

Family Law Bulletin

Number 10 August 1999

INTERNATIONAL ESTABLISHMENT AND ENFORCEMENT OF FAMILY SUPPORT

■ John L. Saxon

While international family support cases—that is, cases in which a spouse or child living in a foreign country seeks alimony or child support from a spouse or parent living in North Carolina, or vice versa—are not yet an everyday occurrence in North Carolina’s courts, they are not uncommon in today’s world in which millions of Americans are stationed, travel, study, or work abroad and millions of foreigners visit, study, work, or move to the U.S. These cases almost always present particularly difficult practical and legal problems for the parties, attorneys, and judges. As one writer has noted:

The difficulties of enforcement of support across state lines in the United States pale in comparison to the obstacles created by national boundaries. The conflicts between different countries’ legal systems, family values and customs, religious precepts and notions of personal jurisdiction can directly impact on the nature and even the availability of an international [family support enforcement] remedy.¹

This bulletin discusses some of the international, federal, and state laws that apply, or might not apply, to international family support cases; examines how these laws apply to cases in which a spouse, parent, or child living in North Carolina seeks to establish or enforce a family support order against a spouse or parent living in a foreign nation and cases in which a spouse, parent, or child living in a foreign nation seeks to establish or enforce a family support order against a spouse or parent living in North Carolina; and suggests some steps that public officials might take to minimize some of the legal problems that arise in international family support proceedings.

Laws Governing International Family Support Cases

The Uniform Interstate Family Support Act (UIFSA)

The Uniform Interstate Family Support Act (UIFSA) (a uniform state law approved by the National Conference of Commissioners on Uniform State Laws) has been enacted by all fifty states. North Carolina’s UIFSA statute is codified as Chapter 52C of the General Statutes and became effective January 1, 1996.²

UIFSA establishes several procedural mechanisms through which (1) an obligee living in North Carolina may establish or enforce a family support order against an obligor who lives in

another state, and (2) an obligee who lives in another state may establish or enforce a family support order against an obligor who lives or owns property in North Carolina.

Although the primary focus of UIFSA is on interstate family support enforcement, it also applies to some international family support cases.

Under UIFSA, a foreign country, nation, or jurisdiction (other than Puerto Rico, the U.S. Virgin Islands, and U.S. territories or possessions) is considered to be a "state" only if it has enacted a law or established procedures for the issuance and enforcement of support orders that are "substantially similar" to those under UIFSA or URESA.³

In other words, some of UIFSA's interstate family support procedures are available only if there is "reciprocity" between a foreign country and North Carolina with respect to family support matters.⁴

Fortunately, a number of foreign countries have adopted laws or procedures that are substantially similar to UIFSA or URESA,⁵ thereby allowing North Carolina courts to use UIFSA's procedures to establish child or spousal support orders on behalf of foreign residents and to recognize and enforce family support orders entered by courts in those jurisdictions, as well as facilitating the establishment or enforcement of family support orders in those jurisdictions on behalf of North Carolina residents.

Reciprocity currently exists under UIFSA between all American states and the following foreign jurisdictions:⁶

- Australia
- Austria
- Bermuda
- Canada (Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Northwest Territories, Ontario, Prince Edward Island, Quebec, Saskatchewan, Yukon Territory)
- Czech Republic
- Fiji
- France
- Germany
- Hungary
- Ireland
- Jamaica
- Mexico
- New Zealand
- Norway
- Poland
- Slovak Republic
- South Africa
- Sweden
- United Kingdom (England, Wales, Scotland, Northern Ireland)

The Uniform Foreign Money-Judgments Recognition Act (UFMJRA)

The Uniform Foreign Money-Judgments Recognition Act (UFMJRA) has been enacted by twenty-eight states, including North Carolina. North Carolina's UFMJRA statute is codified as sections 1C-1801 through 1C-1808 of the General Statutes.⁷

Under UFMJRA, North Carolina courts are required to recognize and enforce certain judgments for the payment of money entered by the courts or tribunals of a foreign country.⁸

Although some states have amended their UFMJRA statute to make it applicable to foreign family support judgments,⁹ North Carolina's UFMJRA statute expressly excludes from its application foreign judgments for support in matrimonial or family matters.¹⁰ Therefore, absent a change in the statute, the UFMJRA may *not* be used in North Carolina to enforce a family support order entered by a foreign court.

Comity

Neither the U.S. Constitution's "full faith and credit clause"¹¹ nor the federal Full Faith and Credit for Child Support Orders Act¹² applies with respect to the recognition and enforcement in the United States of family support orders entered by the courts or public agencies of foreign countries.¹³

North Carolina courts, however, may nonetheless recognize and enforce family support orders entered by the courts of foreign countries under the common law principle of comity.¹⁴

Comity is the

recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and to the rights to its own citizens or of other persons who are under the protection of its laws.¹⁵

Although the laws of many foreign nations require reciprocity with respect to their recognition and enforcement of judgments entered by the courts of other countries, reciprocity is generally not a necessary prerequisite for comity under the principles of American jurisprudence.¹⁶ Thus, an American court may, through comity, recognize and enforce a judgment entered by a court of a foreign country regardless of whether the foreign country's courts would recognize and enforce a similar judgment entered by an American court.

An American court, however, generally will not apply the principle of comity to recognize or enforce a judgment entered by a foreign court unless it is satisfied that the judgment is final, that it was entered under

procedures that were fundamentally fair (that is, the parties were given adequate notice and an opportunity to be heard before an impartial decision-maker), and that enforcement of the judgment would not be contrary to the public policy of the forum state.¹⁷

Thus, North Carolina's Court of Appeals has recognized that a North Carolina court *may* extend comity with respect to the recognition and enforcement of an alimony or child support order entered by a court of a foreign nation, but will not do so when the foreign court lacked personal jurisdiction over the nonresident defendant.¹⁸

Title IV-D of the Social Security Act

Title IV-D of the federal Social Security Act establishes a procedure under which either the United States or individual American states may enter into reciprocal agreements with foreign countries with respect to the international establishment and enforcement of family support obligations.

Section 459A of the Social Security Act, enacted as part of the 1996 federal welfare reform and child support legislation, authorizes the U.S. Secretary of State, with the concurrence of the Secretary of the U.S. Department of Health and Human Services, to declare any foreign country (or a political subdivision thereof) to be a "foreign reciprocating country" if (1) the foreign country has procedures available to U.S. residents for the establishment of paternity and child support orders and for the enforcement, collection, and distribution of child support payments under such orders; (2) the procedures (including administrative and legal assistance) are provided to U.S. residents at no cost; and (3) an agency of the foreign country is designated as the "central authority" responsible for facilitating support enforcement in cases involving U.S. residents and residents of the foreign country and ensuring compliance with the standards established by federal law and regulations regarding international child support enforcement.¹⁹

Once a foreign country is declared to be a foreign reciprocating country under section 459A, the U.S. Department of Health and Human Services is responsible as acting as this country's "central authority" to facilitate international child support cases involving U.S. residents and the residents of foreign countries.²⁰

As of July, 1999, two countries (Ireland and the Slovak Republic) and one Canadian province (Nova Scotia)—all of which had generally been recognized by states as reciprocating foreign countries under UIFSA or the Uniform Reciprocal Enforcement of Support Act (URESAs)—have been declared by the United States to be foreign reciprocating countries under section 459A.

