



## **UIFSA – AVOIDING ROAD BUMPS ON THE INTERSTATE HIGHWAYS**

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***Avoiding The Crash in Your Family Law Case***

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**Chapter 11**

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### **LICENSE & MEMBERSHIPS**

Attorney and Counselor at Law, Texas, 1987  
Board Certified - Family Law, Texas Board of Legal Specialization 2008 - present  
State Bar of Texas & Family Law Section  
Board of Directors, Family Law Section of San Antonio Bar Association, 2002 - 2010;  
President, 2007-2008  
Texas Academy of Family Law Specialists – 2009 - present  
Texas Family Law Foundation - Legislative Review Committee: 2009, 2011; 2013  
San Antonio Family Lawyer's Association, Board of Directors 2011- 2012; President 2013-'14  
College of the State Bar of Texas – 2012 - 2014

### **EDUCATION**

J.D., Texas Tech University School of Law, 1987  
B.A. in English (Writing) and Psychology, McMurry University, Abilene, TX 1984

### **HONORS/RECOGNITIONS**

*Texas Super Lawyers* 2008 - 2015 Family Law  
*San Antonio's Best Lawyers – Family Law*, Scene in SA magazine 2005; 2007 – 2015  
Texas Life Member, Harmony Hills Elementary PTA, 2010

### **SELECTED PUBLICATIONS & PRESENTATIONS**

*Child Support Enforcement – It Only Takes One*, 41<sup>st</sup> Advanced Family Law Course, 2015  
*All Things Enforcement*, 41<sup>st</sup> Advanced Family Law Course Associate Judge's Workshop, 2015  
Acknowledged contributor, *O'Connor's Family Law Handbook 2009; 2010* (Jones-McClure)  
Essay featured in *Women Attorneys Speak Out!* by Judi Craig, Ph.D., MCC, (Thomson-West 2008)  
*Creative Ways to Collect & Defend Child Support Claims*, 2009 Marriage Dissolution Institute  
(selected by Pro Bono Project of Texas Bar Family Law Section for distribution in *Family Law Essentials*)  
*Creative Ways to Collect & Enforce Child Support Claims*, 2009 State Bar College Summer School (selected by  
Texas Bar CLE for rebroadcast as part of "Best of 2009" series)  
*Child Support Workshop* (with Frederick Adams, David Farr & Hon. Marilea Lewis), 35<sup>th</sup> Advanced Family Law  
Course, 2009

*Child Support* (workshop presenter) Lawyer Forward 2016, Austin  
*Child Support & the Special Needs Child*, 2012 State Bar College Summer School  
*Creative Ways to Set Child Support*, 2011 State Bar College Summer School  
*Creative Ways to Enforce Child Support Claims*, 2010 State Bar College Summer School  
*Judicial & Administrative Remedies for Enforcing Child Support*, 2010 Texas Academy of Family Law Specialists  
Trial Institute  
*Caution! Watch Out for Acronyms on the Interstate Case Highway* (with Chris Nickelson), 2010 UT Parent-Child  
Relationships: Critical Thinking for Critical Issues

*Show Me the Money – Creative Child Support Remedies*, 2009 Corpus Christi Bar Assoc. Family Law Seminar  
*Dividing Assets with Fluctuating Values: Slicing the Pie on a SeeSaw* Webcast, panelist, 2009, State Bar of Texas  
*Money Matters* (with Steven Sinkin & Ruth Lown), Extreme Family Law Makeover 2009, SA Bar Assoc. Family Law Section

*Obtaining Child Support* (with Barry Brooks) 2009 UT Parent Child Relationships: Critical Thinking for Critical Issues

*Unique Child Support Remedies* Webcast, paper author and panelist, 2009, State Bar of Texas

*Trial Treasures in Tampa*, Trial Brief Author & planning committee, 2009, Texas Academy of Family Law Specialists Trial Institute

*Dealing with Children with Special Needs* (with Sally Holt Emerson), 2008 Marriage Dissolution Institute

*Setting & Collecting Child Support* (with Hon. Conrad Moren), 2007 State Bar of Texas Annual Meeting

Contributing Editor, *How to Do Your Own Divorce in Texas*, Nolo Press-Occidental, 1993-2001

*State Bar Pro Bono Law Project Speaker*: 9/2005 Eagle Pass; 6/2007 Kerrville; 9/2007 Big Spring, 9/2010, Kingsville; 8/2012 Corpus Christi

## **SELECTED SIGNIFICANT CASES**

*Granado v. Meza*, 398 S.W.3d 193 (Tex. 2013) [clerical error by Attorney General does not relieve obligor of child support obligation]

*Holmes v. Williams*, 355 S.W.3d 215 (Tex. App. – Houston [1st Dist.] 2011, no pet.) [child support lien 157.323 can be used to establish arrears when court loses jurisdiction under 157.005 to enter cumulative money judgment]

*Taylor v. Speck*, 308 S.W.3d 81 (Tex. App. – San Antonio 2010, no pet.) [dormancy not applicable to individual child support payments or to child support judgments]

*In Re M.C.C.*, 142 S.W.3d 504 (Tex. 2006) [legislative amendments to statutes apply prospectively; interest rate on child support is rate in effect at time obligation accrued until 1/1/2002, thereafter 6% simple interest on all balances not reduced to money judgment]

*In the Interest of S.C.S.* 48 S.W.3d 831 (Tex. App.–Houston [14<sup>th</sup> Dist.] 2001) pet. denied *per curiam, sub. nom. Sprouse v. Sprouse*, 92 S.W.3d 502 (Tex. 2002) (with Steven A. Sinkin) [time periods for securing child support judgments are jurisdictional – legislature may extend time for a remedy]

*In the Interest of D.T.*, No. 12-05-00420-CV, 2007 WL 4465250 (Tex. App.– Tyler 2007, no pet.) [child support lien reaches community property retirement of new spouse when lien was perfected before divorce and new spouse does not raise evidence of his/her interest]

