

Intermediate Intergovernmental: From Youse Guys to Y'All (and Everything In Between)



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UNIFORM INTERSTATE FAMILY SUPPORT ACT

- UIFSA Model Rules, UCCJEA, PRWORA, FFCCO
- Personal Jurisdiction vs. Subject Matter Jurisdiction
- Establishment Responding vs. Enforcement Initiating
- Hague Convention The Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance (HCCH 2007 Child Support Convention)

BUT WHAT DO I REALLY DO!!!

OUR GOAL:
GO FROM UIFSA TO UIFSA

Unintelligible
Irritating
Frustrating
Suspicious
Act



Uniform
Interstate
Family
Support
Act

BUILDING ON THE BASICS

Intergovernmental Workflow



Jurisdiction / Choice of Law

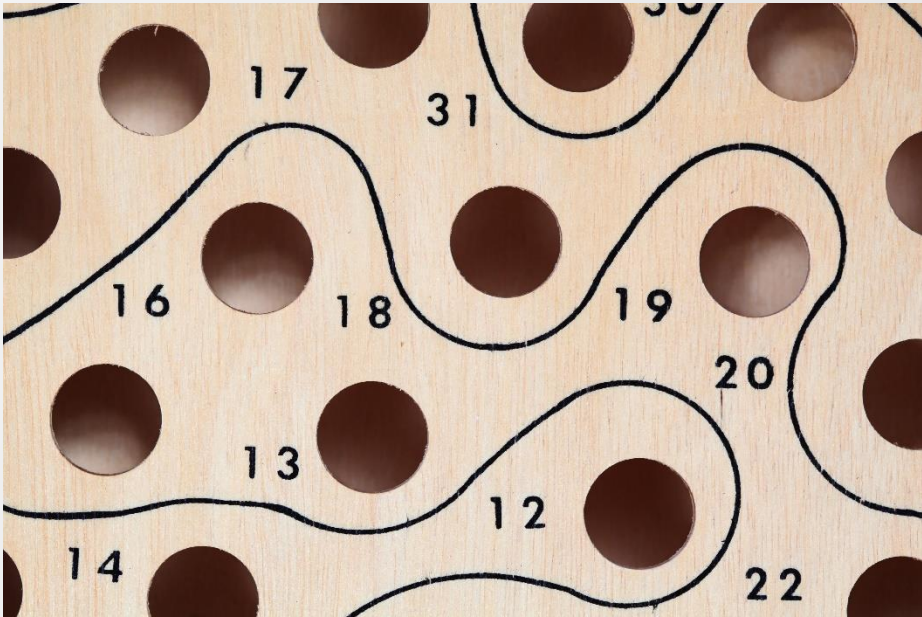


Establishments, Registrations and Modifications



Problems and Barriers

WHAT TO DO FIRST



Know what you are requesting

- One State vs Two State Solution
- Can the other state do what I need?
- Is there a form for that?

Practice Point: Consider a one-state solution first

Fill out the documentation as completely as possible, even if it calls for information your state doesn't need

UIFSA MEANS THERE'S A FORM FOR THAT

INTERNAL DOCUMENTS

- Transmittals
 - Transmittal #1 – Initial Request
 - Transmittal #2 – Subsequent Actions
 - Transmittal #3 – Request for Assistance / Discovery
- Child Support Agency Confidential Information Form
- UIFSA Form §319 for Redirection

DOCUMENTS FILED WITH TRIBUNAL

- Letter of Transmittal Requesting Registration
- Uniform Support Petition
- Personal Information Form For UIFSA §311
- General Testimony
- Declaration in Support of Establishing Parentage

