

# SERVICE OF PROCESS

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**Service of Process**<sup>®</sup>

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**I. INTRODUCTION.** This article discusses service of process issued by Texas courts on defendants located in foreign countries. In this article, TRCP = Texas Rule of Civil Procedure.

**II. U.S. DEP'T OF STATE CIRCULAR.** The United States Department of State has published a circular relating to the service of process in foreign countries.

The circular provides as follows:

“SERVICE OF LEGAL DOCUMENTS ABROAD

Disclaimer: the Information in this Circular Relating to the Legal Requirements of Specific Foreign Countries Is Provided for General Information Only and May Not Be Totally Accurate in a Particular Case. Questions Involving Interpretation of Specific Foreign Laws Should Be Addressed to Foreign Counsel.

**PROHIBITION:** Foreign Service officers are prohibited by Federal regulations (22 CFR 92.85) from serving process on behalf of private litigants or appointing others to do so, state law notwithstanding.

**A. BACKGROUND:** This information flyer provides a general discussion of the methods available for service of process and service of a subpoena abroad. The flyer also includes a discussion on service on a foreign state or agency or instrumentality under the Foreign Sovereign Immunities Act and service on U.S. State Department and U.S. military personnel abroad in a private capacity. The method selected to effect service can have a serious impact both on the matter pending the United States and eventual enforcement of a U.S. judgment abroad. See Fed. R. Civ. P. 4(f) Advisory Committee's Note (West Supp. 1993) "service by methods that would violate foreign law is not generally authorized." See also, Restatement (Third) Foreign Relations Law of the United States Sec. 472, Reporter's Note 1 (1987); Epstein & Snyder, *International Litigation: A Guide to Jurisdiction, Practice & Strategy*, 2nd, Prentice Hall Law & Business, Sec. 4.01 - 4.07 (1994 supp.); Ristau, *International Judicial Assistance (Civil and Commercial)*, Sec.

3-1-1 - 3-1-15; Sec. 4-1-1 - 4-5-2 (1995 Supp.); Born & Westin, *International Civil Litigation in United States Courts*, 119-170 (1989); and Wright & Miller, *Federal Practice & Procedure*, West Publishing, (1987) Sec. 1133-1136 and other treatises on the subject.. In addition to this general flyer on service of process, the Department of State, Office of American Citizens Services has flyers on a variety of topics including service under the Hague and Inter-American Service Conventions (treaties) and country-specific flyers on judicial assistance. See "Additional Information" below.

**B. SUMMARY: METHODS OF SERVICE ABROAD:**

METHOD	PROS	CONS
Service Treaty/Convention Country Service by Foreign Central Authority	Service Generally Guaranteed; No Service Problems Re Future Enforcement Proceedings Abroad.	Translation Usually Required; Expense; Time; 3 months + to serve.
Service by International Registered or Certified Mail, Return Receipt Requested	Fast, Inexpensive	Possible Problems Enforcing Judgment Abroad; Problems With Proof of Service
Service by Agent (Foreign Attorney or Process Server)	Personal Service; Timely	Expense; Possible Problems Enforcing Judgment Abroad
Service by Publication	Timely; Inexpensive Possible Problems	Enforcing Judgment Abroad
Waiver of Service	Timely; Inexpensive	Possible Problems Enforcing Judgment Abroad
Letters Rogatory (Letter of Request)	No Service Problems Re Future Enforcement Proceedings Abroad	Time Consuming - 6 months to a year; Translation Required - Expense

C. IS ENFORCEMENT OF A JUDGMENT IN THE FOREIGN COUNTRY FORESEEN? If eventual enforcement of a U.S. judgment abroad is envisioned, you may wish to consult foreign legal counsel very early in the process of the U.S. proceeding, long before any judgment is rendered, before you begin filing the complaint, serving process, discovery, trial, etc. This may help ensure that the foreign requirements for enforcement are not inadvertently violated in the U.S. action. In countries whose laws do not provide for other methods of service, letters rogatory may be the only method of service if enforcement is anticipated. See Epstein & Snyder, Sec. 4.07 (1994 supp.); Born & Westin, p. 124, 132; Wright & Miller, Sec. 1133, note 4 at 365 (1987); and Waller, Under Seige: United States Judgments in Foreign Courts, 28 Tex. Int'l L.J. 429 (1993).