*In the Interest of A.D.*, 73 S.W. 3d 244 (Tex. 2002) (co-author, *amicus curiae* brief) [time periods for securing writs of withholding in child support are jurisdictional; the order adjudicating the obligation is the judgment; legislature may extend time periods for trial courts to enforce their judgments]

## **COMMUNITY ACTIVITIES**

First Presbyterian Church, San Antonio, Deacon, Class of 2016; Godly Play Teacher 2005-present; JOY Ministry; Shawl Ministry (Circle 5)

Churchill HS Band Parents Association and Chaperone

Eisenhower MS PTA, Executive Board, 2011-2014

Harmony Hills Elementary PTA, San Antonio, 3<sup>rd</sup> VP, 2010-2011

*Autism Society of Greater San Antonio*, Board Member, volunteer General Counsel 2005 - 2008

*GOLD Youth Leadership Foundation (Giving Opportunities for Leadership Development)*, Program Chair 2003,  
Board of Directors, 2003- 2006, general counsel to non-profit corporation  
*Hugh O'Brian Youth Leadership*, West Texas Leadership Seminar, leadership training program for high school  
sophomores: Senior Staff, 1992-2002; Corporate Board 1994-2002; President of Board 1994-1999  
case is an easy ride.

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## UIFSA – AVOIDING ROAD BUMPS ON THE INTERSTATE HIGHWAYS

### I. INTRODUCTION

The Uniform Interstate Family Support Act (UIFSA) is a statutory scheme for handling interstate child support issues. The unique part of UIFSA stems from its universal adoption by all fifty states in virtually identical form. That adoption comes from a federal mandate that tied Title IV-D child support enforcement money to UIFSA adoption. Therefore, all states adopted UIFSA in the mid-1990s to keep the money flowing. As UIFSA is periodically tweaked by the national commissioners charged with its oversight, the Texas legislature dutifully amends Texas Family Code chapter 159 to conform to the new mandates.

This paper is designed to be your “UIFSA in a Box,” or, rather, in a paper or flash drive – a one stop resource for all the questions you have on how UIFSA works. When the next case walks into your office you will have the answers on your screen ready to go.

There are three parts of UIFSA that affect private attorneys – in reverse order of how they appear in the Family Code, they are modification, enforcement and establishment. This paper will address how Texas interprets UIFSA in each of these areas and what the family law attorney needs to know when you deal with an order or a party from another state.

A couple of interesting UIFSA notes. The term “tribunal” refers to courts. Tex. Fam. Code § 159.102(29). Many states use administrative agencies to enforce child support but we Texans zealously guard our access to the halls of justice. What applies in

UIFSA does not apply for custody and possession determinations. There may be modification jurisdiction for conservatorship but not child support unless the parties agree.

UIFSA provides for modifications to evidence and testimony rules. An out of state witness may testify by affidavit containing testimony that would be not be excluded by hearsay if the testimony was provided live. Tex. Fam. Code § 159.316(b). Prenatal expenses and expenses for parentage testing delivered to the opposing party ten days before trial are (1) admissible at trial and (2) presumed reasonable and necessary. Tex. Fam. Code § 159.316(d). The “best evidence” objection cannot be asserted on records received by fax or email. Tex. Fam. Code § 159.316(e). The court shall permit an out of state witness or party to testify by telephone or electronic means (Skype). Tex. Fam. Code § 159.316(f). The husband-wife communication privilege does not apply. Tex. Fam. Code § 159.316(g).

### II. MODIFICATION OF ANOTHER STATE’S ORDER IN TEXAS

#### A. How it Works Part 1:

1. Texas may modify a child support order issued by another state if the child, the obligee and the obligor do not reside in the state that issued the original order; AND
2. a nonresident of Texas is the petitioner seeking modification AND
3. the respondent is subject to personal jurisdiction in Texas OR
4. Texas is the residence of the child or a party [“party” here means individuals only and does not include Title IV-D agencies or any other entity that enforces or modifies child support] who is subject to personal jurisdiction of Texas courts AND all parties consent to Texas having jurisdiction

[consent must be filed in a record in the issuing court stating that Texas can assume continuing exclusive jurisdiction of the child support portion of the case]. Tex. Fam. Code § 159.611; OR

5. The obligor and obligee live in Texas but the child does not. Tex. Fam. Code §159.613.

#### B. How it Works Part 2:

1. After the issuing state's order is registered in Texas, a Texas court applies Texas law for procedure, defenses, burdens of proof and requirements to modify child support.
2. Texas substantive law, such as the child support guidelines, apply to the modification. Tex. Fam. Code § 159.613(b).
3. EXCEPT: Texas cannot modify any aspects of the order from the issuing state that could not be modified by the issuing state - like duration of the child support obligation. Example – if the order is from New Jersey, which terminates child support when the child stops attending college, the child support obligation is not modified to end upon high school graduation. See case discussion below.
4. After Texas issues a new order modifying the support, Texas now has continuing, exclusive jurisdiction over the case and the child until the child and the parties leave the state. The issuing state loses jurisdiction to modify.
5. If two (or more) tribunals have issued support orders, Texas must determine under § 159.207 which order is the controlling order and then proceed to modify that order if the evidence is sufficient. [This used

to happen a lot under URESA and RURESA but is pretty rare now.]

EVEN WITH ALL OF THE ABOVE, if one party leaves Texas and the other party leaves the U.S., Texas retains jurisdiction to modify the child support obligation. Tex. Fam. Code § 159.611(f).

