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## Making Divorce Judgments Enforceable in the United States (Part II of II)

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*Last month, Part I of this two-part article discussed issues such as comity, uniform acts (particularly the UFMJRA), then concentrated on the recognition of foreign custody orders. This month, Part II reviews foreign support orders, paternity judgments, and money judgments.*

### Foreign Support Orders and Paternity Judgments

The Uniform Interstate Family Support Act (UIFSA)<sup>1</sup> was drafted to more efficiently enforce child and spousal support orders as well as the paternity judgments of other states and countries.<sup>2</sup> The prerequisite to enforce another country's orders under UIFSA is that the country of origin must have a "law or procedure substantially similar to UIFSA's, or one of UIFSA's precursors—the Uniform Reciprocal Enforcement of Support Act (URESAs) or the Revised Uniform Reciprocal Enforcement of Support Act (RURESAs).<sup>3</sup> UIFSA does not require that there be reciprocity between the foreign country and our states for a foreign support order to be enforced.<sup>4</sup>

UIFSA may be used to collect a foreign support order<sup>5</sup> as well as related costs and fees, interest, income withhold-

ing, attorney's fees, and other relief.<sup>6</sup> UIFSA also provides for the recognition of foreign paternity judgments. UIFSA allows the recognition of orders from "administrative law agencies or a quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage."<sup>7</sup> This definition provides latitude to enforce orders made in foreign countries with legal systems very different from the United States.

To register a foreign support order under UIFSA the applicant must file two copies, including one certified copy, of all orders to be registered (including a translation), and any modification of an order,<sup>8</sup> with the applicable judicial council form or a letter to the court clerk requesting registration.<sup>9</sup>

On receipt of a request for registration, the court will file the order as a foreign judgment, together with one copy of the foreign court order, regardless of the form of the request.<sup>10</sup> The request must specify the grounds for the enforcement remedy sought.<sup>11</sup> An application for a determination of arrearages under the foreign court order or an actual writ of execution may be issued on application to the court at the same time the order is registered or at a later date. A support order or income-withholding order is registered when the order is filed.<sup>12</sup> Once registered, the foreign order may be enforced like any other support order issued by this state.<sup>13</sup>

Under the former uniform support act (URESAs), the majority of support proceedings were relitigated in the local court even though the foreign court's order was clear

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and unambiguous. Furthermore, even when an existing order of one state was "registered" in the United States, the defending party often asserted the right to modify the foreign order. This meant that several different support orders could be in effect in several states or countries.<sup>14</sup> This problem is rectified by UIFSA in that the state court may not modify the foreign court order if it is determined that the foreign court had proper jurisdiction to issue its order<sup>15</sup> unless neither party resides in the foreign country or if the parties agree in writing that it can be modified in the state.

When a support order or income withholding order issued in another country is registered in the state under UIFSA, the clerk will send out a notice of the registration to the party who owes the support. The notice informs the party that they have 20 days to contest the validity or enforcement of an order registered in the state. The party objecting to the registration 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. If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.<sup>16</sup>

### Available Defenses

A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving one or more of the following defenses:<sup>17</sup>

- (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; or
- (7) The statute of limitations precludes enforcement of some or all of the arrearages.<sup>18</sup>

Refusal to permit visitation cannot be used as a defense to support orders registered pursuant to UIFSA,<sup>19</sup> despite the fact that there is conflicting state law regarding this issue.<sup>20</sup> When registering a paternity judgment of a foreign country under UIFSA, nonparentage cannot be pled as a defense to enforcement.<sup>21</sup> In a provision modeled after a similar section in the UCCJA,<sup>22</sup> UIFSA provides that a court may contact the court of another state in writing, or by telephone or other means, to obtain information concerning the laws of that state, the legal effect of an order of

that tribunal, and of a proceeding in the other country.<sup>23</sup> The law of the foreign country governs the nature, extent, amount, and duration of current payments and other obligations of support and the payment of arrearages under the order<sup>24</sup> as well as discovery that must be done in the foreign country. The procedural, substantive and choice of law rules of the state are controlling in all other respects.<sup>25</sup>

### Wage Assignment Orders

UIFSA provides an even more streamlined method of enforcing wage assignment orders. The act does not require the wage assignment order to be registered. Rather the wage assignment order can be sent directly to the obligor's employer, which triggers wage withholding by that employer without the necessity of a hearing—unless the employee files an objection with the court.

