

**SPECIAL IMMIGRANT JUVENILE STATUS
IN FAMILY COURT:**

LOS ANGELES ONE-PARENT SIJS MANUAL

By

Yliana Johansen-Méndez, Esq.
2011 Equal Justice Works Fellow
Sponsored by Microsoft Corp.



400 S. Hope Street, 8th Floor
c/o Holland & Knight, LLP
Los Angeles, CA 90071
www.supportkind.org

AUGUST 2013

Introduction

Special Immigrant Juvenile Status (SIJS) involves the interplay of federal and state law. This status that was intended to protect abused, abandoned and neglected immigrant children in our country has been highly underutilized in part because it requires immigration practitioners to expand their practice to include representing their child clients in state court dependency, delinquency, guardianship and/or family law proceedings. Much of the success experienced by immigration advocates in state courts has required the development of collaboration and partnerships with other local experts in dependency, delinquency, probate and family law.

In Los Angeles, there is a small group of nonprofits that include SIJS as a regular part of their practice: Kids in Need of Defense (KIND), Public Counsel, Esperanza Immigrant Rights Project, and the Immigrant Center for Women and Children (ICWC). Very few SIJS cases have been tried before the Family Court in Los Angeles. However, with help from organizations such as the Los Angeles Center for Law and Justice (LACLJ) and Legal Aid Foundation of Los Angeles (LAFLA), as well as some private family law practitioners, immigration advocates have recently had successes that are opening up the possibility of obtaining more SIJS eligibility findings in Los Angeles Family Court. Partnerships with family law practitioners have been crucial to the success of SIJS claims before the Los Angeles Superior Court (LASC) Family Division.

This manual is intended to be an overview of the progress that the KIND Los Angeles office, through the Equal Justice Works Fellow, its community partners and pro bono attorneys, has made regarding Special Immigrant Juvenile Status (SIJS) claims for children who are living with a parent in Los Angeles. For the purposes of this manual “one-parent SIJS ” will be used to refer to cases in which a child is already living with one parent in the U.S., and has suffered abuse, abandonment, or neglect by the “other parent” or “non-custodial parent” who may currently reside in the U.S. or abroad. This manual will focus on requests for SIJS eligibility orders through child custody proceedings in family court.

This manual will not provide an in-depth analysis or explanation of immigration law nor California family law. Rather, it is intended to assist lawyers who are considering whether to file a one-parent SIJS case. Use of this manual should not substitute for individual research or legal advice provided by a lawyer familiar with a client’s case, immigration law and State law. We **strongly recommend** that immigration attorneys consult with a family law attorney before filing and throughout the proceedings.

Table of Contents

Introduction.....	1
Background on Special Immigrant Juvenile Status	3
California Courts that May Adjudicate One-Parent SIJS Cases.....	5
History of One-Parent SIJS in the Los Angeles Family Court	7
Requesting Custody Orders in Family Court Child Custody Proceedings	11
Considerations Before Filing	12
Courthouse and Filing Information.....	18
Requesting <i>Fee Waivers</i> in Family Court.....	20
One-parent SIJS Family Court Flow Chart.....	22
Opening a Family Law Case.....	23
Option 1: Filing a <i>Petition to Establish Parental Relationship</i>	23
Option 2: Filing a <i>Petition for Dissolution of Marriage</i>	26
Option 3: Filing a <i>Petition for Custody and Support of Children</i>	31
Filing a <i>Request for Order</i> and Getting Your Hearing Date.....	33
What to Expect the Day of the Hearing	36
Service Requirements	37
Selected Rules of Court Pertaining to Service and Procedure	42
Ex Parte Applications (Emergency Orders).....	46
State Law: Quick Reference to Some Applicable California Laws.....	51
Real Case Examples.....	55
Tables: LASC Family Court Judges and SIJS Cases.....	62
2014 SUPPLEMENT: An Update from the Author (June 2014)	66

To navigate to a specific section of the PDF manual you may left-click on the heading in the table above. If you are viewing this manual in Microsoft Word then you must hold the “Control” key when you left-click on the heading.

Background on Special Immigrant Juvenile Status

Special Immigrant Juvenile Status (“SIJS”) is a visa classification under federal law that allows certain undocumented children to obtain lawful permanent residence in the United States. In order to be eligible for SIJS classification, a state juvenile court must have made several factual findings indicating the child’s eligibility for SIJS under INA §101(a)(27)(J). Once a state court has made the required SIJS eligibility findings, a child may petition U.S. Citizenship and Immigration Service (USCIS) for classification as a “special immigrant juvenile” by filing Form I-360 *Petition for Amerasian, Widow(er), or Special Immigrant*. A child who is granted SIJS may then apply for lawful permanent residency (LPR) by filing Form I-485 *Application to Register Permanent Residence or Adjust Status*.

There have been many changes to the SIJS statute since it was first enacted in 1990. Most recently, Congress enacted the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (“TVPRA”), making significant changes that increase the accessibility of SIJS for more unaccompanied children. Whereas previously SIJS was only available to children who had been deemed “eligible for long-term foster care,” the amendments opened up the possibility to argue that if a child been abused, abandoned, or neglected by one parent, then the child is eligible for SIJS even if reunification with the other parent was still possible.

The TVPRA amends INA §101(a)(27)(J)(i) and (ii), such that a “special immigrant juvenile” is currently defined as an immigrant who is present in the United States, is unmarried, under the age of 21, and:

- (i) who has been declared dependent on a juvenile court located in the United States or **whom such a court has legally committed to, or placed under the custody of**, an agency or department of a State, or **an individual or entity appointed by a State or juvenile court** located in the United States, and whose **reunification with 1 or both of the immigrant’s parents is not viable due to abuse, neglect, abandonment, or a similar basis** found under State law;
- (ii) for whom it has been determined in administrative or judicial proceedings that **it would not be in the alien’s best interest to be returned to the alien’s or parent’s previous country of nationality or country of last habitual residence**; and
- (iii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status,... [emphasis added]

Since the Enactment of the TVPRA, the Code of Federal Regulations has not been updated to reflect the amendments to INA §101(a)(27)(J)(i) and (ii). (*See* 8 C.F.R. § 204.11 (2009)). Furthermore, USCIS has not issued policies on the amended SIJS statute, so guidance on these claims mostly comes from memos and manuals published by NGOs and state case law.

Although success in obtaining SIJS for a child who is living with a parent has varied by state, overall advocates' experiences support the conclusion that a child may be granted SIJS even if s/he is living with a parent. There is one decision issued by an immigration judge interpreting the amended SIJS statute to allow for one-parent SIJS claims. (Glenn P. McPhaul in San Antonio, TX, dated August 10, 2009). Furthermore, advocates throughout the country have had several successful one-parent SIJS claims in which USCIS granted the SIJS classification and ultimately lawful permanent residence. The Immigrant Legal Resource Center collected information from advocates all over the country and has developed practice advisories publishing their findings. In the ILRC's most recent publication on the subject, *An Update on One-Parent Special Immigrant Juvenile Status Claims*, there is an extensive discussion regarding varying state court decisions throughout the country. If you are filing in a court that is hostile to one-parent SIJS claims, it is important that you are aware of case law from other jurisdictions that the judges may turn to in their own deliberations. Although there are no published one-parent SIJS decisions by California courts, the discussion of the history of these claims in Los Angeles provides insight to the posture of the Los Angeles Family Court.

California Courts that May Adjudicate One-Parent SIJS Cases

A “juvenile court,” for SIJS purposes, is “a court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles.” 8 C.F.R. §204.11(a). This broad definition encompasses many California courts, and thus there are several avenues for obtaining the required SIJS eligibility findings, or predicate order, from a state court when a child is in the custody of a parent:

- (1) Dependency proceedings in which a child is deemed a dependent of the court pursuant to California Welfare and Institutions Code section 300 and returned to the custody of one but not both parents;
- (2) Juvenile Delinquency Court proceedings in which a child is released to the custody of a parent, while remaining a ward of the Juvenile Court pursuant to Welfare and Institutions Code section 602;
- (3) Adoption proceedings in which a step-parent seeks to adopt the child and share joint legal custody with one of the natural parents;
- (4) Family Court child custody proceedings in which a parent requests sole legal and physical custody of a child with no visitation requested for the other parent.

Note: It is not possible to file for Guardianship when a child is living with a parent.

Advocates in California have successfully obtained SIJS eligibility findings in some state courts. Requests for SIJS eligibility findings in dependency and delinquency proceedings have been simplified since the Judicial Council of California has adopted form JV-224 “Order Regarding Eligibility for Special Immigrant Juvenile Status.” A similar form, GC-224 “Probate Guardianship: Eligibility of a Ward for Special Immigrant Juvenile Status Under Federal Immigration Law,” was recently developed for use in guardianship proceedings. However, currently there are no forms available for use specifically by the family court. There are also several publications available to guide practitioners who seek to obtain SIJS for their child clients, including:

- “Special Status Seekers” by Kristen Jackson, Senior Staff Attorney at Public Counsel, available online at <http://www.lacba.org/Files/LAL/Vol34No11/2893.pdf>
- *Special Immigrant Juvenile Status Manual*, by Public Counsel, available online at <http://www.publiccounsel.org/publications?id=0119>
- *Guardianship of the Person – Attorney Manual*, by Public Counsel, available online at <http://www.publiccounsel.org/publications?id=0032>

- *Special Immigrant Juvenile Status and Other Immigration Options for Children & Youth*, by the Immigrant Legal Resource Center, available for purchase at <http://www.ilrc.org/publications/special-immigrant-juvenile-status>
- “Remedies for Immigrant Children and Youth” by the Immigrant Legal Resource Center, available online at <http://www.ilrc.org/info-on-immigration-law/remedies-for-immigrant-children-and-youth>

This manual will primarily focus on the progress of one-parent SIJS cases before the Family Division of the Los Angeles Superior Court. However there has been success in obtaining SIJS orders in Family Court in some other counties in California. Below is a list of the reported successful cases, as of August 2013:

COUNTY	DATE OF SIJS ORDER	ATTORNEY(S)
Alameda	November 2012	Brienne Fabela
	December 2012	Peggy Bristol-Wright
Los Angeles	November 2009	Leslie Parrish (Public Counsel)
	March 2010	James Duff Lyall (KIND Fellow/ Esperanza Immigrant Rights Project)
	June 2011	Roger Coven & Wendy Herzog
	August 2011	Suma Mathai (LACLJ) & James Duff Lyall/ Christopher Scherer (KIND Fellows/ Esperanza Immigrant Rights Project)
	April 2012	Annaluisa Padilla
	February 2013	Yliana Johansen-Méndez (KIND) & Xochitl A. Flores
	March 2013	Yliana Johansen-Méndez (KIND) & Annaluisa Padilla
	March 2013	Ji-Lan Zang (LAFLA)
	July 2013	Yliana Johansen-Méndez (KIND)
San Francisco	December 2011	Megan C. Hamilton
	May 2012	Yesenia Garcia Perez
San Joaquin	July 2013	Janette Rossel
San Mateo	February 2012	Hannah Lee
	February 2013	Peggy Bristol-Wright
	March 2013	Palani Rathinasamy & Rodrigo Salas

History of One-Parent SIJS in the Los Angeles Family Court

The first one-parent SIJS case was filed by Leslie Parrish of Public Counsel on behalf of KIND in 2009. The case was filed in the Family Division of the Los Angeles Superior Court (LASC) as a Parentage/Paternity Action. The LASC granted the SIJS predicate order and gave hope to the one-parent SIJS claim. However, since it was granted in 2009, no other case successfully obtained a SIJS predicate order in Los Angeles until 2011.

The KIND Fellows at Esperanza Immigrant Rights Project and some pro bono attorneys for KIND also tried to obtain SIJS predicate orders based on Paternity Actions but faced significant legal hurdles. Judges refused to make eligibility findings because (1) they mischaracterized the eligibility findings as a grant of lawful immigration status and determined that granting the predicate order was therefore out of their jurisdiction as a state court, (2) they believed that only a Juvenile Court could make the eligibility findings and that the Family Court did not have jurisdiction under federal or state law to grant the predicate order, (3) they required compliance with international standards for service according to the Hague Service Convention and other international treaties, such as the Inter-American Convention on Letters Rogatory and Additional Protocol, an area of law with which advocates were generally unfamiliar at the time.

Between 2009 and 2011, a handful of one-parent SIJS cases failed before the Los Angeles Superior Court. In some cases advocates attempted to obtain SIJS orders through Guardianship proceedings and the cases were rejected by the judges because the child was living with a parent. Some failed because judges denied jurisdiction over the case. Without assistance from attorneys experienced in family law, immigration advocates also struggled to comply with the California Code of Civil Procedure and Family Code. Such procedural mistakes resulted in court imposed sanctions upon at least one of the attorneys. Some cases failed because procedural mistakes prolonged the case and the child eventually turned 18 years old, thus aging-out of jurisdiction and eligibility. The general sentiment was that the Los Angeles Superior Court was unwilling to grant SIJS predicate orders. SIJS advocates were unable to replicate the results of the first successful case until they began to partner with family law advocates.

In 2010, KIND Fellow James Duff Lyall partnered with Suma Mathai of the Los Angeles Center for Law and Justice to represent a SIJS eligible child before the Family Court. Although having an experienced family law attorney to help navigate the intricacies of the family court was extremely useful, nonetheless Judge Michael J. Convey refused to grant a SIJS predicate order because he believed that he lacked jurisdiction. With the help of a pro bono law firm, the KIND Fellow filed a Writ Petition before the California Court of Appeals. The Court of Appeals refused to hear a case, so the Writ was submitted directly to the California Supreme Court. A letter was issued from the Supreme Court strongly urging Judge Convey to issue a decision on the matter. Ultimately, Judge Convey contacted the attorneys and indicated that he would grant the predicate order if the Writ was withdrawn. That case was initially filed in March 2010, after

much debate and the filing and withdrawal of the Writ, the eligibility order was issued in August 2011. By that time James Duff Lyall had been replaced on the case by KIND Fellow Christopher Scherer. Although the appeal of Judge Convey's denial did not result in a precedential decision by a higher court, it was significant. During June 2011, in the midst of the Writ being filed and the Supreme Court's insistence that Judge Convey make his decision in the SIJS case, Judge Mark Juhas also granted a SIJS predicate order in a case represented by KIND pro bono attorney Roger Coven, Senior Attorney at Holland & Knight, LLP, and family law specialist Wendy A. Herzog. Both cases have subsequently been approved for SIJS and LPR status by USCIS.

In July 2012, the California Court of Appeals issued an important decision regarding SIJS and the jurisdiction of the Los Angeles Superior Court. In *B.F. v. Los Angeles Superior Court* the Court confirmed that State superior courts have not only the jurisdiction but the duty to make factual findings of eligibility under the SIJS statute. (*B.F. v. Superior Court*, 207 Cal.App.4th 621 (July 2012), available at <http://www.courts.ca.gov/opinions/archive/B238857.PDF>). In this seminal case, successfully argued by Leslie Parrish of Public Counsel, the LASC refused to make the requested SIJS eligibility findings within the context of a guardianship petition before the Probate Department because the Superior Court claimed that it was not a "juvenile court" with jurisdiction to make the requested orders. The Court of Appeals made it clear that Article VI, section 4 of the California Constitution provides for only one superior court in each county, and that although the superior court is divided into departments, as a matter of convenience, the subject matter jurisdiction of the superior court is vested as a whole. Furthermore, the Court suggested that the superior court has a mandatory duty to make special immigrant juvenile findings for the benefit of those "dependent on a juvenile court" or "legally... placed under the custody of... an individual appointed by a State or juvenile court," when it is in the best interest of the child. In response to this decision, the Judicial Council of California developed form GC-224 "Probate Guardianship: Eligibility of a Ward for Special Immigrant Juvenile Status Under Federal Immigration Law."

