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**THE UNIFORM INTERSTATE FAMILY SUPPORT ACT (UIFSA):
ENSURING THE EFFECTIVE ENFORCEMENT & MODIFICATION OF SUPPORT ORDERS**

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INTRODUCTION

The Uniform Interstate Family Support Act (UIFSA) became effective on January 1, 1998 and is embodied in O.C.G.A. § 19-11-100 to § 19-11-191. UIFSA is applicable when parties live in different states and one party seeks the establishment, enforcement, or modification of child support or alimony. UIFSA also applies to paternity issues. UIFSA has been adopted by every State and supersedes all versions of the Uniform Reciprocal Enforcement of Support Act (URESA)¹.

UIFSA attempts to resolve the problems which arose under URESA by establishing a defined set of rules which can be summarized as “One Order, One Time, One Place” so that there is only one controlling order.² UIFSA facilitates the enforcement of a child support by including eight (8) additional provisions to assert personal jurisdiction over a non-resident Defendant. O.C.G.A. § 19-11-110. UIFSA also severely limits an enforcing court’s ability to modify the underlying child support obligation by only allowing the state which enters the controlling order to retain exclusive continuing jurisdiction to modify said order as long as either one of the parties or a child continues to reside in that state.

In summary, UIFSA clearly establishes which *courts* have jurisdiction to *enforce* a support order (which revolves around personal jurisdiction); and the *one court* that has jurisdiction to *modify* a support order (which revolves around subject matter jurisdiction). In other words, a support order can be enforced in multiple states, but can only be modified in one state.

THE EXPANSION OF ASSERTING PERSONAL JURISDICTION UNDER UIFSA

In order to enforce or establish a support order, it is necessary to assert personal jurisdiction over a non-resident Defendant. Establishing this connection becomes difficult when one party resides in a different state. UIFSA facilitates asserting personal jurisdiction over a non-resident Defendant by supplementing Georgia’s Long Arm Domestic Statute. To exercise personal jurisdiction over a

¹ Johnson, Jaimie, *Alimony and Child Support Generally*, 14 Ga.St.U.L. Rev. 121 (1997).

² Atkinson, Janet and Morgan, Laura W., *The Ins and Outs of UIFSA*, American Bar Association (2001).

nonresident Defendant in a case involving support, two statutes may be applied: (1) The Georgia Domestic Relations Long Arm Statute as embodied in O.C.G.A. § 9-10-91 or (2) the UIFSA provisions as embodied in O.C.G.A. § 19-11-110.

Because in many instances Georgia's Domestic Relations Long Arm Statute is not sufficient to assert personal jurisdiction over a non-resident Defendant, UIFSA supplements it by providing the following eight (8) additional provisions to assert personal jurisdiction over a nonresident Defendant:

- (1) The individual is personally served with process within Georgia;
- (2) The individual submits to the jurisdiction of Georgia by consent, 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 Georgia;
- (4) The individual resided in Georgia and provided prenatal expenses or support for the child;
- (5) The child resides in Georgia as a result of the acts or directives of the individual;
- (6) The individual engaged in sexual intercourse in Georgia and the child may have been conceived by that act or intercourse;
- (7) The individual asserted parentage in the putative father registry maintained in this State by the Department of Human Resources; or
- (8) There is any other basis consistent with the Constitutions of Georgia and the United States for the exercise of personal jurisdiction.

O.C.G.A. § 19-11-110.

In short, once a court is able to assert personal jurisdiction over a non-resident Defendant, that Court can *enforce* a support Order over said party regardless of the state where that individual resides.

TO MODIFY A SUPPORT ORDER SUBJECT MATTER JURISDICTION IS REQUIRED

Asserting *personal jurisdiction* over a non-resident Defendant simply allows a Georgia Court to *enforce* a support order, it does not allow a Georgia Court to *modify* a support Order. In order to *modify* a support order, a Court must have *both personal and subject matter jurisdiction*. Subject matter jurisdiction is directly related in UIFSA to the principle of *exclusive continuing jurisdiction*.

