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International Exploration Closer to Home: Working Cases With Mexico

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Imperial County California Child Support

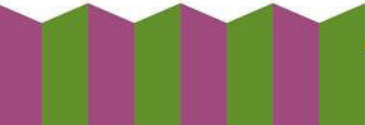
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Registration and Enforcement of Family Foreign Judgments in Mexico

Guillermo Fernandez



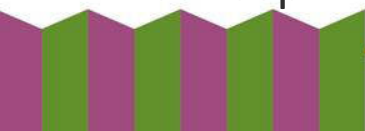
Introduction

- o Comparative law
- o Mexico is a civil law system
- o U.S. is a common law system
- o Base on these differences many situations may arise where the same legal term has different meanings, or where different legal terms have same legal effect
- o This can often cause confusion to self represented litigants, lawyers, and judges.
- o This presentation will not deal with a theoretical examination of the differences between common law and civil law systems, but will focus on the similarities of both systems.

Legal terms and concepts

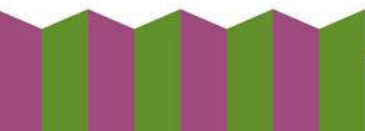
UNITED STATES:	MÉXICO:
<ul style="list-style-type: none"> ○ Child Support ○ Spousal Support ○ Support of an Adult Child ○ Support of Parents ○ Legal and Physical Custody ○ Community and Separate Property ○ Parentage 	<ul style="list-style-type: none"> ○ Pensión Alimenticia (alimony or family support) ○ Patria Potestad y Custodia ○ Bienes Mancomunados y Separados ○ Paternidad

Note: In Mexico “alimony”, refers to food, clothing, medical attention, health insurance, housing, and living expenses, etc., combined into one concept.



Legal Terms & Concepts cont'd.....

UNITED STATES:	MÉXICO:
<ul style="list-style-type: none"> ○ Registration of Out of State Support Order ○ Registration of Out of State Custody Order ○ Income Withholding Order ○ Letter Rogatory or Letter of Request 	<ul style="list-style-type: none"> ○ Homologación de Sentencia Extranjera ○ Retención de sueldo ○ Carta Rogatoria u Oficio Exhortatorio



Laws regulating the Recognition and Enforcement of Foreign Judgments

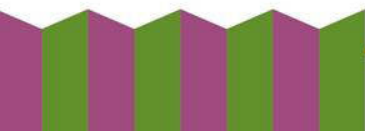
- Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards.
- Inter-American Convention on Jurisdiction in the International Sphere for the Extraterritorial Validity of Foreign Judgments.

If the Country issuing the order is not a signatory Country

- o Mexico may not be bound to enforce the Judgment (unless there is international commitment).
- o Mexico's procedural laws will set the standards for recognition.
- o If only registration is being sought, one should first consider the local laws of the Code of Civil Procedure of the particular Mexican state where registration is being sought (e.g., Baja California, Sonora, Chihuahua, Jalisco, Michoacán, etc.)
- o If enforcement and execution is being sought, a Letter Rogatory must conform with the rules set forth in the Mexican Federal Code of Civil Procedure

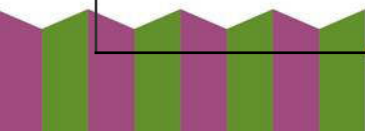
International Reciprocity in Registration and Enforcement of Foreign Judgments

- The theory of reciprocity posits that the courts of Country A should recognize and enforce the judgment of Country B if and only if, Country B is prepared to offer similar recognition and enforcement to the judgments of Country A



International Reciprocity between the United States and Mexico

UNITED STATES:	MÉXICO:
<ul style="list-style-type: none"> ○ US Constitution, Article IV: Full Faith and Credit Clause ○ Cal. Fam. Code §§ 3405-3453 ○ Uniform Recognition Divorce Act (Cal. Fam. Code §§2090-2093) ○ UIFSA: Uniform Interstate Family Support Act (Cal. Fam. Code §§4950-4964) ○ Uniform Child Custody Jurisdiction & Enforcement Act (Cal. Fam. Code §§3400-3461) ○ California Code of Civil Procedure (§1913) 	<ul style="list-style-type: none"> ○ Constitución Política de México Artículo 121: Full Faith and Credit Clause ○ Mexico’s International Reciprocity Declaration (see Attachment A) ○ Federal Code of Civil Procedure (Sections 549-571) ○ Code of Civil Procedure for the State of Baja California (Sections 585-594)