Although the Court of Appeal's decision in *B.F. v. Superior Court* was specific to the Probate Department's jurisdiction and duty to make SIJS eligibility findings, the reasoning of the Court makes the decision easily applicable to proceedings arising in other departments of the Superior Court. The Equal Justice Works Fellow at KIND, Yliana Johansen-Méndez, has collaborated with several pro bono attorneys and family law attorneys to bring additional one-parent SIJS claims before the LASC. Since *B.F. v. Superior Court*, any reservations the family court judges may have had regarding jurisdiction to issue the SIJS eligibility findings have been overcome by briefs and oral arguments regarding applicability of the Court of Appeal's decision in the context of family court proceedings.

Three cases heard by the Family Court in February, March and July 2013 were granted the SIJS predicate orders at their first hearing. The cases were heard by Judge B. Scott Silverman, Judge David S. Cunningham and Judge Patrick A. Cathcart. Judges Silverman and

Cunningham did not require any oral arguments from the attorneys but granted the requested SIJS orders after reviewing the facts in the petitioner's declaration under oath. Both cases were co-counseled or primarily represented by family law attorneys who ensured that there were no procedural complications in the cases. Equal Justice Works Fellow Yliana Johansen-Méndez co-counseled or assisted in the development of the memorandums of points and authorities that were filed with the Requests for Orders. The third case before Judge Cathcart was represented solely by Yliana Johansen-Méndez. Judge Cathcart did request clarification regarding the court's role in the SIJS application process, the ability of USCIS to make its own eligibility determination or exercise discretion, and the application of *BF v. Superior Court* to proceedings through Family Court. After reviewing the facts contained in the petitioner's declaration under oath, Judge Cathcart also granted the SIJS predicate order during the first hearing.

Also in March 2013, two SIJS predicate orders were obtained through divorce proceedings for the first time in California. Although both cases easily overcame challenges to the court's subject matter jurisdiction, these cases provided one additional challenge that was not present in the paternity cases: obtaining personal jurisdiction over the respondent parent. In the first case, represented pro bono by Yliana Johansen-Méndez and immigration and family law practitioner Annaluisa Padilla, the respondent father/husband lived in Guatemala and had never lived in California. Commissioner James Endman has a reputation for being very strict about compliance with procedural requirements. Even after he was convinced that he had jurisdiction to make the eligibility findings, and that service to the father in Guatemala complied with the C.C.P. and did not violate the Hague Service Convention, he was unwilling to make the SIJS eligibility findings until he was convinced that the court had personal jurisdiction over the respondent. Since the respondent lacked significant ties to California, the attorneys requested that the respondent voluntarily subject himself to the jurisdiction of the court by entering a general appearance and filing form FL-130 "Appearance, Stipulations, and Waivers". This general appearance not only subjected the respondent to the jurisdiction of the court, but also can also be considered equivalent to personal service of the summons on the respondent. Commissioner Endman granted the SIJS predicate order just seven days prior to the child's 18th birthday. The I-360 petition was immediately locally filed with USCIS and approved within days.

The second divorce case was represented in family court by Ji-Lan Zang of the Legal Aid Foundation, and for immigration purposes the client was represented by KIND pro bono attorneys Stacey Wang and Tim Fisher of Holland & Knight, LLP under the guidance of Yliana Johansen-Méndez. In this case, the respondent father lived in California for several years but had returned to El Salvador a few months prior to the filing. The father's significant contacts in California subjected him to the jurisdiction of the court although he was no longer physically present in the state. When personal service could not be completed, the respondent was served by mail to his last known address in Los Angeles and last known address in El Salvador. Judge Cunningham granted the SIJS predicate order – the third order granted by Judge Cunningham since 2009.

Conclusion

The TVPRA's amendments to the SIJS definition have only been effective since March 2009, so one-parent SIJS claims are relatively new for state courts and USCIS. Their history and progress through the state courts and federal immigration agencies should be continuously monitored and strategically planned. Despite the fact that many of these cases are being granted by USCIS around the country, some immigration judges and ICE trial attorneys do not think that one-parent SIJS is a valid form of relief.

It is highly recommended that advocates seeking SIJS predicate orders from the family court seek co-counsel or advice from experienced family law attorneys. Many of the Family Court judges have never heard a special immigrant juvenile case before. Thus, it is important that the procedural part of the family law case is done correctly so that the judges are more comfortable with the orders requested. Working with an attorney who is well versed in the California C.C.P. and Family Code will help minimize the number of procedural obstacles that may be faced in family court. Advocates should also be prepared to educate the Court about its role in SIJS cases, and the roles that USCIS and the Immigration Court also play. It is important that Family Court judges understand that a SIJS predicate order is just one of many requirements in a SIJS case, and that the child's immigration case will still be reviewed and may be denied by USCIS or the Immigration Court if the child is subject to certain grounds of inadmissibility.

Since SIJS cases are still new to the Family Court, you should be mindful of how your case will impact the likelihood that your judge will grant SIJS orders in future cases. Try to select cases in which custody will be uncontested, in which you have a legitimate need for custody orders or for the underlying proceeding, and in which the Petitioner's testimony provides a **strong basis** for finding that it is not in the child's best interest to be reunified with the non-custodial parent and/or returned to their country of nationality.

Requesting Custody Orders in Family Court Child Custody Proceedings

SIJS predicate orders may potentially be requested in any child custody proceeding before the Family Court. To date, advocates have only requested SIJS predicate orders through Dissolution of Marriage and Paternity/Parentage actions. However, in the future, advocates may attempt to file for SIJS predicate orders when there is an open Domestic Violence Restraining Order case, or by filing for Legal Separation, Annulment of Marriage, or a Petition for Custody and Support of Minor Children.

The type of proceeding that may be used generally depends on the nature of the relationship between the parents:

- *Parents were never married and no Voluntary Declaration of Paternity has ever been signed* → file a Petition to Establish Parental Relationship (paternity/parentage case)
- *Parents were legally married and would like a divorce* → file a Petition for Dissolution of Marriage (divorce case)
- *Parents were legally married but are not interested in a divorce or legal separation* → file a Petition for Custody and Support of Minor Children

For general information regarding petitions for child custody in California, you may visit the California Courts Self-Help website at <http://www.courts.ca.gov/1185.htm>.

Whenever you consider filing in Family Court, it is also important to keep in mind the overall **public policy of the court**:

- To assure that the health, safety, and welfare of children shall be the court's primary concern in determining the best interest of children when making custody and visitation orders, and that the perpetration of child abuse or domestic violence in a household where a child resides is detrimental to the child. **California Family Code § 3020(a).**
- To assure that children have frequent and continuing contact with both parents after the parents have separated or dissolved their marriage, or ended their relationship, and to encourage parents to share the rights and responsibilities of child rearing, except where the contact would not be in the best interest of the child as provided in Cal. Fam. Code § 3011. **Cal. Fam. Code § 3020(b).**
- Child's health, safety and welfare, together with safety of all family members, must prevail if there is a conflict between that policy and the policy of assuring frequent and continuing contact with both parents, and the court's custody or visitation order must be made in a manner that ensures the health, safety, and welfare of the child and the safety of all family members. **Cal. Fam. Code § 3020(c).**

Considerations Before Filing

1. Does the child's age permit sufficient time to complete the family court proceedings?

- The Family Court will lose jurisdiction over the child custody matter when the child reaches the age of majority at 18 years old. **Cal. Fam. Code §§ 6500, 6501.**
- If the original petition and FL-300 *Request for Order* are filed simultaneously, at best it will take 1 ½ to 2 months from the date of filing to the date of the first hearing where the judge may grant the predicate order.
- If there is a defect in service or the judge requires additional evidence or briefs, it could take several months to a year to complete the proceedings and obtain the predicate order.
- If you are filing in a courthouse or before a judge that has not adjudicated one-parent SIJS claims previously, you should be careful not to give the Family Court or USCIS the impression that the case is being filed “solely for immigration purposes” by filing too close to the child's 18th birthday.

2. Were the parents legally married?

- Although this seems like a simple question, be sure to clarify whether or not there was a valid legal marriage between the parents. Many Latin American clients will say that they were “married” to a partner with whom they lived and had children. The type of proceedings filed depends largely on whether or not the parents are legally married:
- **NO** – The parents were not legally married:
 - If the parents were not married and no Voluntary Declaration of Paternity has been signed by the parents, then they must file a Petition to Establish Parental Relationship in order to request custody orders.
 - The custodial parent may be the Petitioner and the non-custodial parent may be the Respondent.
 - Note: Personal jurisdiction over the respondent non-custodial parent is not necessary as long as the court has jurisdiction over the child custody matter. *See Cal. Fam. Code § 3421(a)(2)(A)*. It is not necessary to have personal jurisdiction over a parent or child if the requirements of the UCCJEA have otherwise been met. *In re Marriage of Leonard* (1981) 122 Cal.App.3d 443, 459, 175 Cal. Rptr. 903. (*Criticized on other grounds in Kumar v. Superior*

Court (1982) 32 Cal.3d 689, 699 n.12, 186 Cal. Rptr. 772, 652 P.2d 1003).

- Also, if the child is over 12 years old, then s/he may be the Petitioner in the case and the custodial parent may be the Respondent. **See Cal. Fam. Code § 7635(a).**
 - Cal. Fam. Code section 7635(a) states that “[t]he child may, if under the age of 12 years, and shall, if 12 years of age or older, be made a party to the action. If the child is a minor and a party to the action, the child shall be represented by a guardian ad litem appointed by the court.” In some cases judges have required child petitioners to be represented by a guardian ad litem, in other cases applications for a guardian ad litem have been denied. This is an issue that should be anticipated in every case concerning children over 12 years old.
 - Any putative or legal parent should be given notice and an opportunity to be heard. **See Cal. Fam. Code § 7635(b).** Some judges have also considered the noncustodial parent an “indispensable party” and required that they be added as a Respondent.
 - Note: A child petitioner is typically used in cases where the “child” is actually an adult who seeks to have their parentage legitimized in order to collect certain benefits or an inheritance. Many judges are uncomfortable with having child petitioners.
- **YES** – The parents were legally married:
 - If the custodial parent has lived in California for at least 6 months and in the County of Los Angeles for at least 3 months, and s/he wants a divorce s/he can request for custody by filing a *Petition for Dissolution of Marriage* (using form FL-100). **See Cal. Fam. Code § 2320 and California Code of Civil Procedure § 395.**
 - Note: You must be able to get personal jurisdiction over the respondent parent/spouse. Service of process alone is insufficient if the parent does not sufficient “minimum contacts” with the state so the Court’s basis for exercising its jurisdiction is not inconsistent with the Constitution of this state or of the United States. **Cal. CCP. §§ 410.10, 410.50.**

- If the custodial parent is not interested in filing for divorce or legal separation, s/he may also file a *Petition for Child Custody and Support* (using form FL-260). See **Cal. Fam. Code § 3120**. It is not necessary to have personal jurisdiction over a parent or child if the requirements of the UCCJEA have otherwise been met. *In re Marriage of Leonard* (1981) 122 Cal.App.3d 443, 459, 175 Cal. Rptr. 903. (*criticized on other grounds in Kumar v. Superior Court* (1982) 32 Cal.3d 689, 699 n.12, 186 Cal. Rptr. 772, 652 P.2d 1003.

3. Does the California Superior Court have jurisdiction to make a child custody determination regarding this child?

- The UCCJEA governs which state (or country) has jurisdiction over child custody matters. See **Cal. Fam. Code § 3400 et seq.**
- According to the UCCJEA the “home state” with jurisdiction to make a custody determination is the state in which the child has been a resident for 6 months. **Cal. Fam. Code § 3402(g)**. Exceptions may be made in “emergency” situations such as in cases of abuse or abandonment. See **Cal. Fam. Code § 3424**.
- If the child is the subject of any prior child custody determination in another state or country, pursuant to the UCCJEA that state/country has exclusive continuing jurisdiction over the child custody matter. See **Cal. Fam. Code §§ 3421, 3422, 3423**.
- Except as otherwise provided in Fam. Code Section 3424, a court may not modify a child custody determination made by a court of another state/country unless a court of this state has jurisdiction to make an initial determination under Section 3421 (a)(1)-(2) and either: (a) The court of the other state determines it no longer has exclusive, continuing jurisdiction or that a court of this state would be a more convenient forum. (b) A court of this state or a court of the other state determines that the child, the child’s parents, and any person acting as a parent do not presently reside in the other state. See **Cal. Fam. Code § 3423**.

4. Will you be able to complete service of process to the non-custodial parent and/or will the Court have personal jurisdiction over the non-custodial parent?

- Ideally the family should have contacts that are willing to personally serve the non-custodial parent with the family court summons and other papers. Otherwise alternative methods of service will be necessary (i.e. service by mail, service by publication, etc.)

- *If the non-custodial parent is in California:* Personal service or any other effective form of service will give the court personal jurisdiction over the non-custodial parent.
- *If the non-custodial parent is outside of California:* The Court will have jurisdiction over child custody matters in a parentage action. *See Cal. Fam. Code § 3421(a)(2)(A).* The court will have personal jurisdiction over the respondent in a divorce case only if the respondent has sufficient “minimum contacts” with the state and the Court’s basis for exercising its jurisdiction is not inconsistent with the Constitution of this state or of the United States. *See Cal. CCP. § 410.10.*
- *If the non-custodial parent is in another country,* service must comply with international treaties and must not violate the laws of the other country. Be especially careful when serving a non-custodial parent in a country that is a signatory to the Hague Service Convention since the service requirements are strictly enforced. *See In re Vanessa Q. v. Jose T., 187 Cal. App. 4th 128 (2nd Dist. 2010).*
- If the non-custodial parent’s whereabouts are unknown, the Hague Service Convention does not apply.

5. Will the non-custodial parent file a response in opposition to the requested orders?

- In most cases it is best to file when you are certain that the case will be uncontested.
- If the non-custodial parent requests joint custody or visitation rights it could be very problematic for your request for SIJS findings. One of the goals of the family court is to encourage parent-child relationships. *See Cal. Fam. Code § 3020(b).*
- Even if the custodial parent wants child support, it is best that you do not request child support before the SIJS predicate order is granted. An otherwise uninterested parent might choose to challenge the case just to avoid paying child support. The custodial parent can always request child support at a later time. Furthermore, the court must have personal jurisdiction over the Respondent in order to enforce a child support order.

6. Has the custodial parent interfered with the parental rights of the non-custodial parent?

- If the non-custodial parent’s abandonment or neglect of the child is partly based on the custodial parent’s efforts to conceal the child’s whereabouts or otherwise prevent them from developing a relationship, you should expect some resistance to the SIJS request from the family court.

- Keep in mind that it is the public policy of the Family Court to assure that children have frequent and continuing contact with both parents. *See Cal. Fam. Code § 3020(b).*
- Even in cases where there has been domestic violence between the parents, the court will generally still grant custody or visitation rights to the abusive parent, even if it is limited to *monitored* or *supervised* visitation. There must be good cause for the court to deny the parental rights of a parent who is requesting custody or visitation. So be wary of cases in which the custodial parent has denied the non-custodial parent access to the child based solely on the history of domestic violence between the parents.

7. Is it in the best interest of the child that he/she is not returned to their previous country of nationality or country of last habitual residence?

- You should only file if you have a strong argument that it is *not in the child's best interest* to be returned to his/her home country. That argument may combine any number of factors in addition to the non-custodial parent's conduct.
 - Is there a parent to care for the child in their home country?
 - Did the child suffer abuse, abandonment or neglect by a non-custodial parent who remains in the home country?
 - Was the child mistreated by third parties in the home country? Was the non-custodial parent unwilling or unavailable to protect the child from this mistreatment?
 - Are there country conditions that put the child at risk if s/he is returned to the home country?
- If the non-custodial parent is in a country other than the child's country of nationality – be sure you can address why it is not in the child's best interest to be returned to that country as well.