D. SERVICE PURSUANT TO MULTILATERAL CONVENTION: (Rule 4(f)(1) F.R.Cv. P.) The United States is a party to two multilateral treaties on service of process. See "Additional Information" below for guidance on how to obtain copies of our detailed information flyers on the practical operation of these Conventions via our automated fax system or our home page on the Internet. See also our country-specific flyers on service of process or international judicial assistance. But see, Volkswagenwerk AG v. Schlunk, 486 U.S. 694 (1988) on the issue of service upon an agent for a foreign corporation in the United States by serving its U.S. subsidiary. See Cumulative Digest of

United States Practice in International Law, 1981-1988, Vol. 2, 1543-1547 (1994) and Vol. 3, 3707-3709 (1995).

1. HAGUE SERVICE CONVENTION: The Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters (20 U.S.T. 1361; 658 U.N.T.S. 163, T.I.A.S. No. 6638; 28 U.S.C.A. (Appendix following Rule 4 FRC vP); 16 Int'l Legal Materials (I.L.M.) 1339 (1977); Martindale-Hubbell Law Directory, Selected International Conventions) is in force for the countries listed below. (But see, our flyer pertaining to the Hague Service Convention.) IN Force: Anguilla, Antigua and Barbuda, Aruba, Barbados, Belarus, Belgium, Belize, Bermuda, Botswana, British Virgin Islands, Bulgaria\*\*\*, Canada, Cayman Islands, China, Cyprus, Czech Republic, Denmark, Djibouti (Formerly Afars and Issas)\*, Egypt, Estonia, Falkland Islands and Dependencies, Fiji, Finland, France (including French Overseas Departments), French Polynesia, Germany, Gibraltar, Greece, Guernsey, Hong Kong S.a.r., Ireland, Isle of Man, Israel, Italy, Japan, Jersey, Kiribati (Formerly Gilbert Islands and Central and Southern Line Islands)\*, Korea, Republic of (South Korea)\*\*\*\*, Latvia, Luxembourg, Macau S.a.r., Malawi, Mexico, Montserrat, Netherlands, Nevis\*\*, Norway, Pakistan, Pitcairn, Poland, Portugal, St. Christopher (Kitts)\*\*, St. Helena and Dependencies, St. Lucia\*\*, St. Vincent and the Grenadines\*\*, Seychelles, Slovak Republic, Solomon Islands, Spain, Sweden, Switzerland, Turkey, Turks and Caicos Islands, Tuvalu (Formerly Ellice Islands)\*, United Kingdom, United States,

## Venezuela.

\* This country achieved independence. No formal declaration has been made to the depository government (The Netherlands) on the continuation in force of the Convention. We have requested the assistance of the Hague Conference on Private International Law in ascertaining from these countries whether they are applying the Convention. Inquirers may wish to consult local counsel in the host country regarding applicability of the Convention.

\*\* This country achieved independence. No formal declaration has been made to the depository government (The Netherlands) on the continuation in force of the Convention. Local authorities in the host country have advised the U.S. Embassy that the Convention remains in force and have provided the identity of the foreign central authority. See our specific flyer on the Hague Service Convention.

