

**UIFSA 2008  
International Future**

19<sup>th</sup> Annual AB 1058 Child Support  
Training Conference  
October 14-16, 2015

1926

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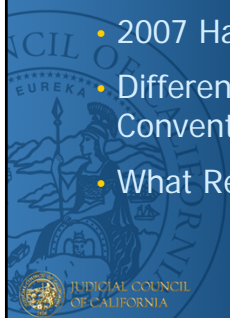
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**Agenda**

- 2007 Hague Convention
- Differences from Non-Convention Cases
- What Remains the Same

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**2007 Hague Convention**

- Alisha Griffin
- Director, California DCSS

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### The 2007 Hague Convention

Multilingual, multicultural implementation across all levels of program & practice, and financial management



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### U.S. Participation in 2007

Convention on International Recovery of Child Support and Other forms of Family Maintenance

- U.S. had never participated prior
- 2003 – U.S. State Dept agreed to establish delegation



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### Hague Convention Process

- 71 countries participated
- Different legal traditions
- Diverse approaches to delivery of services
- Formal negotiations 2003-2007
- Workgroups on forms, applicable law and casework practice
- Finalization and signing, November 2007



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### Hague Convention Parties

- 32 Countries have Ratified
  - European Union (as of 8/2014)
  - Norway
  - Albania
  - Bosnia and Herzegovina
  - Ukraine



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### Future Hague Convention Ratification

- United States (post-UIFSA 2008)
- Brazil
- Belarus
- Kazakhstan
- New Zealand
- Australia



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### U.S. Process towards Implementation

- July 2008 – incorporation into UIFSA
- November 2009 – Senate Foreign Relations Committee Hearing
- September 29, 2010 – Senate advice and consent to ratification
- September 29, 2014 – Congress approved implementing legislation; President signed
  - Pub. L. No. 113-183



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### What Needs to Happen for Ratification

- All states must enact UIFSA 2008 to be in effect no later than April 1, 2016
- President must sign instrument of ratification
- May take up to 6 months



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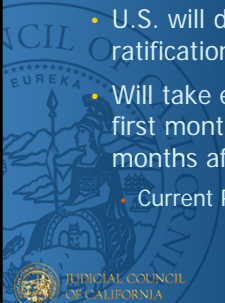
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### What Needs to Happen

- U.S. will deposit instrument of ratification with Hague depository
- Will take effect on the first day of the first month that is not less than 3 months after deposit
- Current Projection: End of 2016



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### Convention: Next Steps

- At Conferences: Gauge Impact & Provide Training
- OCSE: Formed Forms Workgroup and Reviewing Policy and Guidance
- National Council of Child Support Directors established Workgroup
- Each State: Address Regs, Policy, Practice Alignments
- iSupport Development



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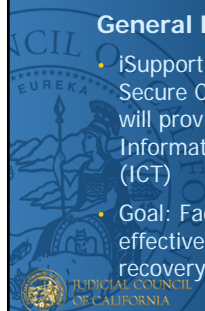
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## iSupport: International Case Management System

### General Description

- iSupport Electronic Case Management and Secure Communication System (ECMSCS) will provide states with necessary Information and Communication Technology (ICT)
- Goal: Facilitate fast, efficient, easy, cost-effective and results-oriented international recovery of maintenance obligations.



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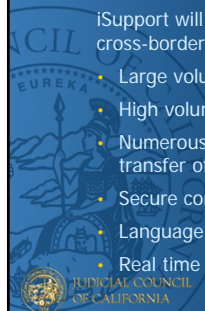
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## iSupport Generally

iSupport will address all major challenges raised by cross-border recovery of maintenance, such as:

- Large volume and long duration of cases
- High volume of communication between authorities
- Numerous repetitive actions, including electronic transfer of funds
- Secure communications
- Language barriers
- Real time access to information across time zones



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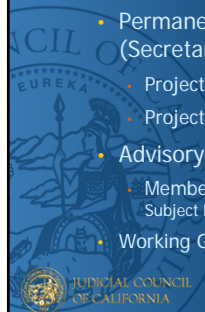
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## iSupport Development

- Permanent Bureau at the Hague (Secretariat)
  - Project Owner
  - Project Management Team
- Advisory Board est. December 2014
  - Membership: Key Central Authority Members and Subject Matter Experts
- Working Groups Established



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### iSupport Timeline

- May 1, 2015: RFP
- June 30, 2015: Bid response
- July 2015: Development kickoff
- August 2015: Pilot implementation of components
- Summer 2016: Full implementation



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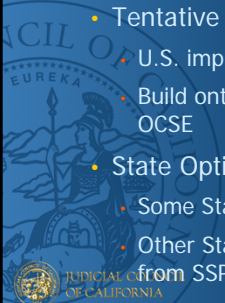
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### iSupport in the U.S.

