DISCUSSION ITEMS

UIFSA DRAFTING COMMITTEE

CONFERENCE CALL JULY 11, 2008

I. SPOUSAL SUPPORT

BACKGROUND.

In Chicago the Committee agreed to include a prohibition of against modification of foreign spousal support orders in Section 211. This was largely due to the context of the separate definitions for State and foreign country. The discussion about implications of the decision was truncated. There was concern expressed about the fact Section 211 refers to continuing exclusive jurisdiction, a concept that does not fit foreign cases. There were those who thought more discussion was warranted. Subsequently, Commissioner Barbara Atwood and observer Ann Estin pressed the case that there should be some opportunity to modify foreign orders in limited circumstances.

The Convention is almost entirely silent on the issue of modification of spousal support (and child support as well) other than in article 18, which grants protection to the obligee from unwanted modification by the obligor. Because the goal of UIFSA 2008 is primarily to deal with the Convention and not to amend the rest of UIFSA, adding Section 712 for Convention cases and not amending Section211 was proposed. Now that questions have been raised, it is clear the drafting committee as a whole needs to consider this issue. At least four options seem apparent, as set forth below.

FIRST OPTION. Amend Section 211(b) to clarify "current law" to prohibit a tribunal of this State from modifying a foreign spousal support order, and delete Section 712.

[§ 211] (b) A tribunal of this State may not modify a spousal-support order issued by a tribunal of**:**

(1) another State having continuing, exclusive jurisdiction over that order under the law of that State**; or**

(2) a foreign country.

SECOND OPTION. Amend Section 211(b) by making a cross reference to Section 712 to limit possible modification of spousal support to Convention cases and retain Section 712 as written in the Big Sky document.

[§ 211] (b) **Except as provided in Section 712, ~~A~~ a** tribunal of this State may not modify a spousal-support order issued by a tribunal of**:**

(1) another State having continuing, exclusive jurisdiction over that order under the law of that State; or

(2) a foreign country.

SECTION 712. JURISDICTION TO MODIFY SPOUSAL-SUPPORT ORDER OF FOREIGN COUNTRY. A tribunal of this State with personal jurisdiction over the parties may modify a spousal-support order of a foreign tribunal if :

(1) the foreign tribunal lacks or refuses to exercise jurisdiction to modify its order pursuant to its laws;

(2) there is agreement in writing between the parties to the jurisdiction of the tribunal of this State; or

(3) the parties submit to the jurisdiction of the tribunal of this State expressly or by defending on the merits without objecting.

THIRD OPTION. Delete Section 712, and amend Section 211 by adding Subsection (d), to provide restricted circumstances under which a tribunal of this State may modify a foreign support order from any foreign country, to read as follows:

[§ 211] **(d) A tribunal of this State with personal jurisdiction over the parties may modify a spousal-support order of a foreign tribunal if :**

(1) the foreign tribunal lacks or refuses to exercise jurisdiction to modify its order pursuant to its laws;

(2) there is agreement in writing between the parties to the jurisdiction of the tribunal of this State; or

(3) the parties submit to the jurisdiction of the tribunal of this State expressly or by defending on the merits without objecting.

II. RESPONSE TIME FOR RESPONDENT RESIDING OUTSIDE THE UNITED STATES

BACKGROUND.

Current UIFSA Sections 605(b)(2) and 606(a) provide for a period of [20] days to allow a respondent to contest the validity or enforcement of a registered support order.

Convention art. 23(6) states:

> A challenge or an appeal is to be lodged within 30 days of notification under paragraph 5. If the contesting party is not resident in the Contracting State in which the declaration or registration was made or refused, the challenge or appeal shall be lodged within 60 days of notification.

The observers in Tucson made strong objection to a change in UIFSA from [20] to [30] days. Note that although the brackets indicate only a suggestion, the 20 days response has been widely, if not uniformly, adopted. In response to suggestions the Convention timeframe was fairer for an individual residing overseas, the following amendments are contained in the Big Sky document.

Section 707(b) incorporates the Convention timeframes. The [20] day period is retained in Sections 605 and 606, with the following amendments:

[§ 605] (b) A notice must inform the nonregistering party:

(1) that a registered support 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:**

(A) the registered order is subject to Section 707; or

(B) the nonregistering party resides outside of the United States or a State, in which case a hearing to contest the order must be requested within 60 days after notice.

[§ 606] (a) A nonregistering party seeking to contest the validity or enforcement of a registered support order in this State shall request a hearing ~~**within [20] days after notice of the registration**~~ **in accordance with the notice provided in Section 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 pursuant to Section 607.