\*\*\* Ratified Convention January 13, 2000; in accordance with Article 28, second paragraph, the Convention will enter into force for the Republic of Korea in the absence of any objections from a State which has ratified the Convention before the deposit of the accession, notified to the Ministry of Foreign Affairs of the Netherlands within a period of six months after the date on which the Ministry has notified it of the accession. For practical reasons, this six month's period will run from January 31, 2000 to July 31, 2000. Pursuant to Article 10, the Republic of Korea objects to the following: a) the freedom to send judicial documents, by postal channels, directly to persons abroad, b) the freedom of judicial officers, officials or other competent persons of the State of origin to effect service of judicial documents directly through the judicial officials or other competent persons of the State of destination, c) the freedom of any person interested in a judicial proceeding to effect service of judicial documents directly through judicial officers, officials or other competent persons of the State of destination.

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documents, by postal channels, directly to persons abroad, b) the freedom of judicial officers, officials or other competent persons of the State of origin to effect service of judicial documents directly through the judicial officials or other competent persons of the State of destination, c) the freedom of any person interested in a judicial proceeding to effect service of judicial documents directly through judicial officers, officials or other competent persons of the State of destination.

2. INTER-AMERICAN SERVICE CONVENTION: The Inter-American Convention on Letters Rogatory, done at Panama January 30, 1975; and Additional Protocol with Annex [regarding service of process] done at Montevideo, Uruguay on May 8, 1979. Senate Treaty Doc. 98-27; 98th Congress; 2d Session; 14 Int'l Legal Materials (I.L.M.) 339 (March 1975); 18 ILM 1238 (1984); Martindale-Hubbell Law Directory, Law Digest Volume, Selected International Conventions. IN FORCE\*\*\*: ARGENTINA, BRAZIL, CHILE, COLOMBIA, ECUADOR, GUATEMALA, MEXICO, PANAMA, PARAGUAY, PERU, UNITED STATES, URUGUAY and VENEZUELA. (See our flyer on the operation of the Inter-American Service Convention.)

\*\*\* Only countries party to both the Convention and the Additional Protocol have a treaty relationship with the United States.

E. SERVICE BY INTERNATIONAL REGISTERED MAIL: (Rule 4(f)(2)(C)(ii) F.R. Cv.P.) registered or certified mail, return receipt requested may be sent to most countries in the world. Rule 4(f)(2)(C) provides that this method of service may be used unless prohibited by the law of the foreign country. (But see discussion below regarding treaty obligation to refrain from this method of service in certain countries.) To ascertain whether such mail service exists in a foreign state, contact your local Post Office to review the International Mail Manual and consult the business section of the U.S. Postal Service Home Page via the Internet at <http://www.usps.gov:80/welcome.htm> for general information, or contact the Government Printing Office. For a general discussion of service by international mail see Born & Westin, 125-126; Epstein & Snyder, Sec. 4.04[3] p. 4-14 - 4-18; Ristau, Sec. 3-1- 11, p. 70.4 - 70.5 (1995 supp.); and Wright & Miller, Sec. 1074, note 6 at 458; Sec. 1092 at 51, 52; Sec. 1134 at 377 regarding international mail conventions and Sec. 1136 regarding proof of service by mail in a foreign country (1987).

F. TREATY OBLIGATION TO REFRAIN FROM SERVICE BY MAIL: American courts have held that formal objections to service by mail made by countries

party to a multilateral treaty or convention on service of process at the time of accession or subsequently in accordance with the treaty are honored as a treaty obligation, and litigants should refrain from using such a method of service. See *DeJames v. Magnificence Carriers, Inc.*, 654 F.2d 280 (3d Cir. 1981), [cert. den., 454 U.S. 1085]; *Porsche v. Superior Court*, [123 Cal. App. 3d 755,] 177 Cal. Rptr. 155 (1981). Service by registered mail should not be used in China, the Czech Republic, Egypt, Germany, Latvia, Luxembourg, Norway, the Slovak Republic, South Korea, Switzerland, Turkey and Venezuela which have notified the Hague Conference on Private International Law and the Government of the Netherlands (the depository) on accession, ratification or subsequently that they object to service in accordance with Article 10, sub-paragraph a of the Convention, via postal channels. See Memorandum of the Administrative Office of the U.S. Courts (November 6, 1980) at Cumulative Digest of United States Practice in International Law, 1981-1988, Department of State, Office of the Legal Adviser, 1447 (1994) or Ristau, Sec. 3-1-9, p. 70.2 (1995 supp.).

