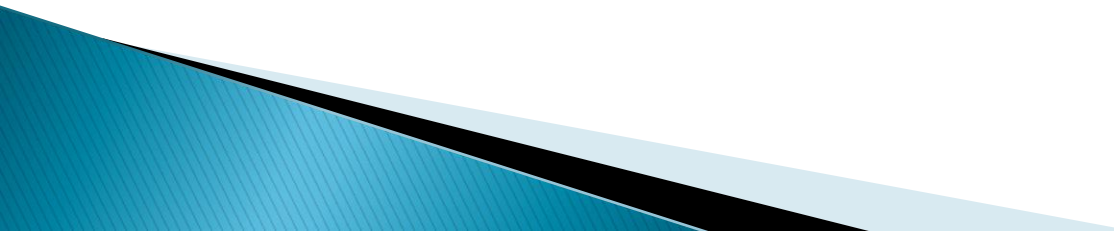


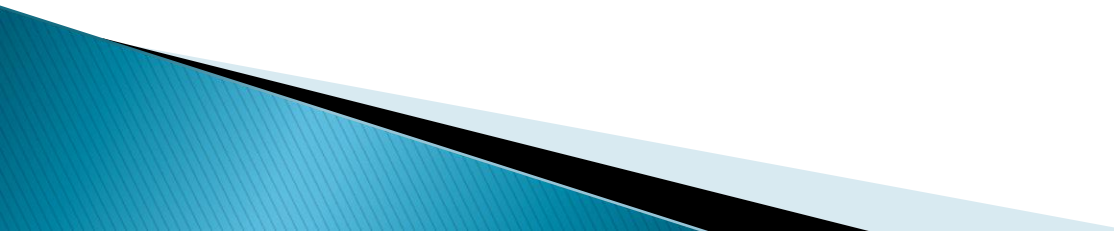
Introduction to UIFSA

UIFSA

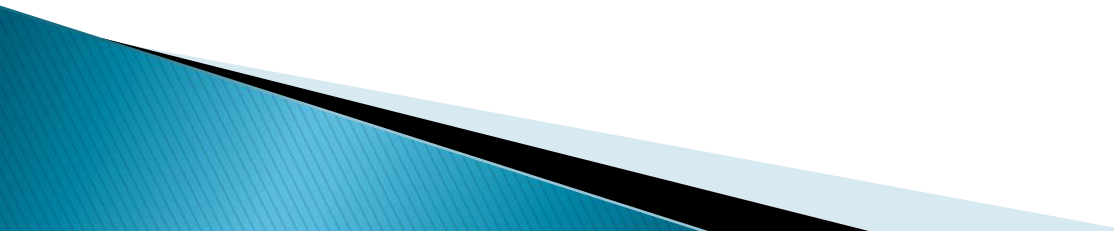
(NC Gen Stat Chapter 52C)

- ▶ A jurisdiction and procedure statute
 - ▶ Provides procedures to establish, enforce and modify family support orders
 - ▶ Does NOT determine amount of support
 - ▶ Uniform????
- 

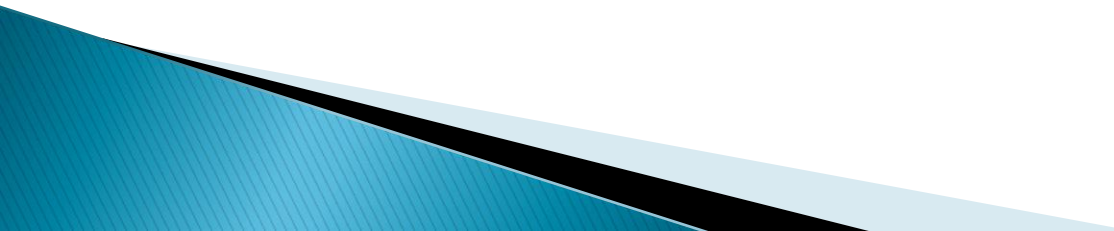
Jurisdiction for Support Orders

- ▶ Need both subject matter and personal jurisdiction
 - ▶ Subject matter = statutory authorization
 - ▶ Personal = statute (long-arm) + due process
- 

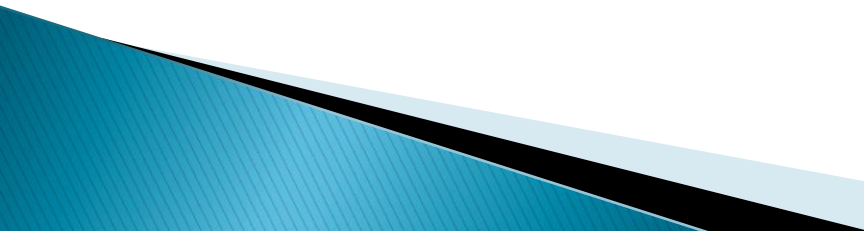
3 Types of Proceedings

- ▶ Initial support orders
 - ▶ Enforcement of existing orders
 - ▶ Modification of existing orders
- 

