

LEGAL SYSTEMS IN GENERAL

CALIFORNIA	BAJA CALIFORNIA
There is no requirement of lawful immigration presence to use court system	There is a requirement of lawful immigration presence to use the court system
Based on Common law	Based on Napoleonic Code
Jury available in civil and criminal cases	No juries
Death penalty for certain crimes	No death penalty
A party can appear without an attorney	A party can not appear without an attorney, except on family law cases
Indigent persons have a right to a court appointed attorney in certain cases: criminal, quasi-criminal, and fundamental rights such as parentage	While indigent persons have a right to a court appointed attorney in family law, civil, and criminal cases through the “Defensoria Publica” (akin to Public Defender’s Office) these offices are not adequately funded, resulting in an inferior level of legal representation; normally carried out by law students or temporary staff called Defensor Adscrito (Court Defender)

COURTS/JUZGADOS

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All hearings are before the judge assigned to the case and are open to the public, except for juvenile proceedings, which are considered confidential.	Unlike United States' Oral system, most Latin American legal systems are based on written pleadings and therefore, most information and/or evidence is presented in a written format. The bulk of the oral hearings are in the form of declarations, similar to depositions in the United States. These are regularly held in front of the secretario de acuerdos , who transcribes the testimony or information presented in these "audiencias" hearings. The Secretario de Acuerdos completes a document called (Acta) to later incorporate into the court file and present to the judge for review and decision making.
Judge personally hears all the evidence	Generally secretario-de acuerdos personally hear all the testimony and prepare "actas" declarations/affidavits for consideration by the judge and parties at a later time.
All files are public records and can be inspected by anyone except juvenile and parentage?	Only the parties and authorized persons can look in the file, but because of decentralization and insufficient software system, it may take several days before it is accessible.
Court will notify the parties by mail if there are any developments	Notification to attorney/parties regarding rulings is done in two fashions: 1) Notice of Order is attached to a Public Justice Bulletin (similar to bulletin boards used in US Courts to post calendar or legal notices); and 2) Court personnel (Notificador) will hand deliver the court order to the last known address. Mexican courts do not allow non-court personnel to serve legal documents.
Pleading and legal documentation are sequentially or chronologically placed inside high quality file folders fastening the contents with metal prongs (ACCO Fasteners)	The tradition of sewing the pleadings and legal documents with twine to a flimsy file cover is still prevalent in most Latin American court systems. This tradition has its origin in medieval times and currently it consumes a great deal of court staff time in removing and re-sewing pleadings to court files.
Courts can be sued	Court can be sued only through an "Amparo" similar to a Writ of Mandamus or Prohibition, but not as a regular civil suit for a money judgment. On rare occasions, an appellate court may rule that a particular judge erred

	with negligence in applying the law, resulting in immediate damage to the parties and thus allowing the matter to proceed as a regular civil suit against that particular judicial officer. Again, this standard is very high and is rarely invoked by the appellate courts.
Open from 8 am to 5 pm	Normal court hours are from 8 am to 3 pm. Also the on-duty criminal court is available 24 hours especially to recognize corpse (Levantamiento de Acta de Fallecimientos).
Does not close except for 13 legal holidays and weekends	Closes during judicial/governmental holidays, for judicial branch vacation for 3 weeks in August, and during the Christmas Holiday (approximately two weeks).
Court clerk	Oficialia de Partes
Superior, Court of Appeal, Supreme	Tribunal Superior, Camara de Apelación, Corte Suprema de Justicia
District Attorney and County Counsel	Ministerio publico
Oral proceedings are allowed and recorded in most cases	Most proceedings consist of written declarations and arguments advanced by the parties. Oral proceedings are normally limited to concluding arguments in court trials.