BUT WHO DOES WHAT, WHEN, WHY, AND HOW

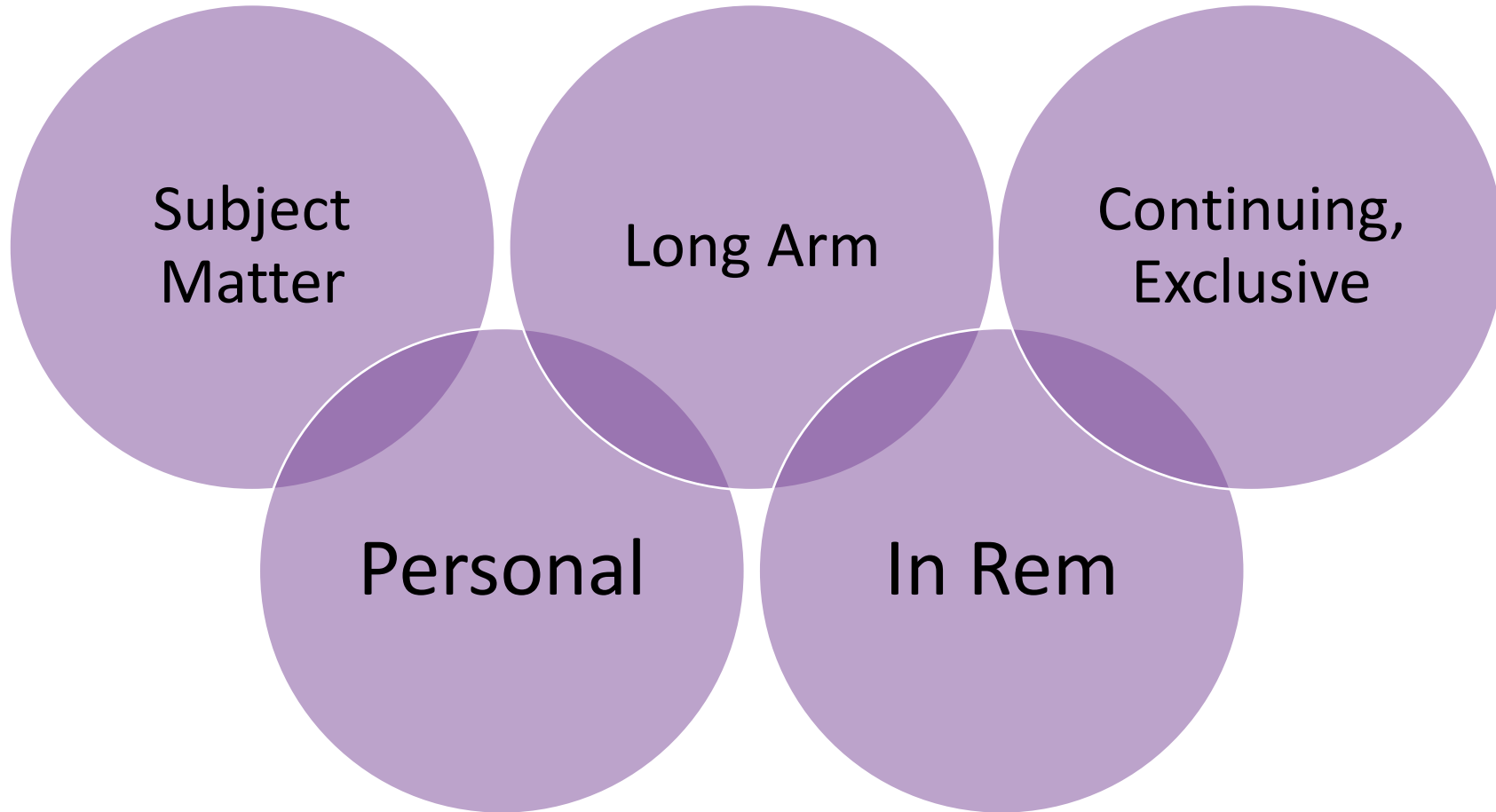
Action depends on:

- **Who lives where?**
- **How did we get the case?**
- **What is being requested?**

Interstate Activities

- 1) Establishment
- 2) Enforcement
- 3) Modification
- 4) Change of Beneficiary
- 5) Payment Forwarding /
Redirection

JURISDICTION



CHILD SUPPORT JURISDICTION MADE EASY

Subject Matter	Does the court have the power to hear the issues?
	Courts of General or Specific Jurisdiction
Personal	Does the court have power over the person?
	Long Arm
Continuing, Exclusive	Once an order exists, the issuing tribunal has the exclusive power to modify that order
In Rem	Jurisdiction over Property
	Generally, used for specific enforcement remedies

JURISDICTION: THE FOUNDATION OF A CASE



Subject Matter
Jurisdiction



Personal
Jurisdiction



Valid Order

JURISDICTION: THE FOUNDATION OF AN INTERSTATE PROBLEM



Subject Matter
Jurisdiction

+

Personal
Jurisdiction

=

Valid Order

LONG ARM JURISDICTION

- Exercising personal jurisdiction over a non-resident
- Based upon non-resident's conduct in the forum state
- Most common for establishment



