

Interplay Between Juvenile and International Law:
Mexican Nationals in Juvenile Dependency Cases
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OJD Training/3-9-16/Justice #7112083

Scope of Presentation

- I. Consular Notification**
 - ☐ *Vienna Convention on Consular Relations* (1963)
 - Scope
 - Implementation

- II. Service of Process**
 - ☐ *Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil and Commercial Matters* (1965)
 - Scope
 - Requirements
 - Application to Juvenile Court Proceedings

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CONSULAR NOTIFICATION

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I. Consular Notification: Vienna Convention on Consular Relations (1963)

- 1. **Scope**
 - Enacted, enforced**
 - Purpose**
 - Signatories**

- 2. **Implementation**
 - Application**
 - ORS 419B.851- Foreign National**
 - Dual citizen**
 - DHS' Memo of Understanding with Mexico**

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VIENNA CONVENTION: SCOPE



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I. Consular Notification: Vienna Convention

1. **Scope**

- Mutual consent treaty enacted on April 24, 1963 and enforced as of March 19, 1967.
- Consists of 79 articles, provides for the establishment of consular offices abroad in member states, outlines duties, obligations, authority, immunity and liability of consular staff.
- 177 member states, including U.S. and Mexico.
- Mexico ratified on June 16, 1965.
- United States ratified November 24, 1969.

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VIENNA CONVENTION: IMPLEMENTATION



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I. Consular Notification: Vienna Convention

2. Implementation- Application

- Article 37- Information in cases of deaths, guardianship or trusteeship, wrecks and air accidents-** Requires that in any case where the appointment of a guardian or trustee appears to be in the interests of a minor who is a *foreign national*, notification of the action be given to the consulate for the child's country.
- Minor child – not defined
- Foreign national- child born in Mexico
- Trustee/guardianship and custody proceedings- includes actions taken pursuant to ORS Chapters 419B, 109 and 125.

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I. Consular Notification: Vienna Convention

2. Implementation- Foreign National

- ❑ 1) a dependency petition is filed; or
- ❑ 2) a request is made to implement a plan other than return to parent
 - for a child who is a *foreign national*, a copy of the petition or motion shall be served on the consulate for the child or ward's country. **ORS 419B.851(3)**
- ❑ ORS 419A.255(12) authorizes disclosure of a petition or motion to the consulate in accordance with ORS 419B.851.
- ❑ Service of the notice on the consulate is mandatory. Form of notice: http://www.dhs.state.or.us/policy/childwelfare/im/2014/cw_im_14_014att.pdf
- ❑ Proof of service is filed with the court and copied to parties.
- ❑ Link to DHS Procedures Manual regarding consular notice- https://www.dhs.state.or.us/caf/safety_model/procedure_manual/ch02/ch2-assessment-section18.pdf

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I. Consular Notification: Vienna Convention

2. Implementation- Dual Citizen

- ❑ If the child is a dual citizen (Mexican and American), neither the convention nor the statute require notice to the consulate, as the child is not considered a foreign national.
- ❑ DHS' procedures manual provides for notice to the consulate with consent of the parent or order of the court.
- ❑ The notice to the consulate under this scenario does not include a copy of the petition or motion, without a court order.
- ❑ Purpose of the notice is to work with Mexico to locate and engage parents and relatives; seek home studies and services; and assist in case planning and placement.

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I. Consular Notification: Vienna Convention

2. Implementation- Memorandum of Understanding

- Between Oregon DHS Child Welfare and Mexico
- Details the understanding between the two nations to comply with the provisions of the Vienna Convention
- Signed in June 2014
- Defines “Mexican minor”
- Establishes notice requirements
- Sets out the 4-page form of notice to be used by Child Welfare
- Link to the Information Memorandum Transmittal detailing the MOU-
https://www.dhs.state.or.us/policy/childwelfare/im/2014/cw_im_14_014.pdf

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SERVICE OF PROCESS



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II. Service of Process: The Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters (1965)*

1. **Scope**
 - Enacted**
 - Signatories**

2. **Requirements**
 - General Rules of Service**
 - Exceptions to the Rules**
 - Effect of non-appearance after service**
 - Summary of service in Mexico**

3. **Application in Juvenile Dependency Proceedings**
 - Case law**
 - Common causes of delay**

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HAGUE- SCOPE



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II. Service of Process: Hague Service Convention

1. Scope

- ❑ Created by the Hague Conference on Private International Law, an intergovernmental agency for the purpose of unifying the rules of private international law.
- ❑ Consists of 31 Articles that govern service of all judicial or extra-judicial documents in civil or commercial matters between Convention signatories.
- ❑ Primary focus is to simplify service of process abroad and to assure that defendants receive timely notice of proceedings.
- ❑ Mexico acceded to the Convention in November 1999, with enforcement in June 2000.
- ❑ **When the Convention applies, the service requirements of the Convention are mandatory and failure to comply with the Convention voids the service.** *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 US 694 (1988).