**G. SELECTED CASES ON SERVICE BY INTERNATIONAL MAIL:** See, *FTC v. Compagnie de Saint-Gobtain-Pont-A-Mous-son*, 636 F.2d 1300 (D.C. Cir. 1980) on the issue of service via international registered mail when the document to be served is compulsory or punitive. See also, *Digest of United States Practice in International Law*, Department of State, Office of the Legal Adviser, 1980 p. 452-457 generally and *Cumulative Digest of United States Practice in International Law*, 1981-1988, 1445-1449 (1994) regarding Department of State response to Embassy of Switzerland inquiry concerning the case. See also, *Umbenhauer v. Woog*, 959 F. 2d 25 (3d Cir., 1992) which held that absent a treaty obligation, objections from foreign governments cannot justify non-compliance with the Federal Rules of Civil Procedure for service of process by mail. It should be noted that the country in question in the case, Switzerland, was not a party to the Hague Service Convention at that time.

**H. PERSONAL SERVICE BY AGENT:** (Rule 4(f)(2)(C)(i) FRCvP) If personal service is desired in countries which are not party to the Hague Service Convention, the most expeditious method may be to retain the services of a local foreign attorney or process server. Rule 4(f)(2)(C) provides for personal service unless prohibited by the laws of the foreign country. The attorney (or agent) can execute an affidavit of service at the nearest American embassy or consulate, or before a local foreign notary which can be authenticated. (See *Wright & Miller*, Sec. 1136 regarding proof of service. Effective June 1, 2002, there is a \$30.00 fee for the first notarial

service requested, and a \$20 fee for each additional seal provided at the same time in connection with the same transaction. See Federal Register, May 16, 2002, Volume 67, Number 95, Rules and Regulations, Page 34831-34838; 22 CFR 22.1, Item No. 41(a) and 41(b). Lists of foreign attorneys are available from our office and from American embassies and consulates abroad. See also our information flyer "Retaining a Foreign Attorney" available through our autofax service or via our home page on the Internet. See "Additional Information" below. It should be noted, however, that this method of service may not be considered valid under the laws of the foreign country. If eventual enforcement of the U.S. judgment in the foreign country is foreseen, this method may not suffice. It may be prudent to consult local foreign counsel early in the process on this point. American process servers and other agents may not be authorized by the laws of the foreign country to effect service abroad, and such action could result in their arrest and/or deportation. See *Wright & Miller*, Sec. 1135 and 1133 (1987) on the subject of who is authorized to serve process abroad.

**I. SERVICE BY LETTER ROGATORY:** (Rule 4(f)(2)(B) F.R.Cv.P; 28 U.S.C. 1696) A letter rogatory, also known as a "letter of request", is a request from a court in the United States to a court in a foreign country requesting international judicial assistance, which is often employed to obtain evidence abroad, but is also utilized in effecting service of process and particularly in those countries which prohibit other methods of service. In some countries service by letters rogatory is the only recognized method of service. Service of a judicial summons, as set forth in Rule 9(c), F.R.Cr. P., may also be effected pursuant to a letter rogatory. Service of process by judicial authorities in the receiving State pursuant to a letter rogatory from a court in the sending State is based on comity. Procedural requirements vary from country to country. See "Additional Information" below for guidance on how to obtain a copy of our information flyer on "Preparation of Letters Rogatory" via our automated fax service or our home page on the Internet. See also our country-specific flyers for any peculiarities of particular countries, or consult the appropriate geographic division of the Office of American Citizens Services. Letters rogatory are a time consuming, cumbersome process and should not be utilized unless there are no other options available. If the laws of the foreign country permit other methods of service, the use of letters rogatory is not recommended given the habitual time delays of up to a year or more in execution of the requests. (See *Casad*, *Jurisdiction in Civil Actions*, 4.06(2) (1983 & Supp. 1986); *Horlick*, *A Practical Guide to Service of United States Process Abroad*, 14 Int'l Law. 637, 642 (1980); *Born & Westin*,



123-125, 133-136; Wright & Miller, Federal Practice & Procedure, Sec. 1134 (1987); and Cumulative Digest of United States Practice in International Law, 1981-1988, Department of State, Office of the Legal Adviser, 1442, 1448 (1994).)