8. What if the non-custodial parent is dead?

- It is theoretically possible to request SIJS orders even when the non-custodial parent is deceased. Note: this has not been attempted in the LASC Family Court yet.
- If one parent is dead, the other parent is entitled to custody of the child. **Cal. Fam. Code §3010 (b).**

- When one of the parents of a child is deceased and there are (1) no court orders in place about the child AND (2) no pending court cases about custody or guardianship, the law requires that the person filing a parentage case give notice of the case to certain people related to the child. The reason for this law is to make sure that anyone who may have an interest in the child or the case has an opportunity to have a say in the case.
 - The Summons and the Petition **MUST** be served on (1) the person or persons who have physical custody of the child (the people the child lives with), and (2) the child’s siblings, half-siblings, and the child’s grandparents (on both sides).
 - The papers can be served in person or by mail, or other way the court allows. If you cannot locate any of the people who must be served, let the court know your efforts (due diligence) to contact them and the court will either give you permission to serve them some other way, or will let you move forward without giving notice to the people who cannot be found.

9. What if the custodial parent does not have legal immigration status in the U.S.?

- The immigration status of a parent, legal guardian, or relative shall not disqualify the parent, legal guardian, or relative from receiving custody. **Cal. Fam. Code § 3040(b)**

10. Are there any other forms of immigration relief available to the child and/or custodial parent?

- A child who is granted SIJS essentially ceases to be the “child” of his or her natural or prior adoptive parents for immigration purposes. **INA § 101(a)(27)(J)**. This means that a child, who is granted SIJS, becomes a permanent resident and then later a U.S. citizen, will never be able to petition to have his/her parent immigrate to the U.S. lawfully. Even if only one parent was abusive, neglectful, or has abandoned the child, the other non-offending parent still faces this bar.
- Consider whether the child has a viable claim for other forms of relief that would allow the child to help their non-offending parent also obtain lawful immigration status. Likewise, if the parent has his/her own way of obtaining lawful immigration status, consider whether it would be more beneficial to the child to be a derivative on the parent’s case.

Courthouse and Filing Information

Los Angeles Superior Court – Central District – Stanley Mosk Courthouse

111 N. Hill Street, Los Angeles, CA 90012

<http://www.lasuperiorcourt.org/locations/ui/location.aspx?loc=LA&>

Room 426, 4th Floor – Family Law Filing Window; Family Law Forms Window

Family Law Courtrooms:

<u>Dept.</u>	<u>Room</u>	<u>Floor</u>	<u>Phone Number</u>	<u>Dept.</u>	<u>Room</u>	<u>Floor</u>	<u>Phone Number</u>
2	215	2 nd	(213) 974-5566	63	604	6 th	(213) 974-5697
2B	247	2 nd	(213) 974-0510	65	608	6 th	(213) 974-5701
2D	629	6 th	(213) 974-5691	67	614	6 th	(213) 974-4331
6	543	5 th	(213) 974-5581	79	610	6 th	(213) 974-6219
7	319	3 rd	(213) 974-5596	83	829	8 th	(213) 974-5577
22	519	5 th	(213) 974-5621	84	835	8 th	(213) 974-5715
27	634	6 th	(213) 974-5891	87	830	8 th	(213) 974-5573
43	419	4 th	(213) 974-5661	88	831	8 th	(213) 974-5693
60	518	5 th	(213) 974-5705				

A phone and office directory for the Stanley Mosk Courthouse is available online at:

<http://www.lasuperiorcourt.org/locations/ui/location.aspx?loc=LA&tab=2&d=Directory>

Notes on Filing

The best time to file is early in the morning, before 10am when room 426 is not so busy. Otherwise you may spend at least an hour in line.

Filing Window hours are from 8:30am – 4:30pm. They begin to accept Ex Parte (Emergency) filings at 8:00am, otherwise you should wait in the line outside the door until the filing window opens at 8:30am. If you are already in line before the doors are closed at 4:30pm you will be allowed to file.

Print out all your own forms – you will be charged for forms if you request them in Room 426, at Window 5. Although samples are being provided to you – always check online for the most recent version of the forms. Most forms are available at: <http://courts.ca.gov/forms.htm> and <http://www.lasuperiorcourt.org/forms/ui/main.aspx?CT=FA>

Check Your Case Summary Online: The case summary will have a brief summary of information regarding the forms that have been filed with the clerk, upcoming hearing dates, and orders made. At any point after filing your case, you may look up the case summary online at: <http://www.lasuperiorcourt.org/civilcasesummarynet/ui/?CT=FA>

Assignment of Cases and General Court Schedule

Once a case is assigned a number, it is sent to a particular judge or commissioner for the duration of the action. All matters pertaining to the case are heard in the assigned department.

Fee Waivers are granted by a clerk in Room 426; if a hearing is necessary they are heard in Department 2, Room 215, from 8:30am to 11:45am and 1:30pm to 4:00pm.

Ex Parte Hearings are held each morning between 8:30am and 10:30am in the assigned department.

Request for Order Hearings are held Mondays, Tuesdays and Wednesdays at 8:30am in the departments where the cases are assigned. Recently the court schedule has been full up to a month and a half in advance or more.

Note: the *Request for Order* (RFO) recently replaced the *Order to Show Cause* (OSC). You may hear some practitioners still refer to the form FL-300 and hearing by the acronym “OSC”. You may also see “order to show case” used in some local or state rules or guidelines that have not been updated to reflect the change.

Mediation

In any case in which child custody orders are requested, the parties will be required to attend a mediation appointment and Parents and Children Together (PACT) class.

Information about the PACT class, including schedules for in person classes and the online class, is available at: <http://www.lasuperiorcourt.org/familylaw/ui/pact.aspx>

The PACT class is offered on the first Thursday of each month at the Stanley Mosk Courthouse, Room 222, 111 N. Hill Street, Los Angeles, 90012.

English: 8:30 – 11:30 am

Spanish: 1:30 – 4:30 pm

LASC Resources:

- Family Division Court Rules :
<http://www.lasuperiorcourt.org/courtrules/ui/Popup.aspx?ch=Chap5&tab=2>
- Employee Procedural Manual for processing Default and Uncontested Judgments submitted by declaration pursuant to Family Code Section 2336:
<http://www.lasuperiorcourt.org/familylaw/ui/pdfs/judgmentmanual.pdf>

Requesting Fee Waivers in Family Court

The fee for an initial filing in Los Angeles is \$435. The most up to date fee schedule is available online at: <http://www.lasuperiorcourt.org/feesnet/ui/popup.aspx?ct=CI>

If your client cannot afford to pay the fees, there are 3 ways to qualify for a fee waiver (choose only one):

- (1) If they are receiving public benefits, like Medi-Cal, Food Stamps (CalFresh), Cal-Works, General Assistance, SSI, SSP, Tribal TANF, IHHS or CAPI; *OR*
- (2) If the household income, before taxes, is less than the amounts listed on Form FW-001 in item 5b; *OR*
- (3) If the court finds that they do not have enough income to pay for their household's basic needs AND the court fees.

To request a fee waiver that covers the cost of filing and most other basic court fees:

1. **Read:** *Information Sheet on Waiver of Superior Court Fees and Costs* (Form FW-001-INFO).
2. **Fill out these forms:**
 - *Request to Waive Court Fees* (Form FW-001)
 - If you need more space, you may use an *Attachment to Judicial Counsel Form* (Form MC-025)
 - Attach proofs of income (tax returns, paystubs, public benefit cards, etc.)
 - *Order to Waive Court Fees* (Form FW-003). Only complete the top section with the case information, the orders will be completed by the Court.
3. **Make one additional copy of your forms:** The original will be for the Court; the other copy will be for you.
4. **File your forms with the court clerk in room 426:** Turn in your forms to the court clerk. S/he will keep the original and return the copies to you, stamped "Filed" or "Conformed Copy." If the clerk cannot immediately grant your fee waiver, it will be sent to a judge. The clerk will tell you how long it will take to process your application for fee waiver and when you should return to pick up your orders. Generally you will be able to pick up your order by the next business day.

Once you have a granted *Order on Court Fee Waiver* (Form FW-003) you should keep this form in an accessible place since you may be asked to show proof of a fee waiver when you file additional forms.

To request a fee waiver for the cost of a Court Interpreter for your hearing:

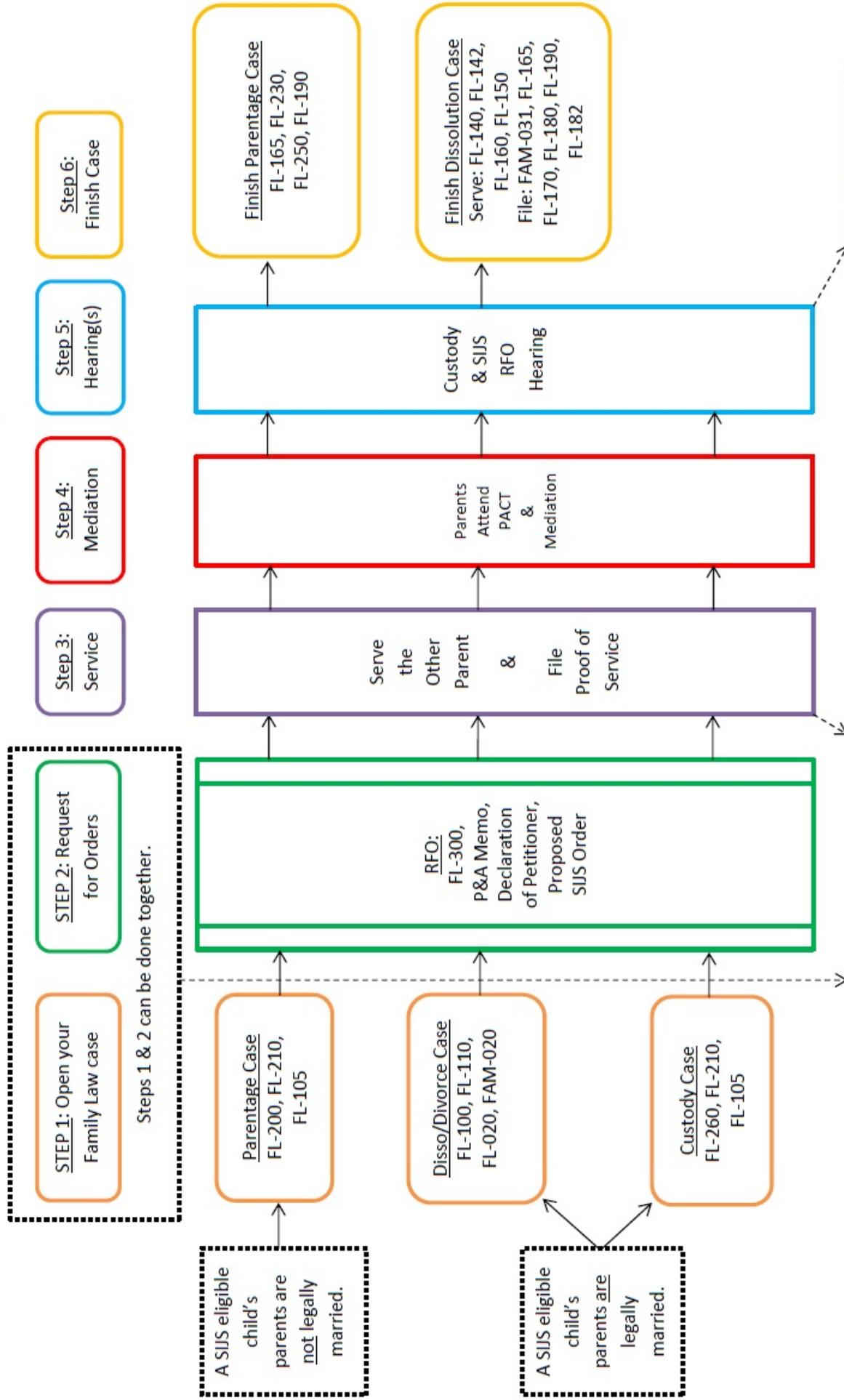
If the Petitioner or Respondent will require an interpreter during the hearing, you should be prepared to request an additional fee waiver on the day of the hearing. If the child is the petitioner and the custodial parent is the Respondent

1. **Read:** the [instructions for FW-002](#) as a guide.
2. **Fill out these forms:**
 - *Request to Waive Additional Court Fees* ([Form FW-002](#)).
 - *Order to Waive Court Fees* ([Form FW-003](#)). Only complete the top section with the case information, the orders will be completed by the Court.
3. **Make one additional copy of your forms:** The original will be for the Court; the other copy will be for you.
4. **File your forms with the clerk in the filing room or with the clerk in the department in which your case is being heard:** Turn in your forms to the court clerk. S/he will keep the original and return the copies to you, stamped “Filed” or “Conformed Copy.”
5. **If your fee waiver is denied** you will have to pay the court interpreter fee prior to having your case heard. The clerk will require you show proof of the payment of the fee in order to proceed with your hearing. On the morning of your hearing you will have to return to room 426 to pay the interpreter fee.

Additional information regarding fee waivers and what to do if your client would like to **appeal a denied fee waiver** is available online at: <http://www.courts.ca.gov/selfhelp-feewaiver.htm>

Fee waivers are confidential. You do not have to serve a copy on the Respondent/ other parent.

ONE PARENT SIJS: FAMILY COURT FLOW CHART



If Steps 1 & 2 are not done together, then you must serve other parent/ respondent twice: (1) with the Summons and Initial Filing, (2) with the RFO and hearing date

When the SIJS Order is obtained → Petition USCIS for SIJS (I-360)

Opening a Family Law Case

Option 1: Filing a *Petition to Establish Parental Relationship*

In the majority of successful one-parent cases in California, the petitioner has requested the SIJS order by filing a *Petition to Establish Parental Relationship*, or a “parentage” case. Prior to filing you should review Title 5 of the California Rules of Court, as well as Division 12 of the California Family Code. This type of proceeding may be used regardless of whether the custodial parent is the mother or the father of the child. Although we **strongly recommend** that you consult with a family law attorney before filing and throughout your proceedings, you may also follow these basic steps:

1. **Fill out these forms:**

- *Petition to Establish Parental Relationship* (Form FL-200),
- *Summons (Uniform Parentage — Petition for Custody and Support)* (Form FL-210), and
- *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (Form FL-105/GC-120).
- Although you may also fill out the *Child Custody and Visitation Application Attachment* (Form FL-311), it is neither necessary nor recommended. It is an optional form that contains a lot of detail about schedules for visits, holidays, etc. and therefore much of it will not be applicable since you will not be requesting visitation orders for the other parent.
- It is not recommended that you request child support orders when requesting SIJS eligibility findings.

Note: To schedule a court hearing to ask the judge to make custody and SIJS eligibility orders, you need to follow the steps for filing a *Request for Order*. To save yourself a trip to the courthouse and to avoid having to serve the non-custodial parent twice, you may simultaneously file the *Petition to Establish Parental Relationship* and *Request for Order*. Then you could have someone serve the non-custodial parent with the petition and the request for order at the same time.

2. **Make at least 2 copies of all your forms:** One copy will be for the petitioner; another copy will be for the other parent/respondent. The original is for the court.
3. **File your forms with the court clerk in room 426:** Turn in your forms to the court clerk. S/he will keep the original and return the copies to you, stamped “Filed” or “Conformed Copy.” One copy is for the petitioner and the other is for the respondent. You will have to pay a filing fee at the time of filing. If your client cannot afford the fee, be sure they also apply for a fee waiver.