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HAGUE- RULES OF SERVICE



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II. Service of Process: Hague Service Convention

2. Requirements- General rules of service

- ❑ **Article 1- Address Unknown-** The Hague Service Convention shall **not** apply where the address of the person to be served with the document is not known.
- ❑ **Article 2- Central Authority-** Each contracting state shall designate a Central Authority which will receive requests for service from other contracting states and act in conformity with the provisions of Articles 3 to 6.
- ❑ **Article 4- Objections-** If the Central Authority considers that the request does not comply with the provisions of the Convention, it shall promptly inform the requesting state and specify the its objection to the request.
- ❑ **Article 5- Service and Translation-** The Central Authority or another “appropriate agency” designated by the Central Authority carries out service in accordance with its nation’s laws or by a method requested by the sending state unless the method is incompatible with its laws. The Central Authority may require the document to be translated in the language of the receiving state.

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II. Service of Process: Hague Service Convention

2. Requirements- General rules of service

- ❑ **Article 6- Certificate of Service-** The Central Authority for the receiving State shall complete a certificate of service. The certificate shall state that the document has been served and shall include the method, place, and date of service and the person to whom the document was delivered. If the document was not served, the certificate shall set out the reasons which prevented service. The certificate shall be forwarded to the applicant (requesting party) directly.
- ❑ **Article 7- Official Languages-** The Model Form requesting service shall be completed in English or French and may be completed in the language of the receiving state.
 - ❑ <https://www.hcch.net/en/instruments/conventions/service/model-form> (Hague Model form to request service and certificate)

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II. Service of Process: Hague Service Convention

2. Requirements- General rules of service

The Hague Conference on Private International Law held a workshop in Mexico City on November 28, 2011 and made recommendations to improve the operation of the Convention in Mexico:

- Contracting states have the right to fill out the Model Form in English or French, although they are encouraged to complete it in Spanish. Forms completed in either English or French, compliant with the Convention, must be received and executed by the Central Authority.
- Time limits for responses by the addressees are subject to the laws of the requesting state, not the requested state.
- Pursuant to Article 4 of the Convention, the Central Authority may verify whether a request is compliant with the Convention, but it may not condition compliance on requirements of its own internal law or judicial decisions.

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II. Service of Process: Hague Service Convention

2. Requirements- General rules of service

- Article 4 obliges the Central Authority to promptly inform the applicant if it considers that a request does not comply with the provisions of the Convention, and to specify its objection.
- The Central Authorities are obliged to promptly execute requests that comply with the provisions of the Convention.
- Central Authorities adopt the following practices when handling requests:
 - a) Determine if a request is compliant with the Convention within 30 days of receipt.
 - b) Respond within a reasonable time to enquiries about the status of a request.
 - c) When possible, informal communication should be via email.
 - d) Promptly inform the requesting state if obstacles arise preventing service.
 - e) If service is prevented or not possible, ensure that the certificate of service is completed and forwarded as soon as possible.

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HAGUE- EXCEPTIONS



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II. Service of Process: Hague Service Convention

2. Requirements- 3 Exceptions to the rules of service

- (1) Article 8- Use of Consular Offices-** Each state shall be free, to use its consular agents abroad to effect service of judicial documents upon persons abroad. Any state may oppose such service within its territory. *(Federal regulations prohibit the use of Consular officers for this purpose unless specifically authorized by the State Department. 22 CFR 92.85) (Mexico objects)*
- (2) Article 10(a)- Use of postal channels –** Provided the State of destination does not object, the Convention shall not interfere with the freedom to send judicial documents, by postal channels, directly to persons abroad. *(Mexico objects)*
- (3) Articles 10(b) and 10(c) – Use of Judicial officers-** Provided the State of destination does not object, the Convention shall not interfere with “judicial officers, officials or other competent persons” of the requesting state to work with “judicial officers, officials or other competent persons” of the receiving state to effect service. *(Mexico objects)*

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HAGUE- EFFECT OF NON-APPEARANCE



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II. Service of Process: Hague Service Convention

2. Requirements- Effect of non-appearance after service

- ❑ **Article 15- Entry of order if person does not appear if:**
- ❑ **Proof of service-** Convention provides that a court may enter a judgment upon a party's non-appearance if it receives proof of service in compliance with the Convention.
- ❑ **No proof of service-** Convention provides that a court may enter a judgment without proof of service if all the following are met:
 - a) Document was transmitted by one of the approved Convention methods;
 - b) A period of time of not less than 6 months, considered adequate by the judge in the particular case, has elapsed since the date of transmission of the document; and
 - c) No certificate of any kind has been received even though every reasonable effort has been made to obtain it through the competent authorities of the State addressed.