**J. SERVICE BY PUBLICATION:** Service by publication may also be a viable option, however, this may not be a valid method of service under the laws of the foreign country. If eventual enforcement of a U.S. judgment in a foreign country is foreseen, it may be prudent to consult local foreign counsel or American foreign legal consultants abroad before proceeding with such a method of service. See Wright & Miller, Sec. 1062 at 222 (1987); Sec. 1074, note 17 at 461-463 (1987); 1092; 1112; 1117-1118 and 1996 pocket part.

**K. WAIVER OF SERVICE:** (Rule 4(d) F.R. Cv.P.) Waiver of service may also be a viable option, however, this may not be a valid method of service under the laws of the foreign country. If eventual enforcement of a U.S. judgment in a foreign country is foreseen, it may be prudent to consult local foreign counsel or American foreign legal consultants abroad before proceeding with such a method of service. See Wright & Miller, Sec. 1062 (1987); . Waivers of service may be executed before a U.S. consular official abroad in the form of an acknowledgment or affidavit. See our flyer on notarial and authentication services abroad.

**L. SERVICE OF SUBPOENA:** 28 U.S.C. 1783, 1784 and Rule 45 of the Federal Rules of Civil Procedure, 28 U.S.C. Appendix provide for service of a subpoena upon a national or resident of the United States in a foreign country. There are no provisions for service upon non-U.S. nationals or residents. See 22 C.F.R. 92.86 - 92.89. Consult the Office of American Citizens Services of the Department of State for further guidance. [end of quotation]"

For further information on these types of issues, see <[http://travel.state.gov/judicial\\_assistance.html#service](http://travel.state.gov/judicial_assistance.html#service)>.

**III. TEXAS RULES OF CIVIL PROCEDURE RELATING TO SERVICE OF PROCESS.** The rules of Texas procedure which may affect service of process issued by Texas courts are TRCP 103, 106, 107, 108, and 108a. These rules are as follows:

**A. TRCP 103.** TRCP 103 provides:

Rule 103. Who May Serve

Citation and other notices may be served anywhere by

(1) any sheriff or constable or other person authorized by law or, (2) by any person authorized by law or by written order of the court who is not less than eighteen years of age. No person who is a party to or interested in the outcome of a suit shall serve any process. Service by registered or certified mail and citation by publication shall, if requested, be made by the clerk of the court in which the case is pending. The order authorizing a person to serve process may be made without written motion and no fee shall be imposed for issuance of such order.

**B. TRCP 105.** TRCP 105 provides

Rule 105. Duty of Officer or Person Receiving

The officer or authorized person to whom process is delivered shall endorse thereon the day and hour on which he received it, and shall execute and return the same without delay.

**C. TRCP 106.** TRCP 106 provides:

Rule 106. Method of Service

(a) Unless the citation or an order of the court otherwise directs, the citation shall be served by any person authorized by Rule 103 by

(1) delivering to the defendant, in person, a true copy of the citation with the date of delivery endorsed thereon with a copy of the petition attached thereto, or

(2) mailing to the defendant by registered or certified mail, return receipt requested, a true copy of the citation with a copy of the petition attached thereto.