Served within the state

Submits to Jurisdiction

Lived in the state with the Children

Lived in the state and Provided Pre-natal Expenses or Support

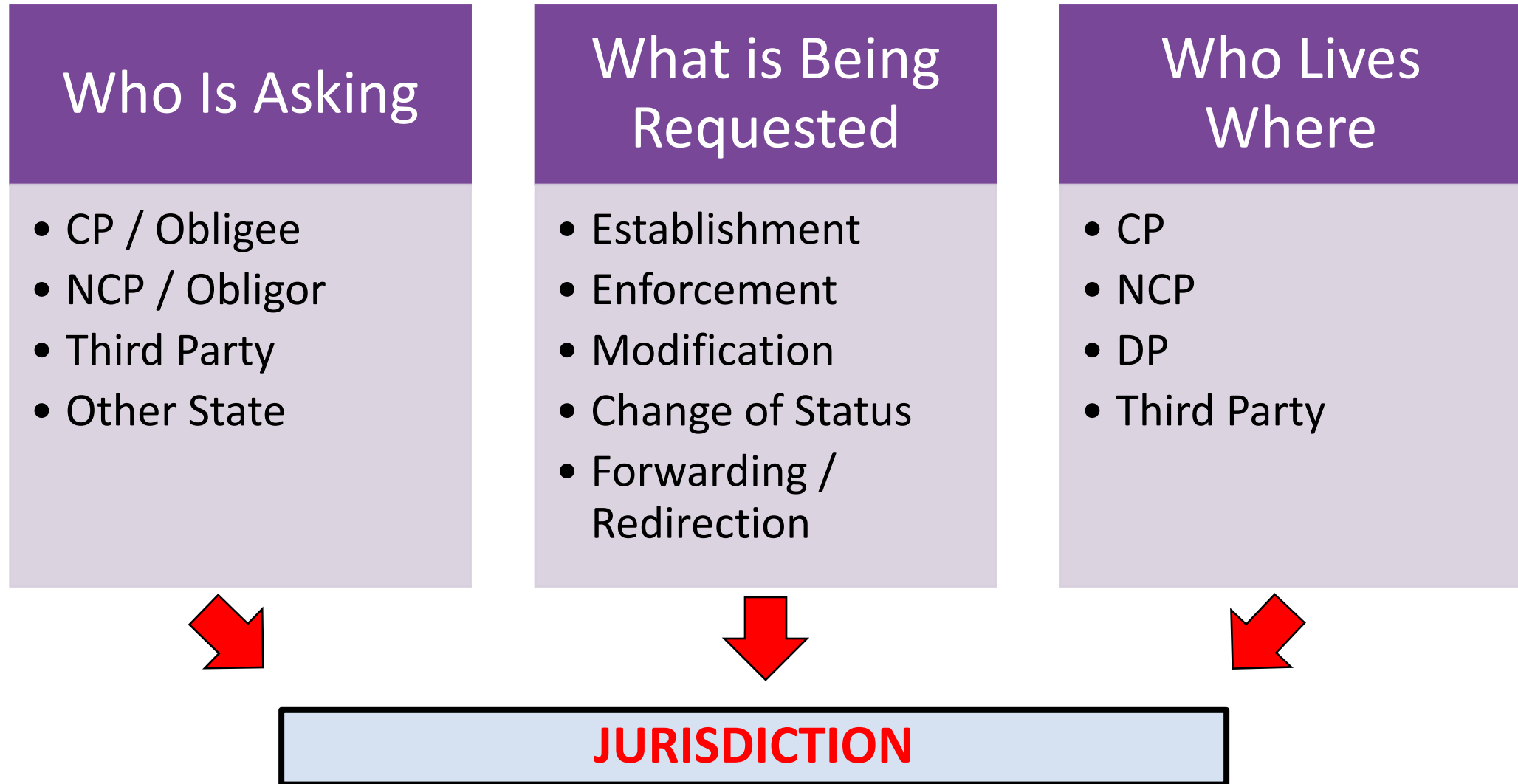
Child in the state due to Acts or Directives

