

## Continuing Jurisdiction Over Support Orders

Joel R. Brandes

[New York Law Journal](#)

May 26, 1998

**T**HE UNIFORM SUPPORT of Dependents Law (USDL), found in former Article 3-A of the Domestic Relations Law (DRL), was intended as a vehicle to secure support in civil proceedings for dependent spouses and children and was used primarily in interstate proceedings.<sup>1</sup> It was unusual in that it provided a special statutory procedure that dispensed with the hearing and physical confrontation of parties and witnesses. The proceedings were conducted in the Family Court by exchanging pleadings between comparable courts in two states, and by the exchange of interrogatories for the purposes of eliciting evidence.

The USDL furnished an additional or alternative civil remedy and was not intended to affect or impair any other remedy available to the petitioner.<sup>2</sup> Thus, the Family Court had jurisdiction in a USDL proceeding to order a parent to make support payments, and its order would not reduce or supersede the parent's obligation to provide child support in accordance with a judgment of divorce or order of a court of another state.<sup>3</sup>

The passage of the Personal Responsibility and Work Opportunities Reconciliation Act in 1996 signaled the demise of the USDL. It provided that, to remain eligible for the federal funding of child support enforcement, a state had to have the Uniform Interstate Family Support Act (UIFSA) in effect by Jan. 1, 1998. As a consequence, New York repealed the USDL<sup>4</sup> and adopted UIFSA as Article 5-B of the Family Court Act (FCA), effective Dec. 31, 1998.<sup>5</sup>

Although some of the terminology of the USDL has been retained in UIFSA, the statutes are vastly different. One difference is the substitution of the term "tribunal" for "court." "Tribunal" means a court, administrative agency or quasi-judicial entity authorized to establish, enforce or modify support orders or to determine parentage.<sup>6</sup> The term "tribunal" was chosen because many states have created administrative agencies to perform these functions.

UIFSA states that "*The Tribunal of this state is the Family Court,*" and throughout UIFSA there are references to "*a tribunal of this state.*" Do not be confused. *A tribunal* refers to both the Family Court and the Supreme Court, which has concurrent jurisdiction to act in any appropriate action.<sup>7</sup>

**One Valid Order at a Time**

The most significant aspect of UIFSA is that it adopts the principle of continuing, exclusive jurisdiction in an attempt to ensure that only one valid support order is effective at any one time. FCA §580-204 provides that where a petition or pleading is filed commencing a proceeding in another state, the Family Court may exercise jurisdiction to make a support order only if the petition is filed before the expiration of the time allowed in the other state for filing a responsive pleading challenging the exercise of jurisdiction by it; the contesting party timely challenges the exercise of jurisdiction in the other state and, if relevant, New York is the "home state" of the child.<sup>8</sup>

The Family Court may not exercise jurisdiction to make a support order where the petition is filed in New York before a petition or comparable pleading is filed in another state, if the pleading in the other state is filed before the expiration of the time allowed in New York for filing a responsive pleading challenging the exercise of jurisdiction by New York; the contesting party timely challenges the exercise of jurisdiction in New York and, if relevant, the other state is the "home state" of the child.<sup>9</sup>

This concept is similar to that in the federal Parental Kidnapping Prevention Act,<sup>10</sup> which gives the "home state" of the child a priority in establishing jurisdiction. UIFSA attempts to resolve disputes between competing jurisdictions by establishing a priority for the tribunal in the child's home state.

"Home State" means the state in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately before that filing of a petition or comparable pleading for support and, if a child is less than 6 months old, the state in which the child lived from birth with either of them. A period of temporary absence of either of them is counted as part of the six-month or other period. <sup>11</sup> If the child has no home state, the state of "first filing" has priority.

FCA §580-205 contains rules for resolving actions pending in two or more states. The issuing tribunal retains continuing, exclusive jurisdiction over a child support order, except in limited circumstances. If a New York tribunal issues a support order consistent with New York law, it has continuing, exclusive jurisdiction over the order as long as one of the individual parties or the child continues to reside in New York<sup>12</sup> and so long as the parties have not filed written consents to the contrary with the Family Court.<sup>13</sup>

If the obligor, the individual obligee and the child have permanently left New York, Family Court no longer has jurisdiction to modify its own child support order. However, the New York order remains in effect until it is modified in accordance with the terms of FCA §§580-609 to 580-614. Thus, New York may lose its continuing, exclusive jurisdiction to modify its order if the parties file a written consent for another state to assume jurisdiction to modify it, even though one of the parties or the child continues to reside in the New York.<sup>14</sup>

Even though the family court issues a child-support order "consistent with the law of this state," it may not exercise its continuing jurisdiction to modify the order if the order has been modified by a tribunal of another state pursuant to UIFSA or a law substantially similar to it.[15](#) In such a situation, the Family Court loses its continuing, exclusive jurisdiction with regard to prospective enforcement of its order and may only enforce the order that was modified as to amounts accruing before the modification[16](#); enforce non-modifiable aspects of that order[17](#); and provide other appropriate relief for violations of that order which occurred before the effective date of the modification.[18](#)