(b) Upon motion supported by affidavit stating the location of the defendant's usual place of business or usual place of abode or other place where the defendant can probably be found and stating specifically the facts showing that service has been attempted under either (a)(1) or (a) (2) at the location named in such affidavit but has not been successful, the court may authorize service

(1) by leaving a true copy of the citation, with a copy of the petition attached, with anyone over sixteen years of age at the location specified in such affidavit, or

(2) in any other manner that the affidavit or other evidence before the court shows will be reasonably effective to give the defendant notice of the suit.

**D. TRCP 107.** TRCP 107 provides:

## Rule 107. Return of Service

The return of the officer or authorized person executing the citation shall be endorsed on or attached to the same; it shall state when the citation was served and the manner of service and be signed by the officer officially or by the authorized person. The return of citation by an authorized person shall be verified. When the citation was served by registered or certified mail as authorized by Rule 106, the return by the officer or authorized person must also contain the return receipt with the addressee's signature. When the officer or authorized person has not served the citation, the return shall show the diligence used by the officer or authorized person to execute the same and the cause of failure to execute it, and where the defendant is to be found, if he can ascertain. Where citation is executed by an alternative method as authorized by Rule 106, proof of service shall be made in the manner ordered by the court.

No default judgment shall be granted in any cause until the citation, or process under Rules 108 or 108a, with proof of service as provided by this rule or by Rules 108 or 108a, or as ordered by the court in the event citation is executed under Rule 106, shall have been on file with the clerk of the court ten days, exclusive of the day of filing and the day of judgment.

**E. TRCP 108.** TRCP 108 provides:

## Rule 108. Defendant Without State

Where the defendant is absent from the State, or is a nonresident of the State, the form of notice to such defendant of the institution of the suit shall be the same as prescribed for citation to a resident defendant; and such notice may be served by any disinterested person competent to make oath of the fact in the same manner as provided in Rule 106 hereof. The return of service in such cases shall be endorsed on or attached to the original notice, and shall be in the form provided in Rule 107, and be signed and sworn to by the party making such service before some officer authorized by the laws of this State to take affidavits, under the hand and official seal of such officer. A defendant served with such notice shall be required to appear and answer in the same manner and time and under the same penalties as if he had been personally served with a citation within this State to the full extent that he may be required to appear and answer under the Constitution of the United States in an action either in rem or in personam.

**F. TRCP 108a.** Rule 108a provides:

## Rule 108a. Service of Process in Foreign Countries

(1) Manner. Service of process may be effected upon a party in a foreign country if service of the citation and petition is made: (a) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or (b) as directed by the foreign authority in response to a letter rogatory or a letter of request; or (c) in the manner provided by Rule 106; or (d) pursuant to the terms and provisions of any applicable treaty or convention; or (e) by diplomatic or consular officials when authorized by the United States Department of State; or (f) by any other means directed by the court that is not prohibited by the law of the country where service is to be made. The method for service of process in a foreign country must be reasonably calculated, under all of the circumstances, to give actual notice of the proceedings to the defendant in time to answer and defend. A defendant served with process under this rule shall be required to appear and answer in the same manner and time and under the same penalties as if he had been personally served with citation within this state to the full extent that he may be required to appear and answer under the Constitution of the United States or under any applicable convention or treaty in an action either in rem or in personam.

(2) Return. Proof of service may be made as prescribed by the law of the foreign country, by order of the court, by Rule 107, or by a method provided in any applicable treaty or convention.

**1. COMMENTARY ON RULE 108a.** Doak Bishop published the following commentary on TRCP 108a, shortly after it became effective in 1984. Doak Bishop, *International Litigation in Texas: Texas Rules of Evidence and Recent Changes in the Texas Rules of Civil Procedure*, 36 BAYLOR L. REV. 131, 133-37 (1984):

The purposes of Rule 108a are threefold: (1) to increase the chances that Texas judgments will be recognized and enforced in other countries; (2) to permit access to the mechanisms established by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, [FN3] and eventually the Inter-American Convention [133] on Letters Rogatory; [FN4] and (3) to provide the courts with additional flexibility for serving process abroad. The main tenets of the rule will be discussed below.