Under UIFSA, once a child support order is entered by a state, that state will have exclusive and continuing jurisdiction over that support order as long as one of the parties or child(ren) continue to reside in that state. O.C.G.A. § 19-11-114. Vesting a court with exclusive continuing jurisdiction is perhaps the most important aspect of UIFSA as it "limits the number of duplicate and conflicting support orders,

and reduces forum shopping by parents seeking to increase or decrease the amount of child support payments.”³

Once exclusive continuing jurisdiction is lost (i.e., when both parties and all the children have left the state where the original order was entered), in order for a state to assert subject matter jurisdiction in a modification action, all of the following must be established: (1) none of the parties or children reside in the original state; (2) the petitioning party is not a resident of the state where the modification is brought (the only exception is when both parties are residents of that state); and (3) the Defendant is subject to the personal jurisdiction of that state. O.C.G.A. § 19-11-170. The purpose behind the requirement of not allowing the petitioning party to be a resident of the state where modification is brought is important because it prevents an individual from relocating to another state for a strategic advantage (such as an individual relocating to a state where the duration of the child support is longer).

There is an important difference between the procedure to modify a child support order and alimony order under UIFSA. Under the current version of UIFSA as adopted by Georgia, an alimony obligation can only be modified in the state which issued the original support order even though all of the parties have relocated from that state. See O.C.G.A. § 19-11-115(f). In other words, the state which entered the alimony order will always have exclusive continuing jurisdiction to modify that support Order regardless of neither party residing in that state.⁴

Unlike the UCCJEA, where a court having exclusive continuing jurisdiction can release its jurisdiction by finding itself to be an inconvenient forum, under UIFSA the state having exclusive continuing jurisdiction is prohibited from releasing its jurisdiction based on inconvenient forum grounds. In addition, even if a state has jurisdiction over a custody matter pursuant to the UCCJEA, that State will not have jurisdiction to modify a child support Order unless it is able to assert both personal and subject matter jurisdiction under UIFSA.

³ Atkinson and Morgan, *supra* at 21.

⁴ The 1996 version of UIFSA, which is the version adopted by Georgia, has been amended by the 2001 version of UIFSA. Pursuant to the 2001 version of UIFSA, the general rules concerning modification of a child support order also apply to the modification of an alimony order (i.e., a state has to be able to assert both personal and subject matter jurisdiction to modify the alimony order). Nonetheless, only a limited number of states, which do not include Georgia, have adopted the 2001 version of UIFSA. The 2001 version of UIFSA (including the Official Comments) can be found at <http://www.law.upenn.edu/bll/ulc/uifsa/final2001.htm>.

RECONCILIATION OF MULTIPLE ORDERS: FINDING THE CONTROLLING ORDER

When multiple support orders exist, UIFSA provides a mechanism to determine which is the “controlling order.” O.C.G.A. § 19-11-116. In situations when two or more support orders have been entered or when multiple states seek to exercise jurisdiction over an order, the following rules apply to determine which is the controlling order: (1) if only one court has exclusive continuing jurisdiction under UIFSA (i.e., when either a party or a child continues to reside in the state that issued the applicable order), the order of that court is the controlling order; (2) if more than one court would have continuing exclusive jurisdiction under UIFSA, the order issued by a tribunal in the current home state of the child is the controlling order (but if an order has not been issued in the current home state of the child, the most recently issued order is the controlling order); and (3) if no court has exclusive continuing jurisdiction under UIFSA, the Georgia court having jurisdiction over the parties (i.e., that court which is able to exercise personal jurisdiction) shall issue a child support order which shall be the controlling order. O.C.G.A. § 19-11-116.

