

“WORKING THE CASE WHEN A PARTY IS IN MEXICO” A Survival Guide for IV-D Agencies

INTRODUCTION

The following is designed to assist caseworkers when one or more parties to a case are in Mexico. These cases can be broken down into two categories:

1. Applicant/Petitioner in Mexico. The Applicant/Petitioner resides in Mexico, the services requested are to establish parentage or to establish, enforce or modify a support order; and the case has been received by

A) **Direct application** for services requested by an individual party in Mexico, or

B) **Referral** from:

(1) the Federal Mexican Support Enforcement Agency [Secretaría de Relaciones Exteriores, Dirección General de Protección y Asuntos Consulares, Oficina de Derecho de Familia (SRE)]; or

(2) a reciprocating Public Mexican State Support Enforcement Agency [Procurador General de Justicia (PGJ); Ministerio Público (MP); or Sistema para el Desarrollo (or Defensa) de la Familia (DIF)]; or

(3) a reciprocating Non-Governmental Organization (NGO) such as the International Institute for Reciprocal Family Assistance (IIRFA) or the Centro Internacional para la Ayuda de la Niñez (International Center for Assistance to Children) (CIAN) ¹

2. Respondent in Mexico. The respondent resides in Mexico and the services requested are to establish parentage or to establish, enforce or modify a support order by:

A) Case initiation to the SRE or NGO; or

B) Exercise of Long Arm Jurisdiction and Notice or Service of Process upon the

¹ IIRFA and CIAN emerged from the federally funded Niños Primero State Improvement Project. It is a collaborative effort by private attorneys, DIF and various law schools in Mexico to help manage the growing international child support caseload involving parties residing in Mexican and U.S. states. IIRFA handles both initiating and responding cases, provides translation and limited locate services, can assist in obtaining service of process in OAG long-arm cases, has a U.S. address for correspondence and a U.S. bank account for transmission and receipt of collections by EFT/EDI.

Respondent in Mexico.

1. APPLICANT/PETITIONER IN MEXICO

A. DIRECT APPLICATIONS FROM MEXICO

COMMON QUESTION: Do we have to take a direct application from a Mexican citizen who has called, written, or shows up in our office?

Answer: Yes, but..... In January, 1999, the Federal Office of Child Support Enforcement (OCSE) issued its interpretation of the federal regulations pertaining to the subject of direct applications. According to OCSE, IV-D agencies are encouraged to establish reciprocal arrangements with foreign countries and must provide appropriate services to “anyone, anywhere”, including a resident of a foreign country who wants services provided directly to him/her - rather than indirectly - that is, by way of a support enforcement agency (SEA) which has *initiated* his/her request to the responding IV-D agency. The entire text of OCSE PIQ 99-01 is set forth in the RELEVANT LAWS section.

Best Practice: While allowing direct applications in foreign country cases, it is recommended that caseworkers inform potential direct applicants of the services available (if any) from Mexican agencies, primarily the SRE or IIRFA-CIAN. These agencies are well versed in the procedures to follow and forms to use in order to successfully initiate cases to the OAG.

Best Practice: IIRFA-CIAN has made arrangements with Mexican banks to provide low cost ATM accounts for Mexican obligees to which direct deposits of collections by the OAG will be routed by IIRFA’s U.S. financial institution. **The administrative, banking and conversion costs for cross border electronic payment processing are approximately one half the costs of converting paper U.S. dollar checks in Mexico.** All payments made via the SRE’s U.S. based Consulates are paper U.S. dollar checks.

If the individual elects to make a direct application, IV-D services should be made available.

Best Practice: Encourage direct applicants from any foreign country to **establish and utilize U.S. mailing addresses and open ATM accounts** at U.S. financial institutions. In many states, applicants can make arrangements to receive direct deposit of collections to their U.S. financial institutions from the IV-D State Disbursement Unit (SDU). Applications for direct deposit services may be obtained from the SDU. **Without a U.S. address, the direct applicant may not get automated mail because most systems have not been**

programmed to meter foreign postage rates.

B. REFERRALS FROM THE SRE, STATE AGENCIES OR NGOs.

Common Questions: Ok, so we have to accept direct applications. Do we have reciprocity with Mexico, i.e., do I have to work these cases their federal or state agencies or non-governmental organizations send me?

Answer: Yes and No. Mexico has not been declared a Foreign Reciprocating Country by the U.S. Department of State with concurrence by the U.S. Department of Health and Human Services. Federal negotiations have stalled over Mexican state laws and customs requiring the physical presence of petitioners in parentage establishment cases.² However, in 1992, the Mexican Minister of Foreign Affairs declared reciprocity with U.S. states on behalf of the Federal District and all Mexican States except Mexico, Sinaloa, Durango, Baja California Sur and Oaxaca. The entire text of the Mexican Declaration of Reciprocity with U.S. states appears in the RELEVANT LAWS section.

Some states (CA) treat Mexico like a Foreign Reciprocating Country because of its reciprocity declaration with the U.S. and because Mexico has continued to negotiate with the U.S. for a federal level arrangement. Other states (FL) do not consider Mexico to be a reciprocating country despite the SRE declaration because Mexico has not adequately responded to their requests for services.