Section 459A also authorizes North Carolina and other American states, to the extent consistent with federal law, to enter into reciprocal arrangements with foreign countries regarding the establishment and enforcement of family support obligations.²¹

Once reciprocity is established between the United States or North Carolina and a foreign country under section 459A, North Carolina's state and local child support enforcement agencies are required to provide free services, at the request of a foreign reciprocating country, to foreign residents with respect to the establishment or enforcement of child support orders (and, at state option, the enforcement of spousal support orders).²²

Section 459A does not directly address issues involving jurisdiction or choice of law in international child support cases, the procedures for establishing or enforcing support in international support cases, or the recognition and enforcement of foreign support orders in American courts. Each of these issues, however, may be addressed and resolved under the terms of specific international agreements or arrangement entered into between a foreign nation and the United States or North Carolina under section 459A.

International Treaties and Agreements

The final potential source of law with respect to international family support cases is treaties, conventions, and agreements between the United States and foreign nations establishing legal rules and procedures governing the establishment and enforcement of family support orders when the party to whom support is owed (the obligee) lives in the United States and the party owing support (the obligor) lives in a foreign country, or vice versa.

The United States, however, has not ratified any of the four major international treaties, conventions, or agreements governing international family support cases, and these treaties are therefore inapplicable to cases in which a foreign obligee²³ files a case asking a North Carolina court to establish or enforce a family support order against a spouse or parent who lives or owns property in North Carolina or cases in which a spouse, parent, or child who lives in North Carolina seeks to establish or enforce a family support order against an obligor who lives or owns property in a foreign nation.²⁴

Applying the Law to International Family Support Cases

Broadly speaking, an international family support case is any case in which the party seeking family support (obligee) and the party from whom support is sought (obligor) live in different countries or in which a party

asks a court or agency of one nation to enforce or modify a family support order entered by a court or agency of another country.

In many cases, the “foreign” obligor or obligee is a citizen or national of a foreign country. Sometimes, however, the “foreign” obligor may be an American citizen who is stationed, studying, working, or living abroad. And in some international family support cases, both parties live in the United States but one party asks an American court to enforce or modify a family support order entered by a foreign court.

It should be noted at the outset that international family support cases, by their very nature, pose a number of extremely difficult and intractable problems—some legal, some practical, some logistical, some financial. They are often time-consuming and expensive and too often frustrating and ultimately futile. Even when international, federal, or state laws or agreements establish rules and procedures for handling international family support cases, these procedures all too often break down due to the inherent difficulties of handling a legal action in which the parties and courts are separated by hundreds or thousands of miles, different languages, and different legal systems.

Nonetheless, the following sections of this bulletin attempt to describe how the laws discussed above should apply to five types of international family support cases:

- cases in which a North Carolina obligee asks a North Carolina court to establish the family support obligation of a foreign obligor;
- cases in which a North Carolina obligee asks a foreign court to establish the family support obligation of a foreign obligor;
- cases in which a foreign obligee asks a North Carolina court to establish the family support obligation of an obligor who lives in North Carolina;
- cases in which an obligee asks a North Carolina court to enforce a foreign family support order;
- cases in which a North Carolina obligee asks a foreign court to enforce an American family support order.

Establishing a North Carolina Family Support Order Against a Foreign Obligor

Mary Jones and her infant daughter live in Raleigh. She alleges that Robert Obudo is the child’s father. Mr. Obudo, a Kenyan citizen, lived in Raleigh while he was a student at a local university but has now returned to Kenya.

Does a North Carolina court have the legal authority to enter an order establishing Mr. Obudo’s paternity of Ms. Jones’ daughter and requiring him to pay child support?

The first question that should be asked in this type of international family support case is whether the obligor is subject to the personal jurisdiction of a North Carolina court under UIFSA’s provisions establishing “long arm” jurisdiction over nonresident defendants in family support cases.²⁵

Under UIFSA, a North Carolina court may enter an order against a person who is not a North Carolina resident establishing the nonresident’s paternity of a child or determining the nonresident’s duty to support his or her child or spouse *if* there is a sufficient connection between the nonresident defendant and North Carolina.²⁶ Grounds for exercising “long arm” jurisdiction under UIFSA include: the nonresident’s having resided in North Carolina with the child; the nonresident’s having resided in North Carolina and provided prenatal expenses or support for the child; the child’s residing in North Carolina as the result of the nonresident’s acts or directives; or the child’s possibly having been conceived as the result of sexual intercourse in North Carolina.²⁷ In order to exercise “long arm” jurisdiction, the court also must find that the connection between the nonresident defendant and North Carolina is sufficiently strong that the exercise of personal jurisdiction over the nonresident does not offend traditional notions of fairness, justice, and due process.²⁸

While UIFSA’s “long arm” provisions will be used most frequently in interstate paternity and child support cases (that is, to establish a North Carolina paternity or support order against a parent residing in another state), they also may be used in international family support cases.²⁹

If a North Carolina court has sufficient grounds for asserting personal jurisdiction over a nonresident parent under UIFSA’s “long arm” provisions, it is legally irrelevant whether the nonresident parent lives in Virginia or Vietnam. Reciprocity between North Carolina and the foreign nation in which the nonresident parent resides is not required, though the absence of a cooperative or reciprocal relationship may, as a practical matter, complicate the establishment of a child support order by a North Carolina court or frustrate enforcement of the order against the parent or his property in the foreign country.

In the hypothetical case of Ms. Jones and Mr. Obudo, Mr. Obudo may be subject to the personal jurisdiction of North Carolina’s courts in an action to establish his paternity of, and require him to pay child support for, Ms. Jones’ child if (a) the child may have been conceived as a result of sexual intercourse between Ms. Jones and Mr. Obudo in North Carolina, (b) Mr.