#### C. How it Works Part 3 – Mechanics of Registering a Foreign Support Order for Modification:

1. Follow same requirements as set out for registering a foreign support order for enforcement under 159.602. Tex. Fam. Code § 159.609.
2. File a letter requesting registration of the foreign support order. See form at TX Family Law Practice Manual “TFLPM” #43-11. Tex. Fam. Code § 159.602(a)(1).
3. File two (2) copies of the foreign support order – one a certified copy by the issuing court and one a plain paper copy. If subsequent orders have been issued in the case that change terms of the support or custody, obtain a certified copy of each of those orders and file the certified copy and plain copy of each as well. Tex. Fam. Code § 159.602(a)(2).
4. File the Notice of Registration of Foreign Support Order TFLPM #43-13. Tex. Fam. Code §159.605.
5. File your petition to modify support and any other requests for relief at the same time you file your registration of the order. Tex. Fam. Code § 159.602(c).
6. Request issuance of citation on the obligor for the petition to modify and registration even though the clerk may mail the notice of registration of foreign support order.

Tex. Fam. Code § 159.605 (clerk shall notify responding party of registration and opportunity to contest) *but see* Tex. Fam. Code § 156.003 (party to a modification suit entitled to notice of suit by citation).  
 7. After a final order is signed, a certified copy of the modified order shall be filed with the original court within 30 days. Tex. Fam. Code § 159.614.

Nothing in the record established parties consented to surrender jurisdiction to Texas. Anyway, even if Texas had jurisdiction, Texas could not modify child support because New York has no provision for child support for adult disabled children and must apply the duration provision law of issuing state.

D. Cases You Should Know:

1. *In re Martinez*, 450 S.W.3d 157 (Tex. App.—San Antonio 2014, no pet.)

- In 1995 NY court Father ordered to pay child support for child until age twenty-one or completed four years of college, whichever came last, but in no event past the age of twenty-two. Father, Mother, and Child all lived in NY.
- In 1998 Child had car accident leaving her quadriplegic.
- In 2006, Mother and Child move to TX, Father stayed in NY.
- In 2013, Mother filed to modify child support obligation in NY because of her adult child’s disability. NY family court denies modification b/c NY law doesn’t provide support of adult disabled child. Mother files in Texas to modify.
- After failed attempt to obtain modification, Mother files a petition to reinstate and extend father’s original child support obligation after it expired.
- Holding: Under UIFSA, New York court, retained continuing, exclusive jurisdiction as father still resided in New York.

2. *In re V.L.C.*, 225 S.W.3d 221 (Tex. App.—El Paso 2006, no pet.)

- 2000, Mother and Father divorced in Sinaloa, Mexico; father ordered to pay \$600/month child support
- 2004, Father filed an original petition in SAPCR, seeking modification of Sinaloa divorce decree concerning possession and access to child; mother counterfiled by registering Mexico divorce decree and seeking enforcement of child support. When filed Father lived in Mexico. Mother and Child lived in TX. At trial the court found the Mexico divorce decree was not an order and modified the child support under the SAPCR because father submitted to jurisdiction of Texas court. Mother appealed saying she only sought enforcement, not modification.
- Holding: Case was not a UIFSA modification as Sinaloa, Mexico was not a “state” as defined by UIFSA; there was no evidence presented that Texas had reciprocal arrangement with Mexico or that Mexico had enacted procedures similar to UIFSA.
- However, trial court had



jurisdiction to enter child support order as part of a SAPCR because mother was resident of Texas and father submitted to jurisdiction of Texas by initiating suit and submitting to jurisdiction for all matters – visitation and support.

3. *Thompson v. Thompson*, 893 S.W.2d 301 (Tex. App.—Houston [1st Dist.] 1995, no writ)

- Mother and Father divorce in 1980 in Indiana.
- Mother and child move to TX and Mother files a petition to modify in TX in 1993. Father still lives in IN. When Mother filed suit there was already modification action pending in IN.
- Holding: TX does not have authority to modify the IN order while one of the parties still resides in issuing state.

4. *In re B.O.G.*, 48 S.W.3d 312 (Tex. App.—Waco 2001, pet. denied)

- Mother and Father divorce in TX. Child and Mother and Father live in TX
- Father moves to Canada in 1996
- Mother and Child move to VA in 1998
- Holding: TX does not have jurisdiction to modify child support as filed by father, as father, mother, and child had all moved out of state. \*\*This case had many moving parts with grandparent access, conservatorship and possession contempt motions. The trial court did not have jurisdiction on child support but kept jurisdiction on other issues.

5. *In Re J.R.S.*, No. 10-12-00142-CV, 2013 Tex. App. LEXIS 9279 (Tex. App. – Waco 2013, no pet.)

- In 2000 child support order established in Colorado where father, mother and child lived.
- In 2003 order was registered in Texas and enforced and enforced again in 2007. All parties lived in TX. At some point mother returned to Colorado and left child with father and then child moved back to Colorado. In 2009 Father got default order in Texas terminating child support and setting arrearages at zero. In 2011 AG filed motion to reinstate arrearages and determine controlling child support order, stating court did not have jurisdiction to modify Colorado order in 2009.
- Holding: 2009 order vacated. Texas did not have jurisdiction to modify the 2000 Colorado order because mother and child still lived in Colorado and did not consent to Texas assuming jurisdiction under UIFSA.

6. *In Re T.L.*, 316 S.W.3d 78 (Tex. App. – Houston [14<sup>th</sup> Dist.] 2010, pet. denied).

- In 1992 Texas divorce, court orders father to pay child support to mother & 2 children who live in Texas while father and 1 child live in Louisiana. In 1998 Texas order is registered for enforcement in Louisiana and an enforcement order is signed in Louisiana with judgment and repayment plan. In 1999 mother signed written request to Texas AG to stop child support services. In 9/1999 Louisiana

court signed “amended” judgment suspending child support obligation and cancelling arrears owed to mother. In 2007 Texas AG filed motion in Texas to confirm arrears. Father objected and filed Louisiana order, saying child support was suspended and arrears cancelled. Final result at trial was denial of AG motion to confirm arrears and a finding the Louisiana order controlled.