International Reciprocity between the United States and Mexico

Note:

- To enforce a foreign judgment in Mexico, the moving party must cite the Federal Code of Civil Procedure
- However, if the intention is only to register the judgment, then state law must be invoked (see attachments B and C)

Conditions for Registration and Enforcement of Foreign Judgments under Mexico's Federal Code of Civil Procedure

In order for a Mexican state court to register and enforce a California Judgment:

- o All requirements for letters rogatory must be satisfied
- o The original court rendering the judgment must have had proper jurisdiction to hear and rule on the matter
- o Service of process on defendant has been properly effectuated
- o No similar case must exist in a Mexican court as result of the same legal action
- o The judgment must not be contrary to Mexican public policy
- o The judgment must fulfill all the formal requirements to be considered authentic (Two step process.)
 - Certification by court officials (clerk)
 - Apostille from the Secretary of State.

Procedure for Registration (Homologación) according to Federal Code of Civ. Procedure

- o The process for “homologación” is considered a summary proceeding
- o Petitions for registration and enforcement of a judgment must be prepared on pleading paper
- o Once a pleading for registration and enforcement is filed, the Respondent must be personally served with a copy
- o Respondent has 9 days to file a response and oppose registration and/or enforcement of the judgment
- o The court will calendar a hearing date for review of the evidence
- o Once the evidence is reviewed, the court will issue a order either granting the registration and/or enforcement of the order

Registration and Enforcement of Foreign Judgments in Mexico

Petition is filed in the Mexican Family law court for registration and enforcement of a foreign judgment known as **“Incidente de Homologación de Sentencias Extranjeras”**

Once a petition is filed, the parties are given a 9 day period to defend against the allegations and file a response

After the Court has reviewed evidence & arguments, the court will issue an order granting or denying registration/enforcement

Appellate process is also available to both parties; notice of appeal must be filed within 5 days

Guidelines for drafting Letters Rogatory

- o Should be written in simple English
- o Should be addressed "To the Appropriate Judicial Authority"
- o Include a brief synopsis of the case, including identification of the parties, nature of the claim and relief sought to enable the foreign court to understand the issues involved
- o State the nature of the assistance requested
- o Include a statement expressing a willingness to provide similar assistance to judicial authorities of the receiving state

Tips regarding parties' names

- o Names of people are composed differently in the US and in Mexico
- o In California, Health and Safety Code §102425 does not prescribe a particular format or guidelines as to any order of the last name(s) of a child

Example:

Father's Name

Gabriel Fernandez Ruiz de Chavez

Mother's Name

Carmen Villalobos Quintero

Child's Possible Names

Guillermo Fernandez

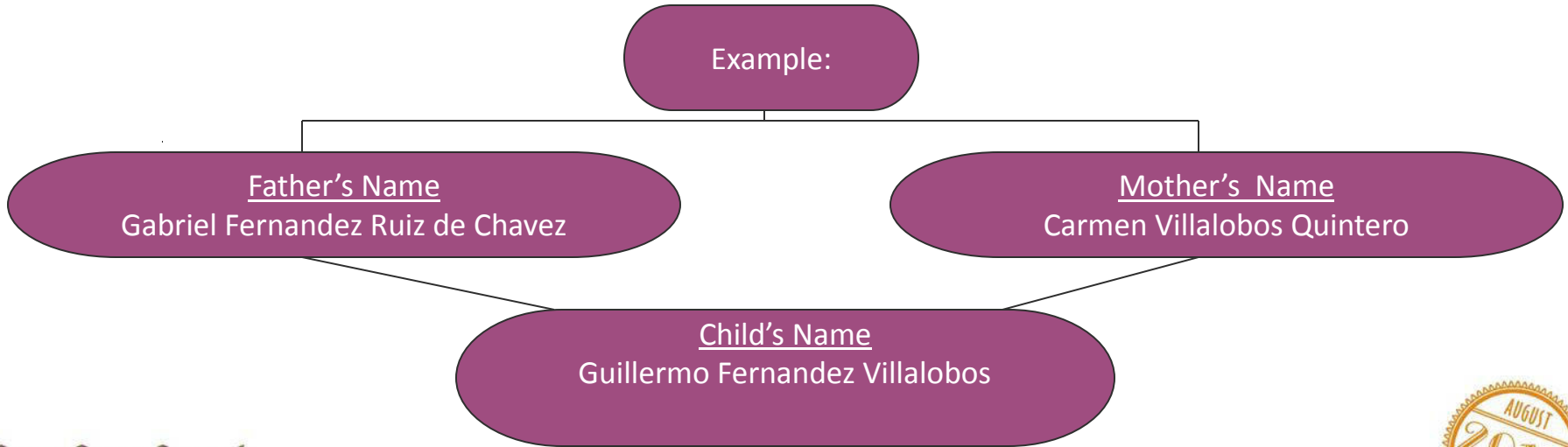
Guillermo F. Villalobos

Guillermo Villalobos

Guillermo V. Fernandez

Tips for parties' names (cont'd)

- o In Mexico, each state's civil code establishes the manner in which the names of natural persons shall be composed:
 - o First name followed by first paternal last name and first maternal last name



Tips on parties' names cont'd.....

- o These differences may create identification problems in that the receiving Mexican court might (mistakenly) believe that the party listed on the Letter Rogatory whom is seeking to enforce and register the judgment is different from the one that is named in the judgment entered by the California Court

- o To avoid any possible misidentification issue, one should enter the party's full name on the Letter Rogatory as well as listing the full name as an "AKA".
Example:
 - o "Guillermo Fernandez" listed on California child support judgment

 - o But "Guillermo Fernandez Villalobos" is full name in Mexico

 - o **Solution: "Guillermo Fernandez aka Guillermo Fernandez Villalobos" should be listed on Letter Rogatory**

Who can assist on Registering and Enforcing a Child Support Order/Judgment in Mexico?

- o DIF (Desarrollo Integral para la Familia)
 - o DIF is the Social Services agency for each state
 - o Each state agency has a prosecution and enforcement unit called “Procuraduría para la Defensa del Menor y la Familia” (Prosecution Unit for the Defense of Minor Children and Families)
 - o Their duty is to provide judiciary assistance and social stabilization for minors, the elderly, and low-income disabled people

- o Ministry of Foreign Affairs (Secretaría de Relaciones Exteriores)
 - o Equivalent of U.S. Department of State
 - o Authority is delineated in the Manual for Collection of Child Support and International Restitution of Minor Children of Mexico's Ministry of Foreign Affairs
 - o National and state DIF offices are charged with processing these cases

Who can assist on Registering and Enforcing a Child Support Order/Judgment in Mexico?

- o State Public Defender's Office in Family Matters (Defensoría de Oficio en Materia Familiar)
- o Private attorney

But what is needed?

- o Letter Rogatory requesting registration and enforcement
- o 1 certified copy of child support order (and extra copy)
- o Name and address of respondent/defendant/obligor
- o Name and address of employer of respondent/defendant/obligor
- o Translation of these documents into Spanish (need not be certified translation)

NCP in Mexico & No Reciprocity



May I close the case? Well...it depends

- 45 CFR CH.III 303.11(B)4: Can close if **(Debtor) locate unknown** and have made diligent Efforts using Multiple Sources over 3 yrs via Automated Locate (if sufficient info to do Auto-Locate) & 1 yr if only lack sufficient info for Auto-Locate
- 45 CFR CH.III 303.11(B)6: The **(Debtor) is a citizen** of and **lives in Mexico**, does not work for the U.S. Federal government or a company with headquarters or offices in the U.S. has **no reachable** domestic income or **assets**; and your State has been unable to establish reciprocity with Mexico **(focus on citizenship, not reciprocity)** If US Citizen, can't close for lack of reciprocity alone.