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HAGUE- SUMMARY OF SERVICE IN MEXICO



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II. Service of Process: Hague Service Convention

2. **Requirements- Summary of service in Mexico pursuant to the Convention:**

- Mexican Consulate and the Mexican Central Authority believe that Convention applies to juvenile dependency proceedings in Oregon.
- Must comply with the Convention when serving in Mexico.
- In accordance with the Convention, service can only be accomplished through Mexican Central Authority.
- Mexico objects to alternate forms of service provided in the Convention- no service by mail or through consular agents.
- Mexico has declared that Convention Model forms addressed to the Mexican Central Authority requesting service must be completed in Spanish.

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II. Service of Process: Hague Service Convention

2. Requirements- Summary of service in Mexico pursuant to the Convention- Dependency and Termination Cases:

- What is required to serve in Mexico pursuant to the Hague Service Convention?
 - Complete the “Request for Service Abroad” form (4 pages) with Spanish translation- form includes applicant’s identity and contact information, and address of the receiving authority, certificate for the Central Authority to complete, notice to the person to be served, summary and description of the documents to be served.
 - Letter of instruction to the Central Authority with Spanish translation along with.
 - 2 certified true copies of the Petition to be served with Spanish translation.
 - 2 certified true copies of Summons with Spanish translation.
 - This process can take 4-6 months before a certificate of service is received from the Central Authority.
 - Link to agreements by Mexico to the Convention- <https://www.hcch.net/en/states/authorities/details3/?aid=267>

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HAGUE- JUVENILE COURT PROCEEDINGS



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II. Service of Process: Hague Service Convention

3. Application in Juvenile Court Proceedings

- ❑ Does the Convention apply to Juvenile court proceedings?
 - Yes.
 - Oregon Appellate court held that parties agreed that the Hague Service Convention applied to juvenile dependency cases and thus service must be made through the Mexican Central Authority. *Dept. of Human Services v. M.C.C.*, 275 Or.App 121 (2015)
 - California Appellate court held that juvenile dependency cases are civil in nature, thus subject to the Hague Service Convention. *In re Alyssa F.*, 112 Cal. App. 4th 846, 852 (2003)

- ❑ Does failure to comply with the Convention void the proceeding?
 - It depends.
 - The Oregon Appellate court held that, father had waived any defects in service for failure to comply with the Hague Service Convention, when he failed to raise any objections until two years into the case, where the father had notice of the proceedings, appeared in the proceedings personally, via telephone, and through counsel. The court went on to say that under Oregon law, "a party claiming that a court lacks personal jurisdiction over the party because of a defect in service must raise that issue at the earliest possible occasion." *DHS v. M.C.C.*, 275 Or.App at 123-24.

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II. Service of Process: Hague Service Convention

3. Application in Juvenile Court Proceedings

- ❑ Does failure to comply with the Convention void the proceeding?
 - The California Appellate court held that a father, residing in prison in Mexico, who appeared in the family law court through his counsel had consented to the court's exercise of personal jurisdiction over him, regardless of the failure of the mother to serve the father in accordance with the provisions of the Hague Service Convention, and affirmed the judgment terminating his parental rights. *In re Vanessa Q.*, 187 Cal. App. 4th 128, 135 (2010)

 - The California Appellate court in *Alyssa F.*, 112 Cal. App. 4th at 854-55, held that despite the fact that the father had indisputably had actual notice of the juvenile dependency proceeding to terminate his parental rights and had generally appeared in the action, this did not cure the defect in service for failure to comply with the Hague Service Convention.

