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How to Reach a Party or Witness in Another Country

Los Angeles Law Library
October 25, 2019
1:30 pm.

Jeffery J. Daar,
Daar & Newman, Lawyers
International Disputes, Issues of Culture, Language, and Where and How an Agreement May Be Enforced are Key

- Uncertainty as to what law will apply in the event of a dispute and what forum will be available for its resolution can be reduced by advance planning.
- Planning affords an opportunity to prevent disputes that may arise, including because of cultural and language differences.
What is normal to some is not normal to others
Lost in translation...
Different strokes for different folks
Identify Differences, Such As Traditions, Customs And Practices

Awareness of our own culture needed to understand others.
Role of Traditions, Customs and Practices In Other Cultures

Examples of differences that may vary from culture to culture

• Level of formality regarded as “normal”;
• Balance between work and personal time;
• Attitudes towards time – punctuality;
• Social status/gender/age.
Practical advice

- Learn the basics of the culture of the country and people that you are dealing with.

- Stay open-minded.

- Show awareness of and interest in the history, customs and so on of the people that you are dealing with.
More Practical Advice

• Explain or apologize if you have broken “their” rules.

• Pay attention to what “they” say and do not say.

• Reciprocate as much as you can.

• Learn differences between different nationalities, ethnicities and religions.
Language Issues

Watch for Changes in Meaning:

- Meaning of words depends on the context in which they are used.

- Cultural context can also lend words unexpected meanings.
Different Legal Systems

- Pay Attention To The Legal Systems At Issue For A Foreign Party or Witness
  - Common law versus Civil law
  - Consider whether foreign courts may be or are potentially in play with respect to any U.S. litigation.
Service of Process

- Did a foreign party agree to a simplified type of service of process?
- If not, then service must be made outside of the U.S. territory – typically pursuant to one of two international treaties:
  - Hague Service Convention.
  - Inter-American Service Convention.
Hague Service Convention

- Applies in civil and commercial cases
- To transmit judicial documents
- For service abroad
- Does not apply where defendant’s address is not known
- Convention usually deals with transmittal of documents, not the actual service
- Case must already be pending
The Hague Service Convention

- Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (commonly called the Hague Service Convention):
  - There are approximately 72 states that are parties of the Hague Service Convention.
  - Except for Mexico, Argentina, Costa Rica and Venezuela, most Central and South American countries have not ratified the Hague Service Convention.
Inter-American Service Convention on Letters Rogatory and Additional Protocol

- Informs the procedures by which litigants may effect service of process only, not evidence taking as well.

- The following countries are members of both the Inter-American Service Convention and Additional Protocol:
  - Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica*, Dominican Republic*, Ecuador, El Salvador, Guatemala, Haiti*, Honduras*, Mexico, Panama, Paraguay, Peru, United States, Uruguay, and Venezuela.

* signed not ratified or acceded
Service of Process under International Conventions

- Both treaties typically require service to be effected by a central authority within the country in which service is to be performed.

- Carefully look for each country’s reservations, declarations and notifications relating to the operation of the Convention.

- In some instances the Hague Service Convention and Inter-American Service Convention Protocols are not the only channels for service of process abroad.
Service of Process [cont’d.]

• Hague Service Convention and Inter-American Convention may not be exclusive or mandatory channel for transmission of service of process.

• Note that enforcement of any ensuing judgment will be difficult if the originating processes were not served pursuant to Convention procedures.
Service of Process - Mexico

- Mexico and the U.S. are parties to the Hague Service Convention and the Inter-American Service Convention and Additional Protocol.

- Mexico’s Central Authority is the General Director of Legal Affairs of the Ministry of Foreign Affairs.

- Mexico objects to the Hague Service Convention’s Service of Process by Certified Mail.