Sex in the state

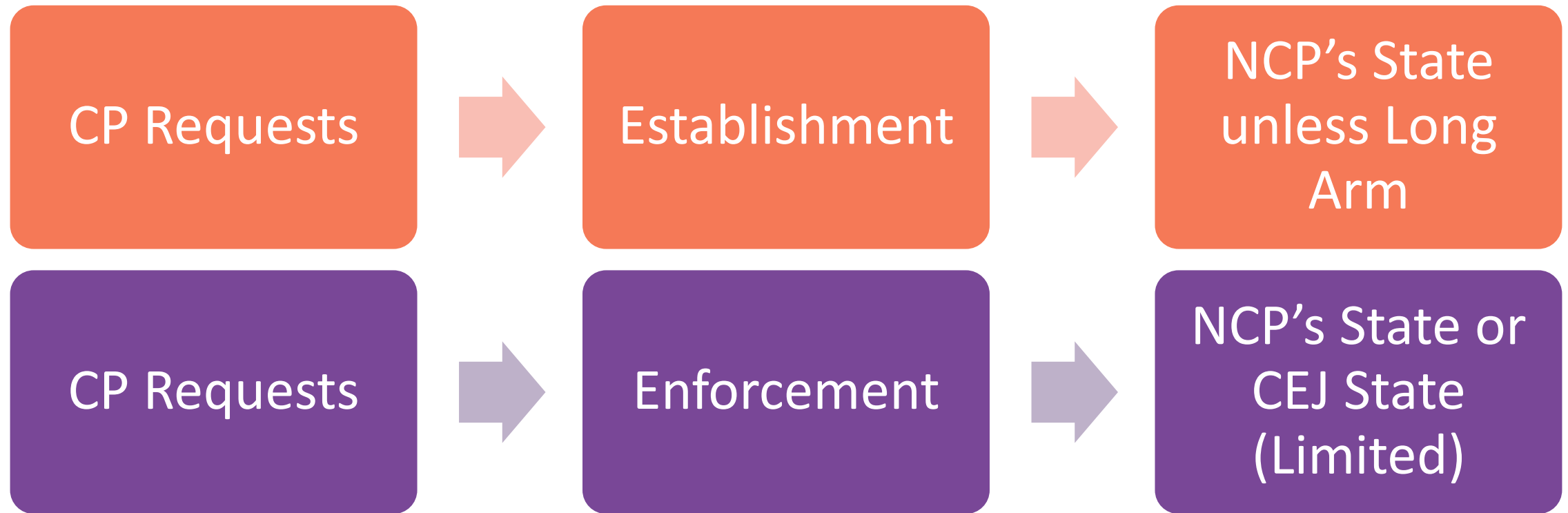
Acknowledgement or claim of paternity in the state