Long Arm Jurisdiction

Considerations

- Always use Long Arm if you can.
- Is there a **jurisdictional basis to establish** support or parentage over a Respondent in Mexico? UIFSA 2001 §201
- **Is enforcement** of resultant order in **U.S. possible?**
 - (wage withholding, license revocation, property lien)
- Will Mexican Courts **recognize/enforce** the resultant order?

Service of Process in Mexico

- Hague Service Convention
 - Central Authority for Receiving Service Requests
 - MCA: Directorate-General for Legal Affairs, Ministry of Foreign Affairs
 - Form USM-94 (Bilingual English/French)
 - Exclusive (Article 1 & *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694 (U.S. 1988) (but see Article 10)
- Inter-American Convention on Letters Rogatory
 - Central Authority for Sending and Receiving Requests
 - Forms USM-272 (English) & USM-272A (Spanish)
 - Not Exclusive (Article 2 & *Kreimerman v. Casa Veerkamp, S.A. de C.V.*, 22 F.3d 634 (5th Cir. Tex. 1994))

Service in Mexico, Cont'd

These days.....service of foreign process by private attorney in Mexico is expressly prohibited:

- SRE Declaration deposited with Kingdom of the Netherlands in May, 2011, objecting to Article 10 service.
- [OGM, Inc. v. Televisa, S.A., 2009 U.S. Dist. LEXIS 33409 \(C.D. Cal. Apr. 15, 2009\)](#). Use one of the Conventions.

FRCPP 4(f) Serving in a Foreign Country

- Unless federal law provides otherwise, an individual ... may be served ...:
 - (1) **by any internationally agreed means** of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;
 - (2) **if there is no internationally agreed means**, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:
 - (A) **as prescribed by the foreign country's law** for service in that country in an action in its courts of general jurisdiction;
 - (B) **as the foreign authority directs** in response to a letter rogatory or letter of request; or
 - (C) **unless prohibited by the foreign country's law**, by:
 - (i) delivering a copy of the summons and of the complaint to the **individual personally**; or
 - (ii) using any form of mail that the clerk addresses and sends to the individual and that requires a *signed receipt*; or
 - (3) **by other means not prohibited by international agreement, as the court orders.** (Emphasis added)

PFI/ABC Legal Services

- U.S. Central Authority is Dep. of Justice
- DOJ – PFI Contract through Jan. 29, 2015
- PFI is Contractor for ALL incoming service requests
- PFI is Contactor for IAC outgoing requests
- PFI charges \$550 for Hague Service in Mexico
- No charge for Service in Mexico per IAC if you fill out the forms – otherwise \$450

Tracking the “Process of Service”

- PFI-MCA-State SC-Family Court-State SC-MCA-PFI-Clerk of Court
- Telephone from U.S.: 011-52-55-3686-5100 ext 6421 or 6127
- Online: www.sre.gob.mx Under the name “SRE” put your cursor on “Tramites y Servicios” and scroll down and click “Exhorto o Carta Rogatoria Internacional”. In the grey box on the right select “Inicio de Tramites Via Internet”. Click “Continuar” and enter Petitioner’s name in the Promovente box and the Respondent’s name in the Demandado box, and any case number the MCA or State or Local Court have provided you in the Expediente de Juzgado... Box, and then click “Buscar”. If you get a hit, click on “Ver detalle” for the status of the request.

Practice Tips

- Use the Inter-American Convention to serve in Mexico
- Fill out BOTH USM-272 forms (English & Spanish)
- Form A, Pg2 Judicial Authority = Judge or Clerk; Central Authority = PFI
- Form B Part I(D) = time to respond (provide law) I(E) = consequences
- Translate all documents to be served
- Have Translation Certificate Apostilled and translate the Apostille
- Have the Summons/Citation Apostilled
- Make 3 copies of Originals (one is for you)
- Send Original English and Spanish + 2 copies of each to PFI
- Attorney ad Litem for Respondent

But what's happening in Mexico

- Reciprocity was established in the early 90s under URESA/RURESAs with 28 Mexican states (out of 32).
- Reciprocity was never re-established under UIFSA.
- The original cooperation scheme provided for DIF to file the cases in court, once received from the Ministry of Foreign Affairs (SRE). Agreements were signed between SRE and DIF but never executed.