- To be safe, make sure all documents are notarized, legalized (apostille) and translated.
Exclusivity of Hague Service Convention

- Service under the Hague Service Convention is mandatory when it applies but local law determines if it applies.
- Statute providing that California rules governing summonses “are subject to” the provisions of the Hague Service Convention does not mean that all service on foreign nationals must be performed pursuant to the procedures of the Hague Service Convention; the statute merely recognizes that treaties trump conflicting state law.
Hague - Transmission Channels

- Central Authority
- Consular or diplomatic channels
- Postal channels
- Direct communication between judicial officers, officials or other competent persons of the State of origin and the State of destination
- Direct communication between an interested party and judicial officers, officials or other competent persons of State of destination
- Internal Law of the Foreign State
Central Authority

- All signatories to the Convention must designate a Central Authority to receive and review “letters of request” for taking evidence.

- Listing of each State’s Central Authority Available at www.hcch.net/home.

- Central Authority is in charge of
  1. Receiving requests for service and
  2. Executing the requests.
Central Authority Procedure – Hague Service Convention

- Hague Service Convention
  - Fill out Request for Service form (USM-94) available at U.S. Marshal’s Office and mail to foreign country’s “Central Authority.”
    - Each signatory nation designates a “Central Authority,” which undertakes the service of process for USM-94 forms.
    - Documents must be translated in official language of foreign country, unless party accepts service voluntarily.

- 3 Methods of service
  - In accordance to local law of jurisdiction;
  - Service by a particular method specified in request; or
  - Service by delivery to addressee if party agrees to voluntary acceptance.
### REQUEST FOR SERVICE ABROAD OF JUDICIAL OR EXTRAJUDICIAL DOCUMENTS

**Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters, signed at The Hague, the 15th of November 1965.**

Convention relative à la signification et à la notification à l'étranger des actes judiciaires ou extra-judiciaires en matière civile ou commerciale, signée à La Haye le 15 novembre 1965.

<table>
<thead>
<tr>
<th>Identity and address of the applicant</th>
<th>Address of receiving authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Identité et adresse du requérant</td>
<td>Adresse de l'autorité destinataire</td>
</tr>
</tbody>
</table>

The undersigned applicant has the honour to transmit — in duplicate — the documents listed below and, in conformity with Article 5 of the above-mentioned Convention, requests prompt service of one copy thereof on the addressee, i.e.: Le requérant soussigné a l'honneur de transmettre, conformément à l'article 5 de la Convention précitée, d'un exemplaire de l'original au destinataire, à savoir:

<table>
<thead>
<tr>
<th>Identity and address</th>
<th>(Identité et adresse)</th>
</tr>
</thead>
</table>

- [ ] a) In accordance with the provisions of sub-paragraph a) of the first paragraph of Article 5 of the Convention* selon les formes légales (article 5, alinéa premier, lettre a) |
- [ ] b) In accordance with the following particular method: selon la forme particulière suivante |
- [ ] c) by delivery to the addressee, if he accepts it voluntarily (second paragraph of Article 5)* le cas échéant, par remise simple (article 5, alinéa 2) |

The authority is requested to return or to have returned to the applicant a copy of the documents - and of the annexes2 — with the attached certificate. Cette autorité est priée de renvoyer ou de faire renvoyer au requérant un exemplaire de l'acte - et de ses annexes - avec l'attestation ci-jointe.

<table>
<thead>
<tr>
<th>List of documents / Énumération des pièces</th>
</tr>
</thead>
<tbody>
<tr>
<td>[ ] [ ] [ ] [ ]</td>
</tr>
</tbody>
</table>

* If applicable / Si applicable

Done at / Fait à

Signature and/or stamp

**CERTIFICATE ATTESTATION**

The undersigned authority has the honour to certify, in conformity with Article 6 of the Convention, that the demand has been executed* que la demande a été exécutée

- [ ] the (date) / le (date):
- [ ] at (place, street, number) / à (localité, rue, numéro) :

- [ ] in one of the following methods authorized by Article 5: dans une des formes autorisées prévues à l'article 5:
  - [ ] a) In accordance with the provisions of sub-paragraph a) of the first paragraph of Article 5 of the Convention* selon les formes légales (article 5, alinéa premier, lettre a) |
  - [ ] b) In accordance with the following particular method: selon la forme particulière suivante |
  - [ ] c) by delivery to the addressee, if he accepts it voluntarily (second paragraph of Article 5)* le cas échéant, par remise simple (article 5, alinéa 2) |