Constitutional Basis

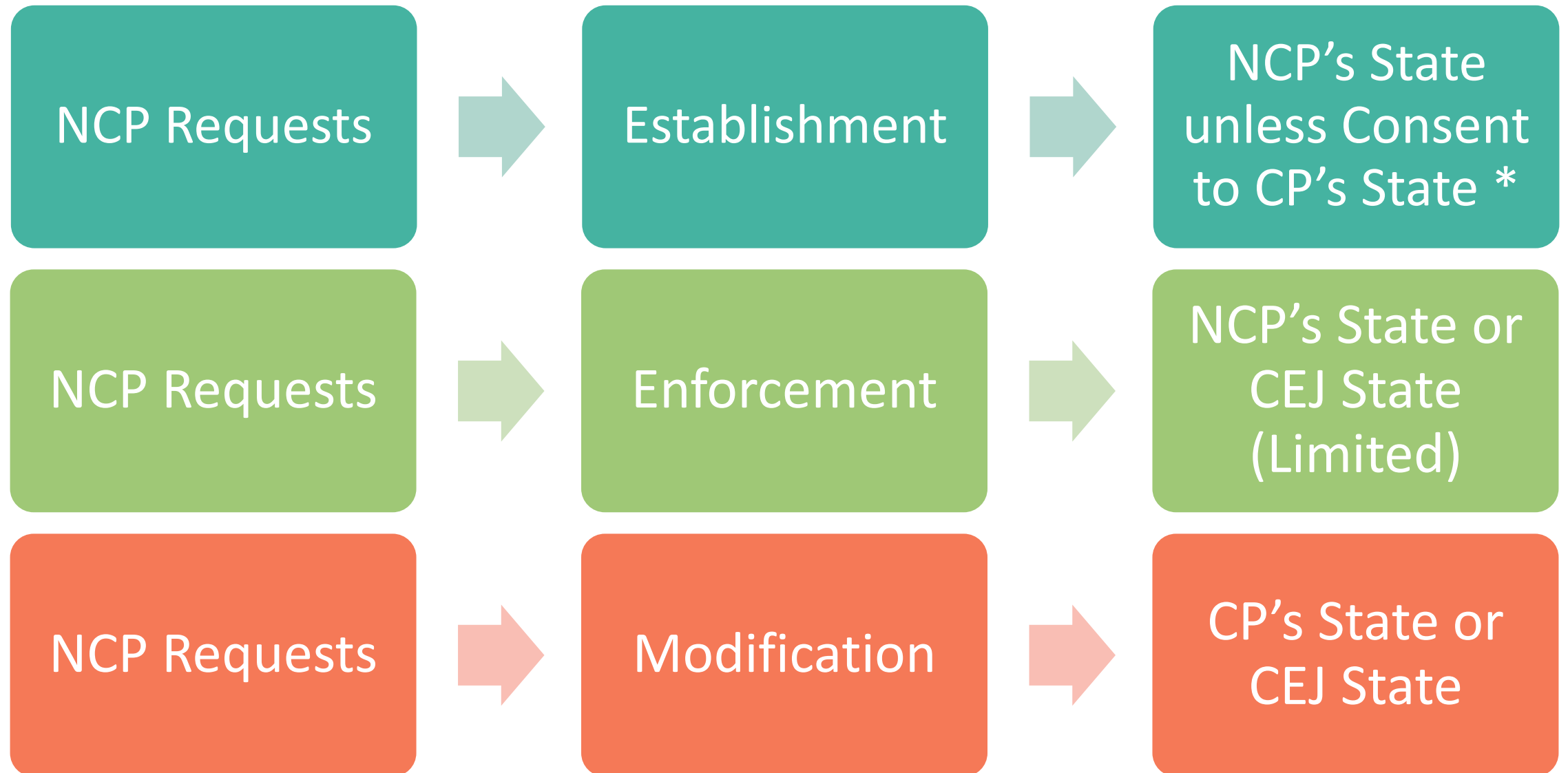
INTERGOVERNMENTAL EQUATION: OUR OPTIONS



INTERGOVERNMENTAL: CP REQUESTS



INTERGOVERNMENTAL: NCP REQUESTS



CEJ, CEJ, WHAT ABOUT CEJ?

A tribunal that issued a child support order exercises CEJ if the:

- Order is the controlling order, AND
- At the time of the filing of a request for modification, one of the individual parties to the support case resides in the state;
OR
- Consent of the parties
- UIFSA § 205



CEJ vs. Controlling Order

CHOICE OF LAW, WHOSE LAW?

ISSUING STATE GOVERNS:

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

RESPONDING STATE GOVERNS:

- Procedures and remedies to enforce current support and collect arrears and interest

UIFSA ESTABLISHMENT

In General

- Do not set conservatorship or visitation

Choice of Law

- Responding state's law regarding:
 - Paternity
 - Obligations
 - Duration

Calculating Support

CALCULATING SUPPORT

Income Shares Model

Percentage of Income Model

Melson Formula

- Dalton v. Clanton, 559 A.2d 1197 (Del. 1989)

CALCULATING SUPPORT

- Income Shares Model (41 States and Territories)
 - Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wyoming, Guam, Virgin Islands.
- Percentage of Income Model (6 states)
 - Flat Percentage: Alaska, Mississippi, Nevada, and Wisconsin
 - Varying Percentage Model: North Dakota and Texas
- Melson Formula (3 states)
 - Delaware, Hawaii, and Montana

UIFSA ENFORCEMENT

In General

- Any court with jurisdiction can enforce a support order

Registration

- Process to bring the out of state order to your state
- Does not create a new order nor does it modify the controlling order

Enforcement

- Enforce as if it were any other case

REGISTRATION, THE TICKET TO LITIGATION



* Greaney, Dan & Scott III, Swinton O., 1997, December 7. *Reality Bites*, Season 9 Episode 10. The Simpsons. Fox Broadcasting Co.

