**INFORMATION re. SERVICE ON PERSON RESIDING OUTSIDE OF U.S.**

*Prepared by Rheeah Yoo and staff at Family Law Facilitator’s Office for Imperial County*.

California’s “long-arm statute” is in CCP 410.10.  “A Court of this state may exercise jurisdiction not inconsistent with the Constitution of this state or the United States.”

Long arm jurisdiction may exist when the "defendant has engaged in activity of the requisite quality and nature [has the required minimum contacts] in the forum state and that the cause of action is sufficiently connected with this activity..." Abbott Power Corp v Overhead Elec. Co., Cal. Ct. App. 1976, relying on International Shoe.

Minimum contacts require substantial, continuous and systematic actions and invoke the benefits and protections of the forums laws, etc.  Inselberg v Inselberg 56 Cal.App 3d 484.

On the other end of the spectrum, a CA court might have only domiciliary jurisdiction.  In situations where jurisdiction is based solely on a petitioner’s domicile, the court lacks personal jurisdiction over a respondent.  The court has only in rem jurisdiction over the divorce itself (can’t make orders for support or property division).

Whether there is long-arm or domiciliary jurisdiction, or something in between, parties still have to observe procedural due process.  A court’s judgment is not binding without notice and opportunity to be heard. Section 3:152 in California Practice Guide: Family Law (Rutter Group) highlighting Pennoyer v Neff and Shaffer v Heitner.

The court’s conclusion in the case mentioned in your email, Kreimerman v. Casa Veerkamp, S.A. 22 F3d was that

Although the parties apparently agree that Kreimerman et al. properly employed the machinery of the Texas Long-Arm Statute, **they do not address—in their submissions to us or to the district court—whether service of process under the Texas Long-Arm Statute on defendants residing in Mexico contravenes notions of comity, the procedural requirements of Fed.R.Civ.P. 4, or any other applicable domestic or international laws**.[56](http://www.leagle.com/decision/199465622F3d634_1541.xml/KREIMERMAN%20v.%20CASA%20VEERKAMP,%20S.A.%20de%20C.V.#fid57) **Neither did the district court reach such issues**: Its inquiry ended when it held— incorrectly, we conclude—that the Convention preempted all other methods of service on defendants residing in another signatory nation. **Whether Kreimerman et al.'s attempt to serve process under the Texas Long-Arm Statute contravened any other law besides the Convention is thus not before us. Such considerations are for the district court on remand.**[**57**](http://www.leagle.com/decision/199465622F3d634_1541.xml/KREIMERMAN%20v.%20CASA%20VEERKAMP,%20S.A.%20de%20C.V.#fid58)

*Are Letters Rogatory Required?*

Letters Rogatory are not required.  The Hague Service Convention describes many other channels of transmission.  Each country identifies which channels of transmission are acceptable.  Here is a link to a diagram of those channels (pages 3 and 4): <http://www.hcch.net/upload/outline14e.pdf>

The Kreimerman opinion explains:

Similarly, the official title of the Convention is the Inter-American Convention on *Letters Rogatory,* whereas the official title of the Hague Service Convention is the Convention on the *Service Abroad of Judicial and Extrajudicial Documents* in Civil or Commercial Matters.[26](http://www.leagle.com/decision/199465622F3d634_1541.xml/KREIMERMAN%20v.%20CASA%20VEERKAMP,%20S.A.%20de%20C.V.#fid27) As rogatory letters (or letters of request) are — by definition — merely one of many procedural mechanisms by which a court in one country may request authorities in another country to assist the initiating court in its administration of justice,[27](http://www.leagle.com/decision/199465622F3d634_1541.xml/KREIMERMAN%20v.%20CASA%20VEERKAMP,%20S.A.%20de%20C.V.#fid28) the Convention's scope appears to be limited to regulating that one procedural mechanism. In contrast, the scope of the Hague Service Convention is much broader, applying as it does to *all* service abroad upon defendants residing within signatory States….

Thus, the text of the Convention strongly indicates, not that the Convention preempts other conceivable methods of service, but that it merely provides a mechanism for transmitting and delivering letters rogatory when and if parties elect to use that mechanism.

*Taking this at face value, are California-authorized methods for service of process valid for service in signatory nations to the Inter-American Convention on Letters Rogatory?*

The problem with going forward with California-type service (personal from an 18+ year old to a party, etc.) is that international treaties signed by the country are binding on each state.  The Supremacy Clause in the Constitution (art VI, sec. 2) makes the Constitution and all treaties the supreme law of the land.  The Hague Convention on Service and Inter-American Convention on Letters Rogatory and its Convention on Additional Protocol are such treaties since they were signed and ratified by the US.

California state law regarding service was written with these treaties in mind.  California’s Code of Civil Procedure lists and authorizes the methods of service which are valid.  CCP 415.30(c) is designed for scenarios where service must take place outside of the US.

Outside the United States, as provided in this chapter or directed by the court in which the action is pending, or if the court before or after service finds that the service is reasonably calculated to give actual notice, **as prescribed by the law of the place where the person is served** or as **directed by the foreign authority in response to a letter rogatory**.  These rules are **subject to the provisions of the Convention on the “Service Abroad of Judicial and Extrajudicial Documents” in Civil or Commercial Matters** (Hague Service Convention).

Our Rules of Court also provide for service outside of our country.  CRC 5.68 outlines what methods of service are valid.

Rule 5.68. Manner of service of summons and petition; response; jurisdiction

(a) Service of summons and petition

The petitioner must arrange to serve the other party with a summons, petition, and other papers as required by one of the following methods:

(1)cid:image001.gif@01CFF784.77D78330Personal service (Code Civ. Proc., § 415.10);

(2)cid:image001.gif@01CFF784.77D78330Substituted service (Code Civ. Proc., § 415.20);

(3)cid:image001.gif@01CFF784.77D78330Service by mail with a notice and acknowledgment of receipt (Code Civ. Proc., § 415.30);

(4)cid:image001.gif@01CFF784.77D78330Service on person outside of the state (Code Civ. Proc., § 415.40);

(5)cid:image001.gif@01CFF784.77D78330**Service on a person residing outside of the United States, which must be done in compliance with service rules of the following:**

**(A)cid:image001.gif@01CFF784.77D78330Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters; or**

**(B)cid:image001.gif@01CFF784.77D78330Inter-American Convention on Letters Rogatory and the Additional Protocol to the Inter-American Convention on Letters Rogatory.**

(6)cid:image001.gif@01CFF784.77D78330Service by posting or publication (Code Civ. Proc., §§ 415.50 and 413.30).

Be sure to check the treaty websites for the types of service that a specific country will find acceptable.  For a super-readable overview, check out the Practical Handbook on the Operation of the Hague Service Convention it’s on Amazon, $10 download or free for kindle unlimited members.  It beats the price on the HCCH website where it’s sold for 75 euros.  There’s a free May 2014 draft revision online right now on the HCCH website: <http://www.hcch.net/upload/wop/2014/2014sc_pd02en.pdf>.

The letters rogatory panel from the AB 1058 Conference supports best practices – which of course is why we share that sinking feeling when the respondent is not in the US.  We are glad for your questions as we are all striving to find efficient and supportable means of service for customers’ cases.