles for establishment of a child support order, what can Johnny and/or Ho-Chunk Nation do?
- If Lac Courte Oreilles establishes an order for child support and Johnny owes Dolly arrears, can Lac Courte Oreilles withhold from Johnny's Ho-Chunk Nation per capita payment?

Complicated Modifications – Hague Convention Order Provided by Parent

Scenario: Lara has a €300 order from France for the support of Michelle. The NCP is Horst, who lives and works in Germany. Lara brings this order to your office as she has relocated to your state, and she wants a modification. She claims Horst got a big promotion.

- What steps do you take to determine if you have jurisdiction to modify? What if you don't have jurisdiction to modify?
- What do you need to do to have an authenticated copy of the order under the Hague Convention rules?
- What forms are needed to be filed if you pursue modification?
- How do you serve Horst? Whose service of process standard applies?
- How do you get a translation of the order?
- How do you get financial information from Horst?



Complicated Modifications – NCP wants to modify non-Hague, bilateral order

Scenario: Keith is the NCP in an Australian case in which he is ordered to pay Nichole \$400 (Australian dollars) per month for the support of Hugh. Nichole and Hugh moved to Indonesia. Keith was the general manager of an Outback Steakhouse restaurant but got laid off, and is now a night-shift manager at Burger King in your state, making much less

- What can you do for Keith under the Bilateral Agreement?
- Is there a UIFSA provision available to Keith if Indonesia won't modify?
- How often do you convert the money from Australian dollars to U.S. dollars?



Thank You!

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