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Uniform Interstate Family Support Act (UIFSA)-An Overview

In 1994, Congress enacted the Full Faith and Credit for Child Support Orders Act (28 U.S.C. §1738(B)(1994)) to address the jurisdictional problems surrounding the modification of a foreign child support order. UIFSA was already in the making as a Model Act drafted in 1992, and amended in 1996. The Welfare Reform Act of 1996 required all states to have UIFSA in effect by 1998. Pennsylvania adopted UIFSA on January 1, 1998 (23 Pa.C.S.A. §§7101 to 7901). The key of UIFSA is one order/one time/one place.

I. UIFSA Jurisdiction

A. Long Arm Jurisdiction-Jurisdiction over a non-resident may be based on one or more of the following:

- The individual is personally served with a summons while in the forum State (*Burnham v Superior Court*, 495 U.S. 604 (1990); 23 Pa.C.S.A. §7201(1));
- The individual submits to the jurisdiction of the forum State (§7201(2));
- The individual resided with the child in the forum State (§7201(3));
- The individual resided in the forum State and provided prenatal expenses or support for the child (§7201(4));
- The child resides in the forum state as a result of the acts or directives of the individual (§7201(5));
- The individual engaged in sexual intercourse in the forum State and the child may have been conceived by that act of intercourse (§7201(6));
- The individual acknowledged parentage of the child in a form filed with the Department of Public Welfare of the Commonwealth under §5103 (relating to acknowledgement and claim of paternity)(§7201(7));
- There is any other basis consistent with the constitution of the forum State and the United States (§7201(8)).

B. Service of Process

A long-arm case is a local action and must follow local law. Jurisdiction can still be challenged if service was ineffective or the nexus between the nonresident and the forum state cannot pass a fundamental fairness test.

NOTE: special evidentiary rules of §§7316 and 7318. The respondent should be advised of the availability of forms required to have his testimony admitted and the availability to participate in the proceedings without returning to the forum state.

- Federal regulations require child support agencies to use long arm jurisdiction where appropriate.
- Either parent may initiate an action to establish paternity and/or support. The IV-D agency must provide services to the petitioner.
- Be aware of any advantages to establishing the first support order. The first state establishing support has continuing exclusive jurisdiction (CEJ) and the non-modifiable terms will control for the duration of the order (age of emancipation).

C. Two-State Process

If long arm is not available or appropriate, the petitioner files in his or her home state, and the petition is transmitted to the responding state.

- Procedural and substantive law of the forum state applies.
- If a paternity determination is already in existence under another State's law, the responding jurisdiction must give it full father and credit (§7315). Non-parentage cannot be raised as a defense; but
 - if paternity has not been determined, the alleged father may raise it as an issue
 - the law of the forum State applies as to presumptions of paternity, admissibility of genetic tests or other litigation issues.
- Determination of support and calculation of the order are determined by the law of the forum state (§§7401(c), 7303 and 7305).
- The order must include calculations upon which the support amount is based.
- Notice requirements must be met (see attachment).

D. Simultaneous Proceedings (§7204)

Since either party may initiate litigation, UIFSA has tie breaking rules to decide where the litigation should proceed if both parties file in different states. Child's home state may come into play as defined in the UCCJA and PKPA.

II. Continuing Exclusive Jurisdiction (§7205)

At any one time, only one State has jurisdiction to modify the order. The State issuing the order has CEJ so long as the obligor, obligee or the child is a resident or until all of the parties file a written consent for another State to modify the order and assume CEJ. The issuing State's CEJ continues until another State modifies the order, and the State with CEJ continues to have enforcement powers (§7206).

Modification of a Support Order

UIFSA incorporates the concept of continuing, exclusive jurisdiction (CEJ), granting to only one State the right to modify the existing support order. So long as one party or the child resides in the State which entered the original order, that State retains CEJ to modify upon proper petition. This also means that even though the state with

CEJ has registered its order in a sister state for enforcement, the sister state does not have the authority to modify the order. *Example:* All parties in PA; support order entered. Obligor moves to FL and ceases payment. PA registers its order in FL for enforcement only. Obligor petitions to modify in FL. FL does not have the authority to modify the order. Obligor's petition can only be heard and acted upon in PA. Obligor may participate in the PA proceedings in person or by telephone upon application to and approval by the Court.

