Interstate Child Support Enforcement Hearings

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Department of Health and Human Services

Techniques for
Effective Management of
Program Operations

TEMPO

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The Uniform Interstate Family Support Act (UIFSA) includes specific provisions for transmitting and receiving testimony and other evidence in interstate child support cases. These provisions are intended to expedite interstate fact-finding proceedings and allow the out-of-state party or witness to participate in the proceedings.

This TEMPO considers UIFSA's evidentiary provisions, including:

- The Background for these Provisions
- Effective Implementation Procedures
- Out-of-state Appearances by IV-D Attorneys
- Interstate Communication Between Tribunals

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Introduction

The "IV-D" child support enforcement program is a cooperative initiative involving federal, state, local, and tribal governments. The program began in 1975 when Congress amended Title IV of the Social Security Act to include the child support enforcement program as a new Part D. Today, all states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and a number of Native American tribes participate in the IV-D program.

The federal Office of Child Support Enforcement (OCSE) is the agency responsible for providing nationwide program oversight. In addition, OCSE is responsible for providing technical assistance to the state, local, and tribal IV-D agencies in order to coordinate an efficient, effective, and uniform implementation of the nation's child support enforcement program.

The Uniform Interstate Family Support Act (UIFSA) is the primary legal framework governing IV-D and non-IV-D interstate case processing throughout the nation. UIFSA includes specific provisions relating to the use of modern electronic equipment to facilitate a tribunal's ability to obtain evidence and other information from out-of-state sources.

OCSE publishes this TEMPO (Techniques for Effective Management of Program Operations) on Interstate Child Support Enforcement Hearings as a technical assistance tool for state, local, and tribal IV-D agencies. The purpose of this TEMPO is to assist IV-D attorneys and UIFSA tribunals in taking full advantage of UIFSA's innovative rules of evidence. By explaining these provisions and highlighting "best practices," OCSE hopes to help ensure that interstate child support hearings are both inclusive and expeditious. Although the 1996 version of UIFSA serves as the basis for this publication, the text notes any meaningful differences between the 1996 and 2001 versions of the Act. The complete text for the relevant UIFSA provisions, as well as sample forms, appears in the Appendix.

Definitions

This TEMPO uses the following definitions:

Custodial Parent: The custodial parent is the parent or guardian who is the primary caretaker of the child (ren).

Initiating State: The initiating state is the state "from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a

responding State" under UIFSA or a substantially similar law or procedure. (1996 UIFSA § 101(7); 2001 UIFSA § 102(7))

Initiating Tribunal: The initiating tribunal is an "authorized tribunal in the initiating State." (1996 UIFSA § 101(8); 2001 UIFSA § 102(8))

Issuing Tribunal: The issuing tribunal is "the tribunal that issues a support order or renders a judgment determining parentage." (1996 UIFSA § 101(10); 2001 UIFSA § 102(10))

Noncustodial Parent: The noncustodial parent is the parent who is obligated to pay support for a child with whom he or she does not reside.

Obligee: The obligee is: "(A) an individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered; (B) a State or political subdivision to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee; or (C) an individual seeking a judgment determining parentage of the individual's child." (1996 UIFSA § 101(12); 2001 UIFSA § 102(12))

Obligor: The obligor is the individual or the estate of a decedent "(A) who owes … a duty of support; (B) who is alleged but has not been adjudicated to be a parent of a child; or (C) who is liable under a support order." (1996 UIFSA § 101(13); 2001 UIFSA § 102(13))

Record: A record is "information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form." (2001 UIFSA § 102(15))

Responding State: The responding state is the "State in which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating State" under UIFSA or a substantially similar law or procedure. (1996 UIFSA § 101(16); 2001 UIFSA § 102(18))

Tribunal: A tribunal is "a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage." (1996 UIFSA § 101(22); 2001 UIFSA § 102(24))

Statement of the Problem

For most of the latter half of the last century, the laws that governed the interstate child support enforcement process were the Uniform Reciprocal Enforcement of Support Act (URESA) and the Revised Uniform Reciprocal Enforcement of Support Act (RURESA). Under both acts, the state court was the forum for interstate child support proceedings.

In most URESA/RURESA cases, the respondent/obligor resided in the responding state and the petitioner/obligee resided in the initiating state. This meant that the respondent was physically present at the URESA court proceedings, whereas the petitioner usually was not. In a URESA/RURESA proceeding it was not uncommon for the respondent to present evidence (i.e., payment, offset) to challenge the claims of the petitioner. Because the petitioner was not physically present, he or she was unable to respond to the evidence. This meant that the responding state court often either entered an order without fully airing the issues or continued the hearing until the petitioner had an opportunity to respond to the respondent's evidence. The continuance usually resulted in a long delay.

By the late 1980s it was apparent that the inefficiencies and inequities resulting from URESA had to be addressed. In 1990 the U.S. Commission on Interstate Child Support and the National Conference of Commissioners on Uniform State Laws (NCCUSL) began a reevaluation of URESA. After two years of intense scrutiny and debate, NCCUSL developed a new model law for interstate child support enforcement -- the Uniform Interstate Family Support Act (UIFSA). In its 1992 report to Congress, the U.S. Commission on Interstate Child Support recommended that Congress require all states to enact UIFSA as a condition of receiving federal IV-D funds.

In response to this recommendation, Congress included a UIFSA mandate in its landmark welfare reform legislation in 1996. Section 321 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. No. 104-193, amended section 466 of the Social Security Act to require that all states have UIFSA in effect by January 1, 1998, as a condition of receiving federal child support funds. All states had enacted UIFSA by June 1998.

