

MEMORANDUM

To: Kansas Judicial Council
From: Judicial Council Family Law Advisory Committee
Date: December 4, 2009
**Subject: Report of the Judicial Council Family Law Advisory Committee on
Recommending Adoption of the 2008 UIFSA.**

In March, 2009, Wichita Attorney Jeffrey N. Lowe asked the Judicial Council to consider supporting enactment by Kansas of either the 2001 Uniform Interstate Family Support Act (UIFSA), or the 2008 revision of UIFSA. Mr. Lowe expressed concern that the current UIFSA in Kansas is outdated, less efficient and more confusing than the more recent versions. The version Kansas has in place is the 1996 version and Mr. Lowe believes that adoption of a more recent version of UIFSA will “enhance and solidify the basic principle of UIFSA that a child support order from one state should be readily enforced in other states.” The Committee discussed Mr. Lowe’s proposal in its June, 2009, meeting and agreed that Kansas should update its version of UIFSA to the 2008 version or alternatively, the 2001 version.

Kansas adopted the 1996 version of UIFSA in response to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The Act mandated the enactment of UIFSA as a condition of state eligibility for the federal funding of child support enforcement. See *Uniform Interstate Family Support Act (2008)*, 43 Fam. L.Q. 75, 82 (2009). Since then, the 1996 version has been amended twice, once in 2001 and again in 2008. The 2001 amendments were the result of many years of experience with the 1996 version and most amendments served to clarify and extend the act while refining some of the details. Fundamental changes in the policies and procedures were avoided. *Id.* at 82.

Although the National Conference of Commissioners on Uniform State Laws subsequently approved the 2001 version and withdrew its approval of the 1996 version, the enactment of the 2001 version was not mandated by Congress. As a result only 22 states have applied for and received a waiver from the federal Office of Child Support Enforcement to enact the 2001 version. Now, the

2008 version is “waiting in the wings in the expectation that the new Hague Maintenance Convention will move forward.” *Id.*

The 2008 version of UIFSA was modified to bring the 2001 version in line with the Hague Convention on the Enforcement of Child Support and Other Forms of Family Maintenance(Convention) which was agreed to in November, 2007. The Convention was the result of five separate negotiating sessions held between June 2003 and November 2007 and involving 70 countries. *Id.* at 85. The United States was the first country to sign on to the Convention. This signature represents the United State’s commitment to make a good faith effort to bring the Convention into force. Before the Convention can become the law of the land, the Senate must give its advice and consent, the President must sign it, and the appropriate documents must be filed in The Hague. However, the Convention is not self-executing which means that additional federal or state statutory enactments will be required to enable the treaty. Since establishment, enforcement, and modification of family support have traditionally been matters of state law, the Uniform Law Commission determined that a revision of the 2001 UIFSA would be the appropriate mechanism by which the Convention could be accepted into force. That revision is contained in the 2008 UIFSA. *Id.*

The 2001 UIFSA was referenced extensively during the drafting of the Convention. As a result, many of the principles and sometimes the exact text of the Convention were already in the 2001 UIFSA. Therefore, the drafting goal of the 2008 version became the integration of the Convention into state law rather than any substantive revisions of the 2001 version. *Id.* The basic principles were to: 1) integrate the requirements of the Convention into the current text when the desired actions and goals of both acts are congruent; 2) adapt the language of the Convention to the current text of UIFSA in order to make that language more comprehensible; 3) draft a stand-alone article in UIFSA to direct a “tribunal of this state” on do’s and don’t’s unique to the Convention support orders containing issues only applicable under the Convention; and, 4) omit the Convention text that need not be included in state law because it speaks only to “Contracting States”. *Id.* at 86.

One notable change from the 2001 UIFSA is the definition of “state”. The 2008 version has been amended to eliminate the legal fiction, created in the 2001 version, that a foreign nation is the

equivalent of an American state. The 2008 version now provides separate definitions for “foreign country,” “foreign tribunal,” and “foreign support order.” Battle Rankin Robinson, *Integrating an International Convention into State Law: The UIFSA Experience.*, 43 Fam. L.Q. 61, 68 (2009). In addition, the heart of the 2008 UIFSA is a new Article 7 that contains a system for registration, recognition, and enforcement of support orders of other jurisdictions. It tracks Article 23 of the Convention and directs how support orders from other countries must be registered and how such orders may be challenged. *Id.* at 71.

The U.S. Senate was asked for its advice and consent to the Convention in September 2008. On October 6, 2009, the Senate Foreign Relations Committee held a hearing on the Convention and the response was overwhelmingly positive. <http://foreign.senate.gov/hearings/2009/hrg091006a.html> Once the Resolution is adopted by the Senate and signed by the President, and the federal legislation is enacted, the 2008 UIFSA will be introduced in all states. Battle Rankin Robinson, *Integrating an International Convention into State Law: The UIFSA Experience.*, 43 Fam. L.Q. 61, 73 (2009). It is anticipated that with the introduction to the states, Congress will require that all states enact the 2008 UIFSA as a condition of state eligibility for the federal funding of child support enforcement. *See id.* at 66.

Although we do not know exactly when the Resolution of Ratification of the Convention will be enacted, the Family Law Advisory Committee agrees that it will likely be enacted within the next few years and therefore, Kansas will be required to adopt the 2008 UIFSA in the near future. In light of the foregoing discussion, and the apparently inevitable requirement that states enact the 2008 UIFSA, the Committee recommends that the Kansas Legislature consider requesting a waiver from the federal Office of Child Support Enforcement to enact the 2008 version of the Uniform Interstate Family Support Act. As an alternative, the committee would recommend that the legislature seek a waiver to enact the 2001 version of UIFSA since the National Conference of Commissioners on Uniform State Laws has withdrawn its approval of the 1996 version of UIFSA in favor of the 2001 UIFSA.