JUDGES/JUEZES

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A judge is either elected by the people or appointed by the governor	A judicial career law establishes the requirements to become a judge. Candidates participate in a competitive qualifying examination and are appointed based on their ranking. The appointments are automatically ratified by Congress.
Judges are paid more than any other court personnel and recently have parity with other governmental positions and legal community.	Judges are paid more than any other court personnel, but make less than many lawyers and business people in the community
Judges wear a robe during court proceedings	Judges do not wear a robe during court proceedings, since they are very few and normally the declarations are before the Secretario de Acuerdos. They can dress casual because they conduct most work from their chambers.
Judge cannot preside over a case in which he may have personal knowledge of the facts, be a material witness, has served as a lawyer, has represented a party, was associated with a lawyer, has a financial interest, is a party, has a family member as a lawyer, has a personal bias, when excusing himself would serve the interests of justice, when he has a substantial doubt as to his ability to be impartial, or when a person aware of the facts might reasonably entertain a doubt as to the judge's impartiality. Code of Civil Procedure § 170.1.	Judge cannot preside over a case in which he may have personal knowledge of the facts, be a material witness, has served as a lawyer, has represented a party, was associated with a lawyer, has a financial interest, is a party, has a family member as a lawyer, has a personal bias, when excusing himself would serve the interests of justice, when he has a substantial doubt as to his ability to be impartial, or when a person aware of the facts might reasonably entertain a doubt as to the judge's impartiality. Baja California Code of Civil Procedures, Article 171 and 172, describe the judicial recusal process and enumerate all instances, which are more limiting than in the United States. Additionally, Code Section 172 allows one or both parties to complain to the Presiding Judge when a judicial officer knowingly fails to abstain from hearing the case. If the Presiding Judge finds that judicial officer failed to properly abstain from hearing the case, he or she may impose an appropriate discipline.
A judge must comply with a Code of Ethics, which includes requirements that the judge uphold the integrity and independence of the judiciary, that the judge conduct his life on and off the bench so as to avoid impropriety and	A judge must comply with a Code of Ethics, which includes requirements that the judge uphold the integrity and independence of the judiciary, that the judge conduct his life on and off the bench so as to avoid impropriety and

the appearance thereof, that the judge perform the duties of judicial office impartially and diligently, that the judge conduct his extrajudicial activities so as to minimize the risk of conflict with judicial obligations, and refrain from improper political activity. California Code of Judicial Ethics.

the appearance thereof, that the judge perform the duties of judicial office impartially and diligently, that the judge conduct his extrajudicial activities so as to minimize the risk of conflict with judicial obligations, and refrain from improper political activity. The code of ethics for all judicial branch employees are included into their Rules of Court (*Ley Orgánica del Poder Judicial del Estado de Baja California, CAPITULO IV DE LA RESPONSABILIDAD Y FALTAS ADMINISTRATIVAS; Artículo 123-131*) The article specifically applicable to judges, includes the following:

- Failure to rule on matters before the judge within the prescribed legal time frame
- To render resolutions or effect court orders that are unnecessary and tend to delay proceedings
- To render decisions or grant default judgments without verification of legal requirements and the merits of the legal pleadings and the law
- Failing to receive the evidence provided by the parties
- Prevent the parties to access or use remedies provided by the law
- To grant bail without financial assurance or appointment of masters or bail bondsmen without financial surety
- Making false or offensive comments or remarks about the parties appearing before the court
- Allowing or making statements when taking judicial notice of matters before the court
- To provide legal advice or assistance to the parties
- Failing to attend to the proceedings at hand
- Failing to ensure that court personnel are providing adequate customer service
- To discuss or opine on legal matters before the court

	<ul style="list-style-type: none">• Failure to report to work on time• Failing to include his/her complete name in signed court orders
A judge's term is 6 years and must stand for re-election if he/she desires to remain on the bench.	A judge's initial appointment term is for 6 years, but he/she can be ratified for an additional 6 years term by the Superior Court Magistrates and Congress