- SRE receives UIFSA petitions directly from CS and files in court
- 95% of petitions received are incomplete:
 - Bilingual forms
 - Notarization
 - Translation
 - Certified court documents

Reciprocity...



COURTESY TRANSLATION

DECLARATION OF RECIPROCIITY FOR THE ENFORCEMENT OF SUPPORT ORDERS

ALL THE COMPETENT STATES AUTHORITIES OF THE UNITED STATES OF AMERICA:

The Mexican Foreign Ministry certifies that the Judicial Authorities of the States of the Federal Republic of Mexico that are listed below, have stated that their civil family laws are reciprocal for the enforcement of support obligations with those States of the United States of America that have enacted the Uniform Reciprocal Enforcement of Support Act (URESAs) or the Reform to the Uniform Reciprocal Enforcement of Support Act (RURESA):

Aguaascalientes	Nayarit
Baja California	Nuevo León
Campeche	Puebla
Chiapas	San Luis Potosí
Chihuahua	Querétaro
Cosahuila	Quintana Roo
Colima	Sonora
Distrito Federal	Tabasco
Guanajuato	Tamaulipas
Hidalgo	Tlaxcala
Jalisco	Veracruz
Michoacán	Yucatán
Morales	Zacatecas


The Mexican Foreign Minister,

Signature.

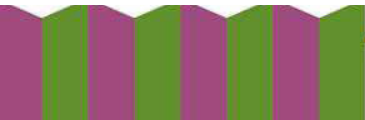
Note: Petitions should be addressed to:
 Secretaría de Relaciones Exteriores,
 Consultoría Jurídica,
 Homero # 213, Piso 17, Col. Chapultepec Morales,
 México, D.F., C.P. 11570 or to the Mexican Consulates in the U.S.

Telephones: 011 (525) 254-73-18 Telefax: 011 (525) 254-73-16
 011 (525) 327-32-18

Contact Persons: Lic. Carlos Pujalte Piñeiro, Deputy Legal Adviser,
 Lic. Eduardo Peña Haller, Coordinator for the Legal Assistance of Mexicans Abroad.



SECRETARÍA DE RELACIONES EXTERIORES



Requirements:

In order to submit the case before the competent Mexican court all of the forms in the UIFSA packet must be completed in Spanish, signed by the applicant and certified by a Notary Public:

“Página de Datos para la Ubicación”

“Petición para el Cobro de Pensiones Alimenticias”

“Declaración Jurada de Pagos y Custodia de los niños”

“Declaración Jurada para Respaldar El Establecimiento de Paternidad”

“Remisión de Documentos Solicitando Colaboración”

“Testimonio General”

Also the following is required:

Proof of expenses (vouchers) for the last two months (glued in white sheets).

Original birth certificate of each dependent child.

Certified copy of the marriage certificate (if applicable)