Obudo lived with Ms. Jones and the child in North Carolina before returning to Kenya, (c) Mr. Obudo provided support for the child while he was living in North Carolina, or (d) one of the other statutory grounds for exercising “long arm” jurisdiction exists.³⁰

If Mr. Obudo is subject to personal jurisdiction in North Carolina under UIFSA’s “long arm” provisions, Ms. Jones may file a civil action against Mr. Obudo for paternity and child support in a North Carolina District Court under Chapter 50 of North Carolina’s General Statutes and G.S. 52C-2-201. If Mr. Obudo is properly served and the North Carolina court determines that it does have jurisdiction over Mr. Obudo, the court will follow the same procedural rules and apply the same substantive law that govern civil paternity and child support cases against North Carolina residents.³¹

Any international family support proceeding, of course, may involve a number of additional legal, logistical, and practical problems, including the inability of a party to personally attend the hearing and the necessity of translating testimony and documents from a foreign language into English. (Two potential legal problems—service of process on a foreign resident and family support proceedings against military personnel who are stationed abroad—are discussed below.) UIFSA does not, and cannot, eliminate these and other problems that are inherent in international family support cases. It does, however, provide a procedural mechanism through which a North Carolina court may adjudicate a foreign obligor’s paternity of a child and establish a foreign resident’s obligation to pay spousal support or child support. (The authority of a North Carolina court to *enforce* a family support order against a foreign resident is discussed in another section of this bulletin.)

Service of Process in Foreign Countries

Before a North Carolina court can enter an order adjudicating Mr. Obudo’s paternity of Ms. Jones’ daughter and requiring him to pay child support for his child, Mr. Obudo must be served with a summons from the North Carolina court and a copy of Ms. Jones’ complaint and be given an opportunity to respond to her allegations. But how can Ms. Jones, her attorney, or the child support enforcement agency serve a summons and complaint on Mr. Obudo in Kenya?

Civil Procedure Rule 4(j)3 allows a summons and complaint to be served on a foreign defendant (a foreign citizen or an American stationed, studying, working, or living in a foreign country) by any form of mail requiring a signed receipt, addressed and mailed by the clerk of superior court to the foreign defendant.

In cases involving military personnel who are stationed abroad or at sea, process may be served by

U.S. certified or registered mail (restricted delivery, return receipt requested) addressed to the defendant’s APO (Army Post Office) or FPO (Fleet Post Office) address (available through each military service’s worldwide military locator service).³²

The U.S. Postal Service’s certified and registered mail services, however, are available only for domestic mail. But a similar international mail service including “recorded delivery” is available through the U.S. Postal Service and the postal systems of certain foreign countries. Process in international family support cases also may be served in many foreign countries through private delivery services (such as Federal Express) if the delivery method includes the recipient’s signature acknowledging receipt.

Rule 4(j)3 also provides that process from a North Carolina court may be served in a foreign country in the manner prescribed by the law of the foreign country in which the defendant will be served, as directed by a foreign authority, or by personal delivery or other service (as authorized by the court) by a person designated by the court or by a foreign court.³³ In addition, process from a North Carolina court may be served on a defendant in a foreign country under the Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters or the Inter-American Convention on Letters Rogatory (both of which have been ratified by the United States) if the defendant lives in a foreign country that is a party to either of these agreements.³⁴

Military Personnel Stationed Abroad or at Sea

What if the defendant in Ms. Jones’ paternity and child support case is not a Kenyan citizen living in Kenya but an American citizen who is a member of the armed forces stationed in Guam, Japan, Germany, or Kosovo?

When international family support cases involve military personnel who are stationed abroad or at sea, the plaintiff and court must comply with the Soldiers’ and Sailors’ Civil Relief Act (SSCRA).³⁵

The purpose of the SSCRA is to protect a person on active military service from civil court proceedings when his or her military service materially affects his or her ability to defend himself or herself in the proceeding. Under the SSCRA, a court must, upon a party’s request, stay a civil family support proceeding involving a person on active military duty unless the court determines that the person’s military service will not materially affect his or her ability to defend himself or herself in the pending action.³⁶ The act also prevents a court from entering a default judgment in a civil family support case unless the plaintiff first files an affidavit showing that the defendant is not in military service. If the defendant is on active duty or his or her

military status is unknown, the court must appoint an attorney to enter a limited appearance on behalf of the defendant and protect his or her interest under the act (for example, by requesting a stay of the case). A default judgment entered against a member of the armed services in a family support case is potentially voidable and may be set aside if the member did not appear in the action, has a meritorious defense, and was materially impaired by his or her military service from defending his or her rights.³⁷

Establishing a Foreign Support Order Against a Foreign Obligor

Returning to our hypothetical case of Ms. Jones and Mr. Obudo, assume instead that Mr. Obudo has never lived in or visited the United States, that Ms. Jones' daughter was conceived and born in Kenya rather than North Carolina (while Ms. Jones was studying or working in Kenya), that there are no grounds for exercising personal jurisdiction over Mr. Obudo under UIFSA's "long arm" jurisdiction provisions, that Ms. Jones and her daughter have moved from Kenya to North Carolina, and Ms. Jones now seeks the assistance of a North Carolina attorney, child support enforcement agency, or judicial official in obtaining a court order establishing Mr. Obudo's paternity of her child and requiring him to pay child support.

When a foreign obligor is not subject to the personal jurisdiction of a North Carolina court under UIFSA's "long arm" jurisdiction provisions but lives in one of the nineteen foreign countries that have adopted laws or procedures similar to URESA or UIFSA, a North Carolina obligee may use UIFSA to bring a civil family support proceeding against the obligor in the foreign country in which the obligor resides.

The procedures in this type of international family support case are similar to those in which a North Carolina obligee asks a court or tribunal in another American state to enter an order establishing the family support obligation of an obligor who lives in another state.³⁸ To utilize UIFSA's interstate procedure in an international family support case, the party claiming support (or the obligee's attorney or a state or local child support enforcement agency on behalf of the obligee) must file a UIFSA petition (and any additional documents or pleadings required under the foreign country's reciprocal support enforcement law) with a North Carolina clerk of superior court (or with the state child support enforcement agency's interstate coordinator if the obligee receives services from a state or local child support enforcement agency).³⁹ North Carolina's "initiating" court or agency then sends the case to a "responding" court or agency in the foreign country that has jurisdiction over the foreign obligor.⁴⁰

When the "responding" court or agency in a reciprocating foreign country receives a UIFSA petition from a North Carolina court, agency, or obligee, it should initiate a legal proceeding, under the foreign country's law, to establish the obligor's duty to provide family support. The obligor is served with process and a copy of the obligee's complaint or petition in the foreign country and under the responding country's legal procedures. In some cases, an attorney or agency in the foreign country may be designated to represent the North Carolina obligee in the foreign legal proceeding.

If, despite all of the legal and practical problems involved, the foreign country's court or agency determines that the obligor is legally responsible (usually under the foreign country's own laws) for the obligee's support, it should enter an order requiring the obligor to pay support and enforce the order against the obligor in the same manner as it would enforce family support orders for obligees living in the foreign country.

Thus, if Mr. Obudo lived in South Africa (which is considered a "state" under UIFSA because it has enacted reciprocal family support procedures), Ms. Jones could use North Carolina's UIFSA statute and the reciprocal family support enforcement law of South Africa to ask a South African court to initiate a legal proceeding and enter an order determining Mr. Obudo's legal responsibility to support their daughter.

