Best of ListServ

Q*:* *Listmates - I have two cases with similar facts. Parties were divorced in State A, the noncustodial parent moved to State B, and the custodial parent moved with the children to California.*

In Case # 1, the noncustodial parent wants to modify custody and visitation. Under the CA version of the UCCJEA, it appears CA can make a finding that both parents and the kids have moved from State A, and therefore State A has lost its exclusive and continuing jurisdiction. My question is this: if the noncustodial parent files in CA to modify custody and visitation, is he submitting to personal jurisdiction for purposes of child support? If so, how can that result be avoided?

In Case # 2, the custodial parent wants to modify visitation and also child support, if possible. Clearly, CA now has subject matter jurisdiction over custody and visitation, but not over child support, unless the NCP consents. Custodial parent was not treated fairly in State A, and would prefer to sue for modification of child support in State B, where the NCP now lives under military orders. Can she do so?

Thanks for your input!

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A:
#1
If neither parent lives in State A any more, custody jurisdiction MUST follow the child if it has a home state (presumably, CA). The NCP does not submit to CA's child support jurisdiction, however, unless he consents. And, if both have moved from state A, the custodial parent must go to state B to ask for child support modification, under UIFSA. (But if the NCP is the first one to seek child support modification, he must file in the respondent's state of residence--here, CA--and jurisdiction would remain there.)

If it sounds confusing, that's because it is.

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#2
We have to remember to look separately at the UCCJEA for custody jurisdiction and at the UIFSA for support jurisdiction issues. It is UIFSA that uses the CEJ (continuing exclusive jurisdiction that vests jurisdiction in the first state to enter a support order and keeps it there until no one is there any longer) language. (Also, remember that alimony, as compared to CS, can NEVER be modified by any state but the state issuing the initial alimony order.)

One way to remember support jurisdiction is that the moving party can ALWAYS go after the respondent in his/her home state under principles of due process whereby one has no right to object to having to litigate an issue in one's home state. However, if the moving party remains behind in the state with CEJ (continuing exclusive jurisdiction), he/she can bring an application there, and the party who moved can be forced to defend in the original state (the one with CEJ).

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#3
Involvement in a UCCJEA proceeding does *not* subject the responding party to child support jurisdiction. UCCJEA Section 109(a) states:
"A party to a child-custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child-custody determination, is not subject to personal jurisdiction in this State for another proceeding or purpose solely by reason of having participated, or of having been physically present for the purpose of participating, in the proceeding."

Unless the party against whom the child support modification request is filed consents that the court has jurisdiction, the party seeking the child support modification *must* file in the other parents state (assuming that *both* parties and the child have moved from that first state). Thus, in your examples, a custodial parent in California cannot request that California modify support *unless* the non-custodial parent consents to California taking over modification jurisdiction. Similarly, State B (in which non-custodial parent lives) cannot undertake to modify support when the custodial parent lives in California.

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