

**Community of Practice for Family Law  
Attorneys Representing Immigrant Survivors**

**International Service of Process**

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The following slides are intended to be a guide to lead our discussion on this topic and to provide substantive material for your future reference.



# Agenda

- Discussion of Service of Process outside the United States

**When have you  
encountered the need to  
serve papers to  
defendants who are not  
in the United States in  
your practice?**



# Laws and Treaties That Govern Service of Process Outside the United States

- The 1965 Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Hague Service Convention).
- The Inter-American Convention on Letters Rogatory and its Additional Protocol (Inter-American Service Convention or IASC).
- FRCP 4.
- US state law.
- The Foreign Sovereign Immunities Act (FSIA).

# Hague Service Convention

The main issues for counsel to consider when attempting to serve process under the Hague Convention are:

- The types of lawsuits the Hague Service Convention covers
  - *It applies only to Civil or Commercial Matters and*
  - *It applies only when Defendant's address is known.*
- Whether the Hague Convention provides the exclusive means of service in contracting states.
- Whether contracting states can place limits on how process is served within their borders.
- The proper methods for serving process under the Hague Convention.

# Methods of Service Under The Hague Service Convention

The Hague Service Convention codifies universally accepted procedures for service of process in civil or commercial matters among the signatories and eliminates the need to serve process through consular or diplomatic means. It provides three main alternate methods for service:

- Use of the country's designated Central Authority.
- International postal channels (service by mail).
- Direct service through an agent in the foreign country.



# Other Options for Service

The Convention also allows for:

- Service through diplomatic or consular channels.
- Service under the destination state's local rules.

# Service Through the Central Authority

Article 2 of the Convention requires each signatory to designate a Central Authority to act as the service agent for process served under the Convention. Although service through a Central Authority is not required in many countries, litigants commonly choose to effect service through this method. For country-specific information, please visit:

<https://travel.state.gov/content/travel/en/legal-considerations/judicial/country.html>

# Complying With The Hague Convention for Service of Process

If a country is a state party to the Hague Convention on International Service, then service must comply with the Convention. The Hague Convention is incorporated in Federal Rule of Civil Procedure 4(f).

Please note: **Guatemala, Honduras, and Ecuador are NOT parties to this Convention**, which means that your state's service of process rules should control.

**India, Mexico, El Salvador, and the Dominican Republic ARE** a state party to the Convention.

<https://www.hcch.net/en/instruments/conventions/status-table/?cid=17>

# Service Through the Central Authority

- Article 3 of the Convention states that litigants who want to serve through the Central Authority, must file a formal request form. In the US, litigants file a *Form USM-94*, available from any office of the US Marshal's Service.
- Article 5 states that initial documents such as the summons and complaint must be translated into the official language of the foreign country.

# Time Frame to Effectuate Service

The Convention does not give a time frame for service. However, Article 15 provides that alternative methods of service may be used if a Central Authority does not respond within six months of a request for service. Because the Convention does not provide a time for making service under its procedures, FRCP 4(m) exempts service in a foreign country from the normal requirement that a summons and complaint be served within 120 days after commencing the action. But a court may dismiss a case for failure to serve a foreign defendant within a reasonable time.

# Service Cost of Central Authority

Under Article 12, the party seeking service through a Central Authority must pay or reimburse the costs incurred by the Central Authority in:

- Using a judicial officer or other person to serve the documents.
- Using a particular method of service.
- The destination state, however, may waive this requirement.

# Service Through Postal Channels

Article 10(a) of the Convention preserves the right of litigants to effect service of judicial documents between signatory states through mail, provided that the state of destination does not object. In *Water Splash, Inc. v. Menon*, 581 U.S. 271 (2017), the United States Supreme Court held that service by mail is permitted provided that:

(a) the receiving country has not objected to service by mail; and (b) service by mail is authorized under otherwise applicable law.

# Registered or Ordinary Mail

When attempting service by mail, the better practice is to serve by registered mail.

To determine whether registered mail service exists in a specific country, check the US Post Office's *International Mail Manual: Index of Countries and Localities*

<https://pe.usps.com/text/imm/immctry.htm>



**Have you served  
documents by  
registered mail? If so,  
how successful were  
you?**



# Potential Risks of Service by Mail

Even where permitted, service by mail creates potential risks. If a defendant did not have actual knowledge of the process through no fault of his own, for example, where the mail was not delivered, got lost or was misdirected, he may be able to vacate a default judgment.

# Translation of Documents

Papers must be translated if serving through a Central Authority under Article 5. However, it is not clear if translation is necessary when serving by mail. Standard practice is to have at least the summons and complaint translated into the official language of the foreign country. Otherwise, the defendant may be able to successfully argue that he did not receive fair notice of the lawsuit.

