UI FSA 2008
International Future

19th Annual AB 1058 Child Support
Training Conference
October 14-16, 2015

Agenda

- 2007 Hague Convention
- Differences from Non-Convention Cases
- What Remains the Same

2007 Hague Convention

- Alisha Griffin
  - Director, California DCSS
The 2007 Hague Convention

Multilingual, multicultural implementation across all levels of program & practice, and financial management

U.S. Participation in 2007

Convention on International Recovery of Child Support and Other forms of Family Maintenance

- U.S. had never participated prior
- 2003 – U.S. State Dept agreed to establish delegation

Hague Convention Process

- 71 countries participated
- Different legal traditions
- Diverse approaches to delivery of services
- Formal negotiations 2003-2007
- Workgroups on forms, applicable law and casework practice
- Finalization and signing, November 2007
Hague Convention Parties

- 32 Countries have Ratified
  - European Union (as of 8/2014)
  - Norway
  - Albania
  - Bosnia and Herzegovina
  - Ukraine

Future Hague Convention Ratification

- United States (post-UIFSA 2008)
  - Brazil
  - Belarus
  - Kazakhstan
  - New Zealand
  - Australia

U.S. Process towards Implementation

- July 2008 – incorporation into UIFSA
- November 2009 – Senate Foreign Relations Committee Hearing
- September 29, 2010 – Senate advice and consent to ratification
- September 29, 2014 – Congress approved implementing legislation; President signed
  - Pub. L. No. 113-183
What Needs to Happen for Ratification

• All states must enact UIFSA 2008 to be in effect no later than April 1, 2016
• President must sign instrument of ratification
• May take up to 6 months

What Needs to Happen

• U.S. will deposit instrument of ratification with Hague depository
• Will take effect on the first day of the first month that is not less than 3 months after deposit
• Current Projection: End of 2016

Convention: Next Steps

• At Conferences: Gauge Impact & Provide Training
• OCSE: Formed Forms Workgroup and Reviewing Policy and Guidance
• National Council of Child Support Directors established Workgroup
• Each State: Address Regs, Policy, Practice Alignments
• iSupport Development
iSupport: International Case Management System

General Description
• iSupport Electronic Case Management and Secure Communication System (ECMSCS) will provide states with necessary Information and Communication Technology (ICT)
• Goal: Facilitate fast, efficient, easy, cost-effective and results-oriented international recovery of maintenance obligations.

iSupport Generally
iSupport will address all major challenges raised by cross-border recovery of maintenance, such as:
• Large volume and long duration of cases
• High volume of communication between authorities
• Numerous repetitive actions, including electronic transfer of funds
• Secure communications
• Language barriers
• Real time access to information across time zones

iSupport Development
• Permanent Bureau at the Hague (Secretariat)
  • Project Owner
  • Project Management Team
• Advisory Board est. December 2014
  • Membership: Key Central Authority Members and Subject Matter Experts
• Working Groups Established
iSupport Timeline

- May 1, 2015: RFP
- June 30, 2015: Bid response
- July 2015: Development kickoff
- August 2015: Pilot implementation of components
- Summer 2016: Full implementation

iSupport in the U.S.

- Tentative Plan:
  - U.S. implements iSupport centrally
  - Build onto Secure State Portal (SSP) by OCSE
- State Options:
  - Some States may build out to SSP
  - Other States will download/upload PDF from SSP

Convention Resources

- www.hcch.net
  - Text, Report, Caseworker's Guide, Mandatory and Recommend Forms, Country Profiles, iSupport information
- www.acf.hhs.gov/programs/css/international
  - International Case Processing Guide, Dear Colleague Letters, Policy Guidance

New definition of “record” allows electronic transmission of testimony
International Cases: What is Different under UIFSA 2008

Kristen Erickson-Donadee
Attorney III, California DCSS

First and Foremost: The Convention

Benefits of Convention
- Expansion of countries to recognize and enforce U.S. child support orders
- Requires countries to provide cost-free services to applicants
- Establishes standard procedures for processing international cases
- Will improve efficiency and timeliness

Benefits of Convention
- Contains strong administrative cooperation requirements and timeframes
- Will result in child support services that are consistent, affordable and timely
- Will be post-treaty review and monitoring of countries’ performance
Key Changes for International Cases