UIFSA CHOICE OF LAW PROVISIONS: YOU CAN RUN, BUT YOU CANNOT HIDE

Pursuant to UIFSA, once Georgia has jurisdiction to modify a child support order, it shall apply its child support guidelines to determine the amount of child support. O.C.G.A. § 19-11-122 (2). Notwithstanding, Georgia is prohibited from modifying the non-modifiable terms of the original order (i.e., duration of the child support obligation).⁵ The choice of law provisions embodied in UIFSA represent a significant departure from URESA which assumed that the law of the enforcing or modifying state (whichever state had before it the Order) controlled the duration of support. O.C.G.A. § 19-11-49.

Pursuant to O.C.G.A. § 19-11-163 “[t]he law of the issuing state governs the nature, extent, amount and duration of current payments and other obligations of support and the payment of arrearage under the order.” In addition, O.C.G.A. § 19-11-170 (c) provides that a Georgia court “may not modify any aspect of a child support order that may not be modified under the law of the issuing state.” The meaning of these provisions is that UIFSA prevents the modification of any final, non-modifiable provision of the original order. The most common non-modifiable provision relates to the termination of a child support obligation.

UIFSA promotes the enforcement of a child support obligation by applying the longer statute of limitation between the court enforcing the Order or the one Court that is able to modify the Order (i.e., the Court having exclusive continuing jurisdiction). O.C.G.A. § 19-11-163(b). In Georgia, there is no statute

⁵ For an analysis of case law addressing this issue, see Atkinson and Morgan, *supra* at 21-22.

of limitations to recover child support arrearages. See O.C.G.A. § 9-12-60 (d); and Brown v. Brown, 269 Ga. 724 (1998).

PROCEDURES TO ENFORCE AN OUT OF STATE SUPPORT ORDER: REGISTRATION

O.C.G.A. § 19-11-161 provides the requirements for registering an order issued by another state. In summary, an out of state support order may be registered in Georgia by including the following information in the applicable motion (i.e., such as a motion for contempt): (1) a letter to the clerk's office requesting registration and enforcement; (2) attaching 2 copies of all orders to be registered (1 which must be certified), including any modification of an order; (3) a sworn statement by the party seeking registration listing the amount of arrearage; (4) the name of the obligor (and if known, that person's address, social security number, obligor's employer, or description and location of property not exempt from execution); and (5) the name and address of the obligee.

Once the applicable motion is filed, the out of state support order is deemed registered. Pursuant to O.C.G.A. § 19-11-164, the Court must notify the non-registering party (obligor) and the employer (if applicable). The notice must inform the non-registering party of the following: (1) that the out of state order is enforceable in Georgia; (2) that a hearing to contest the Order must be requested *within 20 days after notice*; (3) the amount of the alleged arrears; and (4) that failure to contest the validity or enforcement of the registered order will result in confirmation of the order and "precludes further contest of that order with respect to any matter that could have been asserted."

CHALLENGING THE ENFORCEMENT OF A CHILD SUPPORT ORDER

If a party seeks to contest the validity or enforcement of an out of state support order that has been registered in Georgia, the party contesting the Order must request a hearing within 20 days after notice of the registration. O.C.G.A. § 19-11-165(a). "If the non-registering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law." O.C.G.A. § 19-11-165(b).

A contesting party has the burden of proof to contest an out of state support order and can only assert seven (7) defenses to contest the validity or enforcement of a registered order or if he/she seeks the vacation of the registration. O.C.G.A. § 19-11-166(a). The defenses are as follows:

- (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 Georgia to the remedy sought;

- (6) Full or partial payment has been made; or
- (7) The statute of limitation under Code Section 19-11-163 precludes enforcement of some or all of the arrearage.

Apart from the aforementioned seven (7) defenses, there can be no further defenses to contest the registration of an order. If the contesting party does not prevail, the Court will issue an Order confirming the Order and the Order can be enforced by all remedies available under the laws of Georgia.

ADDITIONAL SOURCES

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