The documents referred to in the request have been delivered to: Les documents mentionnés dans la demande ont été remis à:

<table>
<thead>
<tr>
<th>Identity and description of person</th>
<th>Identité et qualité de la personne:</th>
</tr>
</thead>
</table>

Relationship to the addressee (family, business or other):

Liens de parenté, de subordination ou autres, avec le destinataire de l'acte:

- [ ] the document has not been served, by reason of the following facts: que la demande n'a pas été exécutée en raison des faits suivants:

- [ ] In conformity with the second paragraph of Article 12 of the Convention, the applicant is requested to pay or reimburse the expenses detailed in the attached statement*. Conformément à l'article 12, alinéa 2, de ladite Convention, le requérant est prié de payer ou de rembourser les frais dont le détail figure ci-joint ou ci-contre:

**Annexes / Annexes**

<table>
<thead>
<tr>
<th>Documents returned:</th>
<th>Pièces renvoyées:</th>
</tr>
</thead>
<tbody>
<tr>
<td>In appropriate cases, documents establishing the service:</td>
<td>Le cas échéant, les documents justificatifs de l'exécution:</td>
</tr>
<tr>
<td>[ ] [ ] [ ] [ ]</td>
<td></td>
</tr>
</tbody>
</table>

Done at / Fait à

Signature and/or stamp

**Daar & Newman**

Lawyers
WARNING

Identity and address of the addressee
Identité et adresse du destinataire

IMPORTANT

The enclosed document is of a legal nature and may affect your rights and obligations. The summary of the document to be served will give you some information about its nature and purpose. You should however read the document itself carefully. It may be necessary to seek legal advice. If your financial resources are insufficient you should seek information on the possibility of obtaining legal aid or advice either in the country where you live or in the country where the document was issued.

Enquiries about the availability of legal aid or advice in the country where the document was issued may be directed to:

TIRE IMPORTANT

Le document ci-joint est de nature juridique et peut affecter vos droits et obligations. Les éléments essentiels de l’acte vous donneront quelques informations sur sa nature et son objet, il est toutefois indispensable de lire attentivement le texte même du document, il peut être nécessaire de demander un avis juridique.

Si vos ressources sont insuffisantes, renseignez-vous sur la possibilité d’obtenir l’assistance judiciaire et la consultation juridique, soit dans votre pays, soit dans le pays d’origine du document.

Les demandes de renseignements sur les possibilités d’obtenir l’assistance judiciaire ou la consultation juridique dans le pays d’origine du document peuvent être adressées à:

It is recommended that the standard terms in the notice be written in English and French and where appropriate also in the official language, or in one of the official languages of the State in which the document originated. The blanks could be completed either in the language of the State to which the document is to be sent, or in English or French.

Il est recommandé que les mentions impriées dans cette notice soient rédigées en langue française et en langue anglaise et le cas échéant, en outre, dans la langue ou l’une des langues officielles de l’État d’origine de l’acte. Les blancs pourraient être remplis, soit dans la langue de l’État ou le document doit être adressé, soit en langue française, soit en langue anglaise.
Central Authority Procedure – Inter-American Service Convention

- Inter-American Service Convention
  - Similar to Hague Service Convention, except:
    - Fill out form USM-272/272A and send to “Central Authority.”
    - Must include Letters Rogatory as part of request
    - All documents must be translated.
    - Form must bear seal and signature of Clerk of the Court where process issues and signature and stamp of Central Authority.
REQUEST FOR SERVICE ABROAD OF JUDICIAL OR EXTRAJUDICIAL DOCUMENTS PURSUANT TO THE ADDITIONAL PROTOCOL TO THE INTER-AMERICAN CONVENTION ON LETTERS ROGATORY

FORM A

LETTER ROGATORY

1. REQUESTING JUDICIAL OR OTHER ADJUDICATORY AUTHORITY
   Name __________________________
   Address _________________________

2. CASE:
   DOCKET No.: ____________________

3. CENTRAL AUTHORITY OF THE STATE OF ORIGIN
   Name __________________________
   Address _________________________

4. CENTRAL AUTHORITY OF THE STATE OF DESTINATION
   Name __________________________
   Address _________________________

5. REQUESTING PARTY
   Name __________________________
   Address _________________________

6. COUNSEL TO THE REQUESTING PARTY
   Name __________________________
   Address _________________________

PERSON DESIGNATED TO ACT IN CONNECTION WITH THE LETTER ROGATORY

Name: __________________________
Address: _________________________

Is this person responsible for costs and expenses?