- HOLDING: Reversed and remanded. Louisiana order is void. Louisiana did not have jurisdiction to modify Texas order (suspending support & wiping out child support) because mother and 1 child did not live in Louisiana nor did they agree to jurisdiction in Louisiana. Louisiana could enforce, but not modify the Texas order. Mother’s request to AG to close case was a request to an agency – not a tribunal. So Louisiana did not have authority to close case based on mother’s request to AG – had to be from a court.

7. *Lesem v. Mouradian*, 445 S.W.3d 366 (Tex. App. – Houston [1<sup>st</sup> Dist.] 2013, no pet.)

- Divorce between parties in 2002 in Texas with Mother having right to determine primary residence. In 2007 a modification order was signed in Texas giving Father the right to determine primary residence. In 2012 Father filed enforcement motion for possession. Mother filed motion for modification and for transfer of case to Florida where she and child lived. Trial court

transferred custody and support case to Florida and father appealed.

- HOLDING: Affirmed in part and reversed in part. Custody issues transferred to Florida. Child support issues stay in Texas. Child support cannot be modified in Florida so long as one of the parties still resides in Texas. Father did not consent to have child support modification.

D. Relevant Statutes from the Texas Family Code:

Sec. 159.609. PROCEDURE TO REGISTER CHILD SUPPORT ORDER OF ANOTHER STATE FOR MODIFICATION. A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state shall register that order in this state in the same manner provided in Sections 159.601 through 159.608 if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or later. The pleading must specify the grounds for modification.

Sec. 159.610. EFFECT OF REGISTRATION FOR MODIFICATION. A tribunal of this state may enforce a child support order of another state registered for purposes of modification in the same manner as if the order had been issued by a tribunal of this state, but the registered support order may be modified only if the requirements of Section 159.611 or 159.613 have been met.

Sec. 159.611. MODIFICATION OF CHILD SUPPORT ORDER OF ANOTHER STATE.

(a) If Section 159.613 does not apply, on petition a tribunal of this state may modify a child support order issued in another state that is registered in this state if, after notice and hearing, the tribunal finds that:

(1) the following requirements are met:

(A) the child, the obligee who is an individual, and the obligor do not reside in the issuing state;

(B) a petitioner who is a nonresident of this state seeks modification; and

(C) the respondent is subject to the personal jurisdiction of the tribunal of this state; or

(2) this state is the residence of the child, or a party who is an individual is subject to the personal jurisdiction of the tribunal of this state, and all of the parties who are individuals have filed consents in a record in the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction.

(b) Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this state, and the order may be enforced and satisfied in the same manner.

(c) 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, including the duration of the obligation of support. If two or more tribunals have issued child support orders for the same obligor and same child, the order that controls and must be so recognized under Section 159.207 establishes the aspects of the support order that are nonmodifiable.

(d) In a proceeding to modify a child support order, the law of the state that is determined to have issued the initial controlling order governs the duration of the obligation of support. The obligor's fulfillment of the duty of support established by that order precludes imposition of a further obligation of support by a tribunal of this state.

(e) On issuance of an order by a tribunal of this state modifying a child support order issued in another state, the tribunal of this state becomes the tribunal of continuing, exclusive jurisdiction.

(f) Notwithstanding Subsections (a) through (e) of this section and Section 159.201(b), a tribunal of this state retains jurisdiction to modify an order issued by a tribunal of this state if:

(1) one party resides in another state; and

(2) the other party resides outside the United States.

Sec. 159.612. RECOGNITION OF ORDER MODIFIED IN ANOTHER STATE. If a child support order issued by a tribunal of this state is modified by a tribunal of another state that assumed jurisdiction under the Uniform Interstate Family Support Act, a tribunal of this state:

(1) may enforce the order that was modified only as to arrears

and interest accruing before the modification;  
 (2) may provide appropriate relief for violations of the order that occurred before the effective date of the modification; and  
 (3) shall recognize the modifying order of the other state, on registration, for the purpose of enforcement.

**Sec. 159.613. JURISDICTION TO MODIFY CHILD SUPPORT ORDER OF ANOTHER STATE WHEN INDIVIDUAL PARTIES RESIDE IN THIS STATE.**

(a) If all of the parties who are individuals reside in this state and the child does not reside in the issuing state, a tribunal of this state has jurisdiction to enforce and to modify the issuing state's child support order in a proceeding to register that order.  
 (b) A tribunal of this state exercising jurisdiction under this section shall apply the provisions of Subchapters B and C, this subchapter, and the procedural and substantive law of this state to the proceeding for enforcement or modification. Subchapters D, E, F, H, and I do not apply.

**Sec. 159.614. NOTICE TO ISSUING TRIBUNAL OF MODIFICATION.** Within 30 days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order and in each tribunal in which the party knows the earlier order has

been registered. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the modified order of the new tribunal having continuing, exclusive jurisdiction.

**Sec. 159.615. JURISDICTION TO MODIFY CHILD SUPPORT ORDER OF FOREIGN COUNTRY.**

(a) Except as otherwise provided by Section 159.711, if a foreign country lacks or refuses to exercise jurisdiction to modify its child support order pursuant to its laws, a tribunal of this state may assume jurisdiction to modify the child support order and bind all individuals subject to the personal jurisdiction of the tribunal regardless of whether the consent to modification of a child support order otherwise required of the individual under Section 159.611 has been given or whether the individual seeking modification is a resident of this state or of the foreign country.  
 (b) An order issued by a tribunal of this state modifying a foreign child support order under this section is the controlling order.

**Sec. 159.616. PROCEDURE TO REGISTER CHILD SUPPORT ORDER OF FOREIGN COUNTRY FOR MODIFICATION.** A party or support enforcement agency seeking to modify, or to modify and enforce, a foreign child support order not under the Convention may register that order in this state under Sections

159.601 through 159.608 if the order has not been registered. A petition for modification may be filed at the same time as a request for registration or at another time. The petition must specify the grounds for modification.