- Tentative Plan:
  - U.S. implements iSupport centrally
  - Build onto Secure State Portal (SSP) by OCSE
- State Options:
  - Some States may build out to SSP
  - Other States will download/upload PDF from SSP



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### Convention Resources

- [www.hcch.net](http://www.hcch.net)
  - Text, Report, Caseworker's Guide, New definition of "record", Mandatory and Recommended Forms, Country Profiles, iSupport information, allows electronic transmission of testimony
- [www.acf.hhs.gov/programs/css/international](http://www.acf.hhs.gov/programs/css/international)
  - International Case Processing Guide, Dear Colleague Letters, Policy Guidance



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## International Cases: What is Different under UIFSA 2008

- Kristen Erickson-Donadee
- Attorney III, California DCSS



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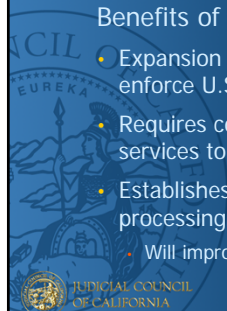
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## First and Foremost: The Convention

### Benefits of Convention

- Expansion of countries to recognize and enforce U.S. child support orders
- Requires countries to provide cost-free services to applicants
- Establishes standard procedures for processing international cases
  - Will improve efficiency and timeliness



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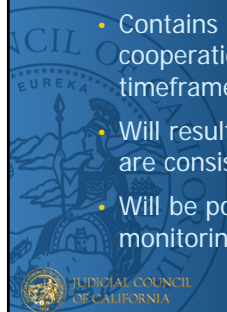
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## Benefits of Convention

- Contains strong administrative cooperation requirements and timeframes
- Will result in child support services that are consistent, affordable and timely
- Will be post-treaty review and monitoring of countries' performance



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### Key Changes for International Cases

- Articles 1 thru 6 apply to a support proceeding involving:
  - A foreign support order
  - A foreign tribunal; or
  - An obligee, obligor, or child residing in a foreign country
  - Based on comity
- New Article 7 applies only to Convention proceedings/cases



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### Key Changes

- Definitions:
  - "State" includes "tribes"
  - "Foreign country" includes many, but not all, foreign nations
    - Foreign reciprocating country
    - State reciprocal arrangement
    - Country with laws substantially similar
    - Convention country



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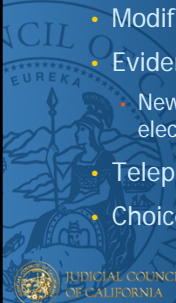
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### Key Changes

- Modification Jurisdiction
- Evidence
  - New definition of "record" allows electronic transmission of testimony
- Telephonic Hearing Requirements
- Choice of Law Clarification



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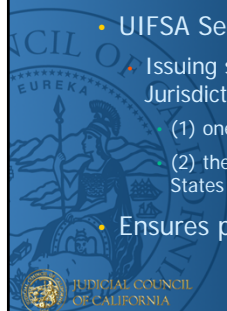
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## Modification Jurisdiction

- UIFSA Section 611(f)
  - Issuing state retains Continuing, Exclusive Jurisdiction (CEJ) to modify where:
    - (1) one party resides in another state; and
    - (2) the other party resides outside the United States
- Ensures party is not left without forum



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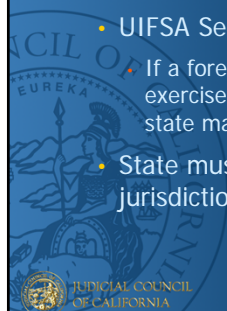
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## Modification Jurisdiction

- UIFSA Section 615
  - If a foreign country lacks or refuses to exercise jurisdiction, a tribunal of this state may assume jurisdiction to modify
- State must also have personal jurisdiction over all parties



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## Required Documents

### Non-Hague Foreign Support Orders

- Transmittal letter
- 2 copies of order, including 1 certified copy
- Sworn or certified statement of arrears
- Certain obligor & obligee information
- Name/address of payment location
- Request for DCO, if appropriate

### Hague Foreign Support Orders

- Transmittal letter
- Complete text of order (or abstract by issuing tribunal)
- Record: order is enforceable in issuing country
- Record attesting to due process (if default order)
- Record: arrears and automatic adjustment of support
- Record of receipt of free legal assistance in issuing country (if necessary)



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### Time Frame to Contest

- Non-Hague Foreign Support Orders within **20 days** after notice of registration
- Hague Foreign Support Orders
  - Not later than **30 days** after notice of registration
  - Not later than **60 days** after notice if contesting party resides outside U.S.