☐ YES ☐ NO

* If not, check in the amount of ________ is attached
* Or proof of payment is attached

The undersigned authority requests that service be carried out in the following manner:

* (1) In accordance with the special procedure or additional formalities that are described below, as provided for in the second paragraph of Article 10 of the above-mentioned Convention, or

* (2) By service personally on the identified addressee or, in the case of a legal entity, on its authorized agent; or

* (3) If the person or the authorized agent of the entity to be served is not found, service shall be made in accordance with the law of the State of destination.

B. Requests the delivery of the documents listed below to the following judicial or administrative authority:

__________________________

C. Requests the Central Authority of the State of destination to return to the Central Authority of the State of origin one copy of the documents listed below and attached to this letter rogatory, and an executed Certificate on the attached Form C.

Done at ________________ this _________ date of ____________ 20____

__________________________

Signature and stamp of the judicial or other adjudicatory authority of the State of origin

__________________________

Signature and stamp of the Central Authority of the State of origin

Title or other identification of each document to be delivered:

________________________________________

(Append additional pages, if necessary:)

* Delete if inapplicable.
ANNEX TO THE ADDITIONAL PROTOCOL TO THE INTER-AMERICAN CONVENTION ON LETTERS ROGATORY

FORM B

ESSENTIAL INFORMATION FOR THE ADDRESSEE

To (Name and address of the person being served)

You are hereby informed that (Brief statement of nature of service)

A copy of the letter rogatory that gives rise to the service or delivery of these documents is attached to this document. This copy also contains essential information for you. Also attached are copies of the complaint or pleading initiating the action in which the letter rogatory was issued, of the documents attached to the complaint or pleading, and of any rulings that ordered the issuance of the letter rogatory.

ADDITIONAL INFORMATION

A. The document being served on you (original or copy) concerns the following:

B. The remedies sought or the amount in dispute is as follows:

C. By this service, you are requested:

D. * In case of service on you as a defendant you can answer the complaint before the judicial or other adjudicatory authority specified in Form A, Box 1 (State place, date and hour):

   * You are being summoned to appear as:

   

   

   

1 Complete the original and two copies of this form in the language of the State of origin and two copies in the language of the State of destination.

* Delete if inapplicable.

---

* If some other action is being requested of the person served, please describe:

* Delete if inapplicable.

E. If you fail to comply, the consequences might be:

* Delete if inapplicable.

F. You are hereby informed that a defense counsel appointed by the Court or the following legal aid societies are available to you at the place where the proceeding is pending.

   Name:

   Address:

   The documents listed in Part III are being furnished to you so that you may better understand and defend your interests.

II. FOR INFORMATION FROM JUDICIAL OR ADMINISTRATIVE AUTHORITY

To:

(Name and address of the judicial or administrative authority)

You are respectfully requested to furnish the undersigned authority with the following information:

* Delete if inapplicable.

The documents listed in Part III are being furnished to you to facilitate your reply.

* Delete if inapplicable.

---
ANNEX TO THE ADDITIONAL PROTOCOL TO THE INTER-AMERICAN CONVENTION ON LETTERS ROGATORY

FORM C

CERTIFICATE OF EXECUTION

To:

(Name and address of judicial or other adjudicatory authority that issued the letter rogatory)

In conformity with the Additional Protocol to the Inter-American Convention on Letters Rogatory, signed at Montevideo on May 8, 1979, and in accordance with the attached original letter rogatory, the undersigned Central Authority has the honor to certify the following:

A. That one copy of the documents attached to this Certificate has been served or delivered as follows:

Date:

At (Address)