### **III. JURISDICTION TO ENFORCE AN ORDER FROM ANOTHER STATE**

#### **A. How it Works Part 1:**

1. Texas may enforce a foreign support order if (Tex. Fam. Code § 159.201(a));
2. the obligor is personally served with citation in this state; OR
3. the obligor submits to the jurisdiction of this state by consent in a record, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction; OR
4. the obligor resided with the child in this state; OR
5. the obligor resided in this state and provided prenatal expenses or support for the child; OR
6. the child resides in this state as a result of the acts or directives of the obligor; OR
7. the obligor engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse; OR
8. the obligor asserted parentage of a child in the paternity registry maintained in this state by the vital statistics unit; OR
9. there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

#### **B. How it Works Part 2:**

1. Once the order is registered for enforcement, Texas has jurisdiction to continue to enforce the order. Tex. Fam. Code § 159.206.
2. The law of the issuing state controls the interest rate on child support, the duration of the obligation and the types of support (i.e., medical, daycare) that can be enforced. Tex. Fam. Code § 159.604(a).
3. Texas law determines available remedies. See Family Code chapters 157 (enforcement by contempt, judgment, liens and levies) 158 (income withholding) and 232 (license suspension).
4. If there are competing, overlapping orders (a rarity), all orders must be registered and the Texas court determines which order is the controlling order. Tex. Fam. Code § 159.207.
  - a. The order from the court with continuing, exclusive jurisdiction controls. Tex. Fam. Code § 159.207(b)(1).
  - b. If more than one court has continuing, exclusive jurisdiction, the court with the home state of the child controls. Tex. Fam. Code § 159.207(b)(2).
5. The more likely situation that happens is successive orders that modify or enforce the original order were entered. In that case, register all orders that mention child support so the trial court has all the information it needs to properly enforce the obligation.

#### **C. How it Works Part 3 – Mechanics of Registering a Foreign Support Order for Enforcement:**

1. File a letter requesting registration of the foreign support order. See form at TX Family Law Practice Manual “TFLPM” #43-11. Tex. Fam. Code § 159.602(a)(1).
2. File two (2) copies of the foreign support order – one a certified copy by the issuing court and one a plain paper copy. If subsequent orders have been issued in the case that change terms of the support or custody, obtain a certified copy of each of those orders and file the certified copy and plain copy of each as well. Tex. Fam. Code § 159.602(a)(2).
3. File the Notice of Registration of Foreign Support Order TFLPM #43-13. Tex. Fam. Code § 159.605.
4. File a sworn statement by the obligee stating the amount of the arrearages OR attach a certified statement from the child support registry of the issuing state which states the amount of the arrearages. Tex. Fam. Code § 159.602(a)(3).
5. File the Registration Information Form (TFLPM #43-12) with the required information listed in Tex. Fam. Code §§ 159.602(a)(4) and (5).
6. File your petition to enforce support and any other requests for relief at the same time you file your registration of the order. Tex. Fam. Code § 159.602(c).
7. Practice tip – attach a copy of the relevant statutes for the duration of the obligation and the interest rate from the issuing state as an exhibit to the motion. It gives the court an opportunity to review the law in advance.
8. Request issuance of citation on the obligor for the petition to enforce support order and registration even though the clerk may mail the notice of registration of foreign support order. Tex. Fam. Code § 159.605 (clerk shall notify responding party of registration and opportunity to contest) *but see* Tex.

Fam. Code § 157.062 (provisions for citation applicable to original lawsuit apply to petition for enforcement).

9. What if it is wrong? Objecting to Registration:

- a. Registration is effective upon filing. Tex. Fam. Code § 159.603. Limited defenses can be asserted to an order.
- b. A contest to the validity of the order must be filed within twenty days of notice (NOT on the Monday following the 20<sup>th</sup> day after service – a trap for the unsuspecting lawyer).
- c. The contest must also request a hearing, although when the hearing must be held is not specified by statute. Tex. Fam. Code § 159.606(a). The court is required to schedule the hearing once it receives the notice from the obligor. Tex. Fam. Code § 159.606(c).
- d. The following defenses can be asserted to challenge the registration (Tex. Fam. Code § 159.607(a), which provides, in pertinent part:
  - (1) the issuing tribunal lacked personal jurisdiction over the contesting party; OR
  - (2) the order was obtained by fraud; OR
  - (3) the order has been vacated, suspended, or modified by a later order; OR
  - (4) the issuing tribunal stayed the order pending an appeal; OR
  - (5) there is a defense under Texas law to the remedy sought; OR
  - (6) full or partial payment has been made; OR

(7) the statute of limitation under Section 159.604 precludes enforcement of some or all of the alleged arrearages;  
OR  
(8) the alleged controlling order is not the controlling order

- e. If evidence establishes a full or partial defense, the trial court may stay enforcement of the registered order or recess to develop more evidence. Tex. Fam. Code § 159.607(b). The court can enforce any part of the order not contested by the obligor. *Id.*
- f. If the defense fails, the court shall proceed with enforcement of the registered order. Tex. Fam. Code § 159.607(c).

D. How it Works Part 4 – The Enforcement Hearing:

1. Have a copy of the relevant statutes for duration of child support obligation and the interest rate ready for the Court. Tex. R. Evid. 202.
2. Texas procedure applies so treat the case like a Texas enforcement case.
3. Be sure you set up a State Disbursement Unit account.
4. When the order is signed, send a certified copy to the clerk of the court in the issuing state and to the Title IV-D agency to give everyone notice of the action. Despite the rumors, there is no national child support database of court orders and judgments. The issuing state needs to know what happened here.