- Articles 1 thru 6 apply to a support proceeding involving:
  - A foreign support order
  - A foreign tribunal, or
  - An obligee, obligor, or child residing in a foreign country
    - Based on comity
- New Article 7 applies only to Convention proceedings/cases

Key Changes

- Definitions:
  - “State” includes “tribes”
  - “Foreign country” includes many, but not all, foreign nations
    - Foreign reciprocating country
    - State reciprocal arrangement
    - Country with laws substantially similar
    - Convention country

Key Changes

- Modification Jurisdiction
- Evidence
  - New definition of “record” allows electronic transmission of testimony
- Telephonic Hearing Requirements
- Choice of Law Clarification
Modification Jurisdiction

- UIFSA Section 611(f)
  - Issuing state retains Continuing, Exclusive Jurisdiction (CEJ) to modify where:
    (1) one party resides in another state; and
    (2) the other party resides outside the United States
  - Ensures party is not left without forum

Modification Jurisdiction

- UIFSA Section 615
  - If a foreign country lacks or refuses to exercise jurisdiction, a tribunal of this state may assume jurisdiction to modify
  - State must also have personal jurisdiction over all parties

Required Documents

- Non-Hague Foreign Support Orders
  - Transmittal letter
  - 2 copies of order, including 1 certified copy
  - Sworn or certified statement of arrears
  - Certain obligor & obligee information
  - Name/address of payment location
  - Request for DCO, if appropriate

- Hague Foreign Support Orders
  - Transmittal letter
  - Complete text of order (or abstract by issuing tribunal)
  - Record: order is enforceable in issuing country
  - Record: arrears and automatic adjustment of support
  - Record of receipt of free legal assistance in issuing country (if necessary)
**Time Frame to Contest**

- Non-Hague Foreign Support Orders within **20 days** after notice of registration
- Hague Foreign Support Orders
  - Not later than **30 days** after notice of registration
  - Not later than **60 days** after notice if contesting party resides outside U.S.

**Defenses to Registration: Convention Orders**

UIFSA section 708:
- *Incompatible with public policy;*
- Issuing tribunal lacked personal jurisdiction;
- Order is not enforceable in issuing country;
- If default order, lack of due process (re: notice and opportunity to be heard)

**Non-Recognition of Convention Order**

If a tribunal does not recognize a Convention order because
- Lack of personal jurisdiction;
- Procedural fraud;
- Prior proceeding was pending first;
- Default order did not satisfy due process,
Non-Recognition of Convention Order (cont’d)

Then:
• Tribunal may not dismiss proceeding without allowing reasonable time for party to request establishment of new Convention support order;
• **And** LCSA must take all appropriate measures to request a child support order where application was received through Central Authority

Hague Convention Forms

• Hague forms must be used in Convention cases once U.S. ratifies
  • Two mandatory forms: **Transmittal** and **Acknowledgement**
  • Recommended forms developed by the Forms Working Group
• Applications not signed under penalty of perjury

International Payments

• Electronic Payment Cards internationally’
  • Mexico pilot
• Electronic Funds Transfer Internationally
  • Canada
• Single Euro Payments Area (SEPA)
International Cases: What Remains the Same

• Jeffrey Schroer
  • Supervising Attorney, San Bernardino County DCSS

Principles Remaining Consistent in UIFSA 2008 as Proposed in SB 646

• Personal Jurisdiction – Non-Resident
  • Presently in Family Code § 4905
  • Maintained in UIFSA § 201
  • Two options:
    Long-arm or
    Two-state proceeding

Limit on Asserting Long-Arm Jurisdiction to Modify a Support Order

• UIFSA § 201(b)
  • Long-arm alone not sufficient
  • However...
    Situations where (a) one party resides
    out-of-state and the other party resides
    outside of the US; or (b) both parties
    reside outside of the US
Continuing Exclusive Jurisdiction (CEJ)

- UIFSA § 205 (FC § 4909 now)
  - Order is the controlling order
  - Residence requirements
  - Consent
  - Order has been modified in another state
  - Initiation of modification request by Court without CEJ
  - Ex parte or temporary orders

CEJ and Enforcement - Initiating

- UIFSA § 206 (FC § 4910 now)
  - CA tribunal can initiate request to enforce to another state if:
    - Controlling order, not modified by another state assuming jurisdiction
    - Arrears and interest accrued prior to a determination that another state’s order is controlling
    - Court having CEJ can enforce its own order by request of another court