The Hague Service Convention was negotiated in 1965, and entered into force in the United States in 1969. Twenty-four nations are presently parties to this treaty. [FN5] While the Convention is self-executing and

available for use by state as well as federal courts, [FN6] there is presently no statute or rule authorizing Texas courts to make service of process by the means allowed by the Convention. While it was probably not specifically necessary for state law to provide for service by means of the Hague Service Convention under Article 5 of the Convention, it is necessary to have such authorization to make use of the optional means of service provided in Articles 8, 9, and 10. [FN7] The failure of state law specifically to authorize service through the Convention was unfortunate, because the Convention provides the quickest, easiest, and least expensive procedure for making service of process in other countries. [FN8]

Subdivision (1)(d) of the rule remedies this problem by allowing service abroad to be made by the terms and provisions of any applicable treaty or convention. One effect of this provision is to inform the bar that there may be treaties or conventions that will aid them in obtaining service abroad. Similarly, subdivision (2) of Rule 108a allows for return of service according to the means provided in any applicable treaty or convention, the Hague Service Convention providing its own procedure for return of service. [FN9] These provisions will allow sufficient flexibility for Texas [134] courts to use any other bilateral treaties or multilateral conventions that may be negotiated by the United States, such as the Inter-American Convention on Letters Rogatory, which has been signed by the United States and is presently pending ratification. [FN10]

One of the most serious difficulties in previous Texas practice was the failure to provide that service may be made in the manner prescribed by the law of the foreign country where the service is to be executed. Many countries will not recognize or enforce judgments from other nations unless those judgments are based upon service of process that is consistent with the methods used by the courts of that country. [FN11] Thus, if a defendant's assets are located in a foreign country, a Texas judgment based upon service of process inconsistent with the foreign country's procedures may prove to be worthless. Moreover, many countries consider service of process to be a public act, limited to the judiciary of the country where it is to be executed. [FN12] Its accomplishment by any other means may be considered an infringement of that country's sovereignty, and may even be a violation of its criminal laws. [FN13] Subdivision (1)(a) of the Texas rule is designed to meet these problems.

Subdivision (1)(b) allows Texas courts to request service of process by means of letters rogatory or letters of request. [FN14] Traditionally, American [135]

courts have used letters rogatory only to seek evidence abroad, and not to serve process. [FN15] Many countries, however, use letters rogatory for serving judicial documents. [FN16] In countries that are not parties to the Hague Service Convention and who consider it a violation of their sovereignty for service to be made except through governmental authorities, this may be the only method of service available. [FN17] By allowing service of process in a manner 'as directed by the foreign authority in response to a letter rogatory or a letter of request,' subdivision (1)(b) permits Texas courts to respond to this contingency. Subdivision (1)(c) incorporates prior methods of service and allows for use of the methods set out in Rule 106 of the Texas Rules of Civil Procedure. [FN18]

Subdivision (1)(e) authorizes United States consular and diplomatic officers to serve process when permitted by the State Department. Generally, American diplomatic or consular officials are not allowed to make service of process in other countries, [FN19] with the notable exception of service upon foreign governments under the Foreign Sovereign Immunities Act (FSIA). [FN20] Nevertheless, consular and diplomatic officials are authorized to serve documents abroad if express permission is granted by the State Department. [FN21] This provision expressly allows these officers to make service under the terms of the FSIA for litigation pending in Texas courts, [FN 22] [136] and will provide needed flexibility when other means of serving process abroad have failed.