4. **Serve the papers on the non-custodial parent:** Have someone (NOT the petitioner) serve the other parent in person with a copy of the papers and a blank *Response to Petition to Establish Parental Relationship* (Form FL-220) and a blank *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (Form FL-105/GC-120).
5. **File your proof of service**
Have your server fill out a *Proof of Service of Summons (Family Law — Uniform Parentage — Custody and Support)*(Form FL-115) and return it to you so you can file it with the court. It is very important that your server fills out the Proof of Service correctly. It is best if you complete as much of the form as possible prior to giving it to the server and review the completed form before it is submitted to the court.
6. **Wait 30 days for the other parent to respond**
The Respondent has 30 days from the date he or she was served with the petition to file a response with the court. In most SIJS cases it is best if the non-custodial parent does not respond and the case proceeds uncontested or by default. If 30 days have passed and there has been no response, you may finish the paternity case *in default*.

At any time while the Parentage case is pending you may file the *Request for Order* so that you may have a hearing on the custody and SIJS eligibility issue. Follow the directions for “Filing a Request for Order and Getting your Hearing Date.” After attending your hearing(s) and receiving the SIJS eligibility predicate order for your client you must still take steps to [finish your case](#).

Finishing your Parentage Case in Default:

If the other parent does not file a response and there is no written agreement between the parents, you should follow these steps to complete the case:

1. Fill out these forms:

- *Request to Enter Default (Family Law — Uniform Parentage)* (Form FL-165);
 - *Declaration for Default or Uncontested Judgment* (Form FL-230);
 - *Judgment (Uniform Parentage — Custody and Support)* (Form FL-250); and
 - *Notice of Entry of Judgment (Family Law — Uniform Parentage — Custody and Support)* (Form FL-190).
2. The following forms are all optional but can be attached to your *Judgment (Uniform Parentage — Custody and Support)* (Form FL-250) if applicable:
 - *Child Custody and Visitation Order Attachment* (Form FL-341)
 - *Child Abduction Prevention Order Attachment* (Form FL-341(B))

- Do not use the following optional forms in SIJS cases: *Supervised Visitation Order* (Form FL-341(A)); *Children’s Holiday Schedule Attachment* (Form FL-341(C)); *Additional Provisions — Physical Custody Attachment* (Form FL-341 (D)); *Joint Legal Custody Attachment* (Form FL-341(E))
3. **Make at least 2 copies of all your forms.** Make sure you include all the attachments and, if any are double-sided, that you photocopy both sides. One copy will be for the custodial parent; another copy will be for the non-custodial parent. The original is for the court.
 4. **Turn in all your forms to the court clerk in room 426, with 2 large envelopes** (addressed to each parent or attorney and with enough first-class postage for papers to be mailed back to you by the court)
 - The clerk will process your paperwork and give it to a judge to review.
 - If all of the judgment documents are completed correctly, the judge will sign the *Judgment* without either named parent having to appear in court.
 - If there is a problem with the documents, a court appearance may be necessary. Or you may just need to fix a mistake on your paperwork.
 5. **The final judgment will arrive by mail.** A court clerk will mail the *Judgment and Notice of Entry of Judgment* to each party, with the date that the judgment was filed stamped in the upper right corner.

Note: If the non-custodial parent **does** file a response, or if the parents have a **written agreement**, you should consult a family law practitioner and refer to the CA Self-Help website’s instructions for finishing your case, available online at <http://www.courts.ca.gov/11299.htm>.

For more information about filing for parentage refer to the CA Self-Help website’s general information at: <http://courts.ca.gov/selfhelp-parentage.htm> and filing instructions at: <http://courts.ca.gov/11298.htm>.

Option 2: Filing a Petition for Dissolution of Marriage

There have been two cases in which SIJS orders were successfully obtained through divorce proceedings. If the parents are legally married, and the custodial parent would like a divorce, you may choose this option. However, be aware of the extra requirement that the court must have *personal jurisdiction* over the respondent spouse/parent, not just subject matter jurisdiction over the child custody matter. Furthermore, if there are extensive issues regarding the *division of property* or *spousal support*, it is not recommended that you proceed with a divorce case unless you are an **experienced family law attorney**. Prior to filing you should review Title 5 of the California Rules of Court, as well as Division 8 of the Cal. Fam. Code. Also see the LASC divorce overview: http://www.lasuperiorcourt.org/familylaw/ui/pdfs/divorce_overview_pru1.pdf

1. Fill out these forms

- *Petition — Marriage (Family Law)* (Form FL-100),
- *Summons (Family Law)* (Form FL-110),
 - If you need more room on your petition to list the petitioner's property and debts, use the *Property Declaration (Family Law)* (Form FL-160),
- *Family Law Case Cover Sheet-Certificate of Grounds for Assignment to District* (Form FAM-020),
- *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (Form FL-105/GC-120),
- While you may also fill out the *Child Custody and Visitation Application Attachment* (Form FL-311) it is neither necessary nor recommended. It is an optional form that contains a lot of detail about schedules for visits, holidays, etc. and therefore much of it will not be applicable since you will not be requesting visitation orders for the other parent.
- It is not recommended that you request child support orders when requesting SIJS eligibility findings.

Note: To schedule a court hearing to ask the judge to make custody and SIJS eligibility orders, you need to follow the steps for filing a *Request for Order*. Before you can finish the divorce case, the petitioner will also have to prepare the property and income disclosures. To save yourself a trip to the courthouse and to avoid having to serve the non-custodial parent twice, you may simultaneously file the *Petition to Establish Parental Relationship* and *Request for Order*. Then you could have someone serve the non-custodial parent with the petition, the request for order, and the disclosure forms at the same time.

- 2. Make at least 2 copies of all your forms:** One copy will be for the petitioner; another copy will be for the respondent. The original is for the court.

3. **File your forms with the court clerk in room 426:** Turn in your forms to the court clerk. S/he will keep the original and return the copies to you, stamped “Filed” or “Conformed Copy.” One copy is for the petitioner and the other is for the respondent. You will have to pay a filing fee at the time of filing. If your client cannot afford the fee, be sure they also apply for a fee waiver.
4. **Serve the papers on the non-custodial parent:** Have someone (NOT the petitioner) serve the respondent spouse/parent with a copy of the papers and a blank *Response — Marriage* (Form FL-120), and a blank *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (Form FL-105/GC-120).

- The papers can be served in one of two ways:

- **Personal service**

- This means that your “server” hand-delivers a copy of all the papers (and the blank forms) to the spouse or domestic partner. In most cases, you will have to do personal service for the initial divorce or legal separation papers.

OR

- **Service by mail with a Notice and Acknowledgment of Receipt**

- If the petitioner and respondent are cooperating on the family law case, and the respondent accepts service by mail, this can be an easy way to serve the papers.

Someone 18 or older (NOT the petitioner) must mail copies of each of the forms filed with the court, the blank forms listed above, and 2 copies of the *Notice and Acknowledgment of Receipt (Family Law)*(Form FL-117).

Note: If the respondent spouse/parent lives outside of California, you may be able to serve him or her with the *Petition* and *Summons* by certified mail, with return receipt requested. For mailing outside of the U.S., you should use registered international mail.

5. **File your proof of service**

Have your server fill out a *Proof of Service of Summons* (Form FL-115). It is very important your server fills out the Proof of Service correctly. It is best that you complete as much of the form(s) as possible prior to giving it to the server and review the complete form before you file it with the court clerk.

- If the respondent was served by mail and Notice and Acknowledgment of Receipt, make sure you also receive a copy of the signed *Notice and Acknowledgment of Receipt — Family Law* (Form FL-117).

6. **Wait 30 days for the other party to respond**

The respondent has 30 days from the date he or she was served with the petition to file a

response with the court. In most SIJS cases it is best if the non-custodial parent does not respond and the case proceeds uncontested or by default. If 30 days have passed, there has been no response, you have received your orders for custody and SIJS, and you have served the respondent with the necessary disclosures, then you may complete the dissolution *in default*.

At any time while the Divorce case is pending you may file the *Request for Order* so that you may have a hearing on the custody and SIJS eligibility issue. Follow the directions for “Filing a Request for Order and Getting your Hearing Date.” After attending your hearing(s) and receiving the SIJS eligibility predicate order for your client, you must still take steps to [finish your case](#).

Preliminary Declaration of Disclosure:

The petitioner **MUST** make a preliminary declaration of disclosure within 60 days of filing the petition. For expediency purposes, you should complete the disclosures at the same time that you are preparing the initial filing or request for order so that you may serve the declaration of disclosure on the respondent at the same time.

If you find there are extensive division of property issues you should not proceed unless you are an experienced family law attorney.

1. Fill out these disclosure forms:

- *Declaration of Disclosure* (Form FL-140),
- *Schedule of Assets and Debts* (Form FL-142) OR a *Property Declaration* (Form FL-160); and
- *Income and Expense Declaration* (Form FL-150).
 - The disclosure documents must include all tax returns filed by the petitioner in the last 2 years.

2. Make at least 1 copy of all the forms and tax returns

One copy will be for the respondent, the original is for the petitioner. Remember, **none** of these disclosure documents are filed with the court. It is very important that you keep a copy in case later you need proof of what information was provided to the respondent spouse.

3. Have someone serve a copy of the disclosure forms on the respondent

Have someone 18 or older (NOT the petitioner) mail a copy of the disclosure documents to the respondent spouse.

4. File the *Declaration Regarding Service of Declaration of Disclosure*

- Fill out the *Declaration Regarding Service of Declaration of Disclosure* (Form FL-141).
- Make 2 copies of this form. File the original and the two copies with the court clerk. The clerk will keep the original and return the copies to you stamped “Filed”.

Keep in mind that if anything changes or if there is new information since the preliminary declarations of disclosure, the parties must fill out and serve new sets of disclosure forms updating the other person about the new or changed information. Another *Declaration Regarding Service of Declaration of Disclosure* (Form FL-141) will have to be filed documenting service of the updated disclosure forms.

Finishing the Divorce Case in Default

If the respondent spouse did not file a response and 30 days have passed since they were served with the summons and petition, and you have already received your requested SIJS eligibility orders from the court, you may take the following steps to complete the case in default:

1. Fill out these forms:

- *Request for Default Setting* (Form FAM-031)
- *Request to Enter Default* (Form FL-165);
- *Declaration for Default or Uncontested Dissolution or Legal Separation* (Form FL-170);
- *Judgment* (Form FL-180); and
- *Notice of Entry of Judgment* (Form FL-190)
- *Judgment Checklist – Dissolution/Legal Separation* (Form FL-182)

2. The following forms are all optional but can be attached to your *Judgment* (Form FL-180) if applicable:

- *Child Custody and Visitation Order Attachment* (Form FL-341)
- *Child Abduction Prevention Order Attachment* (Form FL-341(B))
 1. Do not use the following optional forms in SIJS cases: *Supervised Visitation Order* (Form FL-341(A)); *Children’s Holiday Schedule Attachment* (Form FL-341(C)); *Additional Provisions — Physical Custody Attachment* (Form FL-341 (D)); *Joint Legal Custody Attachment* (Form FL-341(E))

3. There are additional forms that must be completed if the petitioner is requesting child support, spousal support, or there is community property and debts that must be divided. However, since we do not recommend seeking SIJS orders through complicated divorce cases unless you are an experienced family law attorney, we are not including more information on how to request those orders.
4. **Make at least 2 copies of all your forms.** Make sure you include all the attachments and, if any are double-sided, that you photocopy both sides. One copy will be for the petitioner; another copy will be for the respondent spouse/parent. The original is for the court.
5. **Turn in all your forms to the court clerk in room 426, with 2 large envelopes** (addressed to each party or attorney and with enough first-class postage for papers to be mailed back to you by the court)
 - The clerk will process your paperwork and give it to a judge to review.
 - Make sure you have already filed the *Proof of Service of Summons* (Form FL-115) (or file it now) AND the *Declaration Regarding Service of Declaration of Disclosure* (Form FL-141).
 - If all of the judgment documents are completed correctly, the judge will sign the *Judgment* without either named spouse having to appear in court.
 - If there is a problem with the documents, a court appearance may be necessary. Or you may just need to fix a mistake on your paperwork.
6. **The final judgment will arrive by mail.** A court clerk will mail the *Judgment and Notice of Entry of Judgment* to each spouse or domestic partner, with the date that the judgment was filed stamped in the upper right corner.

If a response is entered you should consult with an experienced family law attorney. You may also see the basic steps for Completing Divorce or Separation on the California Courts self-help website: <http://www.courts.ca.gov/1035.htm>

Option 3: Filing a *Petition for Custody and Support of Children*

Although this method has not yet been used to request SIJS orders, a parent may attempt to request the orders by filing a *Petition for Custody and Support of Minor Children*. For more information refer to the CA Self-Help website's instructions at <http://courts.ca.gov/1185.htm> and Cal. Fam. Code § 3120. Although we **strongly recommend** that you consult with a family law attorney before filing and throughout your proceedings, you may also follow these basic steps:

Parents can do this if:

- They are married to each other or are registered domestic partners and do not want to get a divorce, legal separation, or annulment but want a court order for custody and visitation (with or without child support);
- They are not married but have already signed a Voluntary Declaration of Paternity and now want a court order for custody and visitation.
- They are not married but have legally adopted a child together and now want a court order for custody and visitation; or
- The petitioner and respondent have been determined to be the parents of a child in a juvenile case and now want a court order for custody and visitation.

To start a case with a petition for custody and support of minor children:

1. Fill out these forms:

- *Petition for Custody and Support of Minor Children* (Form FL-260),
- *Summons (Uniform Parentage — Petition for Custody and Support)* (Form FL-210), and
- *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (Form FL-105/GC-120).

Note: To schedule a court hearing to ask the judge to make custody and SIJS eligibility orders, you need to follow the steps for filing a *Request for Order*. To save yourself a trip to the courthouse and to avoid having to serve the non-custodial parent twice, you may simultaneously file the *Petition for Custody and Support of Minor Children* and *Request for Order*. Then you could have someone serve the non-custodial parent with the petition and the request for order at the same time.

2. **Make at least 2 copies of all your forms:** One copy will be for the petitioner; another copy will be for the other parent/respondent. The original is for the court.
3. **File your forms with the court clerk in room 426:** He or she will keep the original and return the copies to you, stamped "Filed" or "Conformed Copy." You will have to pay a

filing fee at the time of filing. If your client cannot afford the fee, be sure they also apply for a fee waiver.

4. **Serve the other parent:** Have someone (NOT the petitioner) serve the other parent in person with a copy of the papers and a blank copy of:
 - *Response to Petition for Custody and Support of Minor Children* (Form FL-270)
 - *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (Form FL-105/GC-120).
5. **File your Proof of Service:** Have the server fill out a *Proof of Service of Summons (Family Law — Uniform Parentage — Custody and Support)* (Form FL-115) and return it to you so you can file it with the court. It is very important that your server fills out the Proof of Service correctly. It is best if you complete as much of the form as possible prior to giving it to the server and review the completed form before it is submitted to the court.

Follow the directions for “Filing a Request for Order and Getting your Hearing Date.” To expedite your case you should file the initial filing and request for order simultaneously.

Filing a Request for Order and Getting Your Hearing Date

Once you have opened a family law case, you must file a *Request for Order* (RFO) to set up a court date to request the SIJS eligibility findings and child custody orders. You should review Division 8 of the California Family Code.

1. Prepare these court forms and supporting documents:

- *Request for Order* (Form FL-300). You can use the *Information Sheet for Request for Order* (Form FL-300-INFO) for information.
- Declaration of Petitioner. You should include the declaration as an attachment to the FL-300.
- Memorandum of Points and Authorities in Support of Request for Eligibility Findings Order for Special Immigrant Juvenile Status (SIJS) Under 8 U.S.C. 1101(a)(27)(J)
- Proposed Order Granting Orders for Custody; and Findings Regarding the Minor's Eligibility for Special Immigrant Juvenile Status Under 8 U.S.C. 1101(a)(27)(J)
- Although you may prepare the *Child Custody and Visitation Application Attachment* (Form FL-311), it is not necessary since you will not be requesting visitation for the non-custodial parent.