### **Recognizing Other Jurisdictions**

The Family Court is required to recognize the continuing, exclusive jurisdiction of a tribunal of another state that has issued a child support order pursuant to UIFSA or a law substantially similar to it.[19](#) FCA §580-102 (21) defines such an order broadly. It provides that "support order" means a 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. It may include related costs and fees, interest, income withholding, attorney's fees, and other relief.[20](#) However, a temporary support order issued ex parte by another state's tribunal, or pending resolution of a jurisdictional conflict, does not create continuing, exclusive jurisdiction in the issuing tribunal.[21](#) It should be noted that nothing in FCA §580-205 is intended to deprive a tribunal that has lost continuing, exclusive jurisdiction of the power to enforce arrears that have accrued during the existence of a valid order. Spousal support is treated differently. The Family Court retains continuing, exclusive jurisdiction over its spousal support order throughout the entire existence of the support obligation.[22](#) The procedures of UIFSA are not available to another tribunal to modify an existing New York spousal support order. This is a departure from the USDL, which treated spousal and child support orders identically. Under UIFSA, modification of spousal support is available only where a request for modification is initiated outside of the issuing state and a New York court modifies its order under our law.[23](#) A party seeking to modify a child support order issued in another state must first register that order in New York and may file a petition for modification at the same time, specifying the grounds for modification.[24](#) Once registered, the order may be modified only if the requirements of FCA §580-611 have been met.[25](#)

### **Modification Rules**

FCA §580-611 provides that after a child support order issued in another state has been registered in this state, the Family Court may modify that order only if §580-613 does not apply, *and* only if, after notice and hearing, the court finds that the following requirements are met:

(1) the child, the individual obligee and the obligor do not reside in the issuing state; a petitioner who is a nonresident of New York seeks modification; and the respondent is subject to the personal jurisdiction of the Family Court; or

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

However, if the issuing state is a foreign jurisdiction that has not enacted a law or established procedures substantially similar to the procedures under UIFSA, the consent otherwise required of an individual residing in New York is not required for the tribunal to assume jurisdiction to modify the child support order.[26](#)

FCA §580-613 provides that if all of the parties who are individuals reside in New York and the child does not reside in the issuing state, the Family Court has jurisdiction to modify the issuing state's child support order in a proceeding to register that order.

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 the Family Court.[27](#) Family Court may not modify any aspect of a child support order that may not be modified under the law of the issuing state. If two or more tribunals have issued child support orders for the same obligor and child, the order that controls and must be recognized under FCA §580-207 establishes the aspects of the support order, which are nonmodifiable.[28](#)

Once the Family Court makes an order modifying a child support order issued in another state, it becomes the tribunal having continuing, exclusive jurisdiction.[29](#)

The party obtaining modification of a child support order must, within 30 days, 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. Failure to file the order subjects that party to sanctions by a tribunal in which the issue of failure to file arises. However, the failure to file the order does not affect its validity or enforceability.[30](#)

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## Notes

(1) See former DRL §30.

(2) See former DRL §41(1).

- (3) *Cumming v. Cumming* (1985, 2d Dept.) 113 AD2d 735; *Lanum v. Lanum* (1983, 2d Dept.) 92 AD2d 912.
  - (4) Laws of 1997, ch 398, §36.
  - (5) Laws of 1997, ch 398, §37. FCA §580 904 provides that it shall apply to all actions or proceedings filed on or after it's effective date.
  - (6) FCA §580-101 (22).
  - (7) *Kagen v. Kagen* (1968) 21 NY2d 532; *Seitz v. Drogheo* (1967) 21 NY2d 181.
  - (8) FCA §580-204 (a).
  - (9) FCA §580-204.(b).
  - (10) 28 USC §1738(a).
  - (11) See FCA §580-101.
  - (12) FCA §580-205(a)(2).
  - (13) FCA §580-205(a)(2).
  - (14) FCA §580-205(a).
  - (15) FCA §580-205(b).
  - (16) FCA §580-205(c)(1).
  - (17) FCA §580-205(c)(2).
  - (18) FCA §580-205(c)(3).
  - (19) FCA §580-205(d).
  - (20) FCA §580-205(d).
  - (21) FCA §580-205(e).
  - (22) FCA §580-205(f).
  - (23) FCA §580-206.
  - (24) FCA §580-609.
  - (25) FCA §580-610.
  - (26) FCA §580-611(a).
  - (27) FCA §580-611(b).
  - (28) FCA §580-611(c).
  - (29) FCA §580-611(d).
  - (30) FCA §580-614.
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**Joel R. Brandes** has law offices in Garden City and New York City. He co-authored the nine-volume *Law and the Family New York and Law and the Family New York Forms* (both, published by Westgroup).