Kenya, however, is not one of the nineteen nations that have adopted reciprocal family support enforcement laws similar to URESA or UIFSA, and Ms. Jones therefore may not use UIFSA's interstate procedures to petition a Kenyan court to enter a paternity and child support order against Mr. Obudo.

If UIFSA's "long arm" jurisdiction and interstate family support enforcement provisions are unavailable to Ms. Jones, her only remaining option may be to retain an attorney in Kenya (and possibly travel to Kenya) to file a claim for support against Mr. Obudo in a Kenyan court under Kenya's laws governing family support. The legal, financial, logistical, and practical difficulties involved in such a case, however, render this option more apparent than real and highlight the need for the adoption or extension of international treaties, conventions, agreements, laws, and procedures that will facilitate the establishment of family support orders when the party claiming support and the party from whom support is claimed live in different countries.

Establishing a North Carolina Family Support Order for a Foreign Obligee

Elise Zimmermann lives in Germany. Several years ago she became sexually involved with an American soldier, Bob Jackson, while Bob was stationed in

Germany. Elise became pregnant and had a child. Bob now lives in Fayetteville, North Carolina. He refuses to acknowledge his paternity of Elise's child or provide any financial support for the child.

Can Ms. Zimmermann petition a North Carolina court to enter an order determining Mr. Jackson's paternity of her child and requiring him to pay child support?

Because Germany is one of the nineteen countries that have adopted reciprocal family support enforcement laws or procedures that are substantially similar to URESA or UIFSA, Germany is considered a "state" under North Carolina's UIFSA statute and Ms. Zimmermann can use UIFSA's interstate family support enforcement procedure to obtain a North Carolina court order adjudicating Mr. Jackson's paternity of her child and responsibility for child support.

Under UIFSA and Germany's reciprocal family support enforcement procedures, Ms. Zimmermann may file a UIFSA petition with a German court or agency (the "initiating" tribunal), which must forward the petition to the Cumberland County Clerk of Superior Court.⁴¹ As the "responding court" under UIFSA, the District Court in North Carolina will handle Ms. Zimmermann's international family support case in much the same manner as it would handle an interstate family support case in which the obligee lives in Hawaii or Maine.

First, a summons from the North Carolina court and a copy of the UIFSA petition must be served on Mr. Jackson.⁴² Under UIFSA, Ms. Zimmerman may request child support enforcement services from North Carolina's child support enforcement agency, retain a North Carolina attorney to represent her in the case, or be represented by the local district attorney's office.⁴³ As in family support proceedings under UIFSA's "long arm" jurisdiction provisions, the "responding" North Carolina court may use UIFSA's more liberal rules allowing testimony and cross examination via long distance conference telephone calls, submission of documentary evidence via telefax, and introduction of testimony through affidavit,⁴⁴ but otherwise will follow North Carolina's procedural rules and apply North Carolina's substantive law to determine whether Mr. Jackson is the child's father, how much child support he will have to pay, and how long he will be required to pay child support.⁴⁵ If the court determines that Mr. Jackson is the child's father and that he is responsible for supporting his child, the court's order will have the same effect as a North Carolina court order adjudicating paternity and child support in a lawsuit involving two North Carolina residents, and may be enforced (and modified) in the same manner as any other child support order issued by a North Carolina court.

But what if Ms. Zimmerman is a citizen and resident of Belgium (or Hong Kong) rather than Germany?

Neither Belgium nor the People's Republic of China are among the foreign countries that have adopted reciprocal family support enforcement laws that are substantially similar to URESA or UIFSA. Neither country has been recognized as a "reciprocating" foreign jurisdiction under section 459A of the Social Security Act. Nor is there any international treaty, convention, or agreement between either country and the United States or North Carolina with respect to international family support enforcement.

Therefore the only options available to a Belgian or Chinese obligee seeking family support from a North Carolina obligor are (1) to seek a family support order from the a court in Belgium or China if the Belgian or Chinese court has jurisdiction over the North Carolina obligor under Belgian or Chinese law; or (2) to retain a North Carolina attorney (or request legal services from a North Carolina child support enforcement agency) to file a civil action against the obligor in a North Carolina court seeking the establishment of an order for paternity, spousal support, or child support under North Carolina's General Statutes.⁴⁶ If the obligee chooses to pursue this second option, this type of international family support case will resemble a "normal" North Carolina action for paternity, spousal support, or child support involving two North Carolina residents (except for the practical and logistical problems that may arise due to language barriers and the expense and time involved in the plaintiff's appearance for trial).⁴⁷

Enforcing a Foreign Family Support Order in North Carolina

Wilma and Rudolf Lang are German citizens. They were married in Germany, had two children, separated, and entered into a divorce agreement under which Rudolf agreed to pay Wilma 1,000 German marks per month as support for their children. The agreement was approved by a German court as part of the parties' divorce. Wilma and the children still live in Germany. Rudolf moved from Germany to the United States several years ago and now lives in North Carolina. After moving to the U.S., he has failed to pay the full amount of child support he owes under the German divorce decree.

Can a North Carolina court enforce the child support provisions of the Langs' German divorce decree and require Rudolf to pay Wilma the child support arrearage that he owes under their agreement?

The short answer is "yes." North Carolina courts may, and in some cases must, enforce foreign family

support orders against obligors who live, work, or own property in North Carolina.

Registration for Enforcement Under UIFSA

If the obligee (regardless of the obligee's nationality or residence) is seeking enforcement of a child or spousal support order issued by a court in one of the nineteen countries with which the United States has a reciprocal family support enforcement arrangement (under URESA, UIFSA, or section 459A of the Social Security Act), the country whose court issued the order is considered a "state" under North Carolina's UIFSA statute and North Carolina's courts are required to enforce child and spousal support orders issued by that country's court to the same extent and in the same manner as child and spousal support orders issued by a sister state's courts or agencies.

UIFSA provides several procedures for the enforcement in North Carolina of family support orders issued by the courts or agencies of other "states." One is registration of a "foreign" state's family support order for enforcement by a North Carolina court.

Under UIFSA, an obligee (usually, but not always, a nonresident of North Carolina) seeking enforcement of a family support order issued by a "foreign" court may register the order for enforcement by filing a certified copy of the order and other specified information with the clerk of superior court in the county in which the party owing support lives, works, or owns property.⁴⁸

Upon registration of the foreign support order, the clerk is required to serve a notice of registration on the obligor, who has twenty days to file an objection to registration or enforcement of the order.⁴⁹ The obligor may raise as complete or partial defenses to registration and enforcement of the foreign support order: lack of personal jurisdiction by the issuing tribunal; stay, suspension, vacation, or modification of the order; fraud in obtaining the order; full or partial payment of arrearages claimed under the order; or inapplicability or unavailability of the remedy sought.⁵⁰ The obligor also may contest registration or enforcement based on the applicable statute of limitations (with respect to collection of past-due support arrearages) or UIFSA's rules regarding recognition of one "controlling" support order (with respect to prospective enforcement of child support).⁵¹

If the registered order is confirmed (by court order after a hearing on the obligor's objection to registration or by law if the obligor fails to file a timely objection), the court *must* enforce the registered order, according to its terms and subject to the law of the issuing state with respect to the nature, extent, amount, and duration of support, in the same manner and under the same

procedures as it would enforce a support order issued by a North Carolina court.⁵²

Thus, Ms. Lang may enforce the child support provisions of her German divorce decree through North Carolina's courts by registering the German decree (and the parties' incorporated agreement) with a North Carolina court for enforcement under Part 6 of North Carolina's UIFSA statute, and if the registered German decree is confirmed, a North Carolina court must enforce it against Mr. Lang and his property in North Carolina to the same extent and in the same manner as it would enforce a child support order issued by a South Carolina court.