The last sentence of Rule 108a [FN 23] is the same as the last sentence in the present Rule 108. It has been interpreted as converting Rule 108 into a long-arm provision. [FN24] Its purpose is to expand the scope of the rule to permit service of process to the full extent allowed by the due process clause. [FN25]

Questions have been raised under the Texas Constitution as to the validity of expanding the scope of the rule to the limits of the United States Constitution. [FN26] The argument against the validity of Rule 108 is that Texas statutes, especially article 2031b, [FN27] determine the long-arm jurisdiction of Texas, and Rule 108 is inconsistent with the statutes because it enlarges the court's jurisdiction over nonresidents and is outside the scope of the Texas Supreme Court's rule-making power under Article V, Section 25 of the Texas Constitution. [FN28]

But the purpose of article 2031b, as repeatedly held by the courts, is to expand in personam jurisdiction over nonresidents to the extent permitted by the United States Constitution. [FN29] To that end, courts have

gradually enlarged the 'doing business' language until, finally, [137] jurisdiction was expanded to due process limits by the Texas Supreme Court's recent decisions in *U-Anchor Advertising, Inc. v. Burt* [FN30] and *Hall v. Helicopteros Nacionales de Colombia, S.A.* [FN31]

Even though the *U-Anchor* and *Hall* decisions were rendered after the amendment of Rule 108, their effect is to make the scope of article 2031b co-extensive with that of Rule 108, thereby counteracting the argument that Rule 108 is an enlargement or extension of long-arm jurisdiction in Texas. Accordingly, the rule merely makes explicit for Texas jurisdiction what has already been achieved as a practical matter through the various decisions interpreting article 2031b. The only real change, therefore, is in the means by which service can be effected. It provides a much-needed way of obtaining personal, rather than substituted, service upon a non-resident and is certainly a procedural matter within the court's rule-making authority. Under this analysis, the amendment is merely a housekeeping matter and is not an enlargement of Texas law.

Even if the rule did expand Texas jurisdiction, it would be invalid under the Texas Constitution only if it is 'inconsistent' with the statute. Since the purpose of the amendment and the frequently stated purpose of article 2031b are precisely the same--i.e., to permit in personam jurisdiction to be exercised to constitutional bounds--they are not inconsistent. They are merely two different means to achieving the same goal.

While it could be argued that Rule 108 is also broader than article 2031b in that it does not require plaintiff's cause of action to be connected to his contacts with the state, the court has interpreted article 2031b in such a way as to remove this requirement in many instances. [FN32] Thus, the only inquiry remaining is whether an exercise of jurisdiction is consistent with the demands of due process, [FN33] and this inquiry is the same for both article 2031b and Rule 108.

The analysis of the validity of Rule 108a is precisely the same as that for Rule 108. Rule 108a provides a necessary procedure for foreign service of process, and under the Texas Supreme Court's holdings, it should be considered as valid. [End of quotation]

It is noteworthy that TEX. R. CIV. P. 108a(1)(c) permits substitute service on non-resident respondents pursuant to TEX. R. CIV. P. 106, which allows the court to authorize service "in any other manner that the affidavit or other evidence before the court shows will be reasonably effective to give the defendant notice of the suit."

**IV. SERVICE BASED ON LONG-ARM STATUTE.** The court in *Commission of Contracts of the General Exec. Comm. of the Petroleum Workers Union v. Arriba, Ltd.*, 882 S.W.2d 576, 583 (Tex. App.--Houston [1st Dist.] 1994, no writ), ruled that service could be effected on foreign defendants under the long-arm statute in suits on a business transaction or tort, Tex. Civ. Prac. & Rem. Code §§ 17.044, 17.045 (substitute service upon Secretary of State applies to foreign defendants). While the case has no application to family law litigation, there is a long arm statute in the Texas Family Code, § 6.305. However, it is dissimilar to TCP&RC §§ 17.044 and 045, in that these latter provisions actually provide a procedure for serving process, while Family Code § 6.305 does not. Texas Family Code § 102.009(c), which applies to suits affecting the parent-child relationship, provides that in SAPCRs "[c]itation on the filing of an original petition in a suit shall be issued and served as in other civil cases." Texas Family Code § 102.010 provides for citation by publication "as in other civil cases." Texas Family Code § 102.011 is a long-arm statute for the exercise of jurisdiction over non-residents in a suit affecting the parent-child relationship.