Among UIFSA's enhancements to interstate child support enforcement are innovative rules of evidence. These rules appear at sections 316, 317, and 318 (see Appendix at page 17 for the complete text of these rules) and are intended to resolve many of the longstanding problems affecting the URESA/RURESA interstate court process. According to the Official Comments to the 1996 version of the Act, the purposes behind UIFSA's rules of evidence include:

- Eliminating many potential hearsay problems
- Expediting the proving of health care expenses
- Employing modern methods of communication by allowing the out-of-state party to testify by telephone and supply documents by fax
- Encouraging broad cooperation between tribunals

- Expediting the discovery process.

The focus of the remainder of this TEMPO is to provide meaningful program guidance to assist the IV-D office and interstate tribunal in achieving these goals.

UIFSA's Evidentiary Provisions

Section 316

UIFSA's section 316, *Special Rules of Evidence and Procedure*, is arguably one of the Act's most progressive sections. This section authorizes the necessary procedures that make out-of-state appearances before the UIFSA tribunal a practical reality. At least one state supreme court has recognized the efforts of the UIFSA drafters in "providing the best evidentiary safeguards permitted by the circumstances of interstate support litigation." [*See* Davis v. Child Support Enforcement Unit, 933 S.W.2d 798 (Ark. 1996)]

Specifically, subsection 316(e) allows documentary evidence to be transmitted to a tribunal in another state "by telephone, telecopier, or other means that do not provide an original writing." The 2001 version of UIFSA contains one minor revision, replacing the word "writing" with the word "record."

Subsection 316(f) allows a party or witness in another state to be deposed or to testify "by telephone, audiovisual means, or other electronic means." The 2001 version of UIFSA contains a significant change to this 1996 text. Whereas the 1996 version provides that a tribunal *may* permit an out-of-state party or witness to appear and testify by telephone or other electronic means, the 2001 version states that a tribunal *shall* permit an out-of-state party or witness to appear and testify by telephone or other electronic means.

According to the Official Comment to section 316, the amendment in subsection (f) will eliminate decisions that construe the use of electronic transmission of testimony, such as telephonic testimony, to be entirely within the discretion of the tribunal. Prior to the 2001 revision, some trial courts had denied the nonresident party's request to appear and participate in the proceeding via telephone, and these denials were upheld on appeal. [*See* Schwier and the State of Fla., Dep't of Revenue v. Bernstein, 734 So. 2d 531 (Fla. Dist. Ct. App. 1999); Department of Human Servs. v. Shelnut, 772 So. 2d 1041 (Miss. 2000)]

Telephonic Testimony

Telephone hearings are not new. In fact, they have been used for years by administrative agencies and in civil and criminal proceedings that do not involve child support. [*See* Jerome Corsi & Thomas Hurley, "Attitudes Toward the Use of the Telephone in Administrative Fair Hearings: The California Experience," 31 Administrative L. Rev. 247-283 (Summer 1979); Jerome Corsi, *et al*., The Use of Telephone Conferencing in

Welfare Appeals, Report to the National Science Foundation (May 1981); Roger A. Hanson, *et al*., Evaluation of Telephone Conferencing in Civil and Criminal Court Cases, National Institute of Justice (1983)] Tribunals that hear interstate child support cases have been slower to embrace the technology of the telephone. The most extensive study of telephone hearings in child support cases is a 1990 study in Colorado funded by the State Justice Institute. (Center for Public Policy Studies, "Telephone Conferencing in Interstate Child Support Cases: Final Report," December 1990) The results of that study, as well as anecdotal information, suggest that from a qualitative standpoint, telephone conferencing has tremendous merit. It is valuable in improving the nonresident party's access to the hearing and the decision-maker's ability to obtain testimony relevant to the case. Often parties have not communicated with each other for years and have inaccurate information about each other's financial or living circumstances; the telephone conference helps to clear up some of these misperceptions. The Colorado study found that parties and decision-makers believed that the telephone hearings resulted in orders that were fairer to both parties.

Operational Issues

However, there are a number of operational issues that must be addressed to make telephonic testimony as effective as it can be.

Equipment

First, the tribunal must be equipped with the electronic hardware to accommodate such testimony. This means that the tribunal needs to have a speakerphone or a phone attached to a speaker box, with the ability to make outgoing long distance calls. OCSE has previously issued policy on this issue. (*See* OCSE-AT-98-30, question #6) In instances where the forum tribunal cannot facilitate telephonic testimony, states are advised to "make arrangements with the tribunal to bring a speaker telephone or facsimile machine to the proceeding." OCSE also advised that "the IV-D office, with the assistance of their [sic] federal regional office, may want to investigate technology transfers between tribunals." Depending upon the location of the nonresident person who is testifying telephonically, it may be appropriate to have a speakerphone also in the initiating state.

Even when there are no equipment issues, there may be other potential obstacles that the tribunal or agency must address.

Schedule Coordination

In order to avoid scheduling problems, both the initiating and responding jurisdictions have important roles to play. It is crucial that the initiating jurisdiction identify on the federal *Child Support Enforcement Transmittal #1 – Initial Request* the appropriate name and phone number of the person in the initiating state who is familiar with the case. Within the responding state, someone must assume responsibility for handling the hearing logistics. In a IV-D case, the agency can assist the tribunal by contacting the out-of-state party or witness in advance of setting the formal date/time for the proceeding to

determine when that individual is available. Even when a contact person is identified in the initiating state, that person may only be available during specified phone hours so there needs to be sufficient time allowed to make personal contact. Depending upon the nonresident's location, it may be necessary to accommodate for different time zones. It is most effective for the responding jurisdiction to provide notification of the hearing time at least twice – an initial notification followed by a second confirming notification closer to the date of the telephonic hearing.