I. CEJ

The State with CEJ is the State that has issued a support order and remains the residence of the obligor, obligee, or the child. If there is only one state with CEJ, only that state may modify its order (§7205).

II. More Than One CEJ State (§7207)

If there is more than one state with a support order and one of the parties or the child resides there, the controlling order must be determined. The state with the controlling order has CEJ and may modify.

1. Two or more CEJ States, child's home state trumps.
2. Two or more CEJ States and none is the child home state, most recent order trumps.

These scenarios are fewer as the states have all adopted and are now following UIFSA. If you have a case with an old URESA order, you may find yourself in this situation.

III. Assumption of CEJ by another State

If an issuing state has lost CEJ, a second State may gain it. However, the second State may not modify terms of the controlling order that are non-modifiable in the issuing State (such as duration of the obligation). CEJ is lost when:

1. All parties and the child have left the issuing jurisdiction;
OR
2. The obligor and the obligee agree in writing for another State to assume CEJ;
OR
3. There is more than one support order, but none of the States involved have CEJ (§7207(a)(4)).

IV. Modification Process (§7609-7612)

- Even though the issuing state has lost CEJ, either the obligor or obligee may seek modification
- To avoid forum shopping, the person seeking modification must file in the jurisdiction of the other party.
- Modification is subject to the procedural and substantive laws of the responding state, except the responding state may not modify any provision of the order not subject to modification in the issuing state (§7611(b) and (c))

Example: Order entered in NY where emancipation occurs at age 21. Obligor moves to FL; Obligee moves to PA. Obligee seeks an increase. Petition is heard in FL (the non-moving party's jurisdiction) FL modifies pursuant to FL support guidelines. FL now assumes CEJ (§7611(d)), NY must recognize the modification (§7612) but the duration of the NY order (age 21) continues. Emancipation is a non-modifiable term and survives the change in CEJ.

Points to Remember:

1. Only child support is modifiable. Spousal support must be modified in the issuing state.
2. Under UIFSA, either a court or an administrative agency may be a tribunal. Therefore, a court order of one state may be modified by an administrative agency of another state lawfully exercising jurisdiction.
3. UIFSA is a two-way street....a party who has moved away may use the Act to either initiate a modification to the state with CEJ or to respond to a modification brought by the party who remains in the issuing state.

Registration of a Support Order from Another State

As practitioners in PA, what should we know about UIFSA and registration of foreign orders in PA? A foreign order may be registered in PA for either enforcement (§7601) or modification (§7609).

I. Procedure to register for enforcement (§7602):

1. Letter of transmittal requesting registration and enforcement;
2. Two copies (one certified) of the order to be registered;
3. A sworn statement by the party seeking registration of the arrears or a certified statement from the DRO showing the amount of arrears;
4. The name of the obligor, address, SSN, employer, sources of income, description and location of property in the responding State;
5. Name and address of obligee and the agency to who support payments are to be transmitted.

This is the minimum required by statute; however the transmittal forms in use throughout the country (attached) request additional information relating to the

children of the order; date of last payment; etc. At the time an order is registered for enforcement, there may also be a request for simultaneous relief (§7602(c))

II. Notice of Registration (§7605)

A. The Notice must inform the non-registering party:

1. that the registered order is enforceable as of the date of registration;
2. that a hearing to contest the validity or enforcement of the order must be requested within 20 days of the date of mailing or personal service;
3. failure to contest the validity in a timely manner shall result in confirmation of the order and enforcement;
4. the amount of alleged arrears.