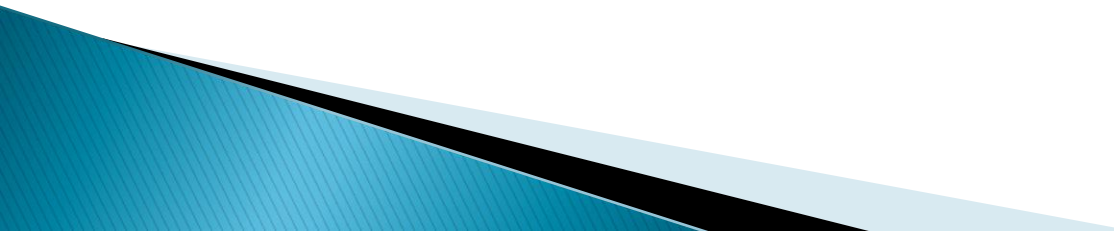
Consider

- ▶ Mom and dad married in NC in 2004
 - ▶ Child born in NC in 2006
 - ▶ Parents separate in 2007
 - Everyone stays in NC
 - ▶ Mom files for support in NC in 2007
 - ▶ Does NC have jurisdiction?
- 

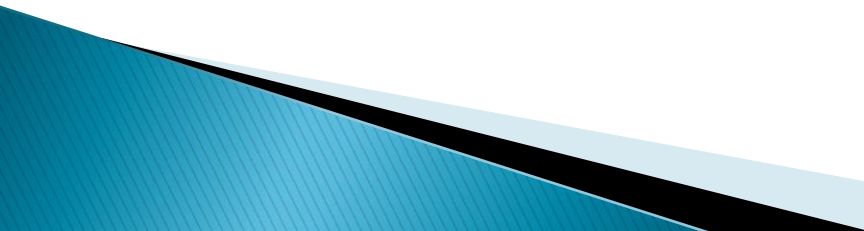
Initial Establishment

- ▶ NC generally always has subject matter jurisdiction to enter first support order regarding a child
 - GS 50-13.4
 - ▶ Personal jurisdiction?
 - ▶ Yes: Long-arm and due process met when defendant is resident of NC
- 

Consider

- ▶ Mom and dad married in Va. in 2004
 - ▶ Child born in Va. in 2006
 - ▶ Parties separate in 2007
 - ▶ Mom moves to NC in 2007 – files for support
 - ▶ Does NC have jurisdiction?
- 

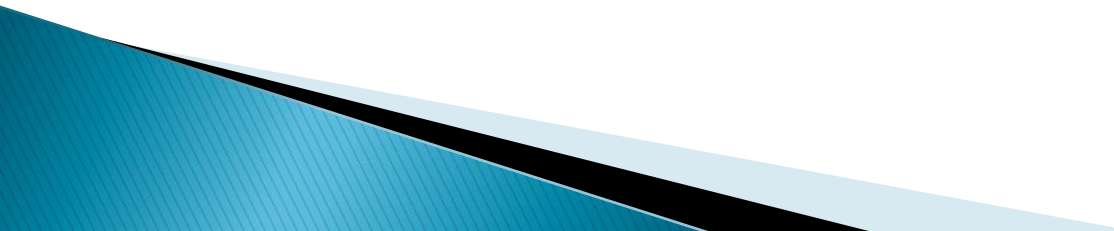
Initial Establishment

- ▶ NC generally always has subject matter jurisdiction to enter initial support order
 - ▶ Personal jurisdiction?
 - ▶ Not without more to meet long-arm and due process
 - UIFSA has broad long-arm (GS 52C-2-201)
 - Still need “minimum contacts”
- 

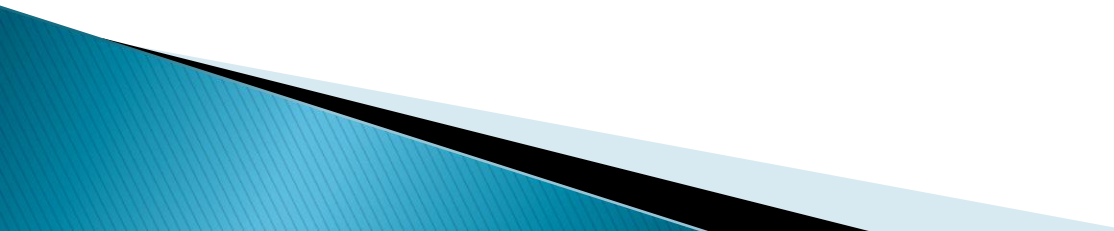
Consider

- ▶ So – does mom have to travel to Virginia to obtain child support order?