2. Make at least 2 copies of all your forms

One copy will be for the custodial parent/petitioner; another copy will be for the non-custodial parent/ respondent. The original is for the court. If the child is the petitioner you will need to serve each parent with a copy even if they are not a party to the case.

3. File your forms with the court clerk in room 426: He or she will keep the original and return the copies to you, stamped "Filed" or "Conformed Copy." You will have to pay a filing fee. If your client has been granted a fee waiver you must bring your copy of the fee waiver when you file.

4. Get your court date and mediation date: The clerk will review the court calendar and give you the next available court date for your RFO. When you file you should have already reviewed your availability and the petitioner's availability so that you can request an alternate date if necessary.

You will also be given a date for the parties/parents to attend mediation. You should attempt to request mediation for a day when your client is off from work, or early in the morning before the RFO hearing.

5. Serve your papers on the respondent

Have someone (NOT the petitioner) serve the respondent with a copy of all the papers filed and a blank *Responsive Declaration to Request for Order* (Form FL-320) before the court date. Look at the front of Form FL-300 to see if the court ordered you to serve any other documents. Generally the clerk will give you an *Order to Attend Mediation Appointment* which must be served on the other party.

- If you filed a *Request for Order* (Form FL-300) with the box for “Court Order” and Item 4 checked, your papers **MUST** be served **in person** at least **16 days before your court date**.
- If you filed a *Request for Order* (Form FL-300) with NO check marks on the box for “Court Order” nor on Item 4, you can probably serve the other party by mail. But if you serve by mail, you must do it at least **16 court days before the hearing plus 5 calendar days for mailing**.

6. File your Proof of Service:

- **If you are filing the Request for Order simultaneously with the Summons and Petition:** On the original *Proof of Service of Summons (Family Law — Uniform Parentage — Custody and Support)*(Form FL-115) you can check the boxes 1 (e)(7) and (8) indicating that you are serving the FL-300, blank FL-320, and Other: Memo of Points and Authorities.
- **If you are filing the Request for Order independently:** Have your server fill out *Proof of Personal Service* (Form FL-330) and return it to you so you can file it with the court. It is very important that your server fills out the Proof of Service correctly. It is best if you complete as much of the form as possible prior to giving it to the server and review the completed form before it is submitted to the court. If you were allowed to, and did, serve the papers by mail, have your server fill out the *Proof of Service by Mail* (Form FL-335).

7. Have the parties attend mediation: The parties will have to complete a Parents and Children Together (PACT) class and attend mediation. Attorneys do not have to attend PACT or the mediation appointment.

If the respondent parent does not live in California and you are certain that they will not attend the mediation appointment, your client should inform the mediator that the other

parent is not coming as soon as they arrive at the meeting. Otherwise they may end up waiting for a long time while the mediator gives the other parent time to arrive. The mediator may try to contact the other parent by phone or will simply provide the petitioner with a form verifying that s/he attended mediation.

Sometimes when the child is the petitioner the court will still order mediation. Although it does not make sense – you should have the parent and child comply with the court order by attending the PACT class and mediation together. It is possible the mediator will try to call the other parent when they arrive for the mediation appointment.

Note: It is possible to call the mediator in advance and explain that the other parent is in another country and will not be attending mediation. Sometimes mediators are then willing to cancel the appointment.

8. **Attend the court hearing:** Bring a copy of all the forms that have been filed in the case, including proof of service documents, and proof that the petitioner attended mediation. If the judge makes a decision at the court hearing, the judge will sign a court order. Bring an extra two copies of the Proposed SIJS Eligibility Order just in case.
9. **After the court hearing:** Your Proposed SIJS Eligibility Order should include all your requested custody orders as well, however, the judge or clerk may request that you prepare the *Findings and Order After Hearing* (Form FL-340), and the *Child Custody and Visitation Order Attachment* (Form FL-341).

What to Expect the Day of the Hearing

When you arrive at the department in which your hearing is scheduled you should check-in with the clerk or bailiff in that department.

- Check the list posted outside the door of the courtroom to determine what number has been assigned to your case – cases will be called in that order.
- When the courtroom opens at 8:30am, **check-in** with the clerk or the bailiff. (*You must check-in before the judge calls your case or else he may refuse to hear your case if you are late.*)
 - If you were assigned a Commissioner rather than a Judge, you will be asked to sign a stipulation form so the assigned commissioner may hear the case. If you do not want this commissioner to hear your case you should indicate that the parties are not stipulating. When your file is ready, you will have to go to Dept. 2 to be reassigned to a judge. If you choose to stipulate, the stipulation is permanent.
 - Provide two business cards to the clerk/bailiff. On the back of the card you should write the number assigned to your case on the docket, the case number, and whether you represent the Petitioner or Respondent.
 - File any forms that were not previously filed with the clerk. Provide the clerk a copy of your proposed orders.
 - Request an interpreter if your client requires one.
 - Usually it is the bailiff who will call to request an interpreter.
 - If you don't already have a fee waiver that includes court interpreter fees you will be asked to either file a fee waiver directly with the court or return to room 426 to pay the \$76 fee.
 - *Be prepared to have your client pay the interpreter fee. Some judges have taken the position that any party that has an attorney, even if it is a pro bono attorney, should not have their interpreter fees waived.*
- You will be asked to sit and wait until your case is called. If you are waiting for a court-interpreter you will not be called until the interpreter is present. Expect to wait at least an hour or two. Interpreters will first assist in the *domestic violence* cases before going to any other department/courtroom.

When your case is called you should stand at the table on the side labeled for the Petitioner/Plaintiff. The judge will ask all the parties to enter their appearance on the record, and then have the client sworn-in before proceeding.

After the hearing you should pick up conformed copies of any orders from the judge's clerk.

Service Requirements

It is very important that you understand the requirements for service of process specific to your case. Inability to properly serve the non-custodial parent may ultimately be a barrier to obtaining SIJS eligibility orders in Family Court. If the non-custodial parent or respondent parent lives in a foreign country, then service must comply with international standards for service of process. In most one-parent SIJS cases one parent will live in the U.S. while the other parent lives in another country. International service of process is not a problem when both parents live in the U.S., although there are different rules for serving respondents outside of California and outside the United States.

Hague Service Convention

For service to countries that are signatories to the *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*, more commonly referred to as the “Hague Service Convention,” the service requirements are strictly enforced by the family court. *See In re Vanessa Q. v. Jose T.*, 187 Cal. App. 4th 128 (2nd Dist. 2010). All signatories to the convention have designated a “Central Authority” through which legal documents can be served to parties in that country. Some countries, such as Mexico, have indicated that service of any legal document should be done exclusively through their Central Authority, while others have indicated that alternative means of service are acceptable. Since service to Mexico must be completed exclusively through the Mexican Central Authority, to date we have not been able to successfully complete service to Mexico because the Mexican Central Authority has been mostly unresponsive or takes several months to a year to serve the documents requested.

In general, courts have invalidated service of process in foreign countries that are parties of the Hague Service Convention when service does not abide by the procedures of the treaty. *See e.g., Shoei Kako Co. v. Superior Court*, (1973) 33 Cal.App. 3d 808.

Hague Service Convention Signatory Countries: Albania Antigua and Barbuda
Argentina Armenia Australia Bahamas Barbados Belarus Belgium Bosnia and
Herzegovina Belize Botswana Bulgaria Canada China Colombia Croatia
Cyprus Czech Republic Denmark Egypt Estonia Finland France Germany
Greece Hungary Iceland India Ireland Israel Italy Japan S Korea Kuwait
Latvia Lithuania Luxembourg Macedonia Malawi Malta Moldova Montenegro
Mexico Monaco Kingdom of the Netherlands Morocco Northern Ireland Norway
Pakistan Poland Portugal Romania Russian Federation Saint Vincent and the
Grenadines San Marino Serbia Seychelles Slovakia Slovenia Spain Sri Lanka
Sweden Switzerland Turkey Ukraine United Kingdom of Great Britain Venezuela

Service to Non-Hague Countries

For countries that are not signatories to the Hague Service Convention other international agreements, such as *The Inter-American Convention on Letters Rogatory (IACLR)* and the

Additional Protocol, may apply. Countries must be a party to both agreements in order for a treaty relationship to exist. For instance, Honduras and El Salvador are not parties to the *Additional Protocol*, and therefore no treaty relationship exists with those countries. However, Guatemala is a party to both the IACLR and the *Additional Protocol*.

Compliance with treaty obligations regarding service is especially important if you expect that there will be efforts to *enforce* the order sought in the foreign country. It is unlikely that there will be a need to enforce the custody order sought in SIJS cases. However, for example, if an order for *child support* will be enforced against a respondent in the foreign country then strict compliance with IACLR may be necessary.

Nevertheless, the courts have held that IACLR *does not* mandate letters rogatory as the exclusive method of service of process in countries that are party to IACLR. Instead, the courts have held that letters rogatory are one method that may be used to serve process and the IACLR provides directions for the use of the letters between the countries that are party to the treaty. For example, in *Kreimerman v. Casa Veerkamp*, 22 F.3d 634 (5th Cir. 1994) cert. denied, 513 U.S. 1016 (1994) the Plaintiffs served process of their lawsuit on the Defendants, all of whom were residents of Mexico, by direct mail through the Texas Secretary of State under the Texas Long-Arm Statute. The district court quashed this service, holding that the Inter-American Convention on Letters Rogatory, a multi-national treaty designed to facilitate service of letters rogatory among the signatory nations, was the exclusive means of effecting service on the defendants. The Fifth Circuit Court of Appeals however, reversed the district court holding that the text of the Convention strongly indicated, not that the Convention preempts other conceivable methods of service, but that it merely provided a mechanism for transmitting and delivering letters rogatory when and if parties elect to use that mechanism. *See also Pizzabioche v. Vinelli*, 772 F.Supp. 1245 (M.D.Fla. 1991). As IACLR was not intended to be the exclusive method of service, methods of service prescribed by California state law are not pre-empted.

The *Federal Rules of Court*, specifically Rule 4(f)(2)(C)(ii) F.R.Cv.P., state that 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. Also, the Ninth Circuit Court of Appeals has held that the federal rules governing the service of process to individuals in foreign countries do not create an enumerated hierarchy requiring a party to attempt service in the order that the methods are listed. *Rio Properties, Inc. v. Rio International Interlink*, 284 F.3d 1007, 1015 (9th Cir. 2002). It is possible to petition the court for alternative forms of service before attempting service of process by other means. *Id.*

Service of process to non-Hague countries such as Honduras, El Salvador, and Guatemala may be successfully completed by complying with the California Code of Civil Procedure. The information that follows is a review of some of the methods available for service of a summons, complaint and most other motions. It is not intended to be a comprehensive resource. The information that follows is based on the presumption that the other party is unrepresented. Different rules for service may apply for represented parties. Additional research may be necessary.

Service of the Initial Filing and Summons:

Persons Who Can Serve the Summons & Complaint:

Any person 18 years of age or over and not a party to the action may serve the summons and complaint (**Cal. CCP. §414.10**). The petitioner may not serve the summons and complaint.

Methods of Serving the Summons & Complaint:

Personal Service:

The summons and complaint may be served by having a copy hand-delivered to the person being served (**Cal. CCP. §415.10**).

Substituted Service:

This method is usually allowed when an elusive individual respondent who cannot be served at his or her home or place of work despite attempts to serve the respondent there on three different days, at three different times of day.

- To make substituted service on an individual, leave the documents at the person's home, business or mailing address (not including a post office box), with a competent member of the household or person in charge of the office who is over 18, and inform the person that the papers are for a lawsuit. Then mail a second copy of the summons and complaint to the same place. (**Cal. CCP. §415.20(b)**) You should serve and file a **declaration of due diligence** with the proof of service (see West's California Code Forms (6th ed.), Cal. CCP §415.20(b), Form 1 at KFC 68 .W4 C5; California Forms of Pleading and Practice, Service of Summons §518.76 at KFC 1010.A65 C3).

Service by Mail:

The summons and complaint may also be served by mailing a copy of the summons and complaint to the defendant, together with two (2) copies of the Judicial Council's "Notice and Acknowledgment of Receipt" form, along with a self-addressed, stamped envelope. Service is complete when the Defendant signs and returns the Notice and Acknowledgment. If he or she does not, then service is not complete, and you will need to try another method of service, but you may be able to recover the additional costs of service from the defendant (**Cal. CCP. §415.30**).

Service by Publication:

Service by publication is acceptable if the respondent cannot, with reasonable diligence, be served by any other method. As with service by posting, you must get a court order to serve a respondent by publication by filing an application with the court showing that you have used due diligence in trying to serve the defendant using other methods. The

publication must be in a named newspaper that is most likely to give actual notice to the party to be served (*see* **Cal. CCP. §§ 415.50, 415.95, 417.10(b)**); *and see* California Forms of Pleading and Practice, Service of Summons §518.78, at KFC 1010.A65 C3, for Declaration of Mailing Pursuant to Order for Publication. *See* Government Code §6060 et seq. for details of when and how the notice must be published, and when service is deemed complete.

Service of Other Papers (such as an RFO filed separately):

Persons Who Can Serve Papers (Other Than the Summons & Complaint):

Any person 18 years of age or over and not a party to the action may serve papers in a case (*see* California Forms of Pleading and Practice, Section 518.36 and Sections 518.90). A “party” to the action cannot serve papers in his or her own case.

Timing of Service: Most Motions and Papers:

Most moving and supporting papers must be served and filed at least 16 court days prior to the date of the hearing.

When serving a party by mail you must add an additional 5 calendar days within California, 10 calendar days outside of California, or 20 calendar days outside of the United States (**Cal. CCP. §§ 1005(b) and 1013 (a)**).

When serving a party by fax or express mail, add 2 calendar days to the notice period or deadline to do any act in response to the papers served. The deadline to file notice of intention to move for a new trial, to vacate judgment or of appeal is not extended by fax or express mail service (*see* **Cal. CCP. § 1013(c), (e)**).

You can easily calculate court days by using the LASC online calculator:
<http://www.lasuperiorcourt.org/CourtDateCalculator/index.aspx>

Methods of Serving Papers:

Papers may be served either by personal service (hand delivery), mail, express mail or, if the parties have agreed in writing, by fax (*see* **Cal. CCP. §§ 1010, 1011, 1012, 1013, 1015, 1016**).

Personal Service:

Notice of a motion or other papers may be hand delivered to the party, or left at the party’s residence between the hours of 8AM and 6PM with a person not less than 18 years of age (*see* **Cal. CCP. § 1011(b)**).

Service by Mail:

Notice of a motion or other papers may be served by depositing them in a post office, mailbox or other facility maintained by the U.S. Postal Service, addressed to the person upon whom they are intended to be served, at the last office address given by that person on any document served on the party making the service; otherwise at that party's place of residence. Service is deemed complete at the time of deposit (*see* **Cal. CCP. §§ 1005(b), 1013(a), (b)**).

Service by Express Mail:

Notice of a motion or other papers may be served by depositing them in a post office, mailbox or other facility maintained by the U.S. Postal Service for Express Mail or by any other express service carrier, or by delivering them to an authorized courier or driver for such carrier, in a sealed envelope, Express Mail postage paid and addressed to the person upon whom they are intended to be served, at the last office address given by that person on any document served on the party making the service; otherwise at that party's place of residence. Service is deemed complete at the time of deposit (*see* **Cal. CCP. §§ 1005(b), (c), 1013(c), (d)**).