# Direct Service Through an Agent in the Foreign Country

- Although service by private courier or agent is not specifically addressed under Article 10 of the Convention, a Special Commission of the Convention stated in 2003 that service through private courier is the equivalent of service through mail.

# Service Through Diplomatic or Consular Channels

- Article 8 of the Convention authorizes a contracting state to use its consular or diplomatic agents to serve judicial documents on persons located abroad. Article 9 authorizes contracting states to use consular or diplomatic channels to forward documents to the authorities of another contracting state for service. However, US litigants usually do not serve because officers of the US Foreign Service are normally prohibited from serving process or legal papers or appointing other persons to do so.

# Service Under the Foreign Country's Local Rules

- Article 11 provides that contracting states may allow judicial documents to be served by any means not specifically set out by the Convention. Article 19 provides that the Convention does not affect a contracting state's internal laws permitting foreign documents to be served within that state by methods other than those set out in the Convention.

# Waiving Formal Service Under FRCP 4(d)

If a foreign defendant agrees to accept service voluntarily, the US plaintiff should consider proceeding under Rule 4(d) of the FRCP, which permits defendants to waive formal service of process.

Waiving formal service of process can benefit both the plaintiff and the defendant. For example:

- The plaintiff benefits by avoiding the costs associated in translating and serving documents under the Hague Convention or other applicable laws.
- The foreign defendant who agrees to waive formal service benefits by having 90 days to respond to the complaint, instead of the standard 21 days under Rule 12 of the FRCP (*FRCP 4(d)(3)*).

# Service Under U.S. State Law

If the lawsuit is pending in a US **state** court, the plaintiff must look to the relevant state's service of process rules. Many states have specific rules governing extraterritorial service of process. For example, some states allow process to be served outside of the state in the same manner as service is made within the state. Counsel should always check to see if a particular state's service methods are prohibited under the law of the foreign country.



# States Civil Procedure Rules

Most states have similar service of process rules that require service upon “natural persons,” and permits service by any of the following methods:

- personal service (handing the documents to the respondent),
- delivering the documents to be served upon a person of “suitable age and discretion” (over age 18) at the respondent’s home or place of business, *and* by mailing the same documents to the respondent’s home or place of business;
- delivering the documents to the respondent’s agent for service; or
- service in another manner permitted by the judge.

# States Civil Procedure Rules

- Look to your specific state rules to effect service.

In Michigan:

Rule 2.105 Process; Manner of Service

(A) Individuals. Process may be served on a resident or nonresident individual by

- (1) delivering a summons and a copy of the complaint to the defendant personally; or
- (2) sending a summons and a copy of the complaint by registered or certified mail, return receipt requested, and delivery restricted to the addressee. Service is made when the defendant acknowledges receipt of the mail. A copy of the return receipt signed by the defendant must be attached to proof showing service under subrule (A)(2).

# States Civil Procedure Rules

(B) Individuals; Substituted Service. Service of process may be made

(1) on a nonresident individual, by

(a) serving a summons and a copy of the complaint in Michigan on an agent, employee, representative, sales representative, or servant of the defendant, and

(b) sending a summons and a copy of the complaint by registered mail addressed to the defendant at his or her last known address;

(2) on a minor, by serving a summons and a copy of the complaint on a person having care and control of the minor and with whom he or she resides;

(3) on a defendant for whom a guardian or conservator has been appointed and is acting, by serving a summons and a copy of the complaint on the guardian or conservator;

# NIWAP Resources

The NIWAP Summary of Service Rules chart reports on all of the service of process options when a party is out of the state or abroad by family court case type including alternative service requirements in all 50 states and DC:

- <https://niwaplibrary.wcl.american.edu/pubs/family-law-summary-of-service/>

Service of Process in SIJS cases explains the common forms of service of processes, service of processes under the Federal rules of civil procedure, service under the Hague convention and service under the Inter-American service convention.

- <https://niwaplibrary.wcl.american.edu/pubs/chapter-vii-service-of-process-in-sijs/>

# Other Resources

- <https://travel.state.gov/content/travel/en/legal-considerations/judicial/country.html>

# Discussion



# Technical Assistance and Materials

- NIWAP Technical Assistance:
  - Call (202) 274-4457
  - E-mail [info@niwap.org](mailto:info@niwap.org)
  - Web Library:  
[www.niwaplibrary.wcl.american.edu](http://www.niwaplibrary.wcl.american.edu)
  - Directory
    - <https://niwaplibrary.wcl.american.edu/home/directory-programs-serving-immigrant-victims/>
- Materials for this COP:
  - <https://niwaplibrary.wcl.american.edu/family-law-cop-materials-repository/>

# Case Rounds: How Can The Group Help You!



Issues in current cases you want  
to discuss with the group?





# Next Community of Practice Call

- Tuesday, April 22, 2025



Thank you!