ATTORNEYS/ABOGADOS

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<p>Any attorney can go to court who has been admitted to the State Bar to practice law</p>	<p>Attorneys must have a license to litigate. Upon completion of their Law Degree they need to obtain their Cedula Profesional (Professional License) which could be either from the Federal or State level. The Federal License is obtained from the Secretaría de Educación Pública and from the Secretary of State of B.C. if it is the State License</p>
<p>Must be member of the State Bar</p>	<p>Bar Associations are voluntary associations without any official standing. Practicing attorneys are not required to be a member of their local bar association to practice</p>
<p>Must pass an examination that includes the law and ethics (Bar exam).</p>	<p>Must Pass the law school examination and obtain the license to litigate, as referenced above</p>
<p>License to practice law can be revoked for: Ethical violations</p>	<p>License to practice law can be revoked for: Ethical violations</p>

FAMILY LAW

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Grounds for Dissolution/Legal Separation:
Irreconcilable Differences or
Incurable Insanity

Grounds for Dissolution, Legal Separation and Abandonment are enumerated in article 264 Baja California Civil Code. These are summarized, as follows:

- Adultery proven by one of the parties
- Due to the birth of a child deemed to have been conceived prior to the marriage and not the child of the husband
- Promoting and financially benefiting from prostitution of wife
- Domestic violence or other criminal acts
- Engaging in lewd or immoral acts by husband or wife with the purpose of corrupting their own children or allowing such corruption
- One of the parties is suffering from syphilis, tuberculosis or some other chronic, incurable disease that is contagious or hereditary
- Incurable mental illness
- Separation from the family residence for more than six months and without just cause
- Separation from the family residence due to substantial grounds for a divorce and the spouse that separated from the family residence has been absent for more than one year and has not filed for divorce
- Spouse is presumed dead or a legal separation has been filed
- Mistreatment, threats or great bodily harm

	<p>committed against each other</p> <ul style="list-style-type: none"> • Wrongly accused of a crime punishable by two years of prison by his/her own spouse • Spouse is convicted of a crime and sentenced to more than two years • Gambling, alcoholism, and persistent use of drugs that can result in family discourse and financial ruin • To require a spouse, against his/her free will to commit an offense punishable by more than one year of prison • Both parties have been separated and apart for more than two years • All aspects of domestic violence against any member of the family that disrupts or denigrate the integrity of the family unit • Mutual consent
<p>Grounds for Annulment: Bigamy, Incest, Fraud, Force, Lack of Capacity, Age of Minority, Physical Incapacity</p>	<p>Grounds for Annulment:</p> <p>False identity, marriage between a minor (male under sixteen years of age and female under fourteen years of age), without legal consent of parent, guardian or judge when it involves a minor, marriage by fear, force or violence, pre-existing marriage without a final judgment</p>
<p>Service of Process: In person. Service of process is performed generally by third party not attached to the court.</p>	<p>Service of Process is Personal, Certified Mail or Publications and always conducted by court personnel.</p>
<p>Default – Respondent does not answer Petition after 20 days</p>	<p>Rebeldia similar to Default, but the time to answer may vary depending on the type of service and cause of action</p>
<p>Judgment – earliest judgment may be entered – six (6) months.</p>	<p>Sentencia earliest judgment may be entered – four (4) months</p>

IMMIGRATION

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<p>Lawful Permanent Residents – Green card holders can live and work in the U.S. Student visa, work permit</p>	<p>A person becomes a resident of Mexico under the following circumstances:</p> <ul style="list-style-type: none">- If he/she marries a Mexican citizen- If he/she has a child born in Mexico- If he/she has a job offer from a employer located in Mexico- If he/she is a retired person from the U.S. and wishes to reside in Mexico and can prove that he/she receives a monthly retirement annuity of not less than \$2,000.00 Pesos
<p>Permanent residents are eligible to become US citizens after 5 years of continuous residency in the US and meet other qualifications. (i.e. basic undertaking of citizenship requirements, free of criminal record)</p>	<p>After 2 years of becoming a Mexican resident, the person can petition to become a naturalized citizen. The document required by Mexico to become a Permanent Resident is a known as “FM-3”</p>