By one or the following methods authorized by the Convention:

1. In accordance with the special procedure or additional formalities that are described below, as provided for in the second paragraph of Article 16 of the above-mentioned Convention, or

2. By service personally on the identified addressee or, in the case of a legal entity, on its authorized agent, or

3. If the person or the authorized agent of the entity to be served was not found, in accordance with the law of the State of destination: (Specify method used)

---

1 Complete the original and one copy in the language of the State of destination.

* Delete if inapplicable.
B. That the documents referred to in the letter rogatory have been delivered to:

Identity of person

Relationship to the addressee (Family, business or other)

C. That the documents attached to the Certificate have not been served or delivered for the following reason(s):

D. In conformity with the Protocol, the party requesting execution of the letter rogatory is requested to pay the outstanding balance of costs in the amount indicated in the attached statement.

Done at _________________ the ______ day of ______ 20____

Signature and stamp of Central Authority of the State of destination

Where appropriate, attach originals or copies of any additional documents proving service or delivery, and identify them.

* Delete if inapplicable.
Service by International Registered Mail

- Service by Registered or Certified Mail, Return Receipt Requested, is an option in many countries in the world. F.R.C.P. 4(f)(2)(C) provides that this method of service may be used unless prohibited by the law of the foreign country.

- U.S. courts have held that formal objections to service by mail made by countries will be honored.
Personal Service by Agent

- For personal service permitted in a particular country, the most expeditious method may be to retain the services of a foreign attorney or process server. (F.R.C.P. 4(f)(2)(C).)

- The attorney or agent may execute an Affidavit of Service at the nearest U.S. Embassy or Consulate or before a local foreign notary.
Waiver of Service

- Waiver of service may also be a viable option. (FRCP 4(d).)
- This may not be a valid method of service under the laws of the foreign country.
- May create an enforcement of a U.S. judgment issue.
Foreign Sovereign Immunities Act

- Service of process on foreign states and foreign state-owned agencies and instrumentalities is governed by the Foreign Sovereign Immunities Act ("FSIA").
- If all of the methods of service provided for by the FSIA have failed, U.S. Embassies will serve a summons, complaint and notice of suit or a default judgment on a foreign government. (28 U.S.C. 1608(a)(4); 22 C.F.R. 93.)
Taking of Evidence Abroad
General Procedures for the Taking of Evidence Abroad

- The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (“Hague Evidence Convention”) procedures may be used to gather evidence located in a country that has signed and ratified the Hague Evidence Convention.

- Approximately 62 states are parties.
General Procedures for the Taking of Evidence Abroad [cont’d.]

- The Hague Evidence Convention outlines two distinct procedures for acquiring evidence:
  - Chapter I involves Letters of Request, whereby a court would send a letter of request to foreign authorities and a foreign judge would oversee discovery in the foreign country. This procedure can be time-consuming and expensive.
  - Chapter II allows for the appointment of a private attorney in the foreign country to serve as the commissioner and oversee production in the foreign country. The commissioner procedure is available for document requests and depositions. This can be an expedient process that can be authorized quickly in some countries.
General Procedures for the Taking of Evidence Abroad [cont’d.]

- Two-Step commissioner procedure:
  - Court appoints a commissioner and seeks formal authorization from the foreign country ministry of justice for the appointment.
  - Commissioner may not be a party, relative, employee or attorney.
  - The appointment may impose conditions on the appointment particularized to the specific case and may maintain the default method of gathering evidence “in accordance with the laws of the State of Origin” or impose some narrower standard.
Letters Rogatory

- Also known as a letter of request, a letter rogatory is a formal request from a court in one country to "the appropriate judicial authorities" in another country, used to request compulsion of testimony or documentary or other evidence or to effect service of process and enforcement of judgment.
Letters Rogatory Requirements

- Signed by a Judge
- Must be translated into the official language of the foreign country.
  - The translator should execute an affidavit as to the validity of the translation before a notary
- Fee via certified check
Inter-American Convention on Letters Rogatory