III. ACCOMMODATION OF PROPOSED FEDERAL ENABLING LEGISLATION

BACKGROUND

The State Department and OCSE indicated that Section 307 should be amended to accommodate the likely final form of the federal enabling legislation that must be enacted by Congress in order for the Convention to come into force after the Senate gives its advice and consent and the President signs the treaty. As you know, the key element in this process is the enactment of UIFSA 2008 by the states (the Convention is not self-executing, and the plan is not to disturb enforcement of the law by state tribunals—as opposed to the unwieldy Abduction Convention which created dual jurisdiction).

On June 6, 2008, we received a request from OCSE for an amendment to Section 307 to accommodate a provision in the proposed federal enabling statue. In short, the proposal is that a support enforcement agency should be able to choose whether to provide services to an applicant "residing outside the United States or a State…." The reason for the change is that the

> legislative proposal leaves it up to the individual states as to whether to provide direct services for people living in foreign jurisdictions, rather than being required to as current UIFSA does. It is critical to give the states this option to encourage other countries to join the Convention. Another way of saying this may be 'an individual petitioner not residing in a state.'

On June 19 the Big Sky document for UIFSA 2008 was forwarded to all commissioners, and to the advisors and observers of the committee. In response to the OCSE request, that document contains the following alternatives: Alternative A retains current law; and, if the Convention comes into force in the United State Alternative B will take into account the predicted change of practice for IV-D agencies, which will be required to enforce certain foreign child-support orders and allowed to choose to enforce or reject foreign child-support orders from countries that do not have a bilateral or multilateral agreement with the United States.

Alternative A

(a) A support enforcement agency of this State, upon request, shall provide services to a [petitioner] in a proceeding under this [Act].

Alternative B

(a) In a proceeding under this [Act], a support enforcement agency of this State, upon request, shall provide services to a [petitioner] residing in the United States or a State, and may provide services to a [petitioner] who is an individual residing outside the United States.

On July 1 we received the following email from OCSE:

> There are two problems with section 307: Alternative B does not provide for mandatory provision of services in non-Convention foreign reciprocating countries'

(FRCs) cases (see section 102(5)(A)); and, the expression "residing in the United States or a State" is a unique new expression which we suggested may be necessary to ensure inclusion of Guam, Puerto Rico, the District of Columbia and the Virgin Islands. On further reflection, we believe that it is unwise to introduce such a new geographical term of art and that both of our concerns re inclusion of the territories and of individuals applying through Central Authorities (in either FRC or Convention countries) can be resolved by substitution of the following language

[§ 307] Alternative B

(a) In a proceeding under this [Act], … shall provide services to a [petitioner] residing in a State, shall provide services to an individual requesting services through the Central Authority of a foreign country defined in section 102(5)(A) or (D), and may provide services to a [petitioner] who is an individual not residing in a State.

These suggested changes are consistent with Federal legislation which we expect Congress may enact to implement the Convention.

If the current language proposed for the enabling legislation is adopted by Congress. Alternative B below will necessarily be an optional provision for state law in order to conform the Social Security Act, Part IV-D. The committee should consider the following version of Section 307.

Alternative A

(a) A support enforcement agency of this State, upon request, shall provide services to a [petitioner] in a proceeding under this [Act].

Alternative B

(a) In a proceeding under this [Act], a support enforcement agency of this State, upon request:

(1) shall provide services to a [petitioner] residing in a State;

(2) shall provide services to a [petitioner] requesting services through a central authority of a foreign country as defined in section 102(5)(A) or (D) and;

(3) may provide services to a [petitioner] who is an individual not residing in a State.

LEGISLATIVE NOTE:

The state legislature may enact Alternative A at any time without restriction in order to maintain the practice under current law.

The state legislature may choose to enact Alternative B if the federal legislation enabling the entry into force of the Convention contains a provision authorizing an option for the state enforcement agency to accept or reject an application for services originating in a foreign country that is not a country defined in Section 102(5)(A) or (D, a.k.a., a foreign reciprocating country or a foreign treaty country.

FOR YOUR INFORMATION: The proposed federal legislation contains the following definitions for the relevant foreign countries. At present these terms are not used in this draft of UIFSA.

"Foreign reciprocating country" means a foreign country, or political subdivision thereof, with respect to which the Secretary of the United States Department of Health and Human Services has made a declaration pursuant to the federal Multilateral Child Support Convention Implementation Act of 2008.

"Foreign treaty country" means a foreign country for which the Convention is in force.