North Carolina's appellate courts have not yet had the occasion to address the application of UIFSA with respect to family support orders entered by the courts of foreign nations. There are, however, at least two published appellate opinions upholding the registration and enforcement of family support orders entered by Canadian and German courts under North Carolina's URESA statute.⁵³

Enforcement by Comity

But what if the Langs' divorce decree and child support agreement were entered by a Danish or Japanese, rather than German, court?

In this case, the provisions of UIFSA would not apply because neither Denmark or Japan has adopted a reciprocal family support enforcement law that is substantially similar to URESA or UIFSA and therefore would not be considered a "state" under UIFSA's provisions regarding the registration and enforcement of support orders issued by tribunals of other "states."

Nonetheless, North Carolina's courts have the legal authority—even in the absence of a reciprocal family support enforcement arrangement or statutory procedure—to enforce, by comity, Danish or Japanese family support orders against obligors who live, work, or own property in North Carolina.

As discussed above, the common law doctrine of comity allows, but does not require, North Carolina courts to recognize and enforce the judgments and decrees of foreign courts.

To enforce a foreign judgment, order, or decree by comity, the party seeking enforcement of the foreign order must file a civil action in North Carolina against the party against whom enforcement of the foreign order is sought.⁵⁴ If UIFSA is inapplicable due to the lack of reciprocity between North Carolina and the country whose court issued the order, enforcement by comity will, at a minimum, require the obligee to retain a North Carolina attorney (or request services from a state or local child support enforcement agency), and perhaps appear for a hearing before a North Carolina court if the

obligor disputes the enforceability of the foreign support order. The obligee's complaint must, at a minimum, allege the entry of the foreign order, attach a certified or authenticated copy of the foreign order, attach a translation of the foreign order, allege facts sufficient to support the court's jurisdiction over the defendant or the defendant's property, and specify the relief the plaintiff is seeking with respect to enforcement of the order.

If, after a trial or hearing, a North Carolina court determines that the foreign order is final, that the order was entered under procedures that were fair and consistent with the American concept of due process,⁵⁵ that enforcement of the order is not contrary to North Carolina's public policy, and that the defendant is legally liable for the payment of family support under the foreign order or judgment, the court should enter a judgment "domesticating" the foreign order and allowing the plaintiff to enforce the foreign judgment or order in the same manner and to the same extent as a judgment or order entered by a North Carolina court.

Enforcing a North Carolina Family Support Order in a Foreign Country

Returning to our hypothetical case involving the Langs, suppose instead that the Langs were divorced in North Carolina, that a North Carolina court ordered Mr. Lang to pay child support, that Ms. Lang and the children still live in North Carolina, and that Mr. Lang has moved to Fiji and has stopped making his court-ordered child support payments. How can Ms. Lang *enforce* the North Carolina child support order against her ex-husband and collect the child support he owes?

Or, in the case of Ms. Jones and Mr. Obudo in which the North Carolina court used UIFSA's "long arm" jurisdiction provisions to enter an order requiring a resident of Kenya to pay support for a child living in North Carolina, can Ms. Jones *enforce* the North Carolina order against Mr. Obudo?

To answer these questions, one must first determine not merely where the obligor lives, but more importantly where the obligor owns property or receives income. While some family support enforcement remedies (such as contempt) require that the enforcing court have personal jurisdiction over the obligor, many support enforcement remedies are directed toward the obligor's income or property and may be employed by a court that has jurisdiction over the obligor's property rather than the obligor's person.

Thus, if Mr. Lang receives income from an employer or other entity doing business in North Carolina or owns real or personal property in North Carolina, a North Carolina court may enforce the North Carolina child support order against Mr. Lang

by issuing an income withholding order to his North Carolina employer or imposing a lien on his property in North Carolina even though he now lives thousands of miles away in Fiji.⁵⁶

If, however, Mr. Lang and Mr. Obudo do not have any income or property in North Carolina or the United States, Ms. Lang and Ms. Jones will have to ask a foreign court or agency to recognize and enforce the child support orders issued by North Carolina's courts.

Because Fiji is one of the nineteen countries that has adopted a reciprocal family support enforcement law similar to URESA or UIFSA, Ms. Lang can use UIFSA's interstate support enforcement provisions to petition a Fijian court to enforce Mr. Lang's family support obligation in much the same manner as she could use UIFSA to request a California court to register and enforce a North Carolina child support order.⁵⁷ Thus, to enforce a North Carolina child support order in Fiji, Ms. Lang should determine the name and address of Fiji's "central authority" for international family support cases,⁵⁸ complete a UIFSA petition seeking registration and enforcement of the North Carolina order, attach one or more certified copies of the order, include a verified statement of any past-due support arrearages that have accrued under the order, and request a North Carolina court or child support enforcement agency to transmit these papers to the appropriate public or judicial authorities in Fiji. Upon receipt of Ms. Lang's petition, the Fijian authorities will be responsible for notifying Mr. Lang of the petition, taking whatever action is necessary and appropriate under Fijian law to enforce Mr. Lang's duty to support his children, and forwarding any child support payments from Mr. Lang to Ms. Lang or North Carolina's central child support collection and distribution unit.⁵⁹

The procedure described above, however, applies only when the obligor or the obligor's property is subject to the jurisdiction of one of the nineteen foreign countries that have adopted a law or procedure similar to URESA or UIFSA or have entered into similar reciprocal family support agreements with North Carolina or other American states.

Because Kenya is not a "reciprocating" foreign jurisdiction, Ms. Jones cannot use UIFSA to request Kenya's courts to enforce the North Carolina child support order against Mr. Obudo or his property in Kenya. Thus, in order to enforce the North Carolina child support against Mr. Obudo, Ms. Jones may have to travel to Kenya and retain a Kenyan attorney to petition a Kenyan court to recognize and enforce the North Carolina order—a course that is not only expensive and time-consuming but also legally problematic because the United States has not entered into any of the international agreements regarding reciprocal

recognition and enforcement of support orders and many foreign countries will not recognize an American support order unless the United States extends reciprocal recognition and enforcement of foreign support orders.