Registration – UIFSA / Foreign Order

UIFSA § 605

Notice

Original Model Rules: 20 Days

Texas moved to 30 days in 2021.

Tex. Fam. Code § 159.605

Recognition – Hague Convention

UIFSA § 707

Notice

Contest of a Convention Order must be filed not later than 30 days after notice

Contest must be filed not later than 60 days after notice if the party does not live in the United States

IS REGISTRATION NECESSARY?

A Split Approach

Registration Necessary

- Alabama - Williams v. Williams, 91 So. 3d 56 (Ala. Civ. App. 2012)
- New York - Auclair v. Bolderson, 6 A.D.3d 892, 775 N.Y.S.2d 121 (2004)
- Nebraska - Lamb v. Lamb, 14 Neb. App. 337, 707 N.W.2d 423 (2005)
- Wisconsin - Cepukenas v. Cepukenas, 221 Wis. 2d 166, 584 N.W.2d 227 (Ct. App. 1998)

Formal Registration Not Required

- Texas - Kendall v. Kendall, 340 S.W.3d 483 (Tex. App.—Houston [1st Dist.] 2011, no pet.)
- Washington –In re Marriage of Owen & Phillips, 126 Wash. App. 487, 108 P.3d 824 (2005)
- Mississippi - Nelson v. Halley, 827 So. 2d 42 (Miss. Ct. App. 2002)

DEFENSES TO DOMESTIC REGISTRATION

Issuing tribunal
lacked personal
jurisdiction

Order was obtained
by fraud

Order has been
vacated, suspended,
or modified

Issuing tribunal has
stayed the order
pending appeal

Defense under the
law of this state to
the remedy sought

Full or partial
payment

Statute of limitation
precludes
enforcement

Alleged controlling
order is not the
controlling order

CONTEST OF REGISTERED CONVENTION ORDER

Incompatible with Public Policy

Lacked Personal Jurisdiction

Not Enforceable in the Issuing Country

Obtained by Fraud (Procedural)

Lacks Authenticity or Integrity

Identical Proceeding Pending in this State Filed First

Order is Incompatible with a More Recent Support Order

Full / Partial Payment

Respondent Did Not Receive Notice / Was Not Entitled to Notice

Order was an Improper Modification

THE ART OF A JURISDICTIONAL CHALLENGE

Forum for a Challenge

Personal Jurisdiction

- Kulko v. Superior Court of California In & For City & Cnty. of San Francisco, 436 U.S. 84, 98 S. Ct. 1690, 56 L. Ed. 2d 132 (1978)

Subject Matter Jurisdiction



MODIFICATION

Change of Continuing Exclusive Jurisdiction

- UIFSA § 205
- Court assumes jurisdiction from the CCEJ
- Upon modified order, modifying court is now the CCEJ

Choice of Law

- Modifying State's Law

Limitations

- Duration cannot be modified
 - Except for indefinite support
- UIFSA § 611

ASSUMING JURISDICTION, FOREIGN AND DOMESTIC

DOMESTIC PARTIES

- Everyone Lives in the Same State
- Everyone Leaves (Play Away)
- Everyone Agrees
- Multiple Orders and Everyone Leaves

FOREIGN PARTY

- One Party Outside the Country
 - UIFSA § 611 (f)
- Foreign Country: Lacks or Refuses Jurisdiction
 - UIFSA § 615
- Hague Convention Order
 - UIFSA § 711

CONSENT TO MODIFY



- UIFSA §205(a)(2) authorizes a tribunal to modify:
 - if the state is not the residence of the obligor, individual obligee or child
 - if the parties' consent in a record or in open court that the tribunal issuing the controlling support order may continue to exercise CEJ.

UIFSA §205(b) states a court may not exercise CEJ when:

- All of the parties who are individuals file a consent in a record with this state that a tribunal of another state, that has jurisdiction over at least one of the individual parties or is located in the state of residence of the child,
- The order is not the controlling order.



POST HOC ERGO PROPTER HOC, UIFSA STYLE?

(after this, therefore because of this)

- A tribunal that lacks CEJ may serve as an initiating tribunal to request that a tribunal of another state that has CEJ should modify the order.



Example: a state has registered an order for enforcement only but may act as the initiating state to request another state to modify the order.