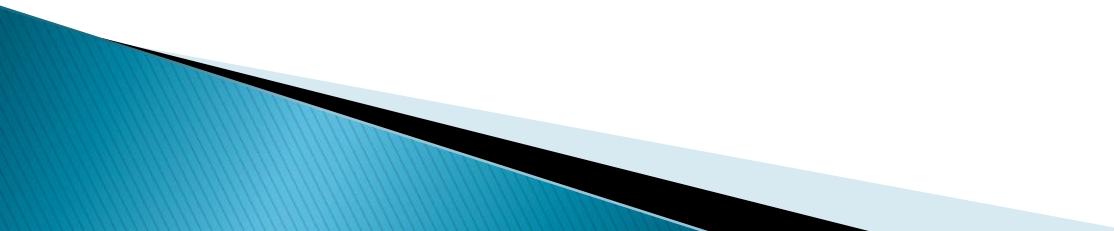
UIFSA Interstate Procedure

- ▶ She can but she doesn't have to
 - ▶ UIFSA provides for Interstate Proceedings
 - NC acts as "initiating state"
 - Va. is "responding state"
 - GS 52C-2-206(a), 3-301(c), 3-304
 - ▶ Va. exercises jurisdiction over dad – not NC
- 

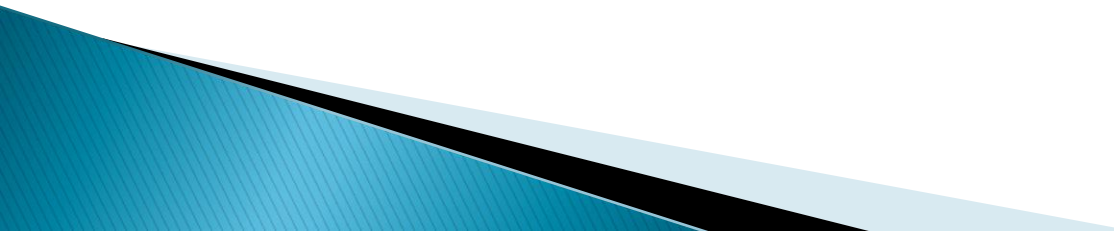
Initial Proceedings Summary

- ▶ NC generally can set original order if NC has personal jurisdiction over defendant
 - ▶ If no personal jurisdiction, UIFSA allows interstate proceedings
- 

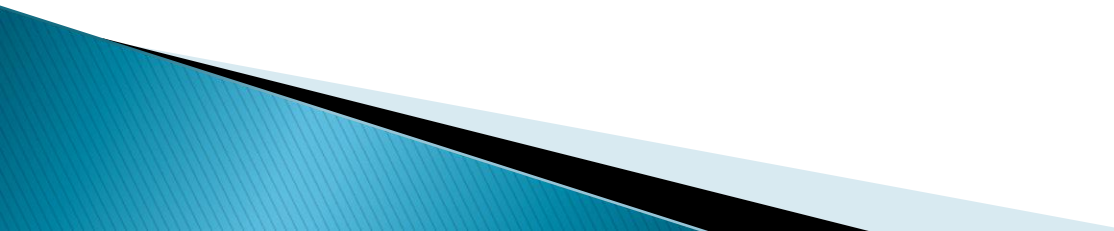
Consider

- ▶ Va. court orders dad to pay support
 - ▶ Dad stays in Va.; mom and child in NC
 - ▶ Dad doesn't pay
 - ▶ Can NC court enforce Va. child support order?
- 

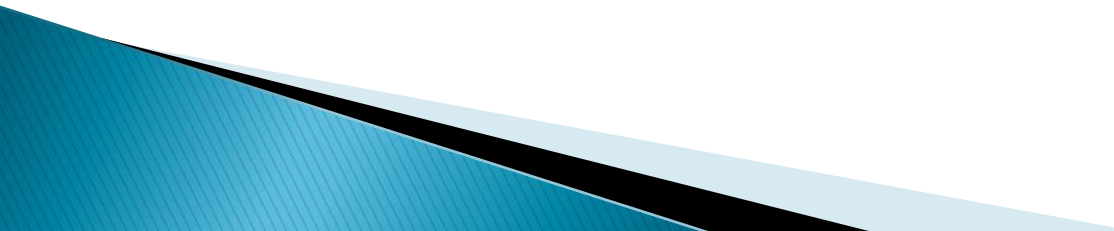
Enforcement Jurisdiction

- ▶ ALL STATES have subject matter jurisdiction to enforce valid order entered by another state
 - ▶ But – must have personal jurisdiction as well
 - ▶ Does mom have to travel to Va. to enforce?
- 