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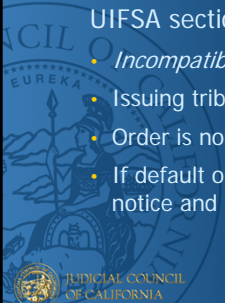
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### Defenses to Registration: Convention Orders

UIFSA section 708:

- *Incompatible with public policy;*
- Issuing tribunal lacked personal jurisdiction;
- Order is not enforceable in issuing country;
- If default order, lack of due process (re: notice and opportunity to be heard)



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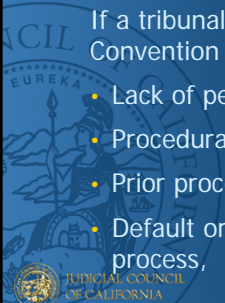
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### Non-Recognition of Convention Order

If a tribunal does not recognize a Convention order because

- Lack of personal jurisdiction;
- Procedural fraud;
- Prior proceeding was pending first;
- Default order did not satisfy due process,



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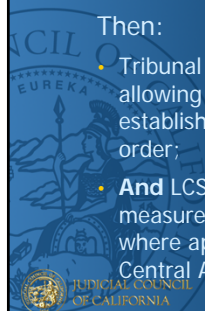
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## Non-Recognition of Convention Order (cont'd)

Then:

- Tribunal may not dismiss proceeding without allowing reasonable time for party to request establishment of new Convention support order;
- **And** LCSA must take all appropriate measures to request a child support order where application was received through Central Authority



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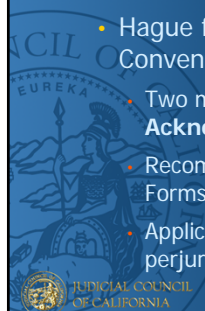
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## Hague Convention Forms

- Hague forms must be used in Convention cases once U.S. ratifies
- Two mandatory forms: **Transmittal** and **Acknowledgement**
- Recommended forms developed by the Forms Working Group
- Applications not signed under penalty of perjury



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## International Payments

- Electronic Payment Cards internationally
  - Mexico pilot
- Electronic Funds Transfer Internationally
  - Canada
  - Single Euro Payments Area (SEPA)



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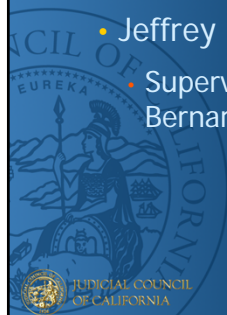
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## International Cases: What Remains the Same

- Jeffrey Schroer
- Supervising Attorney, San Bernardino County DCSS



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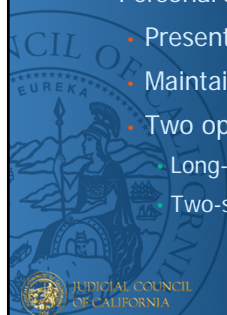
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## Principles Remaining Consistent In UIFSA 2008 as Proposed in SB 646

- Personal Jurisdiction – Non-Resident
- Presently in Family Code § 4905
- Maintained in UIFSA § 201
- Two options:
  - Long-arm or
  - Two-state proceeding



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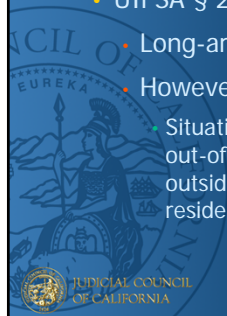
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## Limit on Asserting Long-Arm Jurisdiction to Modify a Support Order

- UIFSA § 201(b)
- Long-arm alone not sufficient
- However...
  - Situations where (a) one party resides out-of-state and the other party resides outside of the US; or (b) both parties reside outside of the US



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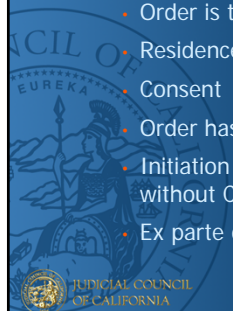
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### Continuing Exclusive Jurisdiction (CEJ)