Another scheduling issue involves the length of time projected for a telephone hearing. As a result of adding "live" testimony from a nonresident person, it may be necessary to add some time to the scheduled block allotted for the UIFSA hearing. However, the Colorado study found that the increased hearing length did not dampen the view of the participating tribunals, IV-D attorneys, or counsel for noncustodial parents toward telephone hearings; 86% of that group saw telephone conferencing as enhancing the quality of the hearings, and 100% of the individuals expressed a willingness to use telephone conferencing again.

Written Instructions

It is also advisable for there to be written instructions, either in the form of an order or a procedural directive, regarding the following issues:

- Location of the nonresident party or witness when testifying

  UIFSA does not specify the location from which a nonresident person must testify. It provides that the forum tribunal may designate a "tribunal or other location" in the other state from which the person can testify. Some decision-makers may require the person to testify from a tribunal, the IV-D agency's office, or the office of an attorney in order to ensure verification of the person. Other decision-makers may allow the nonresident to testify from his or her employment or home. Because UIFSA subsection 316(f) states that "a tribunal of this state shall cooperate with tribunals of other states in designating an appropriate location for the deposition or testimony," the forum tribunal can call upon the assistance of a tribunal in the nonresident party's state to assist in facilitating the nonresident party's testimony.

- Initiation of the call

  The instructions should specify whether the tribunal will be calling the nonresident party or witness. If so, the person needs to identify in advance the number he or she wishes the tribunal to dial. If the tribunal is unable to schedule the UIFSA hearing for a specific time, the instructions should request that the nonresident party or witness be available during a specified block of time.

- Introduction of documentary evidence

  The instructions should specify how documentary evidence will be introduced. For example, some tribunals require that a party must provide copies of any documentary evidence that the party will introduce into evidence a certain number of days prior to the hearing. If evidence will be admitted by fax during the proceeding, the order or directive should also include instructions about the fax number.

Procedural Issues

Witness Preparation

In a IV-D case where the nonresident who is testifying electronically is the IV-D client, the agency should explain the procedure in advance to the person. For example, the person should try to keep answers brief and on-point. It is important that the person listen closely to what is said in the forum since the person will lack visual clues. The person should also demonstrate "courtroom etiquette" even though the person may not be testifying from a courtroom, i.e., no objectionable comments about the tribunal or opposing counsel, no notes handed to the witness detailing what he or she should say.

Witness Verification

The telephonic hearing is conducted in the same manner as a normal hearing. The out-of-state party is sworn in over the phone. If the out-of-state party appearing by telephone is the custodial parent and the noncustodial parent is appearing in person, the noncustodial parent can usually verify the voice of the custodial parent. However, instances remain where no participant present at the proceeding will be able to verify the identity of the out-of-state party or witness by the sound of his/her voice. In recognition of this fact, it is important for the tribunal to adopt standard procedures to verify the identity of the individual testifying by telephone. As a "best practice," states may want to consider Iowa's policy of using the services of a notary public to verify the identity of the off-site party or witness. However, when a notary public is not available, it may be acceptable under state or trial rules of procedure to use other staff, impartial to both parties, to verify identification.

Personal Appearance

Even when procedures exist to prove the identity of the out-of-state party or witness, some tribunals may resist telephonic testimony on the ground that the decision-maker (e.g., judge, magistrate, hearing examiner) is unable to visually determine the party's demeanor. This is especially true since the 1996 version of UIFSA does not explicitly require the tribunal to allow telephonic testimony. To counter such an argument, the IV-D representative can point out that the Official Comment to section 316 of UIFSA 2001 offers the following explanation to a related revision (Subsection (a)): "The amendment to Subsection (a) ensures that a nonresident petitioner or a nonresident respondent may fully participate in a proceeding under the Act without being required to

appear personally. This was always the intent of the provision, but the text was ambiguous in this regard." (emphasis provided)

In addition, the IV-D attorney can argue that the intent of the UIFSA drafters is further demonstrated by their 2001 amendment removing the tribunal's discretion to allow a party or witness to appear and testify via telephone or other means; the "may permit" is replaced by "shall permit." Finally, a compelling argument can be made that determining an individual's demeanor via the telephone is clearly superior to reviewing the party's written pleadings, which does not reveal the demeanor of those who testify.

Motion for Telephonic Testimony

Telephone hearings will not be used in all cases. Some IV-D offices have developed a form Motion for Telephonic Testimony that a IV-D attorney may submit in a case, particularly in one known to involve complex or disputed issues. *See* the Appendix at page 24. Other states have rules of civil procedure that require such a motion. *See* the Appendix at page 22. In UIFSA proceedings where the nonresident party (generally the custodial parent) is not scheduled to appear via telephone, it may be advisable for the tribunal to expressly offer the resident party (generally the noncustodial parent) an opportunity to include the nonresident party's participation by telephone. In the case of People ex rel. Orange Co. Cal. ex rel. T.M.S. v. M.A.S., 962 P.2d 339 (Colo.App. 1998), the tribunal offered to include the nonresident party by telephone but the resident party (noncustodial parent) declined the offer. Later, the noncustodial parent appealed the tribunal's decision arguing, among other things, that he was denied the right to cross-examine the witness. Noting that the noncustodial parent had turned down the offer to include the custodial parent via telephone, the Colorado Court of Appeals summarily rejected the noncustodial parent's argument.