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HAGUE- COMMON CAUSES OF DELAY



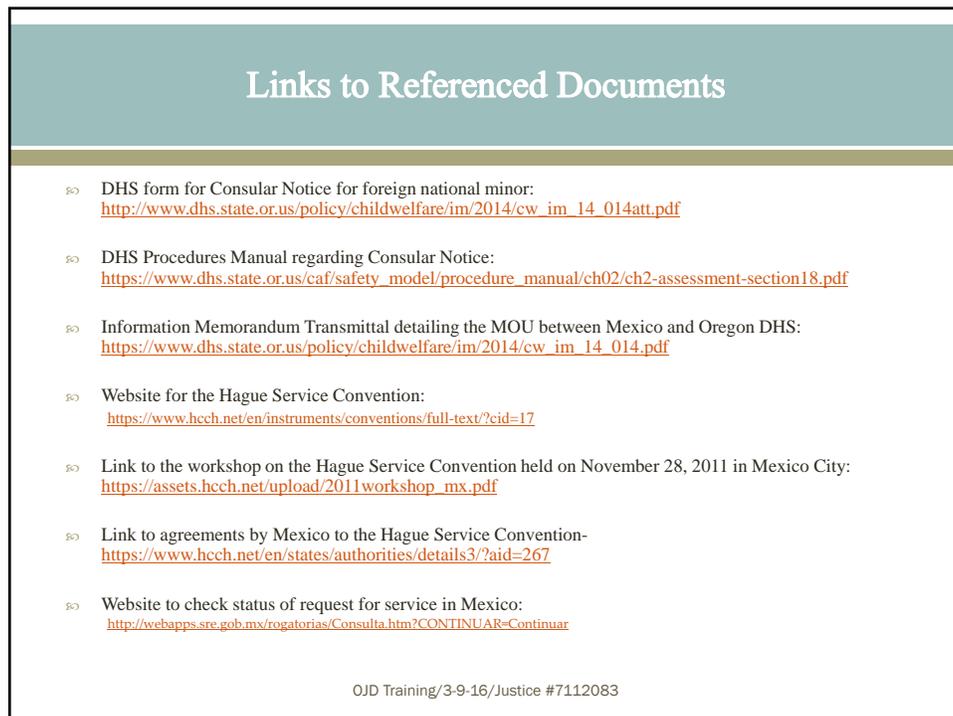
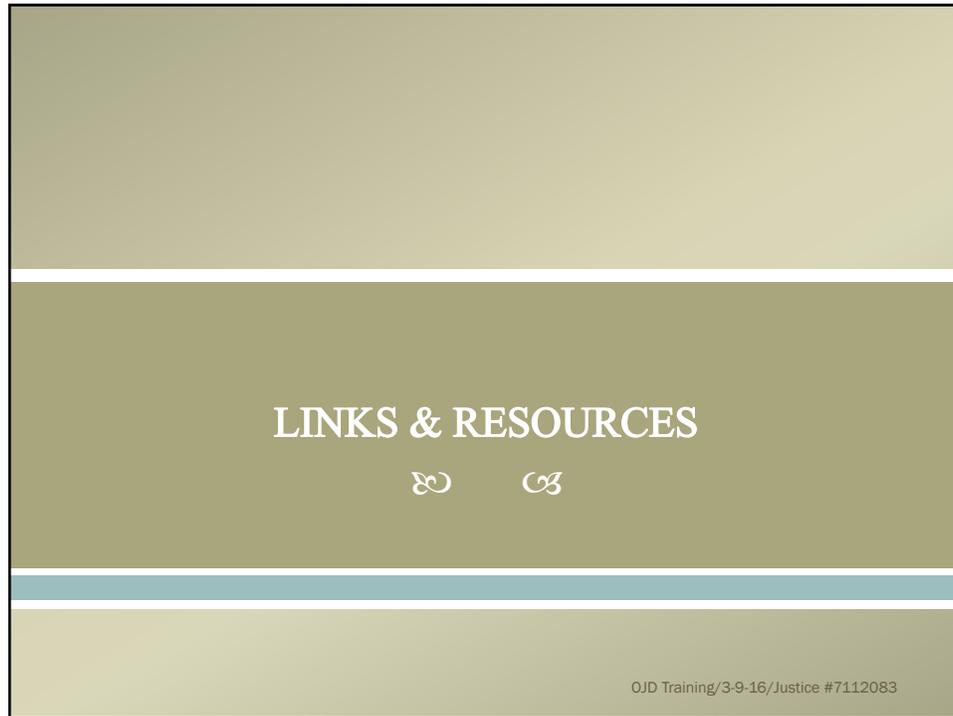
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II. Service of Process: Hague Service Convention

3. Common causes of delay with service in Mexico:

- Address for parent is incorrect- missing house number, village, road demarcation;
- Name of parent is incorrect;
- Spanish translation is missing or wasn't done;
- Documentation is missing- summons, petition, request for service.
- Requisite number of copies not provided;
- Request was sent to the Mexican Consulate in Portland and not directly to the Ministry of Foreign Affairs in Mexico;
- Changes in local government;
- Mexico imposing or changing service requirements;

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QUESTIONS?

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