III. Contest to Registration (§7607)

A. Non-registering party must file an "Objection to Registration" within 20 days of the mailing of the notice of registration. File with Prothonotary, copy to DRO. *See Attachments, which have been prepared by the DRO for use by pro se litigants.*

B. The IV-D agency attorney represents the registering party, unless private counsel has been retained.

C. Defenses:

1. Issuing tribunal lacked personal jurisdiction;
2. order was obtained by fraud;
3. order has been vacated, suspended or modified by a later order;
4. issuing tribunal has stayed order pending appeal;
5. there is a defense under the law of the forum state to the remedy sought;
6. full or partial payment has been made;
7. statute of limitations under 7604 (relating to choice of law) precludes enforcement of some or all of the arrears.;

D. Confirmed Order (§7608) – confirmation of a registered order precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

IV. Registration for Modification (§7609)

A. same manner as for enforcement; request for registration usually accompanied by a petition for modification.

B. Modification can only occur if requirements of §7611 are met:

1. child, obligor or obligee do not reside in issuing state;
2. petitioner is a non-resident and seeks modification;
3. respondent is subject to the personal jurisdiction of PA.

C. Order is modified pursuant to PA guidelines. §7611(b).

D. Restriction—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, i.e., duration of the obligation. §7611(c)

E. Upon issuing an order modifying a child support order issued in another state, PA assumes CEJ. §7611(d).

UIFSA Enforcement

1. Enforcement is available in any State where the obligor derives income, owns property or assets, as well as where personal jurisdiction may be obtained.
2. UIFSA requires determination of controlling order when there are multiple orders for purposes of establishing how much current support can be enforced. Any State with a valid support order may enforce arrears accrued prior to determination of the controlling order. Arrears are a final judgment, non-modifiable retroactively and entitled to full faith and credit (42 U.S.C. §666(a)(9)).
3. Direct Income Withholding (§7501) – provides for recognition in a UIFSA state of the income withholding order of a sister state without first registering the order. Direct Income Withholding may be initiated by sending an order directly to the obligor’s employer located in another state. Need only be by regular mail; however, Montgomery County DRO often sends these orders by certified mail.
4. The employer must treat the order as if it had been issued by the tribunal with jurisdiction over the employer. “Employer” is defined by the receiving state’s withholding law. Payments **do not** go through the employer’s state.
5. UIFSA is unclear as to which State’s law applies on issues such as definition of income subject to garnishment; garnishment limits; fees charged by employers; time frames for distribution of funds; and allocation in the case of multiple families.
6. §7502 authorizes a responding UIFSA state to use available administrative remedies to the fullest extent possible; negates the need for registration. However, if the obligor contests the use of administrative remedies, the order must be registered for enforcement.
7. Choice of law (§7604) requires the procedure and law of the registering state govern enforcement issues. Regarding applicable statute of limitations, UIFSA directs the registering tribunal to apply whichever law is longer, issuing or responding – a public policy choice in favor of enforcing child support debts.

Intrastate Family Support Act (IFSA)

23 Pa. C.S.A. §8101-§8415

Same principles as UIFSA, only all matters are within the Commonwealth. Provides for registration for enforcement or modification, full faith and credit is given from county to county. Simplified by PACSES, since all monies paid within the Commonwealth support network are recorded for all counties to access.

Most often, IFSA is utilized when the obligor is self-employed and a non-resident of Montgomery County, or venue is more appropriate in another county. Obligee files a complaint as in a local case, and the complaint is transmitted to the responding tribunal. Parties may participate in the proceedings by telephone, and the physical presence of the petitioner is not required.

If the case is commenced in Montgomery County, but enforcement of the order becomes problematic because of the obligor's non-residence locally, the case will usually be registered for enforcement in the appropriate location. Orders are not transferred without prior consultation with the obligee.

§8312 provides tribunals assist one another in obtaining discovery or to compel an individual over whom it has jurisdiction to respond to a discovery request.

§8313 provides that if the obligee prevails in a registration request, the court may assess the obligor for reasonable attorney fees, costs, and necessary travel incurred by the obligee and the obligee's witnesses. §8313(c) states a tribunal **shall** order the payment of costs and attorney fees if it is determined that a hearing was requested primarily for delay; furthermore, *a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.*