Pro Hac Vice

From the IV-D program attorney's perspective, *pro hac vice* is one of the most serious issues related to the interstate hearing. *Pro hac vice* is the name of the limited license to practice law before a court or tribunal in a state where an attorney is not otherwise licensed to practice law. In interstate cases, the practice of law is occurring in the state where the forum tribunal is located. For example, when a Massachusetts IV-D attorney who is physically located in his/her local office appears, via the telephone, before a tribunal in New Jersey, that Massachusetts attorney is participating in a New Jersey proceeding, just as if he or she was standing before the New Jersey tribunal.

As a result, the out-of-state attorney either must be licensed to practice law in the forum state or, if he or she is not representing a party, limit his or her appearance before the forum to that of a witness. If the out-of-state IV-D attorney is not licensed to practice law in the forum state, the presentation of any legal argument or the examination of a witness in the forum by that attorney may be an exercise in the unauthorized practice of law. As the unauthorized practice of law is, at a minimum, an ethical violation in all states, it is important that the IV-D attorney understand this important aspect of the interstate hearing.

Although the specific rules and procedures differ among the states, the application for *pro hac vice* status generally involves:

- Filing a written application
- Paying a fee
- Finding an attorney in the forum state to "sponsor" the nonresident attorney

Due to the procedural differences between the states, it is very important that the nonresident attorney understands and honors the forum state's *pro hac vice* procedures. *See* the Appendix at page 19 for a representative copy of Arizona's *Pro Hac Vice* application.

In a IV-D interstate case, a nonresident IV-D attorney seeking *pro hac vice* status could contact a colleague attorney working for the IV-D program in the forum state. Individual state law or policy determines whether the IV-D attorney in the forum state may sponsor the nonresident IV-D attorney's *pro hac vice* application. It is important to note that the act of sponsoring a nonresident attorney is not purely ministerial. The sponsoring attorney frequently assumes varying levels of responsibility to the tribunal, the parties, and the opposing counsel. For example, Arizona's *pro hac vice* process [Rule 33(d), Rules of the Supreme Court] requires that the name of the local sponsoring attorney "appear on all notices, orders, pleadings, and other documents," and further requires that the "local counsel may be required to personally appear and participate in pretrial conferences, hearings, trials, or other proceedings conducted before the court, board, or administrative agency when the court, board, or administrative agency deems such appearance and participation appropriate." Utah's *pro hac vice* process places similar burdens upon the local sponsoring attorney. [*See* Utah State Bar Rule 11-302(g)] The sponsoring attorney may even be responsible for ethical violations of the sponsored attorney.

As a result of the demands that may be required of the local sponsoring attorney, it is important for all IV-D attorneys to fully understand the requirements of their local *pro hac vice* rules and procedures before consenting to sponsor a nonresident attorney's application. Of course, the IV-D attorney should request and receive the prior approval of his/her chain of command before sponsoring any *pro hac vice* request.

On a related note, most state bar associations have rules requiring member attorneys to assist in preventing the unauthorized practice of law. These rules give rise to another ethical issue that is important to all IV-D attorneys: What should an attorney do when he or she believes that a nonresident attorney, appearing and practicing law before the forum via the telephone or other electronic means, has not complied with the forum state's *pro hac vice* procedures? Depending upon the state's code of professional conduct, an attorney may be subject to disciplinary action for not reporting an inappropriate appearance before a state tribunal. For further guidance regarding these rules and procedures, attorneys should consult their local bar associations.

Video Teleconferencing

Oklahoma is one state that has successfully implemented video teleconferencing into its child support hearings caseload. The Office of Administrative Hearings (OAH) is Oklahoma's tribunal responsible for hearing child support enforcement cases. In 1994, OAH began video teleconferencing. According to J. Michael Sherrod, an Administrative Law Judge (ALJ) with OAH, the use of video teleconferencing has proven to be a tremendous time-saving tool. For example, ALJ Sherrod notes that in one instance six hearings involving four different locations were held in less than two hours. According to Sherrod, "if an ALJ had been required to travel to each of the sites, over twelve hours of 'windshield time' would have been used." ("Child Support, the Administrative Process, and the SATTRN Project: Oklahoma Style," page 542 of conference material for Reengineering Child Support: Doing More, Better, and Faster with Less, held in Washington, DC in 1995)

Yet, at the date of this TEMPO's publication, the tribunals and IV-D offices in most states have little experience with the use of video teleconferencing in UIFSA proceedings. A good resource for any state that is considering the implementation of video teleconferencing appears in the October 2001 publication of the Delaware State Bar Association's *In Re*. This publication contains an article by Richard K. Herrmann, Esquire, titled "Video Teleconferencing is an Effective Alternative to Travel." (*See* http://www.dsba.org/oct01.htm) Although not dealing specifically with UIFSA, this article includes three "lessons" that will assist any tribunal in its efforts to implement this relatively new technology.

Mr. Herrmann's first lesson is "to effectively use video teleconferencing, you need to have someone to talk to." That is, the video teleconference cannot occur if the forum tribunal is the only location equipped with the necessary hardware. However, if the issuing or initiating tribunal (or its local IV-D office) does not have teleconferencing equipment, the tribunal may be able to coordinate video teleconferencing through services offered by court reporters, telephone companies, copy centers, and local universities.