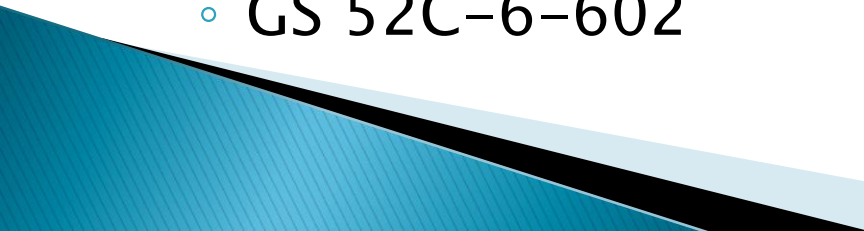
UIFSA Interstate Procedure

- ▶ She can but she doesn't have to
 - ▶ UIFSA provides for Interstate Proceedings
 - NC acts as "initiating state"
 - Va. is "responding state"
 - GS 52C-2-206(a), 3-301(c), 3-304
 - ▶ Va. exercises jurisdiction over dad – not NC
- 

Consider

- ▶ Va. court entered support order
 - ▶ Everybody moves to NC
 - ▶ Dad doesn't pay
 - ▶ Can NC court enforce the Va. order?
- 

Enforcement

- ▶ NC always has subject matter jurisdiction to enforce
 - ▶ Personal jurisdiction?
 - Yes – dad is NC resident
 - ▶ Procedure?
 - ▶ UIFSA requires Registration for Enforcement
 - GS 52C-6-602
- 

Consider

- ▶ Mom registers Va. order for enforcement
- ▶ Dad responds – “But she won’t let me visit!”
- ▶ Defense?

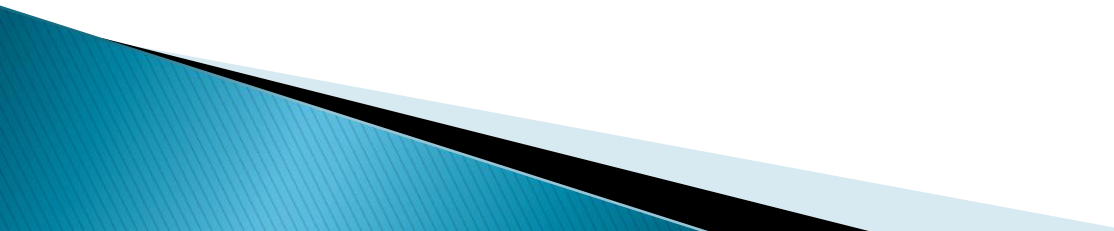
Defenses to Enforcement of “Foreign” Support Order

- ▶ All defenses must be raised in response to Registration
- ▶ If no valid defense raised, order is confirmed
- ▶ Defenses listed in GS 52C–6–607 are exclusive
 - *See Lively v. Berry*, 653 SE2d 192 (2007)
 - *But cf. Tepper v. Hoch*, 140 NC App 354 (2000)

Enforcement Summary

- ▶ NC always has subject matter jurisdiction to enforce valid order entered in another state
- ▶ Must have personal jurisdiction
- ▶ If no personal jurisdiction – UIFSA allows interstate proceedings
 - (just like initial establishment)
- ▶ If NC has personal jurisdiction – UIFSA requires Registration for Enforcement

Consider

- ▶ Child support order entered in Va. when everyone lived there
 - ▶ Mom moves to NC with child
 - ▶ Dad stays in Va.
 - ▶ Mom wants more \$\$\$\$\$
 - ▶ Can NC modify the Va. order?
- 

Modification

- ▶ Va. has continuing exclusive jurisdiction (“CEJ”)
 - Federal Full Faith and Credit for Child Support Orders Act, 28 USC 1738B (“FFCCSPA”)
 - UIFSA, GS 52C-2-205

- ▶ State that issues valid order maintains exclusive jurisdiction until:
 - Everyone leaves the state, or
 - Parties sign and file written consent to jurisdiction in another state