- Applies in Civil and Commercial cases
  - For service of process, summons or subpoenas abroad
- Replaces traditional letter rogatory process
- Required Form
  - Signature of Clerk of Court required
- The U.S. Department of Justice is the Central Authority.
  - Requests from the United States are transmitted via a private contractor carrying out the service functions of the U.S. Central Authority on behalf of the Department of Justice.
Mexico Example: Central Authority Procedure

1. Issuance of Letter Rogatory by requesting authority

2. Send to Central Authority
   U.S. Department of State
   (Process Forward International)

3. U.S. Department of State Verifies the LR. If satisfies all Requirements it is forwarded to Mexico’s Central Authority - Ministry of Foreign Affairs

4. Letter Rogatory is received by the Proper Judicial Authority, who executes it, Returns it to Mexico Central Authority.

5. Letter Rogatory is received by Mexico’s Central Authority and Forwarded it to the proper judicial Authority in the Republic of Mexico
Mexico Example: Judicial Channels Procedure

- Issuance of Letter Rogatory by requesting authority
- Letter Rogatory carried by the interested party to the proper judicial authority in Mexico
- Letter Rogatory is received by Mexico’s Judicial Authority and processed through the clerk of the courtroom
Court Forms – Example

- Ex Parte Application for Issuance of Letter Rogatory for Service of Process Abroad; Order
Ex parte Application for Issuance of Letter Rogatory

Application is hereby made for an order directing issuance of a letter rogatory for service of process abroad. Applicant requests that the summons, petition and accompanying documents in this action be served on respondent in Mexico with the assistance of appropriate judicial authorities. In support of this application the undersigned states:

1. The petition was filed on __________, and summons was issued on that same date.
2. Respondent is a proper party to this action.
3. Respondent’s last known address was ______________________, Mexico.
4. Respondent cannot be served by any other method because ______________________.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: ________________________________ Petitioner

ORDER FOR ISSUANCE OF LETTER ROGATORY

On reading petitioner’s application for this order, and it satisfactorily appearing to me that respondent cannot with reasonable diligence be served in any other manner specified in Code of Civil Procedure §§ 415.10 through 415.40, and that a cause of action exists in favor of petitioner against respondent, and that respondent is a proper party to this action, IT IS ORDERED that a letter rogatory issue requesting international judicial assistance in serving the summons, petition and accompanying documents on respondent in Mexico.

Dated: ________________________________ Judge of the Superior Court

Ex Parte Application and Order Letter Rogatory Service Abroad

PL-12(Optional)
The facts of the case pending before the requesting court are as follows: On ____________, a petition to establish parental relationship with the minor child ____________, born ____________, was filed by ____________, Petitioner, against ____________ Respondent, in the ________ County Superior Court, and was assigned Case No. _________. The address of Petitioner ____________ is ____________.

The undersigned judicial authority has the honor to transmit the documents listed below in duplicate, and requests prompt service of process of one copy thereof on Respondent ____________, at the address of ____________, Mexico. The undersigned judicial authority further requests the service be carried out in the following manner: (a) By personal service on the identified addressee, (b) If personal service is not possible, in accordance with the law of the State of destination.


This court further requests that the judicial authority of the State of destination return to this court an executed Certificate of Execution, as attached hereto. The requesting Court agrees to willingly provide similar assistance to the judicial authorities of the Receiving State, Baja California, Mexico.

Dated: ____________

_________________________, Presiding Judge
Superior Court of California, County of Imperial
Absence of Convention - Federal Court

- Title 28 U.S.C. §§ 1781 and 1782
  - Transmittal of Letters Rogatory through the Department of State and through the district court.
  - Requests for issuance of Letters in a pending civil case are forwarded to the assigned district judge, who may refer them to the discovery magistrate judge.
Jeffery J. Daar

- International Litigation and Arbitration track record for more than 20 years.

- Positions include:
  - Principal of Daar & Newman, P.C., Los Angeles
  - Past Chair, International Law Section of the State Bar of California
  - Past Chair, International Law Section of the Los Angeles County Bar Association
  - Chair, Consulegis International Litigation and Arbitration Specialist Group
  - Former Commissioner, Board of Airport Commissioners for the Los Angeles World Airports

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