His second lesson is "test the technology before you have to use it." Clearly, the video teleconferencing equipment should not be used until it has been thoroughly tested by the individuals who will be operating it during the UIFSA proceedings. Prior to scheduling a video teleconference for a UIFSA case, the equipment at both sites should be tested together to ensure that the equipment is compatible. According to Mr. Herrmann, prudent testing helps avoid costly, inconvenient, and embarrassing mechanical failings during the scheduled proceeding.

His final lesson is "learn the technique and etiquette necessary to effectively use the technology." For example, the author points out the limitations of video teleconferencing (e.g., two people speaking at the same time) and advises that operators advise participants not to speak over one another. It is important that the forum tribunal include a brief

explanation of the proper protocol for effective video teleconferencing at the outset of each hearing using this technology.

As noted earlier, some have challenged UIFSA's telephonic testimony on the grounds that it restricts the tribunal's ability to determine demeanor. Where available, video teleconferencing puts that argument to rest.

In the case of T.L.R. Minor Child of T.R v. R.W.T., 737 So. 2d 688 (La. 1999), the party appearing personally before the UIFSA tribunal (defendant) argued that due process violations rendered the entire UIFSA statute unconstitutional. In this case, even though the defendant never attempted to confront any witness via the telephone or any other means, he nevertheless argued that he was unable to adequately confront the out-of-state witnesses because the "telephone testimony made available by the state would not provide demeanor evidence of truthfulness or fabrication." Surprisingly, the trial court agreed with the defendant and found UIFSA "unconstitutional insofar as it deprived the defendant the right to cross-examine the witness in court." In reviewing and overturning this challenge to UIFSA, the Louisiana Supreme Court noted that UIFSA "permits several alternative methods of taking testimony besides testimony by telephone." The court, citing In re Application of CBS, Inc., 828 F.2d 958, 960 (2d Cir. 1987), stated that "testimony recorded audiovisually has been accepted as providing demeanor evidence." [*Also see* State of Minnesota v. Sewell, 595 N.W.2d 207 (Minn. Ct. App. 1999) In this criminal case, the appellate court found no constitutional infirmity in the use of video teleconferencing for the presentation of testimony.]

OCSE recognizes that those states that have implemented video teleconferencing have obtained valuable experience related to this technology. It is hoped that these states will share any "lessons" they have learned with staff from their federal regional offices. For the benefit of other IV-D agencies, OCSE will include reported video teleconferencing "best practices" in future technical assistance publications.

Facsimile Transmission of Documentary Evidence

In 1989 the State Justice Institute funded two studies by the National Center for State Courts regarding courts' use of facsimile technology. [Courts in the Fax Lane: The Use of Facsimile Technology by State Courts, SJI Grant No. 89-06F-B-023 (August 1990) and Facsimile Transmission of Court Documents: A Feasibility Study, Fifty State Survey of Fax Use by State Courts (August 1990)] At that time, 38 state administrative offices of the courts reported use of fax machines by at least some level of the state court system. States differed in the type and length of documents that could be filed by fax, the hours of fax service operation, the disposition of the "original" document, and the requirement of a filing fee. UIFSA reflects courts' increased acceptance of faxed documents. As noted earlier, in addition to allowing testimony via telephone, UIFSA's subsection 316(e) permits the transmission of documentary evidence to a tribunal by telecopier (facsimile transmission – "fax"). In the Official Comment to section 316, the drafters note that UIFSA is encouraging "tribunals and litigants to take advantage of modern methods of

communication in interstate support litigation" by allowing the out-of-state party/witness to "supply documents by fax." Unlike video teleconferencing equipment, fax machines are commonly present in IV-D offices, tribunals, private businesses, and even many private residences. By allowing their use to transmit documentary evidence between states, UIFSA offers significant savings in time and expense to the logistics of the interstate hearing.

What is even more important is that UIFSA allows the faxed documents to be accepted in lieu of the original document. UIFSA's evidentiary provisions place more emphasis upon the *relevancy* and *veracity* of a document and less importance upon whether the document is a "first generation." This is quite a shift in priority. Historically, copies of documents that were presented to the tribunal as evidence could be challenged under the "best evidence rule." In a nutshell, the "best evidence rule" restricts from evidence copies of documents in cases where originals of those documents exist. However, section 316(e) of the 1996 UIFSA provides that "documentary evidence transmitted from another State" by "telephone, telecopier, or other means that do not provide an original writing may not be excluded from evidence on an objection based on the means of transmission." As a result, UIFSA does not allow challenges to the introduction into evidence of non-original documents simply because they are presented to the tribunal via fax transmission. In most cases, this provision should be sufficient to defeat any "best evidence rule" objections.

This is not to say that any document delivered to a UIFSA tribunal via a fax machine must be accepted as evidence. UIFSA simply says that the documentary evidence submitted to the tribunal may not be excluded from evidence based upon an objection to its means of transmission. All other appropriate objections to documentary evidence remain in effect and controlled by local law, including local rules of evidence.

It is also important to note that in the 2001 UIFSA, NCCUSL replaced the word "writing" in subsection 316(e) with the new term "record." The term is defined in section 102 of the 2001 Act. As further explanation, the Official Comment to section 102 states that the use of this new terminology "conforms UIFSA to the Conference standard for legal documentation as established in the Uniform Electronic Transactions Act Section 102(13) [hereafter UETA]. Henceforth, the phrase 'in a record' will replace the terminology 'in writing' as the appropriate manner to recognize that electronic transmissions and signatures are increasingly appropriate substitutes for more traditional documentation." As of the date of this publication, 46 states, the District of Columbia, and the U.S. Virgin Islands have enacted the UETA into law.