UIFSA § 206

EFFECT OF MODIFICATION BY ANOTHER STATE

- UIFSA § 205(c)
 - If another state modifies the child support order issued by this state, then this state must recognize CEJ of the other state
- UIFSA § 611(e)
 - If the child support order issued by one state is modified by another state, the modifying tribunal assumes CEJ



Ryan's Rule for intergovernmental modification jurisdiction

$$2 > 1$$

“It’s math so easy,
even a lawyer can do it!”

- Ryan

RYAN'S RULE

$$2 > 1$$

Information Needed

1. Order Issuing State

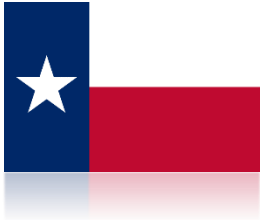
2. CP / DP State

3. NCP State

RYAN'S RULE

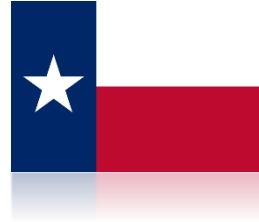
$$2 > 1$$

Order



Texas

CP / DP



Texas

NCP



Nevada

- $2 \text{ (TX)} > 1 \text{ (NV)}$
- Texas keeps jurisdiction

RYAN'S RULE

$$2 > 1$$

Order



Maryland

CP / DP



Colorado

NCP



Colorado

- 2 (CO) > 1 (MD)
- Colorado assumes jurisdiction

RYAN'S RULE

$2 > 1$

Order



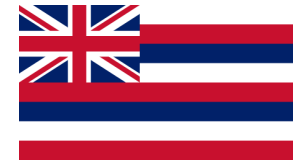
New Mexico

CP / DP



Oregon

NCP



Hawaii

- $1 \text{ (NM)} = 1 \text{ (OR)} = 1 \text{ (HI)}$
 - Play Away
 - Who is requesting?

COMMON PROBLEMS WITH INTERGOVERNMENTAL CASES

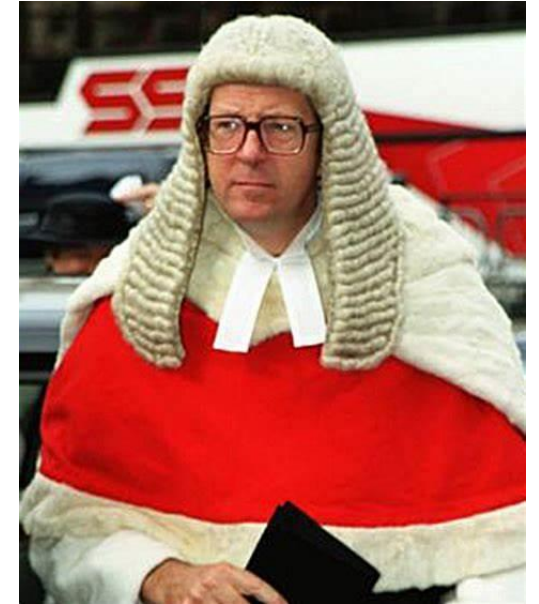


- Missing documents
- Locate not recently verified
- Address and/or Employment information is old
- Other information is incomplete or inaccurate
- If local or “optional” forms are needed, explain these to the initiating jurisdiction

PHYSICAL VS. LEGAL RESIDENCE



- Official comments to UIFSA state that proof that neither individual nor the child continue to reside in the issuing state is made directly in the responding tribunal.
- But what does “reside” as used in UIFSA mean? There is a split in the appellate courts as to what the drafters meant when using the term “reside”.



BARRIERS WITH INCOMING CASES

- Family Violence
- Action requested inaccurate
- ALL orders not included
 - Modifications
 - COLA



TIPS FOR COMPLETING DOCUMENTS

- Reconcile arrears on all documents
- Pay close attention to case type (i.e., TANF, Medical Only)
- Provide a recent, verified address for the obligor
- Request correct action (i.e., Collection of Arrears Only)
- Provide your direct contact information
- Provide email address



CUSTOMER SERVICE

- Initial referrals – contact the Central Registry within 30 days
- Follow-up status requests – contact the local county/regional agency
 - If unable to obtain a response, contact the Central Registry
 - Responding jurisdiction sends all correspondence through the initiating jurisdiction
 - Parties should contact their child support agency within their respective state