### Money Judgments

The Uniform Foreign Money-Judgments Recognition Act<sup>26</sup> (UFMJRA) covers family law orders for the payment of money that is not for spousal or child support.<sup>27</sup> To be recognized by our courts, the UFMJRA requires that the order be conclusive and enforceable (even though an appeal may be pending or the order is still subject to appeal).<sup>28</sup> The defendant may apply for a stay of enforcement if an appeal is pending or the defendant is entitled to and intends to appeal the judgment.<sup>29</sup> Once established, the order is enforceable as though it was a judgment of another state. There is no expedited method of registration of foreign judgments like there is under UIFSA. A complaint to establish a foreign country judgment must be filed alleging the elements set forth in the UFMJRA.<sup>30</sup>

The UFMJRA requires that before giving recognition to a foreign judgment there must be personal jurisdiction over the defendant. Under the statute, personal jurisdiction is obtained by personal service in the foreign country, a voluntarily general appearance of the defendant, consent to service in the foreign country, or the defendant being domiciled in the foreign country.<sup>31</sup>

### Available Defenses

The defenses to recognition of the foreign court order under the UFMJRA are:

- (1) The judgment was rendered under a system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law;
- (2) The foreign court did not have personal jurisdiction over the defendant;
- (3) The foreign court did not have jurisdiction over the subject matter;

(4) The defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him to defend;

(5) The judgment was obtained by extrinsic fraud;

(6) The cause of action or defense on which the judgment is based is repugnant to the public policy of the state;

(7) The judgment conflicts with another final and conclusive judgment;

(8) The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceeding in that court; and

(9) In the case where jurisdiction is based solely on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.<sup>32</sup>

State legislatures should bolster the UFMJR by adding a section that would authorize the registration of certified family law money judgments similar to that provided for by the UCCJA that permits the filing of foreign custody orders; or similar to UIFSA, which permits the registration of foreign support orders. A certified copy of the foreign judgment would be filed in California courts with a family law case number. Any objections relating to the validity of the foreign court order could be addressed at the time enforcement procedures commenced. This amendment would mean that most foreign divorce orders (except those relating to real property and restraining orders) would be addressed in the family law department in an expedited manner by registration.

## Foreign Currency

The uniform statutes described above do not explain how to calculate the dollar amount of a judgment issued in a foreign currency, but the California use of *Pecaflor Construction, Inc. v. Landes*<sup>33</sup> held that when enforcing a foreign judgment rendered in a foreign currency, the foreign money judgment must ordinarily be converted to American dollars using the exchange rate that was in effect at the time of the foreign judgment.

The lawyer enforcing a foreign judgment in state court must use ingenuity in obtaining recognition of that judgment. While some orders in a judgment require registration, other orders in the same judgment require that a complaint be filed to establish the order as a state court order. Despite the fact that several statutes address the diverse aspects of a divorce judgment, most orders will be recognized by state courts without having to rely on the comity doctrine.

As international commerce continues to expand and people immigrate to the United States in greater numbers, lawyers will need more efficient means of enforcing for-

ign court orders. With a few revisions to the current uniform statutes, the enforcement of foreign divorce judgments in state courts, which once involved expensive civil litigation, will be accomplished simply and cost effectively.

## Notes

1. UIFSA developed from the congressional legislation in 1975, 1984, 1988, and 1996 relating to child support enforcement procedures such as wage withholding, tax intercepts, and credit reporting as well as federal substantive requirements (the Bradley Amendment, 1986, which directs states to enact laws that prohibit retroactive reduction of a child support arrearage stemming from a court order). Those spurred the National Conference of Commissioners to revise the two prior uniform support statutes (Revised Uniform Reciprocal Enforcement of Support Act (RURESA) and the Uniform Reciprocal Enforcement of Support Act (URESA)) and come up with UIFSA. Congress mandated enactment of UIFSA for a state to remain eligible for federal child support funds. 42 U.S.C. § 66 states in part (f) In order to satisfy section 454(2)A, on and after January 1, 1998, each state must have in effect the Uniform Interstate Family Support Act, as approved by the American Bar Association on February 9, 1993, together with any amendments officially adopted before January 1, 1998, by the National Conference of Commissioners on Uniform State Laws. All references to UIFSA are to the Uniform Laws Annotated.

2. Uniform Interstate Family Support Act § 101(19)(ii), defines a state as, "A foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders that are substantially similar to the procedures under this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

3. Uniform Interstate Family Support Act § 101(16) states: "When the Attorney General is satisfied that reciprocal provisions will be made by a foreign jurisdiction for the enforcement of support orders made within this state, the Attorney General may declare the foreign jurisdiction to be a reciprocating state for the purpose of this chapter. . . Any such declaration . . . may be reviewed by the court in an action brought under URESA." As of April 15, 1998, the California Attorney General had declared the following foreign jurisdiction to be reciprocating states: all the Canadian provinces, South Africa, Australia, Germany, Bermuda, France, New Zealand, Czech Republic, Fiji, Finland, Hungary, Ireland, Austria, Mexico, Norway, Poland, Republic of the Marshall Islands, Slovak Republic, Sweden, Northern Ireland, Scotland and England. Each state has their own list.