Hopefully, the state IV-D programs are working with their tribunals to implement section 316(e) of UIFSA. The fax machine is a relatively inexpensive vehicle for presenting out-of-state documentary evidence to the tribunal and often avoids the need for a continuance of the hearing in order to allow the delivery of the document via the mail or other physical transport. As noted in UIFSA's Official Comment to this section, one of the most useful applications is to provide a responding tribunal with up-to-date arrearage information.

Sections 317 & 318

To further UIFSA's efforts to facilitate and expedite interstate child support enforcement proceedings, sections 317 and 318 encourage tribunals of different states to directly communicate and cooperate.

URESA/RURESA did not authorize such direct tribunal-to-tribunal communication. As a result, when issues arose requiring an understanding of the initiating state's laws (e.g., the application of dependent disability benefit payments), the responding state court frequently needed to continue the hearing to allow the petitioner's responding state representative to contact his/her counterpart in the initiating state for guidance. The 1996 Official Comment to section 317 notes this departure from RURESA, stating "broad cooperation between tribunals is permitted under UIFSA to expedite establishment and enforcement of a support order."

UIFSA's section 317, *Communication Between Tribunals*, allows the responding state's tribunal to communicate with a tribunal in another state "to obtain information concerning the laws of that state, the legal effect of a judgment, decree, or order of that tribunal, and the status of a proceeding in the other state." It is important to note that UIFSA does not limit this tribunal-to-tribunal communication to the tribunals within the responding and initiating states. For example, the responding tribunal may need to communicate with a tribunal in the state that issued the order to obtain information concerning the order. This tribunal-to-tribunal communication may be in a written record, or by telephone or other means. As a practical note, as we continue the transition from URESA/RURESA to UIFSA, it may be necessary for the IV-D representative to remind the tribunal of UIFSA's specific procedural enhancements. For example, rather than concurring with a requested continuance to resolve a question of another state's law, the IV-D attorney should encourage the tribunal to take advantage of the opportunity to contact the other state's tribunal and resolve the legal question during the hearing.

UIFSA's section 318, *Assistance With Discovery*, authorizes and encourages tribunals within different states to cooperate in the discovery process. The rule is reciprocal; it allows a tribunal to ask another state's tribunal for assistance in obtaining discovery and to provide such assistance when asked. The Official Comment to this section describes the intent of the UIFSA drafters:

> This section takes another logical step to facilitate interstate cooperation by enlisting the power of the forum to assist a tribunal of another State with the discovery process. The grant of authority is quite broad, enabling the tribunal of the enacting State to fashion its remedies to facilitate discovery consistent with local practice.

However, in an attempt to expedite the filing of the original transmittal, UIFSA allows the direct filing with the responding state of the transmittal and accompanying documents. This efficiency removes the initiating state's tribunal from the initial case

filing procedures. As a result, in many cases, the responding state does not receive any identifying or contact information concerning the initiating state's tribunal. In instances in which the responding tribunal cannot request the initiating tribunal for assistance with discovery due to a lack of contact information (e.g., phone or facsimile number), the IV-D representative at the UIFSA hearing should assist the tribunal by providing the name and number of the initiating state's IV-D contact. This information should appear on the federal interstate form, Transmittal #1 at page 2, section VIII, and on Transmittal #2, page 2. The IV-D contact may be able to direct the responding tribunal to the appropriate tribunal in the initiating state. (For additional guidance *see* OCSE AT-98-30, question/answer #58. Please note that this Q/A referred to the 1997 federal forms. Revised interstate forms were disseminated in January 28, 2005 through OCSE AT-05-03.)

Conclusion

Now that all states are becoming more familiar with UIFSA, it is important that the IV-D community take full advantage of the opportunities the Act offers to bring real improvements to the interstate child support enforcement arena. As IV-D practitioners we need to merge UIFSA's innovations into our existing interstate case processing procedures. It is reasonable to assume that the more completely a state incorporates UIFSA into its IV-D policies and procedures, the more success that state will achieve in its interstate caseload.

Tribunals are encouraged to adopt protocols and procedures that give life to UIFSA's tribunal-to-tribunal efficiencies. State IV-D agencies are encouraged to provide training regarding the effective use of UIFSA's evidentiary provisions and to develop policy regarding attorney participation in telephone hearings. The goal should be to improve access to the tribunal by both parties. This way, the impact of not being physically present in the forum is minimized and the tribunal has the information it needs to make an appropriate decision.

Appendix

Note: The Appendix includes the three UIFSA sections referenced throughout this TEMPO. The sections appear in strikeout text to demonstrate any differences between the 1996 and 2001 versions of these sections. The text that is struck is the 1996 version and underlined text is the 2001 version. Brackets indicate that a state legislature may make a choice in the language and, when warranted, substitute terms common to that state.

SECTION 316. SPECIAL RULES OF EVIDENCE AND PROCEDURE.

(a) The physical presence of ~~the [petitioner]~~ a nonresident party who is an individual in a ~~responding~~ tribunal of this State is not required for the establishment, enforcement, or modification of a support order or the rendition of a judgment determining parentage.

(b) ~~A verified [petition],~~ An affidavit, a document substantially complying with federally mandated forms, ~~and~~ or a document incorporated by reference in any of them, which would not be excluded under the hearsay rule if given in person, is admissible in evidence if given under ~~oath~~ penalty of perjury by a party or witness residing in another State.