Most cases initiated by the SRE request that a support order be established and enforced against a non-custodial parent thought to be residing in the responding state.³ Incoming Mexico (and all other foreign) cases are routed to the ICS for assessment, locate and case initiation. The SRE requests that correspondence be sent c/o specified Mexican Consulates in Texas. **Pursuant to Mexican law, the SRE cannot be the payee on collections.**

2. RESPONDENT IN MEXICO

A. CASE INITIATION TO THE SRE

Common Question: Will Mexico work the cases I send them?

² 42 U.S.C.659 A (a) requires a Foreign Reciprocating Country to have established, or undertake to establish, procedures to establish parentage and support orders; enforce the orders and remit collections to the U.S.; have a central authority to facilitate the cases and ensure compliance with the standards of the arrangement; and provide all services without cost to U.S. applicants.. The statute allows the Secretaries of State and Health and Human Services to establish additional standards - one of which has been to insist that applicants not be required to travel to the country in order to receive services.

³ Historically, Mexico has transmitted very few requests to enforce existing orders and more rarely transmits request to establish parentage. The vast majority of responding cases involve married/separated parties and the respondent is the non-custodial parent who is residing and working in Texas.

Yes and No. Yes, IIRFA will work the cases you send to Nuevo Leon and some other Mexican States. No, SRE will not (so far).

As mentioned above, despite the 1992 SRE Declaration of Reciprocity, U.S. states have not enjoyed successful case initiation to Mexico. U.S. requests are sent to the SRE which, in theory, sends its attorneys to the state court where the respondent resides, or forwards the cases to attorneys of the PGJ, MP, or DIF, who, in theory, file an enforcement action in the Family Court nearest the obligor's residence. In May, 2000, SRE reported that it had received 942 cases from the U.S.. None of these cases has been sent to state courts for enforcement. Three factors impede the processing of incoming child support cases in Mexico:

- 1) SRE also handles Hague Child Abduction cases which have a higher priority than support cases - and tax the agency's limited resources.
- 2) Files initiated by the US lack sufficient information, need translations or lack authentication by Apostille in accordance with the Hague Legalization Convention.
- 3) In addition to child support cases, state DIF organizations manage child and spousal welfare and protection cases which also have a higher priority..

B. CASE INITIATION TO IIRFA-CIAN

To initiate a case to IIRFA-CIAN, Custodial Parents are required to give **formal power of attorney** to IIRFA-CIAN's lawyers to prosecute the civil action and to have standing to cause criminal proceedings for abandonment to be prosecuted by the state Public Ministry. A special **Letter Rogatory** must be signed by the issuing tribunal, requesting that its order be enforced in Mexico. The Power of Attorney, the Letter Rogatory and the order to be enforced must be authenticated by Apostille from the Secretary of the initiating U.S. State. Copies of the Power of Attorney and Letter Rogatory are in Appendices IV and V, respectively. All documents must be translated, however, **translations by U.S. translation services are generally not acceptable to Mexican tribunals**. Translations must be done by translators certified by the Mexican tribunals. IIRFA arranges the translations (which turn out to be considerably less than the vendor's cost).

Best Practice: For practical purposes, to ensure the greatest opportunity for success, and to fairly test cross border procedures as they develop send each other only cases with a good opportunity for success, namely:

- 1) Respondent's location is known and readily verifiable
- 2) Respondent is gainfully employed or has attachable assets
- 3) Respondent is a citizen, legal resident or documented alien in Mexico.

C. LONG ARM JURISDICTION - NOTICE OR SERVICE OF PROCESS UPON

THE RESPONDENT IN MEXICO.

Common Question: We have long arm jurisdiction.. Can I serve somebody in Mexico with a private process server or do I have to get those special forms and serve in accordance with a Convention?

Answer: It depends on whether or not you want Mexico to recognize the order. If so, you will need to serve the respondent under either of two service conventions:

- 1) The Inter-American Convention on Letters Rogatory which Mexico ratified March 27, 1978.
- 2) The Hague Convention of November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, effective June 1, 2000.

Both conventions designate a central authority in the Ministry of Foreign affairs to send service requests on special forms. Mexico made several reservations and declarations upon joining these conventions, including the requirement that both the forms and documents to be served be translated into Spanish.⁴ Various cases have ruled on whether or not use of these conventions are the “exclusive” method of serving process in member countries.⁵ However, service of process by private Mexican attorney is a widespread, accepted practice in Mexico. **Therefore, if the goal is not recognition of the resultant order by a Mexico tribunal, but rather enforcement of the order by a U.S. tribunal, then private service should be pursued.**

Best Practice: The U.S. Department of State has an excellent website containing country specific information for obtaining judicial assistance abroad at: http://travel.state.gov/judicial_assistance.html#service A recent printout for Mexico is in Appendix IV.

⁴ The text of the conventions and reservations by Mexico can be found at <http://www.oas.org/> & <http://www.hcch.net/e/status/stat14e.html#mx>

⁵ *Volkswagenwerk AG v. Schlunk*, 486 U.S. 694 (1988). See also *Krierman v. Casa Veerkamp*, 22 F.3d 634 (5th Cir. 1994) *cert. denied*, 115 S. Ct. 577 (1994).