COMMUNICATING WITH ANOTHER STATE

- Follow a “hierarchy”
- Utilize various communication tools
 - Transmittals
 - Email
 - Telephone calls
- Federal tools
- Call centers vs. direct contact



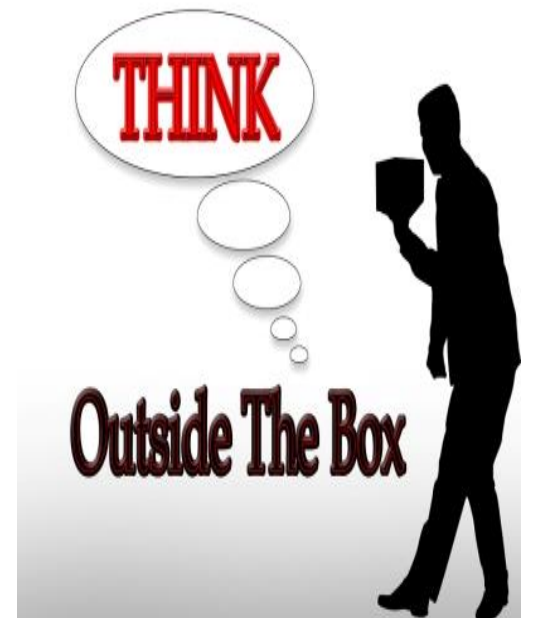
FEDERAL ELECTRONIC TOOLS

- Use the electronic tools available on the OCSE Portal
 - IRG
 - QUICK
 - FCR
 - CSENet
 - EDE
 - Communications Center



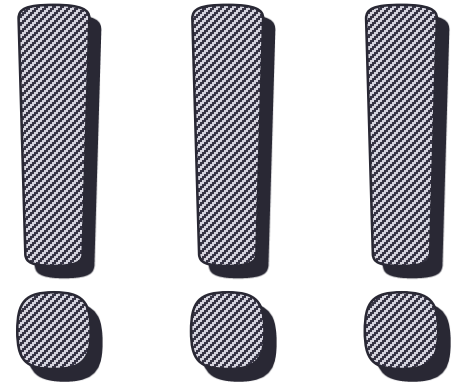
POINTS OF INTEREST

- Paternity when CP is not the mother
 - Complete Declaration in Support of Establishing Parentage
 - Notarized statement from CP
- Voluntary Acknowledgment of Paternity vs. birth certificate
 - Constitutes legal proof of paternity
- Change of Payee/Beneficiary
 - Varies from state to state
 - Administrative in some states while judicial in others



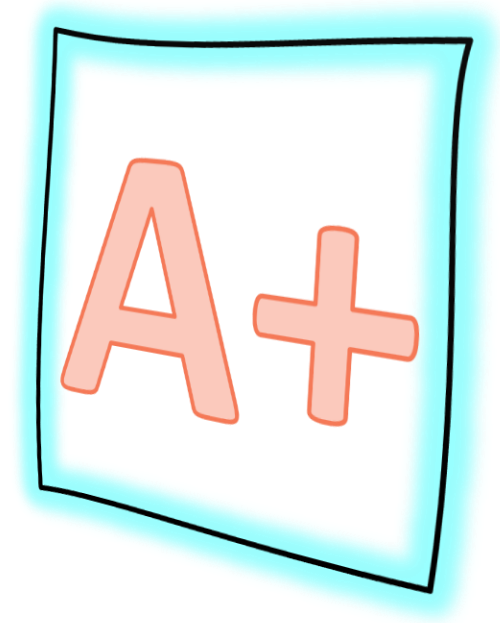
POINTS OF INTEREST

- Redirection of Payments vs. Enforcement vs. Payment Forwarding
 - Payments originally sent directly to CP and are now sent to an SDU
 - Originally sent to one SDU and now sent to a new SDU
 - Transmittal #1 vs. Transmittal #3
- Enforcement and forward payments
 - Varies from state to state
 - Use for administrative action requests



POINTS OF INTEREST

- Certified copies of orders
- Registration for Modification Only – NCP filing
- Confidentiality forms
- Arrears calculations
 - State with controlling order determines the balance
- Telephonic testimony
 - Varies from state to state, although now mandatory
 - Valuable tool in intergovernmental cases





Thanks for Attending: Intermediate Intergovernmental

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To Y'all
WICSEC 2023