Modification

- ▶ Does mom have to go to Va?
- ▶ Not necessarily
- ▶ Interstate proceeding is available
 - NC as the “initiating state”
 - Va. as the “responding state”
 - GS 52C-2-206(a), 3-301(c), 3-304

Consider

- ▶ Child support order by Va. court in 2004
- ▶ Everybody comes to NC in 2005
- ▶ 2007: Dad wants to modify
- ▶ Can NC modify?
 - ▶ Yes – Va. lost CEJ when everyone left state
- ▶ Procedure?
 - Registration for Modification: GS 52C–6–609

Modification

- ▶ Virginia law or NC law?
- ▶ NC law applies generally
 - GS 52C-6-611(b)
- ▶ But no modification of provisions not subject to modification in Virginia
 - GS 52C-6-611(c)
 - *Lombardi*, 157 NC App 540 (2003)
- ▶ No modification of vested arrears
 - GS 50-13.10; federal FFCCSOA

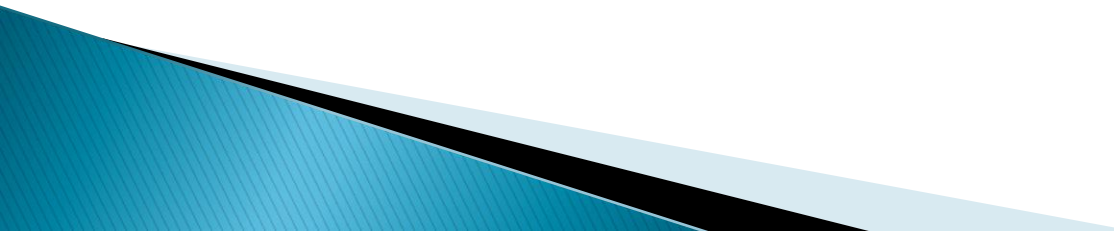
Consider

- ▶ Child support order by Va. court in 2004
- ▶ Mom and child move to NC in 2005; dad to Tennessee
- ▶ 2008: Can mom enforce in NC?
 - Not unless have personal jurisdiction over dad
- ▶ 2008: Can NC modify?

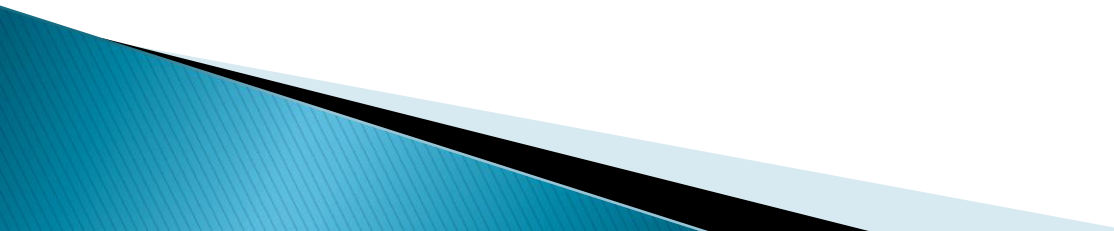
Modification

- ▶ “Play away” Rule
- ▶ If no state has CEJ, party seeking modification must go to state of other party
 - GS 52C-6-611(a)(1)
 - Unless written and filed consent of parties to NC jurisdiction

Modification of Child Support Summary

- ▶ NC has no subject matter jurisdiction to modify if another state has CEJ
 - ▶ State entering child support order keeps CEJ until all parties leave state or all parties consent in writing to move jurisdiction
 - ▶ If no state has CEJ – remember “play-away” rule
- 

Consider

- ▶ 2005: California enters alimony order
 - ▶ 2006: Wife moves to Ga.; Husband to NC
 - ▶ 2008: Wife seeks enforcement in NC
 - ▶ Procedure?
 - Same as child support
 - Register California order for enforcement
 - ▶ Enforce?
 - As long as NC has personal jurisdiction
 - ▶ Modify?
- 

Alimony Modification

- ▶ State that enters alimony order keeps exclusive jurisdiction FOREVER
 - GS 52C-2-205(f)
- ▶ Parties cannot consent to change in jurisdiction
 - GS 52C-2-205(f) and Official Comment
- ▶ *See Hook v. Hook*, 170 NC App 138 (2005)

Controlling Orders

- ▶ URESA allowed multiple orders
- ▶ Orders validly entered under URESA are entitled to retrospective enforcement
 - (full faith and credit for arrears)
 - *See Mannthey v. Kilbourne*, 157 NC App 239 (2003)
- ▶ Only a “controlling order” is subject to prospective enforcement
 - GS 52C-2-207 (UIFSA determines controlling order)
 - *See Jones v. Jones*, 175 NC App 158 (2005)