(c) A copy of the record of child-support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it, and is admissible to show whether payments were made.

(d) Copies of bills for testing for parentage, and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least [ten] days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary, and customary.

(e) Documentary evidence transmitted from another State to a tribunal of this State by telephone, telecopier, or other means that do not provide an original ~~writing~~ record may not be excluded from evidence on an objection based on the means of transmission.

(f) In a proceeding under this [Act], a tribunal of this State ~~may~~ shall permit a party or witness residing in another State to be deposed or to testify under penalty of perjury by telephone, audiovisual means, or other electronic means at a designated tribunal or other location in that State. A tribunal of this State shall cooperate with tribunals of other States in designating an appropriate location for the deposition or testimony.

(g) If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

(h) A privilege against disclosure of communications between spouses does not apply in a proceeding under this [Act].

(i) The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this [Act].

(j) A voluntary acknowledgment of paternity, certified as a true copy, is admissible to establish parentage of the child.

SECTION 317. COMMUNICATIONS BETWEEN TRIBUNALS.

A tribunal of this State may communicate with a tribunal of another State or foreign country or political subdivision in ~~writing~~ a record, or by telephone or other means, to obtain information concerning the laws ~~of that State~~, the legal effect of a judgment, decree, or order of that tribunal, and the status of a proceeding in the other State or foreign country or political subdivision. A tribunal of this State may furnish similar information by similar means to a tribunal of another State or foreign country or political subdivision.

SECTION 318. ASSISTANCE WITH DISCOVERY.

A tribunal of this State may:

(1) request a tribunal of another State to assist in obtaining discovery; and

(2) upon request, compel a person over whom it has jurisdiction to respond to a discovery order issued by a tribunal of another State.

ARIZONA'S RULE 33(d), RULES OF THE SUPREME COURT

NONRESIDENT ATTORNEY
PRO HAC VICE APPLICATION

Name:
Residence Address:

Office Address:

Telephone: Fax:

Title of cause or case where applicant seeks to appear:
Docket Number:
Court, Board, or Administrative Agency:
Party on whose behalf applicant seeks to appear:

Courts to Which Applicant Has Been Admitted:	Date of Admission:	Bar Number:

Applicant is a member in good standing in such courts.

Applicant is not currently disbarred or suspended in any court.

Applicant [ ] is / [ ] is not **(select one)** currently subject to any pending disciplinary proceeding or investigation by any court, agency or organization authorized to discipline attorneys at law.

Jurisdiction(s) Where Discipline Matter Pending:	Nature of Matter Under Investigation:	Name / Address of Disciplinary Authority:

Applicant [ ] has / [ ] has not **(select one)** been disciplined by any court, agency or organization authorized to discipline attorneys at law.

In the preceding three (3) years, applicant has filed applications to appear as counsel under Rule 33, Arizona Rules of Supreme Court in the following:

Title of Matter:	Docket #:	Court or Agency:	Application Granted? (Y/N)

Name of local counsel: _____
State Bar of Arizona Number: _____
Address: _____

_____
Telephone: _____ Fax: _____

Name(s) of each party in this cause and name and address of all counsel of record:

Party:	Counsel of Record:	Address:
_____	_____	_____
_____	_____	_____

Applicant is including with this application a nonrefundable application fee, payable to the State Bar of Arizona, in the amount of $330.00.

This case or cause [ ] is / [ ] is not **(select one)** a related or consolidated matter for which applicant has previously applied to appear pro hac vice in Arizona. If this matter is a related or consolidated with any previous application, applicant certifies the following:

Applicant certifies the following:

1. Applicant shall be subject to the jurisdiction of the courts and agencies of the State of Arizona and to the State Bar of Arizona with respect to the law of this state governing the conduct of attorneys to the same extent as an active member of the State Bar of Arizona, as provided in Rule 46(b) Rules of the Supreme Court.
2. Applicant will review and comply with appropriate rules of procedure as required in the underlying cause.
3. Applicant understands and shall comply with the standards of conduct required of members of the State Bar of Arizona.

Verification

STATE OF _____)
County of _____) ss.

I, the Applicant, swear that all statements in the application are true, correct, and complete to the best of my knowledge and belief.

Dated: _____ Applicant's signature_____

SUBSCRIBED AND SWORN TO before me this _____day of _____, 20__, by _____.
Name of Applicant

_____
Notary Public

NOTE – As the application requires original signatures of the applicant and notary, this application cannot be filed electronically. Please submit all documents and fees by mail to:

State Bar of Arizona
Pro Hac Vice
111 West Monroe, Suite 1800
Phoenix, AZ 85003

For further information, please contact our Membership Records Department at (602) 340-7239.

Examples of Court Rules Regarding Telephonic or Video Testimony

Colorado Rules of Civil Procedure

Rule 43(i) (1): A party may request that testimony be presented by telephone or videophone at a trial or hearing. A request for presentation of testimony by telephone shall be made by written motion or stipulation filed at least 21 days prior to the trial or hearing at which testimony is proposed to be taken by telephone. The motion shall include: (a) the reason(s) such testimony should be taken by telephone (b) a detailed description of all testimony which is proposed to be taken by telephone and (c) copies of all documents or reports which will be used or referred to in such testimony.