- UIFSA § 205 (FC § 4909 now)
  - Order is the controlling order
  - Residence requirements
  - Consent
  - Order has been modified in another state
  - Initiation of modification request by Court without CEJ
  - Ex parte or temporary orders



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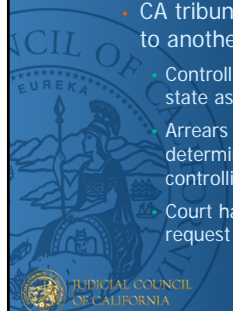
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### CEJ and Enforcement - Initiating

- UIFSA § 206 (FC § 4910 now)
  - CA tribunal can initiate request to enforce to another state if:
    - Controlling order, not modified by another state assuming jurisdiction
    - Arrears and interest accrued prior to a determination that another state's order is controlling
    - Court having CEJ can enforce its own order by request of another court



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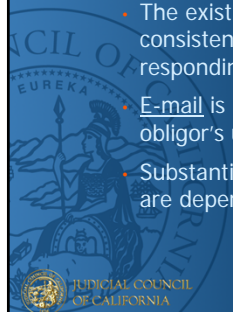
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### CEJ and Enforcement - Responding

- UIFSA § 305 (presently FC § 4919)
  - The existing and proposed statutes are consistent re duties and powers of the responding tribunal
  - E-mail is included in proposed statute for obligor's updated contact information
  - Substantive rules are avoided, as these are dependent on applicable state law



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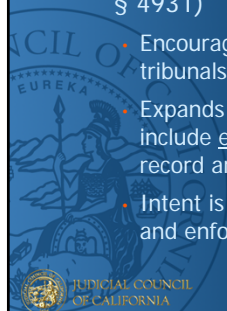
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### Communication Between Tribunals

- UIFSA § 317 (currently in Family Code § 4931)
- Encourages communication between tribunals – worldwide in scope
- Expands means of communication to include e-mail in addition to the court record and telephone
- Intent is to expedite order establishment and enforcement



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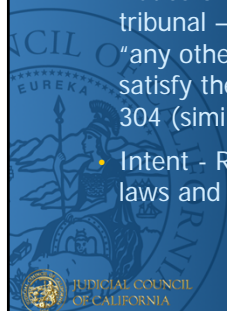
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### Important Due Process Considerations Within UIFSA 2008

- Duties of initiating tribunal to foreign tribunal – currency conversion and “any other documents necessary to satisfy the foreign tribunal”. UIFSA § 304 (similar to FC § 4918 now)
- Intent - Respectful of foreign tribunal's laws and processes



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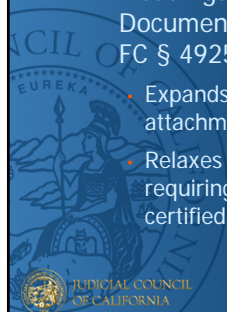
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### Important Due Process Considerations Within UIFSA 2008

- Pleadings and Accompanying Documents – UIFSA § 311 (currently FC § 4925)
- Expands existing law to require attachment of all known support orders
- Relaxes existing law by no longer requiring that the attached orders be certified



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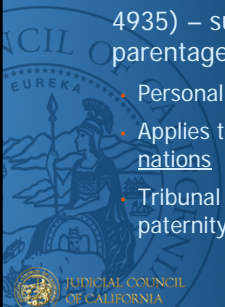
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**Support Order Establishment or Determination of Parentage**

- Article IV - UIFSA § 401 (currently FC § 4935) – support; and UIFSA § 402 - parentage
- Personal jurisdiction required
- Applies to residents of US and foreign nations
- Tribunal of this state can determine paternity as a responding tribunal



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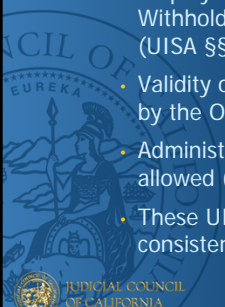
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**Article V of UIFSA 2008 – Enforcement without Registration**

- Employer compliance with Income Withholding Order issued in another State (UISA §§ 501 – 505)
- Validity of order or enforcement – contest by the Obligor (UIFSA § 506)
- Administrative enforcement by LCSA allowed (UIFSA § 507)
- These UIFSA 2008 provisions are consistent with existing law on UIFSA



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**Registration, Enforcement and Modification of Support Order – Article VI**



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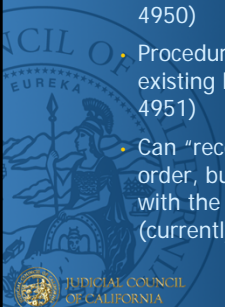
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### Registration