Conclusion

Given the significant and increasing commercial and military connections between North Carolina and foreign countries, attorneys and courts in North Carolina undoubtedly will see more and more cases involving international family support issues in the coming years.

While these cases will always present unique practical and legal problems compared to intrastate and interstate family support cases, there is no reason that international boundaries should be allowed to create impenetrable barriers to the establishment and enforcement of family support obligations. North Carolina's General Assembly, Governor, Attorney General, child support enforcement agency, judges, and the bar can, and should, take actions that will facilitate and improve the international establishment and enforcement of family support.

For example, regardless of whether there is any agreement or reciprocal family support enforcement procedure between North Carolina and the foreign country, North Carolina judges can, and should, apply the common law principle of comity to recognize and enforce family support orders entered by courts in foreign nations unless they find that the procedures under which the foreign order was entered were contrary to American principles of due process and fundamental fairness.

Or, following the example set by Florida, Iowa, and Michigan, the General Assembly could amend North Carolina's Foreign Money-Judgment Recognition Act to include, rather than exclude, family support orders entered by a court in a foreign nation, thereby allowing the recognition and enforcement in North Carolina of foreign family support orders under the procedures established by UFMJRA.

And while there are reciprocal family support enforcement procedures in effect between North Carolina and nineteen foreign countries, the Governor, Attorney General, and state child support enforcement agency could work together to expand these reciprocal arrangements to include more foreign countries by exploring, alone or with other states, the possibility of entering into reciprocal agreements with additional foreign countries and determining whether other foreign countries have adopted laws or procedures that are substantially similar to URESA or UIFSA.

And finally, state officials and the private bar could encourage the U.S. Senate, Department of State, and President to give further consideration with respect to ratifying one or more of the four major international agreements regarding international establishment, recognition, and enforcement of family support obligations.

Notes

¹ Philip Schwartz, "International Support Remedies," Ch. 13 in Haynes, Margaret C. and G. Diane Dodson (eds.), *Interstate Child Support Remedies* (Washington, D.C.: American Bar Association, 1989).

² UIFSA replaced prior uniform interstate support laws (the Uniform Support of Dependents Act, the Uniform Reciprocal Enforcement of Support Act, and the Revised Uniform Reciprocal Enforcement of Support Act) that had been enacted, in some version, by all fifty states. In this bulletin, the three prior interstate family support statutes will be referred to jointly as the Uniform Reciprocal Enforcement of Support Act or URESA.

³ See G.S. 52C-1-101(19)(b). A similar provision with respect to reciprocal child support enforcement between American states and foreign countries was included in the 1968 Revised Uniform Reciprocal Enforcement of Support Act (URESAs), which was adopted by North Carolina's General Assembly in 1975. See G.S. 52A-3(13) (repealed effective Jan. 1, 1996).

⁴ According to the official comments to UIFSA, UIFSA's reciprocity requirement with respect to foreign nations is based on the drafters' understanding that "in international relations the concept of reciprocity is crucial to acceptance of child support orders by other nations."

⁵ UIFSA does not specify who is responsible for determining whether a foreign country is entitled to reciprocity based on its adoption of laws or procedures that are "substantially similar" to URESA and UIFSA. In one instance, North Carolina's Attorney General issued a formal opinion stating that the Federal Republic of Germany (the former West Germany) was entitled to reciprocity because it had enacted a law that was substantially similar to URESA. 49 N.C. Op. Atty. Gen. 2 (1979). There is nothing in UIFSA, however, that would prevent a court from deciding, in the context of a pending case, whether a foreign country meets UIFSA's definition of "state" based upon its adoption of a law or procedure that is substantially similar to UIFSA or URESA.

⁶ The child support enforcement (IV-D) agency in each state should maintain a current list of foreign countries that are considered to be reciprocating foreign countries under UIFSA.

⁷ UFMJRA was first promulgated by NCCUSL in 1962. North Carolina's General Assembly enacted UFMJRA in 1993. In North Carolina, the act applies only with respect to foreign judgments entered on or after October 1, 1993.

⁸ A money judgment entered by a foreign court will not be recognized under UFMJRA if the judgment was rendered under a system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law or if the foreign court lacks subject matter jurisdiction or personal jurisdiction over the defendant. G.S. 1C-1804(a). UFMJRA also permits, but does not require, a court to deny recognition and enforcement of a foreign money judgment if (a) the defendant did not receive adequate notice of the foreign proceeding, (b) the defendant's appearance in the foreign proceeding would have caused serious inconvenience, (c) the judgment was obtained by fraud, (d) the cause of action upon which the judgment was based is repugnant to the public policy of this state, (e) the foreign court that rendered the judgment would not recognize a comparable judgment entered by a North Carolina court, or (f) other statutory criteria are present. G.S. 1C-1804(b). The procedure for registering and enforcing a money judgment entered by a foreign nation's court is the same as that for registering and enforcing money judgments entered by the courts of sister states. G.S. 1C-1803; G.S. 1C-1703, 1704, 1706.

⁹ At least three states, Florida, Iowa, and Michigan, have amended their UFMJRA statutes to include foreign child support orders within the definition of foreign money judgments. Fla. Stat. Ann. § 55.602(2); Iowa Code §626B.1(2); Mich. Stat. §27.955(1)(b).

¹⁰ G.S. 1C-1801(1).

¹¹ U.S. Constitution, Art. IV, § 1.

¹² 28 U.S.C. 1738B (Pub. Law No. 103-383, Oct. 20, 1994; Pub. Law No. 104-193, § 322, Aug. 22, 1996).

¹³ See *Southern v. Southern*, 43 N.C.App. 159, 258 S.E.2d 422 (1979).

¹⁴ See *Southern v. Southern*, 43 N.C.App. 159, 258 S.E.2d 422 (1979). See also G.S. 52C-1-103 (the remedies available under UIFSA do not affect the availability of remedies under other laws); G.S. 1C-1807 (UFMJRA does not preclude the recognition of foreign judgments in situations not covered by UFMJRA).

¹⁵ *Hilton v. Guyot*, 159 U.S. 113 (1895).

¹⁶ Joan M. Krauskopf, "International Recognition and Enforcement of Family Law Judgments," 27 St. Louis B. J. 2:6, 7 (1980).

¹⁷ *Krauskopf*, 27 St. Louis B. J. at 7. See also *Mayer v. Mayer*, 66 N.C.App. 522, 311 S.E.2d 659 (1984).

¹⁸ *Southern v. Southern*, 43 N.C.App. 159, 258 S.E.2d 422 (1979).

¹⁹ 42 U.S.C. 659a.

²⁰ 42 U.S.C. 659a; 42 U.S.C. 654(32).