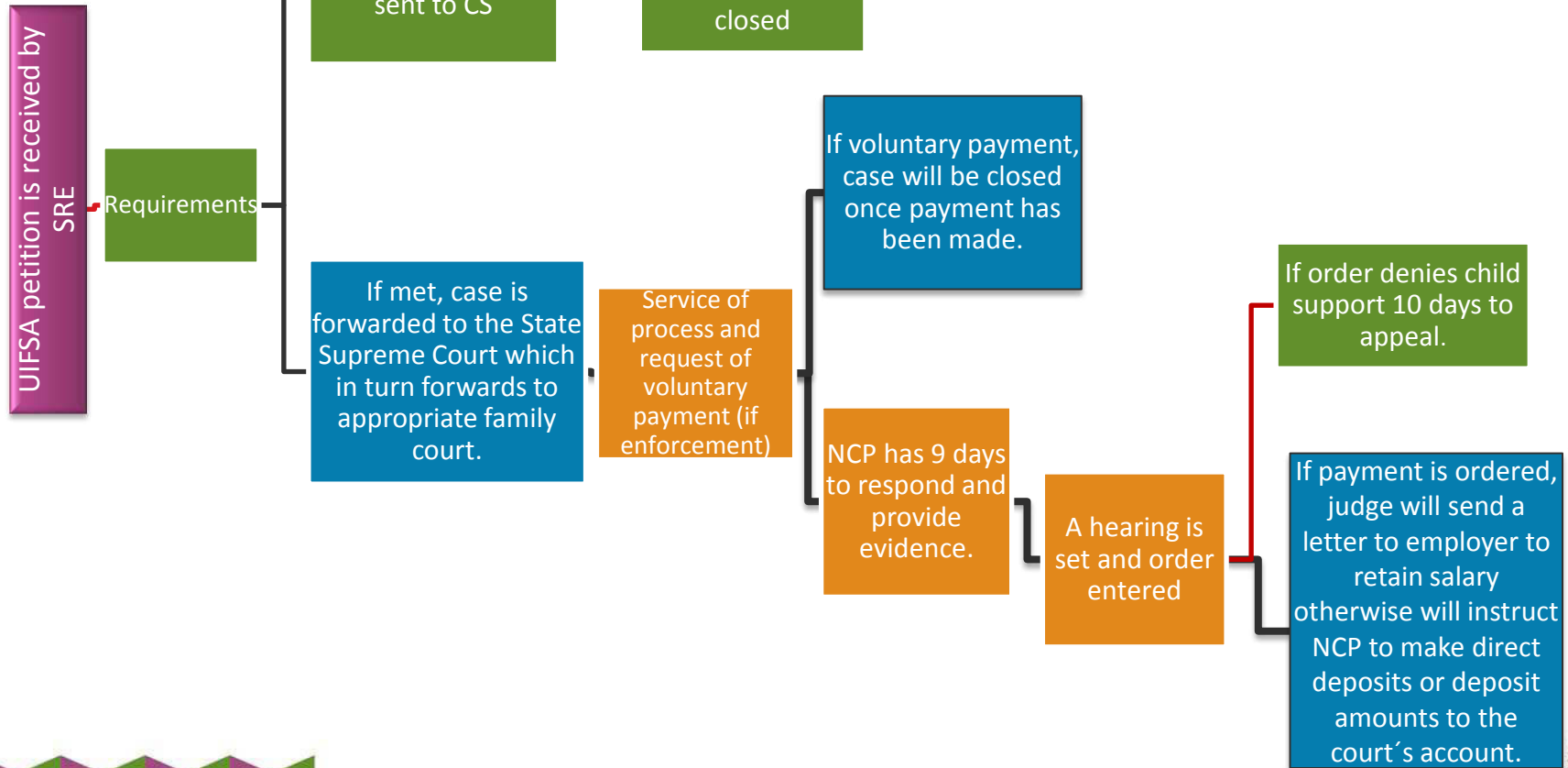
Pictures of each dependent child and of the respondent.

Information to locate the non-custodial parent, home and work address.

If a support order has been entered, a certified copy.

Petitioner's letter addressed to Dirección de Derecho de Familia, Secretaria de Relaciones Exteriores, stating the need for maintenance

All documents must be in Spanish or translated thereto. We need the original packet along with 2 copies of all documents.



Main issues ...

- Location. No clearinghouse.
- Orders in Mexico usually set child support in percentage not total amounts.
- Paternity. If parties are married and/or name of the father in birth certificate paternity has been established.
- Funds transfer. Usually courts require direct transfer or deposit to beneficiary not CS.

Outgoing cases ...

- Consulates as intermediaries
- Direct handling in border states (Cd Juarez-Texas)
- Problems for CPs to cash in checks due to US bank requirements.
- Delays in receiving hearing notices and other paperwork.