Service by Fax:

Note the date and place of transmission, as well as the fax number the papers are being sent to, on the papers *or* include an unsigned copy of the certificate of transmission containing the fax number to which the notice or other paper was transmitted. Service is deemed complete at the time of faxing transmission (*see* **Cal. CCP. §§ 1005(b), 1013(e), (f)**).

Service by Publication:

Only a *Summons* may be served on a party by publication.

Service When a Party's Residence is Unknown:

Service may be made by delivering the notice or papers to the clerk of the court (*see* **Cal. CCP. § 1011(b)**). The notice or papers delivered to the clerk must be enclosed in an envelope addressed to the party in care of the clerk, and the back of the envelope must state, "Service is being made under Code of Civil Procedure section 1011(b) on a party whose residence address is unknown, [Name of party whose residence address is unknown] and [Case name and number]" (*California Rules of Court 3.252*).

Filing Proof of Service

If you are making a motion, you must file all your completed Proofs of Service with the court at least **five court days** before the scheduled hearing date (*California Rules of Court 3.1300(c)*).

Selected Rules of Court Pertaining to Service and Procedure

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) Personal service (Code Civ. Proc., § 415.10);
- (2) Substituted service (Code Civ. Proc., § 415.20);
- (3) Service by mail with a notice and acknowledgment of receipt (Code Civ. Proc., § 415.30);
- (4) Service on person outside of the state (Code Civ. Proc., § 415.40);
- (5) Service on person residing outside of the United States which must be done in compliance with service rules of the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters; or
- (6) Service by posting or publication (Code Civ. Proc., §§ 415.50 and 413.30).

(c) Continuing jurisdiction

The court has jurisdiction over the parties and control of all subsequent proceedings from the time of service of the summons and a copy of the petition. A general appearance of the respondent is equivalent to personal service within this state of the summons and a copy of the petition upon him or her.

Rule 5.72. Court order for service by publication or posting when respondent's address is unknown

If the respondent cannot be found to be served a summons by any method described in Code of Civil Procedure sections 415.10 through 415.40, the petitioner may request an order for service of the summons by publication or posting under Code of Civil Procedure sections 415.50 and 413.30, respectively.

(a) Service of summons by publication or posting; forms

To request service of summons by publication or posting, the petitioner must complete and submit to the court Application for Order for Publication or Posting (form FL-980) and Order for Publication or Posting (form FL-982). Alternatively, petitioner may complete and submit to the court pleadings containing the same information as forms FL-980 and FL-982. The petitioner must list all the reasonable diligent efforts that have been made to find and serve the respondent.

(b) Service of summons by posting; additional requirements

Service of summons by posting may be ordered only if the court finds that the petitioner is eligible for a waiver of court fees and costs.

(1) To request service by posting, the petitioner must have obtained an Order on Court Fee Waiver (Superior Court)(form FW-003). If petitioner's financial situation has improved since obtaining the approved order on court fee waiver, the petitioner must file a Notice to Court of Improved Financial Situation or Settlement (form FW-010). If the court finds that the petitioner no longer qualifies for a fee waiver, the court may order service by publication of the documents.

(2) Proof of Service by Posting (form FL-985) (or a pleading containing the same information as form FL-985) must be completed by the person who posted the documents and then filed with the court once posting is completed.

Rule 5.92. Request for court order; response

(a) Request for order; procedures

(1) In a family law proceeding other than an action under the Domestic Violence Prevention Act or a local child support agency action under the Family Code, a notice of motion or order to show cause must be filed on a Request for Order (form FL-300), unless another Judicial Council form has been adopted or approved for the specific motion or order to show cause.

(2) In an action under the Domestic Violence Prevention Act, a notice of motion or order to show cause to modify existing orders that were entered after a hearing may be filed on a Request for Order (form FL-300).

(3) In a local child support action under the Family Code, a notice of motion or order to show cause filed by any party other than the local child support agency may be filed on a Request for Order (form FL-300).

(4) The Request for Order (form FL-300) must set forth facts sufficient to notify the other party of the declarant's contentions in support of the relief requested.

- (5) A completed Income and Expense Declaration (form FL-150) or Financial Statement (Simplified) (form FL-155) must be filed with the Request for Order (form FL-300) when relevant to the relief requested unless a current form is on file with the court.
- (6) The moving party must file the documents with the court to obtain a court date and then serve a copy on the responding party.
 - (A) If the request for order seeks court orders pending a hearing or seeks an order that the other party attend the hearing, the Request for Order (form FL-300) and appropriate attachments must be served in the manner specified for the service of a summons in Code of Civil Procedure section 413.10 et seq.
 - (B) If the Request for Order (form FL-300) is filed after entry of a judgment of dissolution of marriage, nullity of marriage, legal separation of the parties, or paternity, or after a permanent order in any other proceeding in which the visitation, custody, or support of a child was at issue, it must be served as specified in Family Code section 215.
 - (C) All other requests for order and appropriate attachments may be served as specified in Code of Civil Procedure section 1010 et. seq.
- (7) The documents served must include a blank copy of the following:
 - (A) Responsive Declaration to Request for Order(form FL-320);
 - (B) Income and Expense Declaration (form FL-150) or Financial Statement (Simplified)(form FL-155) when completed declarations are among the papers required to be served.

Rule 2.305. Requirements for signatures on documents

(a) Possession of original document

A party who files or serves a signed document by fax under the rules in this chapter represents that the original signed document is in the party's possession or control.

(b) Demand for original; waiver

At any time after filing or service of a signed fax document, any other party may serve a demand for production of the original physically signed document. The demand must be served on all other parties but not filed with the court.

(c) Examination of original

If a demand for production of the original signed document is made, the parties must arrange a meeting at which the original signed document can be examined.

(d) Fax signature as original

Notwithstanding any provision of law to the contrary, including Evidence Code sections 255 and 260, a signature produced by fax transmission is deemed to be an original.

Rule 2.305 amended and renumbered effective January 1, 2007; adopted as rule 2007 effective March 1, 1992.

Ex Parte Applications (Emergency Orders)

If you have been unable to serve the respondent within the time frame required by the California Code of Civil Procedure, need a court order allowing an alternate method of service such as service by publication, or if there is an immediate danger of irreparable harm to the children involved in the case, you may consider filing an Ex Parte Application. However, these issues may also be decided by a judge during a scheduled hearing for an RFO.

LACBA Barrister's Tips for Ex Parte Applications are available online at:
<http://www.lacba.org/Files/LAL/Vol30No1/2352.pdf>

Below are the state and local rules that apply to Ex Parte Applications.

Ex Parte: California Rules of Court (Revised July 1, 2013)

Rule 5.151. Request for emergency orders; application; required documents

(a) Application

The rules in this chapter govern applications for emergency orders (also known as ex parte applications) in family law cases, unless otherwise provided by statute or rule. These rules may be referred to as “the emergency orders rules.” Unless specifically stated, these rules do not apply to ex parte applications for domestic violence restraining orders under the Domestic Violence Prevention Act.

(b) Purpose

The purpose of a request for emergency orders is to address matters that cannot be heard on the court's regular hearing calendar. In this type of proceeding, notice to the other party is shorter than in other proceedings. Notice to the other party can also be waived under exceptional and other circumstances as provided in these rules. The process is used to request that the court:

- (1) Make orders to help prevent an immediate danger or irreparable harm to a party or to the children involved in the matter;
- (2) Make orders to help prevent immediate loss or damage to property subject to disposition in the case; or
- (3) Make orders about procedural matters, including the following:
 - (A) Setting a date for a hearing on the matter that is sooner than that of a regular hearing (granting an order shortening time for hearing);

(B) Shortening or extending the time required for the moving party to serve the other party with the notice of the hearing and supporting papers (grant an order shortening time for service); and

(C) Continuing a hearing or trial.

(c) Required documents

A request for emergency orders must be in writing and must include all of the following completed documents when relevant to the relief requested:

- (1) Request for Order (form FL-300) that identifies the relief requested;
- (2) A current Income and Expense Declaration (form FL-150) or Financial Statement (Simplified) (form FL-155) and Property Declaration (form FL-160);
- (3) Temporary Orders(form FL-305) to serve as the proposed temporary order;
- (4) A written declaration regarding notice of application for emergency orders based on personal knowledge; and
- (5) A memorandum of points and authorities only if required by the court.

(d) Contents of application and declaration

- (1) Identification of attorney or party

An application for emergency orders must state the name, address, and telephone number of any attorney known to the applicant to be an attorney for any party or, if no such attorney is known, the name, address, and telephone number of the party, if known to the applicant.

- (2) Affirmative factual showing required in written declarations:

The declarations must contain facts within the personal knowledge of the declarant that demonstrate why the matter is appropriately handled as an emergency hearing, as opposed to being on the court's regular hearing calendar.

An applicant must make an affirmative factual showing of irreparable harm, immediate danger, or any other statutory basis for granting relief without notice or with shortened notice to the other party.

- (3) Disclosure of previous applications and orders

An applicant should submit a declaration that fully discloses all previous applications made on the same issue and whether any orders were made on any of the applications, even if an application was previously made upon a different state of facts. Previous applications include an order to shorten time for service of notice or an order shortening time for hearing.

(4) Disclosure of change in status quo

The applicant has a duty to disclose that an emergency order will result in a change in the current situation or status quo. Absent such disclosure, attorney's fees and costs incurred to reinstate the status quo may be awarded.

(5) Applications regarding child custody or visitation (parenting time)

Applications for emergency orders granting or modifying child custody or visitation (parenting time) under Family Code section 3064 must:

(A) Provide a full, detailed description of the most recent incidents showing:

- (i) Immediate harm to the child as defined in Family Code section 3064(b); or
- (ii) Immediate risk that the child will be removed from the State of California.

(B) Specify the date of each incident described in (A);

(C) Advise the court of the existing custody and visitation (parenting time) arrangements and how they would be changed by the request for emergency orders;

(D) Include a copy of the current custody orders, if they are available. If no orders exist, explain where and with whom the child is currently living; and

(E) Include a completed Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)(FL-105) if the form was not already filed by a party or if the information has changed since it was filed.

(e) Contents of notice and declaration regarding notice of emergency hearing

(1) Contents of notice When notice of a request for emergency orders is given, the person giving notice must:

(A) State with specificity the nature of the relief to be requested;

(B) State the date, time, and place for the presentation of the application;

(C) State the date, time, and place of the hearing, if applicable; and

- (D) Attempt to determine whether the opposing party will appear to oppose the application (if the court requires a hearing) or whether he or she will submit responsive pleadings before the court rules on the request for emergency orders.

(2) Declaration regarding notice

An application for emergency orders must be accompanied by a completed declaration regarding notice that includes one of the following statements:

- (A) The notice given, including the date, time, manner, and name of the party informed, the relief sought, any response, and whether opposition is expected and that, within the applicable time under rule 5.165, the applicant informed the opposing party where and when the application would be made;
- (B) That the applicant in good faith attempted to inform the opposing party but was unable to do so, specifying the efforts made to inform the opposing party; or
- (C) That, for reasons specified, the applicant should not be required to inform the opposing party

Ex Parte: Los Angeles Superior Court Local Rules (Effective May 17, 2013)

5.3 SESSION HOURS AND CALENDARING

(a) Ex Parte Applications. Ex parte applications and orders, including notice thereof, must comply with California Rules of Court, rules 5.51-5.169, except for good cause shown or as otherwise provided by law. In a Domestic Violence Prevention Act proceeding, an application may be made without notice pursuant to Family Code section 6300.

(1) _____. An Ex Parte application for temporary restraining order or other order under the Domestic Violence Prevention Act (Fam. Code, § 6200 et seq.) and other ex parte application for temporary restraining order in a matter specifically assigned to the Family Law Division may be presented to the department designated for such purpose by the court on any court day from 8:30 a.m. until 11:30 a.m., and from 1:30 p.m. until 3:30 p.m.

(2) Family Law Ex Parte Applications:

(A) Central District: An ex parte application, brought on a ground other than specified in subsection (a)(1) above, may be presented on any court day only from 8:30 a.m. to 10:30 a.m. in the department in which the case is assigned; or, if the case has not yet been assigned, to Department 2.

(B) District Courts: Counsel or self-represented party should contact the department to which the case is assigned or, if not yet assigned, the clerk's office, to determine ex parte application hours.

(b) Calendaring Noticed Motions and Trials

(1) Requests for Orders and Other Noticed Motions: All requests for orders and other motion hearings are set at 8:30 a.m. on court days not otherwise reserved for trials or other proceedings, unless otherwise ordered by the court. At the time of presenting the request or other motion, the filing clerk will set the matter in the assigned department only on the days available therefor. The moving papers must include on the face page and caption of form FL-300 the exact nature of the request for order or other non-Family Code request that is included in the request or motion.

(2) Trials:

(A) In Central District Cases. Except for good cause, the department to which the case has been assigned will transfer the case to Department 2, or to such other location as directed by court order, for all trial setting, trial readiness, and trial settlement related matters. The case will then be re-assigned for trial to any available trial department, which could include the department originally assigned. The department originally assigned will continue to handle all other non-trial and post-trial proceedings.

(B) Trials in Other Districts. The department to which the case is assigned will set trials and trial related proceedings pursuant to Local Rule 5.13 at times and days available in that department, unless that district has adopted a master calendar reassignment rule, in which case the procedures for the Central District may be followed.

State Law: Quick Reference to Some Applicable California Laws

Custody & Visitation

“**Sole legal custody**” means that one parent has the right and responsibility to make decisions concerning the child’s health, education and welfare **Cal. Fam. Code § 3006**

“**Sole physical custody**” means that a child shall reside with and under the supervision of one parent, subject to the court’s power to order visitation. **Cal. Fam. Code § 3007**

Custody shall be awarded according to the best interest of the child, with first preference to both parents or to either parent. **Cal. Fam. Code § 3040(a)**

The immigration status of a parent, legal guardian, or relative shall not disqualify the parent, legal guardian, or relative from receiving custody. **Cal. Fam. Code § 3040(b)**

There is no statutory preference or presumption for or against joint or sole physical and/or legal custody. **Cal. Fam. Code § 3040(c)**

In re Marriage of O’Connell (1978) 80 Cal.App.3d 849, 146 Cal.Rptr. 26 Establishes the distinction between the right to custody and control of a minor child and the right of visitation.

Child custody statutes are applicable in the following proceedings:

1. A proceeding for dissolution of marriage
2. A proceeding for nullity of marriage
3. A proceeding for legal separation of the parties
4. An action for exclusive custody pursuant to Cal. Fam. Code § 3120
5. A proceeding to determine physical or legal custody or for visitation in a proceeding pursuant to the Domestic Violence Prevention Act (Cal. Fam. Code §§ 6200, et seq.); however, physical or legal custody may not be awarded to a party who has not first established a parent-child relationship pursuant to Cal. Fam. Code § 6323(a)(2)
6. A proceeding to determine physical or legal custody or visitation in an action pursuant to the Uniform Parentage Act (Cal. Fam. Code §§ 7600, et seq.)
7. A proceeding to determine physical or legal custody or visitation in an action brought by the district attorney pursuant to Cal. Fam. Code § 17404

Best Interest of the Child

Factors affecting the best interests of the child in custody determinations which may be relevant in SIJS cases:

1. The health, safety, and welfare of the child. **Cal. Fam. Code § 3011(a)**
2. Any history of abuse by one parent against the child or any child to whom the parent is related by blood or affinity or with whom the parent has had a caretaking relationship, no matter how temporary, the other parent, a parent, current spouse or cohabitant of person seeking custody, or anyone whom the person has dated or been engaged to; however, court may require independent corroboration of such allegations. **Cal. Fam. Code § 3011(b)**
3. If the court finds that a party seeking custody has perpetrated domestic violence against the other party seeking custody or against the child's sibling(s) within the previous five years, there is a rebuttable presumption that an award of sole or joint physical or legal custody of a child to the perpetrator is detrimental to the best interest of the child, pursuant to **Cal. Fam. Code § 3011**. The presumption may be rebutted only by a preponderance of the evidence. Refer to Cal. Fam. Code §§ **3020, 3040(a)(1), 3044**
4. Where the trial court considers the issues of custody or visitation the court should consider whether any emergency protective orders (EPO's) or other restraining orders are currently in effect. **Cal. Fam. Code §§ 3031(a)-(c)**
5. The Court must consider the nature and amount of contact of the child with both parents. **Cal. Fam. Code § 3011(c)**
6. Court shall not consider a parent's absence or relocation from the family residence in determining custody or visitation if either:
 - a. Absence or relocation is of short duration and during that time the party has demonstrated an interest in maintaining custody or visitation, the party maintains or makes reasonable efforts to maintain, contact with the child, and the party's behavior demonstrates no intent to abandon the child; or
 - b. The party is absent or relocates because of actual or threatened domestic violence by the other party.