E. Cases you Should Know:

1. *Ellithorp v. Ellithorp*, 346 S.W.3d 583 (Tex. App.—El Paso 2009, pet. denied)

- Motion filed divorce in WV 5 days before Father filed
- Mother lived and Children lived in WV, Father lived in TX
- Parties entered into an agreed order in WV dismissing TX case and ratified and confirmed WV divorce final order.
- HOLDING: Both Texas and West Virginia had continuing, exclusive jurisdiction under (UIFSA) to issue child support orders regarding the same children in divorce cases, where mother lived in West Virginia and a West Virginia court issued an order which father did not challenge, and father lived in Texas, and Texas court issued order in father's divorce which mother did not challenge. West Virginia child support order in mother's divorce case, rather than Texas child support order in father's divorce case, was the controlling order under UIFSA, where West Virginia remained the home state of the children and Texas and West Virginia both had continuing, exclusive jurisdiction.

2. *In re G.L.A.*, 195 S.W.3d 787 (Tex. App.—Beaumont 2006, pet. denied)

- In 1999, parents divorce in MD, and Father ordered to pay child support
- In 2002 Father moved to Germany. Mother and child moved to TX. Mother registered MD decree in TX. Father filed answer in Texas and then filed special appearance which asserted lack of personal jurisdiction, a

defense under Tex. Fam. Code § 159.607.

- **HOLDING:** Father's answer waived his contest to personal jurisdiction. When a party has registered the order properly in Texas and the party contesting the order does not establish a defense under section 159.607(a), the Act requires the trial court to enforce the support order. *See* TEX. FAM.CODE ANN. §§ 159.603, 159.607.

3. *Arnell v. Arnell*, 416 S.W.3d 188 (Tex. App.—Dallas 2013, no pet.)

- Mother and Father divorced in Switzerland while all parties lived there. Father ordered to pay child support.
- Parties owned real property in Dallas Co. that was not divided by Swiss Court. Mother files registration of five Swiss support orders in TX court. Mother requested turnover of Dallas property to offset monies owed under the Swiss child support orders.
- **HOLDING:** Swiss court orders registered and enforced in Texas. Although under UIFSA Switzerland had jurisdiction to modify the orders, Texas could still enforce them. Father's objection to validity and enforcement of Swiss orders under 159.607 was not established.

4. *In the Interest of E.H.*, 450 S.W.3d 166 (Tex. App. – Houston [14<sup>th</sup> Dist.] 2014, pet. denied).

- Mother obtained default judgment for child support

order in Israel with service by registered mail as permitted by Israeli law. Mother requested enforcement in Texas against Father, who now lived in Texas. Father objected to registration of the order, claiming he was not served and the record did not show compliance with Israeli rules of civil procedure. The trial court denied registration and the AG appealed.

- **HOLDING:** Denial of registration of Israeli order affirmed. Generally foreign orders are entitled to full faith and credit or, alternatively, comity. However, the record in this case did not show Father was served or that the Israeli court acquired personal jurisdiction over him. Without proper service, the order is void and cannot be registered for enforcement.

5. *Office of the Attorney General v. Duran*, No. 13-13-00423-CV, 2015 Tex. App. LEXIS 5321 (Tex. App. – Corpus Christi – Edinburg 2015, no pet.).

- AG registered a Michigan paternity order and sought enforcement. Father objected and claimed fraud. The court found the Michigan order was fraudulent based in part on deemed admissions that Father was in fact not the father of the child. The trial court terminated Father's parental rights, vacated the child support arrearages and entered a \$0.00 judgment, which the AG appealed.



- **HOLDING:** Affirmed. Although the “wrongful parentage” statute Tex. Fam. Code 161.005 stops future child support, arrears are still owed. However, in this case, the court applied guiding principles of equity and found under common law fraud that Father was not responsible for any child support.

6. *Beistel v. Allen*, No. 01-06-00246-CV, 01-06-00276-CV, 2007 Tex. App. LEXIS 4307 (Tex. App. – Houston [1<sup>st</sup> Dist. 2007, no pet.)

- Parties divorced in Ohio in 1986; Father ordered to pay child support. Father moved to Texas and Mother registered Ohio order & obtained 3 judgments enforcing child support. In 2005 Father filed motion to terminate wage withholding orders, which trial court granted.
- **HOLDING:** The court erred in accepting Father’s child support calculation because it did not include interest, which was mandatory under Ohio law. He also disregarded the cumulative money judgment entered in 2000, which was done as his child support obligation ended. The errors made by the court were an abuse of discretion requiring remand.

F. Relevant Statutes from the Texas Family Code:

Sec. 159.201. BASES FOR JURISDICTION OVER NONRESIDENT.

(a) In a proceeding to establish or enforce a support order or to determine parentage of a child, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

- (1) the individual is personally served with citation in this state;
- (2) the individual submits to the jurisdiction of this state by consent in a record, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
- (3) the individual resided with the child in this state;
- (4) the individual resided in this state and provided prenatal expenses or support for the child;
- (5) the child resides in this state as a result of the acts or directives of the individual;
- (6) the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;
- (7) the individual asserted parentage of a child in the paternity registry maintained in this state by the vital statistics unit; or
- (8) there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

(b) The bases of personal jurisdiction listed in Subsection (a) or in any other law of this state may not be used to acquire personal

jurisdiction for a tribunal of this state to modify a child support order of another state unless the requirements of Section 159.611 are met, or, in the case of a foreign support order, unless the requirements of Section 159.615 are met.

Sec. 159.202. DURATION OF PERSONAL JURISDICTION. Personal jurisdiction acquired by a tribunal of this state in a proceeding under this chapter or other law of this state relating to a support order continues as long as the tribunal of this state has continuing, exclusive jurisdiction to modify its order or continuing jurisdiction to enforce its order as provided by Sections 159.205, 159.206, and 159.211.

Sec. 159.206. CONTINUING JURISDICTION TO ENFORCE CHILD SUPPORT ORDER.