²¹ 42 U.S.C. 659a(d). Although the U.S. Constitution prohibits American states from entering into treaties with foreign nations and requires congressional consent for certain agreements between states and foreign countries, the constitution does not prohibit states from entering into agreements with foreign countries regarding international establishment and enforcement of family support obligations because these agreements involve an issue (family law) that falls primarily within the jurisdiction of states under our federal system of government and the agreements do not encroach upon the federal government's supremacy with respect to foreign relations. *Blouin v. Dembitz*, 367 F.Supp. 415 (S.D.N.Y. 1973, *aff'd*, 489 F.2d 488 (2nd Cir. 1973); *Fraser v. Fraser*, 415 A.2d 1304 (R.I. 1980). Even before enactment of section 459A, several U.S. states entered into agreements with foreign countries regarding international family support cases. In 1960, Michigan became the first state to enter into an international agreement regarding family support when it established a reciprocal arrangement with the Canadian province of Ontario based on Michigan's URESA statute and Ontario's Reciprocal Enforcement of Maintenance Orders Act. Other states subsequently entered into similar reciprocal agreements with the Canadian provinces, the United Kingdom, West Germany, France, and other countries. And while North Carolina has not entered into any reciprocal family support agreements with foreign countries, it has, since 1975, indirectly become a party to the agreements between other states and foreign countries by virtue of their establishing reciprocal procedures that are "substantially similar" to those under URESA or UIFSA.

²² 42 U.S.C. 654(32).

²³ The terms "foreign" obligee and "foreign" obligor in this bulletin refer to the residence of the obligee or obligor in a foreign nation regardless of whether the obligor or obligee is a citizen or national of the foreign nation in which he or she resides or is a citizen or national of the United States or another country.

²⁴ The four major international treaties governing international family support cases are the 1956 United Nations Convention on the Recovery Abroad of Maintenance (which is currently in effect in more than sixty countries and uses procedures that are similar to the interstate family support procedures established under North Carolina's former Uniform Reciprocal Enforcement of Support Act); the 1973 Hague Convention Concerning Recognition and Enforcement of

Maintenance Obligations; the 1973 Hague Convention on the Law Applicable to Maintenance Obligations; and the 1989 Inter-American Convention on Support Obligations. These treaties are discussed in more detail in David F. Cavers, *International Enforcement of Family Support*, 81 Colum. L. Rev. 994 (1981), and Carol S. Burch, *The 1989 Inter-American Convention on Support Obligations*, 40 Am. J. Comp. L. 817 (1992). There are at least two reasons for the United States' reluctance to enter into any of these international family support agreements. First, the federal government was not, until the late 1970s or early 1980s, significantly involved in the area of family law, which was viewed as an area of state, rather than federal, responsibility. And while the federal government's role in the area of child support enforcement has increased significantly over the past twenty years (through the enactment of Title IV-D of the Social Security Act in 1974 and the expansion of this law in 1984, 1988, and 1996), its primary focus has been on improving state child support enforcement programs, state laws regarding paternity and child support, and interstate family support cases, rather than international family support cases. Second, some of the jurisdictional, choice of law, and procedural provisions in some of these international family support treaties might, in some instances, be contrary to or inconsistent with fundamental principles of American government and jurisprudence, including federalism and due process. And while there are solutions to many, if not all, of these potential problems, recent efforts encouraging the United States to explore ratification of these international family support treaties have so far been unsuccessful.

²⁵ G.S. 52C-2-201.

²⁶ G.S. 52C-2-201.

²⁷ G.S. 52C-2-201.

²⁸ See *Kulko v. California Superior Court*, 436 U.S. 84 (1978).

²⁹ UIFSA's "long arm" provisions apply regardless of whether the nonresident defendant is a foreign citizen or nation living in a foreign country or an American citizen who is stationed, studying, working, or living in a foreign country.

³⁰ In *Franklin v. Virginia Dept. of Social Services ex rel. Franklin*, 497 S.E.2d 881 (Va. Ct. App. 1998), the Virginia Court of Appeals held that a Virginia court could exercise personal jurisdiction, pursuant to UIFSA's "long arm" jurisdiction provisions, over a resident of Mali (Africa) to establish the nonresident parent's child support obligation of a child because the child resided in Virginia as a result of the nonresident defendant's "acts or directives."

³¹ The court also may use UIFSA's more liberal rules allowing testimony and cross examination via long distance conference telephone calls, submission of documentary evidence via telefax, and introduction of testimony through affidavit. G.S. 52C-3-315.

³² Military authorities may not serve civil process on members of the armed services. Military commanders, however, may be able to provide some assistance to attorneys with respect to service of process in family support cases. For example, a military commander may, upon request of an attorney in a family support case, advise a service member with respect to the effect of service and give the member an opportunity to accept or decline service.

³³ Additional information and assistance with respect to foreign service of process may be available from the U.S. State Department's Office of Citizens Consular Services.

³⁴ These international agreements and other aspects of foreign service of process are discussed in more detail in Philip Schwartz, *International Support Remedies*, Ch. 13 in Haynes, Margaret C. and G. Diane Dodson (eds.), *Interstate Child Support Remedies* (Washington, D.C.: American Bar Association, 1989), and in Ch. 9 of Dobbs, Marian F. et al., *Enforcing Child & Spousal Support* (New York: Clark, Boardman, Callaghan, 1995). The text of the Hague Convention and a list of signatory countries is published in the Martindale-Hubbell Law Directory. Forms to request foreign service of process under the Hague Convention may be obtained from any local U.S. Marshall's office. Under this convention, an American attorney or judicial official may mail a request for service, along with the summons, complaint, or other papers to be served, to the designated "central authority" of a foreign nation that is a party to the convention. In some cases, the foreign country may require that the documents be translated from English to that country's official language. The foreign country's central authority will then attempt to serve the papers on the foreign defendant and send a certificate of service to the attorney or judicial official verifying service or explaining why the papers could not be served.

³⁵ 50 U.S.C. 520. The Soldiers' and Sailors' Civil Relief Act also applies to "domestic" intrastate or interstate family support proceedings involving military personnel who are on active duty. The SSCRA and other issues involving the establishment or enforcement of family support with respect to obligors who are members of the armed forces (including voluntary and involuntary support allotments through military channels without a court order) are discussed in more detail in Ch. 9 of Dobbs, Marian F. et al., *Enforcing Child & Spousal Support* (New York: Clark, Boardman, Callaghan, 1995).

³⁶ The application of the SSCRA's provisions regarding the stay of civil proceedings against military personnel was addressed by North Carolina's Court of Appeals in *Judkins v. Judkins*, 113 N.C.App. 734, 441 S.E.2d 139 (1994).

³⁷ 50 U.S.C. 520(4). *See Smith v. Davis*, 88 N.C.App. 557, 364 S.E.2d 156 (1988). A request to set aside a default judgment may be made at any time the defendant is in military service or within 90 days of his or her completion of service.

³⁸ *See* G.S. 52C-4-401.