The court may consider attempts by one party to interfere with other party's regular contact with the child in determining if the party has satisfied the above requirements. This statute does not apply to a party against whom domestic violence protective orders, residence exclusion orders, civil harassment protective orders, or criminal protective orders have been issued, or to a party who has abandoned a child as defined in Cal. Fam. Code § 7822. **Cal. Fam. Code § 3046**

7. The court's determination of what constitutes the child's best interest shall also include the habitual or continual illegal use of controlled substances or habitual or continual abuse of alcohol by either parent; however, court may require independent corroboration of such allegations. **Cal. Fam. Code § 3011(d)**
8. Where custody or visitation has been awarded to a parent even though he or she has been accused of child abuse, domestic violence, or alcohol or drug abuse, unless the parties have stipulated to the custody arrangement, the court must state its reasons for the custody order and the order must specify the details of the child's transfer between parents in order to minimize the child's exposure to violence or conflict. **Cal. Fam. Code § 3011(e)**
9. The court is required to consider, among other factors, which parent is more likely to allow the child or children frequent and continuing contact with the non-custodial parent, consistent with the provisions of **Cal. Fam. Code §§ 3011 and 3020. Cal. Fam. Code § 3040(a)**

Abuse, Abandonment or Neglect

Statutes and case law regarding child abuse and abandonment which may be relevant in SIJS cases:

1. Trial court must consider any history of abuse against the child in determining the best interests of the child. **Cal. Fam. Code § 3011(b)**
2. Sexual molestation or abuse alone of a minor, or the requirement that the parent register as a sex offender, justifies a denial of custody. **Cal. Fam. Code § 3030(a)**
3. Serious physical abuse of the child by the parent that seems likely to continue is sufficient to justify a denial or change of custody. **In re Luwana S. (1973) 31 Cal.App.3d 112, 107 Cal.Rptr. 62**
4. Emotional neglect of the child may be grounds for awarding sole custody to one parent. **In re Fred J. (1979) 89 Cal.App.3d 168, 152 Cal.Rptr. 327**
5. A parent whose child was conceived as a result of raping the other parent and who was convicted of that crime shall not be granted custody. **Cal. Fam. Code § 3030(b)**
6. Change of physical custody ordered solely because the custodial parent attempted to sever the relationship between the non-custodial parent and the children. **In re Marriage of Wood (1983) 141 Cal.App.3d 671, 190 Cal.Rptr. 469**
7. If one parent is dead, is unable or refuses to take custody, or has abandoned the child, the other parent is entitled to custody of the child. **Cal. Fam. Code § 3010(b)**

8. Abandonment occurs where a parent (1) leaves the child in the care and custody of the other parent for a period of one year (2) with the intent to abandon, and either (3a) without any provision for the child's support or (3b) without communication from the parent. **Cal. Fam. Code § 7822(a)(3); People v. Ryan, 76 Cal. App. 4th 1304, 1315 (Ct. App. Cal., 1st App. Dist., Div. 1 Dec. 16, 1999)**
9. A parent "leaves" a child by "voluntarily surrendering" the child to another person's care and custody. **In re Amy A., 33 Cal. Rptr. 3d 298, (Ct. App. Cal., 4th App. Dist., Div. 1 Aug. 24, 2005)**

A child under the age of 18 may be declared free from the custody and control of either or both parents pursuant to Family Code section 7800 et. seq. Such a declaration terminates all parental rights and responsibilities with regard to the child. The following are grounds for such a declaration and can be used to support your request for sole custody and SIJS findings:

1. The child has been left by both parents or the sole parent in the care and custody of another person for a period of six months without any provision for the child's support, or without communication from the parent or parents, with the intent on the part of the parent or parents to abandon the child. **Cal. Fam. Code § 7822 (a)(2)**
2. One parent has left the child in the care and custody of the other parent for a period of one year without any provision for the child's support, or without communication from the parent, with the intent on the part of the parent to abandon the child. **Cal. Fam. Code § 7822 (a)(3)**
3. The failure to provide identification, failure to provide support, or failure to communicate is presumptive evidence of the intent to abandon. If the parent or parents have made only token efforts to support or communicate with the child, the court may declare the child abandoned by the parent or parents. **Cal. Fam. Code § 7822 (b)**
4. The child has been neglected or cruelly treated by either or both parents. **Cal. Fam. Code § 7823 (a)(1)**

Real Case Examples

The following are examples from actual cases filed in the Family Division of the Los Angeles Superior Court. Each of these cases encountered its own set of challenges but was ultimately successful at obtaining a SIJS predicate order and SIJS status from USCIS. The lessons learned from these cases and others provide the foundation for the information contained in this manual.

(1) **J-R-L-O- (John)** Age at time of filing: *17 yrs 5 months* Country: *Guatemala*

Facts: Since John was an infant, his father was never a source of love or support. John's parents were married, but soon after John was born his father began to disappear for long periods of time without returning home. John's mother was solely responsible for providing for John and his little brother. In order to make more money, John's mother moved to the U.S. to work when John was only ten years old. She wanted to leave John and his brother with their grandmother, but John's father threatened that he would kidnap them and never let her see or speak to them again. Over the next six years, John's father became physically and verbally abusive. He insulted John almost every day, frequently calling him a "piece of shit" and "faggot." He would hit and kick John for making too much noise, not cleaning the house properly, and sometimes for no reason at all. His father would also leave John and his younger brother alone from 6am until 10pm at night almost daily. Although their mother sent money for John and his younger brother, their father never used this money to care for them or pay for their meals. When John was 15 years old, he began working as a carpenter and used the money he earned to buy food. Often John could not afford to feed both his brother and himself, so he would go hungry in order to feed his brother. John decided to leave Guatemala one day after he was beaten so badly by his father that he was afraid his father might kill him. John's injuries were so severe that over three months after John had left his father's home, doctors in the U.S. suspected that John was the victim of physical abuse and referred him to the Department of Children and Family Services and the police for an investigation. John has been living with his mother, her new partner, and his half-brothers in Los Angeles since July 2011.

Proceeding Type: Dissolution of Marriage

Parties: Mother vs. Father

Location of other parent: Father in Guatemala

Attorney(s) for Petitioner: Annaluisa Padilla & Yliana Johansen-Méndez

Presiding Judge: Commissioner James Endman

Date of Initial Filing: August 24, 2012

Date of RFO Filing: November 29, 2012

Date of First RFO Hearing: January 29, 2013

Date of SIJS Order: March 11, 2013

Notes on Proceedings: There was no one available to personally serve the respondent father in Guatemala, so service of the summons and initial filings was originally attempted by registered international mail, including an FL-117 *Notice and*

Acknowledgment of Receipt for the respondent to sign and return in a pre-paid envelope. A few weeks after mailing, counsel called the residence of the respondent father and spoke to his girlfriend who indicated that the documents had not arrived. Counsel re-sent the summons and initial filings by FedEx. Further attempts to call the respondent's home to confirm receipt were unsuccessful. On November 26th the signed FL-117 arrived in the mail. On November 29th the proof of service and *Request for Order* were filed with the court. The notice of hearing was filed on the respondent by first-class mail and an FL-330 was filed.

At the hearing, the judge said that in over 25 years that he has been on the bench he has never seen a request for special immigrant juvenile status. There were three issues he was concerned about: (1) He did not know if service to Guatemala had to comply with the Hague Service Convention, (2) he did not believe that he had the jurisdiction to make the requested orders because this is not a "juvenile court," and (3) service to the respondent father was improper because it had to be by registered mail with return receipt requested. The attorney explained to Commissioner Endman that Guatemala is not a signatory to the Hague Convention, explained how 8 C.F.R. 204.11 defines "juvenile court" and how the Court of Appeals decision in *B.F. vs. Los Angeles Superior Court* applies to the Family Court. He indicated that he was "convinced" and willing to grant the orders, he indicated that he could not do so because although service of the summons was proper, service of the RFO and hearing date was not. He emphasized the need to serve by certified or registered mail with return receipt requested and to provide an additional 20 days advance notice for international service by mail according to Cal. CCP. §§ 1005 and 1013. He granted a continuance to April 15, 2013 to allow for service to be completed, despite a request for a sooner hearing date since the child would turn 18 years old on March 18, 2013.

The respondent was served with notice of the new hearing date and RFO, and a proof of service was filed. On February 28th, the attorneys filed an ex parte motion requesting that the court advance the hearing and enter the requested SIJS order since service to the father complied with the code of civil procedure. During the Ex Parte hearing the judge denied the request and indicated that even if service was proper the Court did not have personal jurisdiction over the respondent.

The attorneys determined that the only way for the court to have personal jurisdiction over the respondent would be for the respondent to enter an appearance in the case. John and his mother were able to negotiate a deal with the respondent and convince him to sign and return form FL-130 *Appearance, Stipulations, and Waivers* by fax. On March 11, 2013, the attorneys appeared before the court with another Ex Parte motion and the signed general appearance from the respondent. It was exactly one week before John's 18th birthday when the judge finally signed his SIJS predicate order as a "temporary order" pending payment of the \$435 fee due from the respondent for the filing of his appearance. Payment was submitted and another order was signed by the judge, however the I-360 had already been filed with the temporary SIJS order and approved locally by USCIS.

(2) **B-L-A- (Brenda)**

Age at time of filing: *17 yrs 4 months*

Country: *Honduras*

Facts: Some of Brenda's earliest memories are of her father hitting her mother and throwing things at her. Her father was drunk almost every day and would also hit Brenda with his hands, brooms, and belts. Brenda's mother often attempted to defend Brenda and protect her from her father's physical abuse, however this usually prompted him to turn his violence towards her as well. Her mother left to the U.S. to find work when Brenda was only seven years old. With her mother gone, there was no one to protect Brenda from her father's drunken beatings. After her mother left, there were two months during which Brenda lived alone with her father and her then infant sister. During much of that time, seven-year-old Brenda was left home alone, taking care of her infant sister while their father went out with his girlfriend or stayed out drinking. When he came home drunk he would start to yell and hit her. Two months later, Brenda's father decided to leave his daughters in the care of their paternal grandparents, and instead went to live with his girlfriend and their son. From then on, Brenda only saw her father about once a month when he visited her grandparents. Brenda's father barely spoke to her when he saw her. He never gave her grandparents any food or money to help take care of Brenda and her sister. They depended mostly on the money sent by Brenda's mother. For the next decade, Brenda's father failed to provide for her and did not make any efforts to develop a relationship with her. When Brenda was 14 years old she was brutally gang raped by gang members in her town. Even after moving to another town with her other grandparents, she was still experiencing threats and was terrified that the gang would find her again. Brenda's grandmother and mother immediately made plans to send Brenda to the U.S. where she could be safe. Brenda has been living with her mother in the Los Angeles area since April 2012.

Proceeding Type: Parentage

Parties: Child vs. Mother

Location of other parent: Father in Honduras

Attorney(s) for Petitioner: Xochitl Flores & Yliana Johansen-Méndez

Presiding Judge: B. Scott Silverman

Date of Initial Filing: November 14, 2012

Date of RFO Filing: January 7, 2012

Date of First RFO Hearing: February 26, 2012

Date of SIJS Order: February 26, 2012

Notes on Proceedings: At the time of filing, the attorneys requested appointment of Yliana Johansen-Méndez as Guardian ad Litem for the child petitioner at no expense to the court, but the application was denied. Instead, only Xochitl Flores appeared as counsel for the child petitioner. Service to the respondent mother was easily completed since she was living with the client in Los Angeles and cooperated in the case. However, the family struggled to locate the father in Honduras to serve him with notice. On the day of the hearing he had not been served and counsel was prepared to request a continuance. However, the case was initially scheduled before Commissioner Endman. Based on the experience in John's case (see #1 above) the attorneys did not stipulate to allow the case to be heard by the Commissioner; instead the case was reassigned on the day of the hearing to Judge Silverman.

Judge Silverman read the points and authorities memo during a court recess and upon calling the case indicated that the case was “novel” because: (1) he had never seen a case in which a child was the petitioner, but upon looking at the code and at the Parentage forms decided that it clearly allowed a child petitioner; and (2) he had never heard of special immigrant juvenile status, but upon reading the materials provided and the decision in *B.F. vs. Los Angeles Superior Court* he was convinced that he had the jurisdiction to make the orders and that it was in the child’s best interest. He confirmed the facts of the case with the child petitioner under oath. He did not bring up the issue of service to the other parent – the attorneys believe that this was an oversight since he only had a limited time to review the case prior to making his decision, and since the other parent was not the respondent in the case. He read on the record and signed the proposed SIJS order provided by the attorney.

(3) **D-A-M-R- (Danny)** Age at time of filing: *17 yrs 5 months* Country: *Guatemala*

Facts: Danny’s father moved to the U.S. before Danny was born, but has always kept in regular contact with Danny and sent money back to Guatemala to support him. When Danny was three or four years old, his mother found a new partner and chose to leave Danny in her parents’ care. Danny was subjected to daily physical abuse by his alcoholic grandfather. When Danny was only seven years old, his grandfather pressured him to quit school so that he could work and bring money home. Danny attempted to escape his grandfather’s abuse and pressure to work by living with his mother. Instead, he found himself in another violent household. Danny’s stepfather abused not only Danny, but also his mother and step-siblings. Danny was severely beaten with a belt and other objects. Rather than protecting Danny, his mother turned to Danny for advice on how to make her husband stop abusing her. To escape his step-father’s abuse, Danny returned to live with his maternal grandparents at age nine. Since his grandfather forced him to quit school and start to work, Danny started working as a fare collector on a small bus. Three people who were very close to Danny were killed by gangs: his friend Santos who also worked on a bus, his cousin Franklin, and the bus driver for whom Danny worked. As gang violence escalated and Danny began experiencing more death threats, his father requested that Danny live with him in the U.S. so that he could be safe. However, Danny mother and grandparents did not allow him to move to the U.S. or to any other area of Guatemala suggested by his father. It wasn’t until Danny witnessed the murder of his bus driver and was almost killed himself, that his father was able to bring Danny to the U.S. Danny has been living with his father, step-mother, and half-siblings in the Los Angeles area since November 2010.

Proceeding Type: Parentage

Parties: Father vs. Mother

Location of other parent: Mother in Guatemala

Attorney(s) for Petitioner: Yliana Johansen-Méndez

Presiding Judge: Patrick A. Cathcart

Date of Initial Filing: May 10, 2013

Date of RFO Filing: May 10, 2013

Date of First RFO Hearing: July 2, 2013

Date of SIJS Order: July 2, 2013

Notes on Proceedings: The attorney in this case simultaneously attempted to serve the mother by registered international mail and by personal service. Specific instructions regarding service were provided to the petitioner/father. He was responsible for finding a family member or friend in Guatemala who would be willing to personally serve Danny's mother and return the original forms to him for filing. At the time that personal service was completed, Danny's mother had already received the documents by international registered mail. She returned the signed FL-117 *Notice and Acknowledgment of Receipt* to the server who then mailed the documents back to the petitioner. Proof of service by both methods was provided to the court prior to the scheduled hearing.