(a) A tribunal of this state that has issued a child support order consistent with the law of this state may serve as an initiating tribunal to request a tribunal of another state to enforce:

- (1) the order, if the order:
  - (A) is the controlling order; and
  - (B) has not been modified by a tribunal of another state that assumed jurisdiction under the Uniform Interstate Family Support Act; or
- (2) a money judgment for arrears of support and interest on the order accrued before a determination that an order of a tribunal of another state is the controlling order.

(b) A tribunal of this state having continuing jurisdiction over a support order may act as a

responding tribunal to enforce the order.

Sec. 159.207. DETERMINATION OF CONTROLLING CHILD SUPPORT ORDER.

(a) If a proceeding is brought under this chapter and only one tribunal has issued a child support order, the order of that tribunal controls and must be recognized.

(b) If a proceeding is brought under this chapter and two or more child support orders have been issued by tribunals of this state, another state, or a foreign country with regard to the same obligor and same child, a tribunal of this state having personal jurisdiction over both the obligor and individual obligee shall apply the following rules and by order shall determine which order controls and must be recognized:

- (1) if only one of the tribunals would have continuing, exclusive jurisdiction under this chapter, the order of that tribunal controls;
- (2) if more than one of the tribunals would have continuing, exclusive jurisdiction under this chapter:
  - (A) an order issued by a tribunal in the current home state of the child controls;
  - or
  - (B) if an order has not been issued in the current home state of the child, the order most recently issued controls; and
- (3) if none of the tribunals would have continuing, exclusive jurisdiction under this chapter, the tribunal of this state

shall issue a child support order that controls.

(c) If two or more child support orders have been issued for the same obligor and same child, on request of a party who is an individual or that is a support enforcement agency, a tribunal of this state having personal jurisdiction over both the obligor and the obligee who is an individual shall determine which order controls under Subsection (b). The request may be filed with a registration for enforcement or registration for modification under Subchapter G or may be filed as a separate proceeding.

(d) A request to determine which is the controlling order must be accompanied by a copy of every child support order in effect and the applicable record of payments. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.

(e) The tribunal that issued the controlling order under Subsection (a), (b), or (c) has continuing jurisdiction to the extent provided by Section 159.205 or 159.206.

(f) A tribunal of this state that determines by order which is the controlling order under Subsection (b)(1) or (2) or Subsection (c), or that issues a new controlling order under Subsection (b)(3), shall state in that order:

- (1) the basis upon which the tribunal made its determination;
- (2) the amount of prospective support, if any; and
- (3) the total amount of consolidated arrears and accrued interest, if any, under all of the orders after all payments made

are credited as provided by Section 159.209.

(g) Within 30 days after issuance of an order determining which order is the controlling order, the party obtaining the order shall file a certified copy of the controlling order in each tribunal that issued or registered an earlier order of child support. A party or support enforcement agency obtaining the order that fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order.

(h) An order that has been determined to be the controlling order, or a judgment for consolidated arrears of support and interest, if any, made under this section, must be recognized in proceedings under this chapter.

Sec. 159.601. REGISTRATION OF ORDER FOR ENFORCEMENT. A support order or income-withholding order issued in another state or a foreign support order may be registered in this state for enforcement.

Sec. 159.602. PROCEDURE TO REGISTER ORDER FOR ENFORCEMENT.

(a) Except as otherwise provided by Section 159.706, a support order or income-withholding order of another state or a foreign support order may be registered in this state by sending the following records to the appropriate tribunal in this state :

- (1) a letter of transmittal to the tribunal requesting registration and enforcement;
- (2) two copies, including one certified copy, of the order to be registered, including any modification of the order;
- (3) a sworn statement by the person requesting registration or a certified statement by the custodian of the records showing the amount of any arrearage;
- (4) the name of the obligor and, if known:
  - (A) the obligor's address and social security number;
  - (B) the name and address of the obligor's employer and any other source of income of the obligor; and
  - (C) a description of and the location of property of the obligor in this state not exempt from execution; and
- (5) except as otherwise provided by Section 159.312, the name and address of the obligee and, if applicable, the person to whom support payments are to be remitted.
- (b) On receipt of a request for registration, the registering tribunal shall cause the order to be filed as an order of a tribunal of another state or a foreign support order, together with one copy of the documents and information, regardless of their form.
- (c) A petition or comparable pleading seeking a remedy that must be affirmatively sought under other law of this state may be filed at the same time as the request for registration or later. The pleading must specify the grounds for the remedy sought.

- (d) If two or more orders are in effect, the person requesting registration shall:
  - (1) furnish to the tribunal a copy of each support order asserted to be in effect in addition to the documents specified in this section;
  - (2) specify the order alleged to be the controlling order, if any; and
  - (3) specify the amount of consolidated arrears, if any.
- (e) A request for a determination of which order is the controlling order may be filed separately from or with a request for registration and enforcement or for registration and modification. The person requesting registration shall give notice of the request to each party whose rights may be affected by the determination.

**Sec. 159.603. EFFECT OF REGISTRATION FOR ENFORCEMENT.**

- (a) A support order or income-withholding order issued in another state or a foreign support order is registered when the order is filed in the registering tribunal of this state.
- (b) A registered support order issued in another state or a foreign country is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this state.
- (c) Except as otherwise provided in this subchapter, a tribunal of this state shall recognize and enforce, but may not modify, a registered support order if the issuing tribunal had jurisdiction.

## Sec. 159.604. CHOICE OF LAW.

- (a) Except as otherwise provided by Subsection (d), the law of the issuing state or foreign country 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.
- (b) In a proceeding for arrears under a registered support order, the statute of limitation of this state, or of the issuing state or foreign country, whichever is longer, applies.
- (c) A responding tribunal of this state shall apply the procedures and remedies of this state to enforce current support and collect arrears and interest due on a support order of another state or a foreign country registered in this state.
- (d) After a tribunal of this state or another state determines which is the controlling order and issues an order consolidating arrears, if any, the tribunal of this state shall prospectively apply the law of the state or foreign country issuing the controlling order, including that state's or country's law on interest on arrears, on current and future support, and on consolidated arrears.