³⁹ The involvement of North Carolina courts, child support enforcement agencies, and attorneys in these cases is limited. The court's primary role is to transmit the UIFSA petition to the appropriate agency or "responding" court in the foreign country and to assist the responding court in obtaining any additional evidence or testimony that is needed. And while a North Carolina attorney or child support agency may provide assistance, advice, or legal representation to an obligee in these cases, there are legal and practical limits on how much they can do in a family support proceeding that is pending in a foreign court thousands of miles from North Carolina.

⁴⁰ The state child support enforcement agency (a section of the DHHS Division of Social Services) maintains a list of the "responding" courts and agencies in other states and foreign countries.

⁴¹ The German court may forward the UIFSA petition directly to the appropriate North Carolina court or through the United States' "central authority" (DHHS) if Germany is recognized as a reciprocating nation under section 459A of the Social Security Act. Ms. Zimmermann (or her attorney) also may by-pass Germany's "initiating tribunal" by sending the UIFSA petition directly to a "responding court" in North Carolina. G.S. 52C-3-301(c). The petition must conform substantially to the forms used in interstate UIFSA proceedings and include the information required by G.S. 52C-3-310 and North Carolina law.

⁴² The North Carolina court, of course, must have personal jurisdiction over the defendant to enter an order adjudicating the defendant's paternity of a minor child or requiring the defendant to pay spousal or child support.

⁴³ *See* G.S. 52C-3-307, 308.

⁴⁴ G.S. 52C-3-315.

⁴⁵ G.S. 52C-3-303.

⁴⁶ North Carolina's state and local child support enforcement (IV-D) agencies are required to provide services to persons who are not North Carolina residents (including obligees who live in foreign

countries) on the same basis as they provide services to residents of North Carolina.

⁴⁷ In this type of international family support case, a North Carolina court will follow North Carolina's procedural rules and apply North Carolina's substantive law to determine the defendant's paternity and duty to pay spousal or child support, and the amount, scope, and duration of his or her support obligation.

⁴⁸ G.S. 52C-6-602. If the obligee lives in another state or foreign country, he or she may register the foreign support order in North Carolina by mailing the order and other information directly to the clerk of superior court, by retaining a North Carolina attorney to register the foreign support order on his or her behalf, or by requesting the services of a child support enforcement agency in the foreign country or in North Carolina. If a nonresident obligee seeking registration and enforcement of a foreign support order is not represented by counsel and is not receiving services from a child support enforcement agency, the district attorney is required to legally represent the obligee in the North Carolina proceedings for registration and enforcement. G.S. 52C-3-308.

⁴⁹ G.S. 52C-6-605, 606.

⁵⁰ G.S. 52C-6-607.

⁵¹ G.S. 52C-6-607, 604(b); G.S. 52C-2-207. Note that under UIFSA, North Carolina's ten-year statute of limitations on the collection of unpaid child support arrearages applies *unless* the issuing state's statute of limitations is longer. If the foreign support order is not the "controlling" support order under the rules specified in section 207 of UIFSA, the court should decline to enforce the order prospectively but is required to enforce the order with respect to any unpaid support arrearages that accrued before the date the order was modified, superseded, or determined not to be the controlling support order.

⁵² G.S. 52C-6-603(b), 604(a).

⁵³ *Williams v. Williams*, 97 N.C.App. 118, 387 S.E.2d 217 (1990) (holding that a separation agreement incorporated into a Canadian divorce decree providing for payment of child support beyond the child's 18th birthday could be registered and enforced in North Carolina); *Lang v. Lang*, 125 N.C.App. 573, 481 S.E.2d 380 (1997) (holding that an agreement regarding child support that was annexed to the court record in a German legal proceeding could be registered by a German citizen and enforced against the obligor in North Carolina under URESA).

⁵⁴ *See Pieper v. Pieper*, 108 N.C.App. 722, 425 S.E.2d 435 (1993).

⁵⁵ In *Southern v. Southern*, 43 N.C.App. 159, 258 S.E.2d 422 (1979), North Carolina's courts refused to extend comity with respect to the recognition and

enforcement of a foreign family support order because the foreign court lacked personal jurisdiction over the nonresident defendant.

⁵⁶ North Carolina's income withholding provisions regarding child support are codified in G.S. 110-136.3 et seq. North Carolina's statute regarding liens on real and personal property for delinquent child support payments are codified in G.S. 44-86 and 44-87. If Mr. Lang has income or property in other states, Ms. Lang may seek enforcement of the North Carolina child support order against that property through UIFSA's direct income withholding, administrative enforcement, or registration for enforcement provisions. It should be noted that Mr. Lang remains subject to the personal jurisdiction of North Carolina's court despite the fact that he moved from North Carolina to Fiji after the child support order was entered. But even though the North Carolina court has continued personal jurisdiction over Mr. Lang, there may be little that the court can do to directly enforce its own order against Mr. Lang if he has left the state and does not have any income or property in North Carolina.

⁵⁷ In some cases, the foreign court's enforcement of the obligor's family support obligation may resemble the interstate support enforcement procedures under the former URESA statute, in which a responding state's

court might (1) enter a new child support order that provided more or less support than the existing child support order for which enforcement was requested, or (2) modify a registered child support order issued by another state's court. The reciprocal family support enforcement procedures of other countries also may require that pleadings in reciprocal family support enforcement proceedings be translated from English to the official language of the foreign country or establish procedures for registering or enforcing foreign support orders that are different than those under North Carolina's UIFSA statute.

⁵⁸ The names and addresses of the "central authority" for each reciprocating foreign country are available through the Child Support Enforcement Section of the DHHS Division of Social Services in Raleigh (telephone 919-571-4114).

⁵⁹ Once the papers are sent to Fiji, the support enforcement process is in a very real sense dumped in the lap of the Fijian authorities and beyond the control of Ms. Lang and the North Carolina court. And like the interstate support enforcement process under URESA, the international support enforcement process often may be painfully slow, frustrating, and ultimately futile.

This Bulletin is published by the Institute of Government to address issues of interest to local and state government employees and officials. Public officials may photocopy the Bulletin under the following conditions: (1) it is copied in its entirety; (2) it is copied solely for distribution to other public officials, employees, or staff members; and (3) copies are not sold or used for commercial purposes.

Additional copies of this Bulletin may be purchased from the Institute of Government. To place an order or to request a catalog of Institute of Government publications, please contact the Publications Sales Office, Institute of Government, CB# 3330 Knapp Building, UNC-CH, Chapel Hill, NC 27599-3330; telephone (919) 966-4119; fax (919) 962-2707; e-mail khunt@iogmail.iog.unc.edu; or visit the Institute's web site at <http://ncinfo.iog.unc.edu>.

The Institute of Government of The University of North Carolina at Chapel Hill has printed a total of 462 copies of this public document at a cost of \$262.73 or \$0.57 each. These figures include only the direct costs of reproduction. They do not include preparation, handling, or distribution costs.

©1999

Institute of Government. The University of North Carolina at Chapel Hill
Printed in the United States of America

This publication is printed on permanent, acid-free paper in compliance with the North Carolina General Statutes