Judge Cathcart did not note any procedural or service issues. The judge immediately put the petitioner/father under oath. (1) He reviewed the facts claimed in his declaration relating to the abuse and gang threats suffered by Danny, the amount of time that Danny has lived with his father in California, and Danny's current progress in school. (2) He requested that the attorney clarify the role of the Family Court and USCIS in a SIJS request – he wanted reassurance that USCIS would still have the discretion to approve or deny the immigration case. (3) He reviewed the *B.F. vs. Los Angeles Superior Court* decision and clarified that the underlying proceeding in that case was actually a Guardianship proceeding and that neither parent was available to care for the child. (4) He inquired about the legal immigration status of Danny's father. Although each of his inquiries sounded as though he was hesitant and might require further briefing of the issues, he actually granted the SIJS orders as requested during the first hearing.

(4) **J-G-Q- (Jaime)**

Age at time of filing: *15 yrs 11 months*

Country: *Guatemala*

Facts: In Guatemala, Jaime lived with his mother and her abusive husband. For years he witnessed as his stepfather physically abused his mother. As Jaime grew older and gathered up the courage to intervene to protect his mother, his stepfather began to direct drunken attacks towards Jaime instead. Even when his stepfather allowed his family members to abuse Jaime, his mother did nothing to intervene. Jaime often felt like an outcast in his own home; he knew that his stepfather despised him and that his mother favored his two half-siblings. But the moment Jaime knew that he had to leave that house came after the stepfather's brother pushed him off of the terrace onto some high voltage electric cables. Jaime lay unconscious among the cables and was not found for over four hours. He required transplant operations and a skin graft to repair the burns he suffered all over his body. He was in a coma for 1 month and remained in the hospital for 5 additional months in recovery. The doctors told him that it was a miracle that he survived, and warned that any slight head injury may trigger memory loss or even death. Jaime knew that living with his mother and stepfather would only result in continued abuse and eventually his own death. So, Jaime decided to try to reunite with his biological father in the United States. When he was 15 years old, Jaime undertook the perilous journey from Guatemala to the U.S., during which he was kidnapped, robbed at gunpoint by a violent Mexican drug cartel, the Zetas, and walked for days through the

Arizona desert. In June 2011, Jaime finally found safety in his father's home and has been living happily with him in Los Angeles ever since.

Proceeding Type: Parentage

Parties: Father vs. Mother

Location of other parent: Mother in Guatemala

Attorney(s) for Petitioner: Annaluisa Padilla

Presiding Judge: David Cunningham

Date of Initial Filing: December 8, 2011

Date of RFO Filing: December 19, 2011

Date of First RFO Hearing: February 8, 2012

Date of SIJS Order: April 4, 2012

Notes on Proceedings: On December 21, 2011, the summons and petition were served on the respondent by registered mail along with the Notice and Acknowledgement of Receipt (form FL-117). The respondent failed to sign and return the form FL-117, so the attorney was not able to complete service prior to the hearing on February 8, 2012. On the day of the hearing the attorney filed an Ex Parte application, declaration of the petitioner documenting his efforts to serve the respondent by mail and indicating that he gave verbal notice of the proceedings to the respondent, and a memorandum of points and authorities in support of a motion for an alternative method of service pursuant to C.C.P. § 413.10(c). The attorney's requested permission to serve the respondent by courier, King Express, as it was a method likely to give her actual notice of the proceedings. The request was granted by Judge Cunningham. He granted the SIJS predicate order at the next hearing on April 4, 2012.

(5) **J-M-C-C- (Janet)** Age at time of filing: *13 yrs 4 months* Country: *El Salvador*

Facts: When Janet was very young her mother left to the U.S. to work and provide for her daughters. When her mother left, Janet was left with her father in El Salvador. He consistently neglected her needs and ultimately abandoned her. When Janet lived with her father she was abused terribly by his live-in girlfriend and he did nothing to protect her. Whenever her father would leave the house, his girlfriend would abuse Janet verbally, telling her that she was not really her father's daughter and that she did not belong there. She would hit Janet often, sometimes with her fists and sometimes with other objects. At times, Janet would get cuts or bruises that she would have to hide at school. When his girlfriend left the house, she would lock Janet out, leaving her in the back yard without food or water. Sometimes the neighbors felt sorry for Janet and threw food over the fence for her. When Janet told her father about the mistreatment he refused to believe her and took no action to protect her. Her father failed to provide any reasonable support for Janet; even when Janet got sick and had to stay in the hospital he refused to help pay the bill. Furthermore, when Janet was 11 years old, her father suddenly insisted that Janet leave his house. Janet's mother made arrangements for other family members to take care of Janet while she arranged for her transportation to the U.S.

In October 2009, Janet left El Salvador to join her mother in Los Angeles. She has not had contact with her father since he kicked her out of the house a few months prior.

Proceeding Type: Parentage

Parties: Mother vs. Father

Location of other parent: Father in El Salvador

Attorney(s) for Petitioner: Roger Coven & Wendy Herzog

Presiding Judge: Mark Juhas

Date of Initial Filing: February 28, 2011

Date of RFO Filing: February 28, 2011

Date of First RFO Hearing: April 4, 2011

Date of SIJS Order: June 23, 2011

Notes on Proceedings: The RFO hearing scheduled for April 4, 2011 was rescheduled at the attorneys' request because service to the father in El Salvador had not been completed. The attorney simply called the court clerk in advance of the hearing so that no appearance would be necessary on April 4th.

No one was available to serve the father personally in El Salvador. On March 17, 2011 the documents were mailed to him both by first class registered mail, return receipt requested, and by UPS. A Notice and Acknowledgement of Receipt (form FL-117) was provided for him to sign and return. On March 17, 2011, a KIND staff member spoke to the respondent on the phone and explained the pending proceedings and relief sought. The respondent was very uncooperative and indicated that he wanted nothing to do with the proceedings. Although KIND was able to contact the respondent four more times, he was unwilling to return the FL-117 and eventually stopped answering his phone. On April 22, 2011, the attorneys attempted to serve the respondent again by mail and UPS with the initial filing, notice of the continued hearing, and blank response forms.

On June 2, 2011, the attorneys filed a supplemental memorandum of points and authorities regarding service, a declaration from the attorney, a declaration from the KIND staff member who called the respondent, and proofs of service by first class mail and UPS. At the hearing on June 8, 2011, Judge Juhas reviewed the filing found that the respondent had received actual notice of the proceedings. He indicated that he was willing to sign a SIJS predicate order but was not willing to sign the predicate order as it had been proposed by the attorneys. Over the next several days Judge Juhas exchanged emails with the attorneys until they agreed upon the language of the predicate order. It was signed on June 23, 2011. At the time Judge Juhas was aware of the Writ that had been filed in the case before Judge Convey, and the California Supreme Court's response to Judge Convey urging him to issue a decision on the merits of the SIJS order.

Tables: LASC Family Court Judges and SIJS Cases

Stanley Mosk Courthouse, 111 N. Hill Street – Current Family Court Judges (August 2013)

The table below is intended to give you an overview of the judges who may potentially preside over your case in Family Court, and some background regarding their professional history to the extent that it may help you understand your audience. Keep in mind that the judges in the family department are constantly changing and this table may not be up to date.

Judge/Commissioner	Dept	Room	Date Appointed	Background	Notes
Hon. Scott M. Gordon	2	215	Commr. since 2002	Former police detective and Prosecutor	Heard the pending service issue in the case in which Judge Lewis granted a temporary order. Did not revisit the SIJS issue but declared Judge Lewis’ SIJS order valid and reissued the SIJS order without the “pending hearing” language. (2010)
Hon. Robert B. Broadbelt	2B	247	Dec. 2012	Complex business litigation	<i>Case pending.</i>
Hon. Marc D. Gross	2D	629	Dec. 2012		
Hon. Randall Pacheco	6	543	Jul. 2009; Commr. since 2001	Children’s Law Center, Public Defender	
Hon. B. Scott Silverman	7	319	Nov. 2008; Commr. since 2007	Labor & Employment	Granted one case – was convinced by the P&A Memo submitted. No oral argument required. (2013)
Hon. David Cunningham	22	519	Jan. 2009	DOJ Civil Rights Division, Land Use, Police Commissioner	Granted three cases – very favorable towards SIJS. At in the most recent case he did not require oral argument at all but reviewed factual basis with Petitioner (2009-2013)
Hon. Stephen M. Moloney	27	634	Jul. 2009		
Hon. Robert Willett	43	419	Dec. 2010	Complex Business Litigation	
Hon. Maren Nelson	60	518	Jan. 2009; Commr. since 2004		

Hon. Bruce Iwasaki	63	604	May 2012	Legal Aid at LAFLA and NLS	
Hon. Christine Byrd	65	608	April 2010		
Hon. Michelle Williams Court	67	614	Dec. 2011	Bet Tzedek, Housing, ACLU	<i>Case pending.</i>
Hon. Thomas T. Lewis	79	610	2006	Family Law	Granted one case after hearing argument. The predicate order was granted in temporary orders pending completed service. (2010)
Hon. Patrick A. Cathcart	83	829	Dec. 2012	Complex business litigation	Granted one case – reviewed the P&A memo prior to the hearing and requested clarification on some points. He reviewed Petitioner’s declaration under oath before granting. (2013)
Commr. James Endman	84	835	Commr. since 1988		Granted one case – very picky about procedural requirements and overall seemed reluctant to grant. Do not recommend continuing in his court. (2013)
Hon. Holly J. Fujie	87	830	Dec. 2011		<i>Case pending.</i>
Hon. Ralph Hofer	88	831	Jul. 2009	Complex business litigation, Fed Prosecutor & Narcotics Task Force	

The table below provides an overview of all the known cases brought before the Family Division of the Los Angeles Superior Court as of August 2013.

Filing Type	Petitioner v. Respondent	Immigration Attorney	Family Law Attorney/ Advisor	Family Court Judge	Date of SIJS Decision	SIJS/LPR Status
Parentage	Father (California) v. Mother (Guatemala)	EJW Fellow at KIND, Yliana Johansen-Méndez	None	Judge Patrick Cathcart	7/2/2013 Granted	SIJS and LPR granted, by USCIS
Divorce	Mother (California) v. Father (Guatemala)	Holland & Knight, LLP (<i>pro bono</i> for KIND)	Legal Aid Foundation (LAFLA)	Judge David Cunningham	3/20/2013 Granted	SIJS and LPR granted, by USCIS
Divorce	Mother (California) v. Father (Guatemala)	EJW Fellow at KIND, Yliana Johansen-Méndez	Annaluisa Padilla	Commissioner James Endman	3/11/2013 Granted	SIJS and LPR granted, by USCIS
Parentage	Child (California) v. Mother (California)	EJW Fellow at KIND, Yliana Johansen-Méndez & Xochitl Flores	Xochitl Flores	Judge Scott Silverman	2/26/2013 Granted	SIJS and LPR granted by USCIS
Parentage	Father (California) v. Mother (Guatemala)	Annaluisa Padilla (<i>pro bono</i> for KIND)	Annaluisa Padilla	Judge David Cunningham	4/4/2012 Granted	SIJS granted, LPR pending
Parentage	Child (California) v. Mother (California) and Father (El Salvador)	KIND Fellow at Esperanza Immigrant Rights Project	LA Center for Law and Justice (LACLJ)	Judge Michael Convey	8/1/2011 Granted after Writ filed	SIJS and LPR granted by USCIS
Parentage	Mother (California) v. Father (El Salvador)	Holland & Knight, LLP (<i>pro bono</i> for KIND)	Wendy Herzog	Judge Mark Juhas	6/23/2011 Granted	SIJS and LPR granted by USCIS
Parentage	Child (California) v. Mother (California) (<i>Father deceased</i>)	KIND Fellow at Esperanza Immigrant Rights Project	None	<i>Several judges and OSCs:</i> Judges Feffer, Endman, and Goldberg	Withdrawn -- child turned 18 after procedural delays	N/A
Parentage	Child (California) v. Mother (California)	K&L Gates, LLP (<i>pro bono</i> for KIND)	None	Judge Amy Pellman	7/2/2010 Denied	N/A

Parentage	Child (California) v. Mother (California)	KIND Fellow at Esperanza Immigrant Rights Project	None	Judge Thomas Lewis	3/30/2010 Granted in a temporary order	SIJS and LPR granted by USCIS
Parentage	Child (California) v. Mother (California)	Simpson Thatcher, LLP (<i>pro bono</i> for KIND)	Public Counsel	Judge David Cunningham	11/13/2009 Granted	SIJS and LPR granted by USCIS

2014 SUPPLEMENT

AN UPDATE TO:

**SPECIAL IMMIGRANT JUVENILE STATUS
IN FAMILY COURT:**

LOS ANGELES ONE-PARENT SIJS MANUAL

By

Yliana Johansen-Méndez, Esq.

2011 Equal Justice Works Fellow

Sponsored by Microsoft Corp.



400 S. Hope Street, 8th Floor
c/o Holland & Knight, LLP
Los Angeles, CA 90071
www.supportkind.org

JUNE 2014

An Update from the Author:

In the months since the One-Parent SIJS Manual was completed in August 2013, there have been some developments that will be relevant to your representation of SIJS cases before the Family Court.

In addition to familiarizing yourself with the California Court of Appeals case *B.F. v. Superior Court*, 207 Cal.App.4th 621 (July 2012), you should also read and incorporate the following decisions to your Memorandum of Points and Authorities:

- *Eddie E. v. Superior Court*, (2013) 223 Cal.App.4th 622 (available at: <http://www.courts.ca.gov/opinions/archive/G048067.PDF>)
 - Establishes that a child declared a ward of the court pursuant to WIC 602 may be eligible for SIJS because a court must find *either* that an immigrant has been (a) “declared dependent on a juvenile court” **OR** (b) “legally committed to, or placed under the custody of” a state agency or department or “an individual or entity appointed by a State or juvenile court located in the U.S.”
 - Currently this case is before Appellate Court again regarding “one or both parents”, “death as abandonment” and “best interests” issues.
- *Leslie H. v. The Superior Court*, (2014) 224 Cal. App. 4th 340 (available at: <http://www.courts.ca.gov/opinions/documents/G049127.PDF>)
 - A juvenile or state court does not make any immigration decisions, such as whether a particular minor will be allowed to obtain lawful status or remain in the United States.
 - In fact, “immigration policy considerations and their final adjudication in a particular case” are beyond the scope of the juvenile court’s inquiry. (*Leslie H.* citing *Mario S.*, 954 N.Y.S.2d at 852-53).

Additionally, while no formal policy regarding one-parent SIJS claims has been disseminated by either the U.S. Citizenship and Immigration Service or the Executive Office for Immigration Review (Immigration Courts), the following two publications support a position that a child who is living with one parent may be eligible for SIJS:

- USCIS Brochure: *Immigration Relief for Abused Children* (available at: http://www.uscis.gov/sites/default/files/USCIS/Green%20Card/Green%20Card%20Through%20a%20Job/Immigration_Relief_for_Abused_Children-FINAL.pdf)
 - States a SIJS eligible child may “[b]e living with a foster family, an appointed guardian, or the non-abusive parent.”
- Laura E. Ploeg, *Special Immigrant Juveniles: All the Special Rules*, Immigration Law Advisor, Vol. 8, No. 1, January 2014. (A publication of the Executive Office for Immigration Review)(available at: <http://www.justice.gov/eoir/vil/ILA-Newsleter/ILA%202014/vol8no1.pdf>)
 - “Under the current version of the statute, because it is only reunification with one parent that must be not viable, the alien child could potentially be living with one parent and still qualify for SIJ status.” (pg. 4)