- Authorized by UIFSA § 601 (currently FC § 4950)
- Procedure to register is consistent with existing law – UIFSA § 601 (currently FC § 4951)
- Can “recognize and enforce” registered order, but not modify, if jurisdiction rests with the issuing tribunal – UIFSA § 603 (currently FC § 4952)



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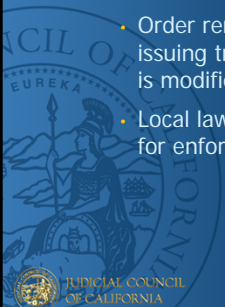
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### Choice of Law – UIFSA § 604 (currently Family Code § 4953)

- UIFSA 2008 and existing law is consistent
- Order remains under the jurisdiction of the issuing tribunal unless and until the order is modified by the responding tribunal
- Local law (i.e. responding tribunal) applies for enforcement remedies.



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### Contesting Enforcement of Registered Order

- The procedure, timelines and potential defenses to registration **for non-Convention cases** are consistent between UIFSA 2008 and current law
- UIFSA §§ 605 – 607 (currently found in Family Code §§ 4954 – 4956)



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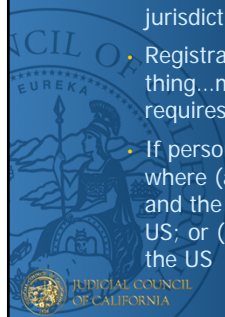
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### Registering and Modifying an Order of Another State

- Remember our discussion on personal jurisdiction
- Registration for enforcement is one thing...modification of the registered order requires personal jurisdiction
- If personal jurisdiction, then can modify where (a) one party resides out-of-state and the other party resides outside of the US; or (b) both parties reside outside of the US



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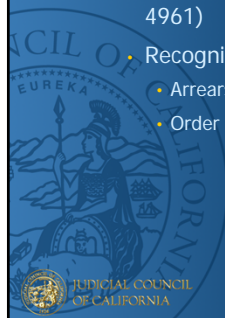
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### Recognition of an Order Modified in Another State

- UIFSA § 612 (currently Family Code § 4961)
- Recognition for enforcement includes:
  - Arrears prior to modification and
  - Order modified, once registered



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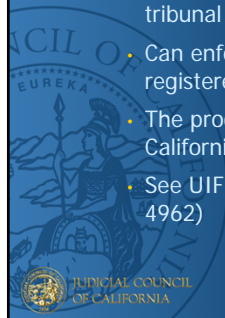
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### Parties Leave Issuing State and Reside in California

- Personal jurisdiction is conferred on a tribunal in this state
- Can enforce the order and once it is registered, modify it
- The procedural and substantive rules of California apply
- See UIFSA § 613 (currently Family Code § 4962)



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### Notice to Issuing Tribunal of Modification

- No change between existing law and UIFSA 2008
- See UIFSA § 614, currently contained in Family Code § 4963



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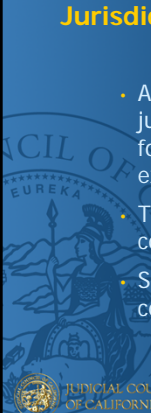
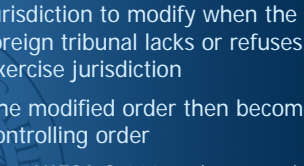
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### Jurisdiction to Modify a Foreign Child Support Order

- A California tribunal can assume jurisdiction to modify when the issuing foreign tribunal lacks or refuses to exercise jurisdiction
- The modified order then becomes the controlling order
- See, UIFSA § 616 and current law contained in Family Code § 4964



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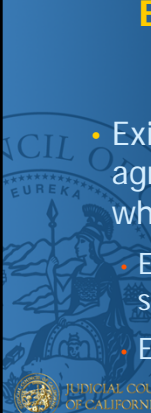
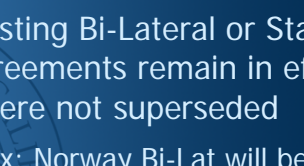
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### Existing Bi-Lateral Agreements

- Existing Bi-Lateral or State agreements remain in effect where not superseded
- Ex: Norway Bi-Lat will be superseded by Convention
- Ex: Canada Bi-Lat still effective



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## Speakers

- Alisha Griffin
  - Director, California Department of Child Support Services
- Kristen Erickson-Donadee
  - Attorney III, California DCSS
- Jeffrey Schroer
  - Supervising Attorney, San Bernardino County DCSS



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