CEJ and Enforcement - Responding

- UIFSA § 305 (presently FC § 4919)
  - The existing and proposed statutes are consistent re duties and powers of the responding tribunal
  - E-mail is included in proposed statute for obligor’s updated contact information
  - Substantive rules are avoided, as these are dependent on applicable state law
Communication Between Tribunals

- UIFSA § 317 (currently in Family Code § 4931)
  Encourages communication between tribunals - worldwide in scope
  Expands means of communication to include e-mail in addition to the court record and telephone
  Intent is to expedite order establishment and enforcement

Important Due Process Considerations Within UIFSA 2008

- Duties of initiating tribunal to foreign tribunal - currency conversion and "any other documents necessary to satisfy the foreign tribunal". UIFSA § 304 (similar to FC § 4918 now)
  Intent - Respectful of foreign tribunal's laws and processes

Important Due Process Considerations Within UIFSA 2008

- Pleadings and Accompanying Documents - UIFSA § 311 (currently FC § 4925)
  Expands existing law to require attachment of all known support orders
  Relaxes existing law by no longer requiring that the attached orders be certified
Support Order Establishment or Determination of Parentage

- Article IV - UIFSA § 401 (currently FC § 4935) – support; and UIFSA § 402 - parentage
- Personal jurisdiction required
- Applies to residents of US and foreign nations
- Tribunal of this state can determine paternity as a responding tribunal

Article V of UIFSA 2008 – Enforcement without Registration

- Employer compliance with Income Withholding Order issued in another State (UISA §§ 501 – 505)
- Validity of order or enforcement - contest by the Obligor (UIFSA § 506)
- Administrative enforcement by LCSA allowed (UIFSA § 507)
- These UIFSA 2008 provisions are consistent with existing law on UIFSA
**Registration**

- Authorized by UIFSA § 601 (currently FC § 4950)
- Procedure to register is consistent with existing law – UIFSA § 601 (currently FC § 4951)
- Can “recognize and enforce” registered order, but not modify, if jurisdiction rests with the issuing tribunal – UIFSA § 603 (currently FC § 4952)

**Choice of Law – UIFSA § 604 (currently Family Code § 4953)**

- UIFSA 2008 and existing law is consistent
- Order remains under the jurisdiction of the issuing tribunal unless and until the order is modified by the responding tribunal
- Local law (i.e. responding tribunal) applies for enforcement remedies.

**Contesting Enforcement of Registered Order**

- The procedure, timelines and potential defenses to registration for non-Convention cases are consistent between UIFSA 2008 and current law
- UIFSA §§ 605 – 607 (currently found in Family Code §§ 4954 – 4956)
Registering and Modifying an Order of Another State

- Remember our discussion on personal jurisdiction
- Registration for enforcement is one thing...modification of the registered order requires personal jurisdiction
- If personal jurisdiction, then can modify where (a) one party resides out-of-state and the other party resides outside of the US; or (b) both parties reside outside of the US

Recognition of an Order Modified in Another State

- UIFSA § 612 (currently Family Code § 4961)
- Recognition for enforcement includes:
  - Arrears prior to modification and
  - Order modified, once registered

Parties Leave Issuing State and Reside in California

- Personal jurisdiction is conferred on a tribunal in this state
- Can enforce the order and once it is registered, modify it
- The procedural and substantive rules of California apply
- See UIFSA § 613 (currently Family Code § 4962)
Notice to Issuing Tribunal of Modification

- No change between existing law and UIFSA 2008
- See UIFSA § 614, currently contained in Family Code § 4963

Jurisdiction to Modify a Foreign Child Support Order

- A California tribunal can assume jurisdiction to modify when the issuing foreign tribunal lacks or refuses to exercise jurisdiction
- The modified order then becomes the controlling order
- See, UIFSA § 616 and current law contained in Family Code § 4964

Existing Bi-Lateral Agreements

- Existing Bi-Lateral or State agreements remain in effect where not superseded
- Ex: Norway Bi-Lat will be superseded by Convention
- Ex: Canada Bi-Lat still effective
Speakers

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- Kristen Erickson-Donadee
  Attorney III, California DCSS
- Jeffrey Schroer
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