## Sec. 159.605. NOTICE OF REGISTRATION OF ORDER.

- (a) When a support order or income-withholding order issued in another

state or a foreign support order is registered, the registering tribunal of this state shall notify the nonregistering party. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

- (b) A notice must inform the nonregistering party:
- (1) that a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;
  - (2) that a hearing to contest the validity or enforcement of the registered order must be requested within 20 days after notice unless the registered order is under Section 159.707;
  - (3) that failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages; and
  - (4) of the amount of any alleged arrearages.
- (c) If the registering party asserts that two or more orders are in effect, the notice must also:

- (1) identify the two or more orders and the order alleged by the registering party to be the controlling order and the consolidated arrears, if any;
- (2) notify the nonregistering party of the right to a determination of which is the controlling order;
- (3) state that the procedures provided in Subsection (b) apply to the determination of which is the controlling order; and

(4) state that failure to contest the validity or enforcement of the order alleged to be the controlling order in a timely manner may result in confirmation that the order is the controlling order.

(d) On registration of an income-withholding order for enforcement, the support enforcement agency or the registering tribunal shall notify the obligor's employer under Chapter 158.

**Sec. 159.606. PROCEDURE TO CONTEST VALIDITY OR ENFORCEMENT OF REGISTERED SUPPORT ORDER.**

(a) A nonregistering party seeking to contest the validity or enforcement of a registered support order in this state shall request a hearing within the time required by Section 159.605. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages under Section 159.607.

(b) If the nonregistering party fails to contest the validity or enforcement of the registered support order in a timely manner, the order is confirmed by operation of law.

(c) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered support order, the registering tribunal shall schedule the matter for hearing and give notice to the parties of the date, time, and place of the hearing.

**Sec. 159.607. CONTEST OF REGISTRATION OR ENFORCEMENT.**

(a) A party contesting the validity or enforcement of a registered support order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

- (1) the issuing tribunal lacked personal jurisdiction over the contesting party;
- (2) the order was obtained by fraud;
- (3) the order has been vacated, suspended, or modified by a later order;
- (4) the issuing tribunal has stayed the order pending appeal;
- (5) there is a defense under the law of this state to the remedy sought;
- (6) full or partial payment has been made;
- (7) the statute of limitation under Section 159.604 precludes enforcement of some or all of the alleged arrearages; or
- (8) the alleged controlling order is not the controlling order.

(b) If a party presents evidence establishing a full or partial defense under Subsection (a), a tribunal may stay enforcement of the registered support order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered support order may be enforced by all remedies available under the law of this state.

(c) If the contesting party does not establish a defense under Subsection (a) to the validity or enforcement of

the registered support order, the registering tribunal shall issue an order confirming the order.

Sec. 159.608. CONFIRMED ORDER. Confirmation of a registered support order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

**IV. ESTABLISHMENT OF PARENTAGE AND CHILD SUPPORT UNDER UIFSA IN TEXAS**

A. How it Works Part 1:

1. Texas may establish parentage and issue a child support order pursuant to Tex. Fam. Code § 159.401(a), if Texas has personal jurisdiction over the parties under 159.201(a), which provides:

- (1) the individual is personally served with citation in this state; OR
- (2) the individual submits to the jurisdiction of this state by consent in a record, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction; OR
- (3) the individual resided with the child in this state; OR
- (4) the individual resided in this state and provided prenatal expenses or support for the child; OR
- (5) the child resides in this state as a result of the acts or directives of the individual; OR
- (6) the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse; OR

- (7) the individual asserted parentage of a child in the paternity registry maintained in this state by the vital statistics unit; OR
- (8) there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction. **AND/OR**

- 9. The person requesting the order resides outside Texas; OR
- 10. The Title IV-D agency requesting the order is located in another state.

2. Temporary orders for child support can be issued pursuant to Tex. Fam. Code § §159.401(b), which provides, in pertinent part:

- (1) the obligor is the presumed father; OR
- (2) the party requesting adjudication of paternity; OR
- (3) the party is identified as the father of the child through genetic testing; OR
- (4) an alleged father who has declined to submit to genetic testing; OR
- (5) shown by clear and convincing evidence to be the father of the child; OR
- (6) an acknowledged father as provided by applicable state law; OR
- (7) the mother of the child; OR
- (8) an individual who has been ordered to pay child support in a previous proceeding and the order has not been reversed or vacated.

B. How it Works Part 2:

Texas procedural and substantive law applies to an establishment of parentage

and child support case under UIFSA. Tex. Fam. Code § 159.303.

the clerk. The rest of the case is an easy ride.

A petition to establish parentage will be filed as in any original suit in Texas.

### C. Case you Should Know:

*1. Office of Atty. Gen. v. Long*, 401 S.W.3d 911 (Tex. App.—Houston [14th Dist.] 2013, no pet.)

- Mother and father divorced in North Carolina but no child support was ordered. Father moved to Texas. AG filed petition against father to set child support obligation at request of North Carolina's Title IV–D agency, on behalf of mother/former wife who resided in North Carolina with children. Trial court dismissed petition.
- **HOLDING:** Because North Carolina did not set the child support obligation when it issued the divorce decree, it did not have continuing, exclusive jurisdiction to adjudicate question of child support. Under UIFSA, Texas had jurisdiction to establish child support obligation. Tex. Fam. Code § 159.401.

## V. CONCLUSION

The UIFSA highway is quite simple once you have a map. Well drafted statutes help you avoid the speed bumps inherent in family law matters. The most important things to remember are to verify personal jurisdiction to register and enforce the order and to make sure a certified copy of the order and the proper pleadings are filed with