4. Uniform Interstate Family Support Act § 101(22).

5. Section 101(21) states as follows: "Judgment, decree, or order, whether temporary, final, or subject to modification, for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, arrearages, or reimbursement, and may include related costs, and fees, interest, income withholding, attorney's fees, and other relief."

6. Uniform Interstate Family Support Act § 101(21).

7. Uniform Interstate Family Support Act § 101(22).

8. Uniform Interstate Family Support Act § 602(a).

9. Each state or county may promulgate its own forms.

10. Uniform Interstate Family Support Act § 502(b).

11. Uniform Interstate Family Support Act § 602(c).

12. Uniform Interstate Family Support Act § 603.

13. Uniform Interstate Family Support Act § 603(b).

14. Uniform Conference of Commissioners, Prefatory note II.B.3. Under UIFSA, the principle of continuing, exclusive jurisdiction aims,

so far as possible, to recognize that only one valid support order may be effective at any one time.

15. Uniform Interstate Family Support Act § 603(c).
16. Uniform Interstate Family Support Act § 606.
17. Uniform Interstate Family Support Act § 607.
18. Uniform Interstate Family Support Act § 604(b).
19. Uniform Interstate Family Support Act § 305(d).
20. See, e.g., California Fam. Code § 3556 and *In re Marriage of Damico* (1994) 7 Cal.4th 673.
21. Uniform Interstate Family Support Act § 315.
22. Uniform Child Custody Jurisdiction Act § 7.
23. Uniform Interstate Family Support Act § 317.
24. Uniform Interstate Family Support Act § 604.
25. Uniform Interstate Family Support Act § 202.
26. Uniform Foreign Money-Judgments Recognition Act (UFMJRA) § 1 *et seq.* UFMJRA § 1(2) states that a "Foreign State" means "any

governmental unit other than the United States, or any state, district, commonwealth, territory, insular possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands" and that "Foreign judgment" means "any judgment of a foreign state granting or denying recovery of a sum of money, other than judgment for taxes, a fine or other penalty, or a judgment for support in matrimonial or family matters."

27. Uniform Foreign Money-Judgments Recognition Act § 1(2).
28. Uniform Foreign Money-Judgments Recognition Act § 2.
29. Uniform Foreign Money-Judgments Recognition Act § 6.
30. Uniform Foreign Money-Judgments Recognition Act §§ 4 & 5.
31. Uniform Foreign Money-Judgments Recognition Act § 5. This section states the criteria for establishing jurisdiction in business matters and accident cases.
32. Uniform Foreign Money-Judgments Recognition Act § 4. This section codifies the common law doctrine of comity.
33. *Pecaflor Construction, Inc. v. Landes* (1988) 198 Cal. App.3d 342, 243 Cal.Rptr. 605.

## CASE SPOTLIGHT

# Judicial Estoppel in Domestic Relations Cases

The doctrine of judicial estoppel applies to domestic relations cases in general, including oral separation agreements reached in court, the *Massachusetts* Supreme Judicial Court has held. *Paixao v. Paixao*, 708 NE2d 91 (Mass 1999), however, found the doctrine inapplicable to the facts of this case.

## The Doctrine

The court described judicial estoppel as the principle by which "[a] party who has successfully maintained a certain position at a trial cannot in a subsequent trial between the same parties be permitted to assume a position relative to the same subject that is directly contrary to that taken at the first trial." The primary concern of the doctrine of judicial estoppel is to protect the integrity of the judicial process, which would be ill served if litigants, attorneys, and judges could not rely on declarations of settlement made to the court.

The opinion added that the reason why oral agreements are honored is that their acknowledgment in open court lends credibility and certainty.

## No Agreement

However, in this case the court found that the parties never agreed to the terms of the settlement discussed in open court.

On August 5, 1999, the lawyers reported to the court that the parties reached an oral separation agreement. The

highlights of the agreement were read into the record. The judge had a colloquy with the parties, under oath, during which he asked the parties whether they understood the terms of the agreement, whether they had enough time to consider the terms, whether they wanted to speak further with counsel, and whether they believed the agreement to be fair and reasonable. The judge then asked the lawyers to submit a signed agreement the following day. The next day the parties reported that the wife was unwilling to sign the agreement.

On September 8, new counsel for the wife told the judge that the wife believed that the oral agreement was merely a proposal. After more negotiations, counsel reported that there was once again an agreement. The judge instructed the parties to send the agreement to the court. Several weeks later, the wife's lawyer filed a motion to set a trial date because the wife would not sign the agreement. The lawyer argued that the oral agreement was not entered into freely and willingly by the wife, and that she was confused and under extreme pressure during the August 5 proceedings. The judge denied the wife's motion for a trial date, and signed a judgment granting a divorce incorporating the husband's proposed agreement, which he found to be fair and reasonable.

But, the appellate court disagreed, finding that there was no agreement because the judgment offered by the husband was merely a proposed judgment.