Minnesota Rules of Family Court Procedure, Expedited Child Support Process Rules, I. General Rules

Rule 359.01: A child support magistrate may on the magistrate's own initiative conduct a hearing by telephone, or where available, interactive video. Any party may make a written or oral request to the court administrator or the court administrator's designee to appear at a scheduled hearing by telephone or, where available, interactive video. In the event the request is for interactive video, the request shall be made at least five (5) days before the date of the scheduled hearing. A child support magistrate may deny any request to appear at a hearing by telephone or interactive video.

Rule 359.02: The court administrator or court administrator's designee shall arrange for any telephone or interactive video hearing approved by the child support magistrate. When conducting a proceeding by telephone or interactive video and a party or witness resides out of state, the child support magistrate shall ensure that the requirements of Minn. Stat. Section 518C.316 (2000) are met. The child support magistrate shall make adequate provision for a record of any proceeding conducted by telephone or interactive video. No recording may be made of any proceeding conducted by telephone or interactive video, except the recording made as the official court record.

New York Uniform Rules for the Family Court, Part 205

Section 205.44: (a) This section shall govern all applications for testimony to be taken by telephone, audio-visual means or other electronic means in accordance with sections 433.531-a and 580-316 of the Family Court Act. (b) A party or witness seeking to testify by telephone, audio-visual means or other electronic means must complete an application on the form officially promulgated by the Chief Administrator of the Courts and set forth in chapter IV of Subtitle D of this Title and, except for good cause shown, must file such application with the court not less than three days in advance of the hearing date. The applicant shall attempt to arrange to provide such testimony at a designated tribunal or the child support enforcement agency, as defined in the federal Social Security Act (42

U.S.C. Title IV-D) in that party's state, or county if within the state. The court may permit the testimony to be taken at any suitable location acceptable to the court, including but not limited to, the party's or witness' counsel's office, personal residence or place of business. (c) The applicant must provide all financial documentation ordered to be disclosed by the court pursuant to section 424 or 580-316 of the Family Court Act, as applicable, before he or she will be permitted to testify by telephone, audio-visual means or other electronic means. The financial documentation may be provided by personal delivery, mailing, facsimile, telecopier or any other electronic means that is acceptable to the court. (d) The court shall transmit a copy of its decision by mail, facsimile, telecopier, or electronic means to the applicant and the parties. The court shall state its reasons in writing for denying any request to appear by telephone, audio-visual means or other electronic means.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

XXXXXXXXXXXX, ss. DOCKET NO.

Massachusetts Department of Revenue	)
Child Support Enforcement on behalf of	)
xxxxxxxxxx	)
Plaintiff	)
v.	)
	)
xxxxxxxxxxxxxx	)
Defendant	)
	)

MOTION TO ALLOW TELEPHONIC TESTIMONY

Now comes the Department of Revenue Child Support Enforcement Division on behalf of XXXXXXX and requests that this Honorable Court allow the Plaintiff to testify by telephone at the hearing scheduled for XXXXXX. As grounds therefor, the Department states that the Plaintiff is a resident of the state of XXXXXXXX; that Plaintiff's physical presence is not required for the hearing pursuant to M.G.L. c.209D, § 3-316(a); that the Plaintiff wishes to participate in the hearing; and that the court may grant the Plaintiff permission to participate by telephone in accordance with M.G.L. c.209D, § 3-316(f).

Respectfully submitted,
DEPARTMENT OF REVENUE
By its attorney,

_____
COUNSEL TO THE COMMISSIONER

Sample Transcript of Telephone Testimony

Sample transcript excerpted from "Telephonic Testimony in Criminal and Civil Trials," 14 Hastings Communications and Entertainment Law Journal 107, 119-120 (1992).

THE COURT: Hello. This is the Superior Court for the State of California, Judge Hastings presiding. Is this Ms. Witness?

WITNESS: Yes, this is Ms. Witness.

THE COURT: Is there a notary public present?

NOTARY: Yes, your honor.

THE COURT: <To the Notary> Will you state your name and notary qualifications for the court?

NOTARY: My name is Mr. Notary. I am a notary for the City and County of New York, number XXXXX. Expiration date XX/XX/XXXX.

THE COURT: Mr. Notary, have you verified the identity of Ms. Witness?

NOTARY: Yes, your honor. I have.

THE COURT: In what form?

NOTARY: She has presented a valid New York's driver's license with the number W12345-12345-12345-64. The picture on the license appears to be the person currently present.

THE COURT: And have you made a photocopy of the identification with a signed statement by you certifying this information?

NOTARY: I have, your honor.

THE COURT: I would like to remind all parties that this certification along with any documents used by the witness must be received by this court before the close of evidence or the jury will be instructed to disregard this testimony. Mr. Notary, are you and Ms. Witness currently the only persons in the room?

NOTARY: We are, your honor.

THE COURT: Mr. Notary, at the close of this testimony, I will ask you to certify that, to your knowledge, Ms. Witness was not guided in her responses by any means including, but not limited to, a person

visible to Ms. Witness nodding or giving other visual signals to the witness. Please be alert for such activity.

Ms. Witness, are you ready to begin to testify?

WITNESS: I am, your honor.

THE COURT: In a moment the court clerk will administer an oath to you. This is a very serious matter. Although you are currently outside of the state of California, this oath is valid and it requires that you speak the truth or be guilty of perjury. If you perjure yourself here today, the State of California will pursue your conviction with all power at its disposal. Do you understand what I have just said?

WITNESS: I do, your honor.

THE COURT: In addition, I would like to caution you that any misconduct or abusive language will not be tolerated. Are you ready to proceed?

WITNESS: I am, your honor.

THE COURT: <To the clerk> You may proceed.
<The clerk gives the accepted oath to the witness.>