

“Rocks in the Road”

[Representing Creditors]

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- Big Picture/Practical Approach
- No Reciprocity or Convention
- Direct Applications
- Exercising Long-Arm Jurisdiction
- Service of Process

Prologue.....

When One Encounters a Rock in the Road.....

1. If it is small, DRIVE OVER IT.
2. If it is BIG:
 1. DRIVE AROUND IT.
 2. MOVE IT – WITH HELP IF NEEDED
 3. REPORT IT TO THE AUTHORITIES SEIZED
 4. REPORT IT TO THE WORLD (Press, Twitter, FB, etc)

Practical Approach

Recovery of Maintenance in the
European Union and Worldwide
Heidelberg Conference 5 – 8 March 2013

Knowledge & Relationships

- Personal Knowledge & Understanding
Home and Foreign Law & Policy, Options Available,
Creativity, Will Power
“You are never too busy to take the time to make
yourself less busy” *General W.C. (“Bill”) McGlothlin, USAF*
- Seek and Accept Assistance
“Make a new friend every day” *Bill McGlothlin.*

Rock on U.S. Road

IV-D Agency will not OPEN Creditor's case with
Debtor in non-reciprocating country

IV-D Agency wants to CLOSE a case if debtor moves
and resides in a non-reciprocating country

Debtor in Non-Reciprocating Country

U.S. IV-D Agency Case Closure Criteria

- 45 CFR CH.III 303.11(B)4: Can close if **(Debtor) locate unknown** and have made diligent Efforts using Multiple Sources over 3 yrs via Automated Locate (if sufficient info to do Auto-Locate) & 1 yr if only have info for Non-Auto-Locate
- 45 CFR CH.III 303.11(B)6: The **(Debtor) is a citizen** of, and **lives in, a foreign country**, does not work for the Federal government or a company with headquarters or offices in the United States, and has **no reachable** domestic income or **assets**; and the State has been unable to establish reciprocity with the country (**focus on citizenship, not Reciprocity**) If US Citizen, can't close for lack of reciprocity alone.

Debtor in Non-Reciprocating Country

Long Arm Jurisdiction

- Is there a **Jurisdictional basis for TX to establish** support or determine parentage over a Nonresident Respondent (NR)?
UIFSA 2001 §201
- **Is Enforcement** of resultant Order in **U.S. possible?**
 - (wage withholding, license revocation, property lien (cost & logistics of PAT);
- Will other country **recognize/enforce** the resultant order?
- **Service of Process Issues**
- **No Long Arm?:** Foreign Attorney; “Non-Judicial” Remedies

Creditor in Non-Reciprocating Country

IV-D Policy: PIQ-99-01 Anybody Anywhere can
Apply for Establishment and/or Enforcement
Services

<http://www.acf.hhs.gov/programs/css/resource/direct-application-for-title-iv-d-services-from-international-residents>

Creditor in Non-Reciprocating Country

Establishment of Child Support Order in U.S.

- **Legal Basis:** “The status of the place from which a (creditor) applies for services is irrelevant in an establishment case filed under UIFSA” People ex rel. A.K., 2003 WL Debtor in CO, Creditor in Russia HELD: CO can EST for applicant residing in Russia;
 - **Practice Tip:** Verify with DOS that providing legal assistance and facilitating the transfer of money to a country does not constitute **trading with the enemy or violation of an economic boycott.**
- **Law Applicable:** *Lex fori* & Creditor does not need not travel to U.S. UIFSA 2001 § 316(a) & rules of evidence & inter-tribunal communications apply

Creditor in Non-Reciprocating Country

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Enforcement of Foreign Child Support Order in U.S.

- **Legal Basis** “State” because it has procedures “substantially similar” to UIFSA procedures or “Comity” (No Admin Registration using comity)
- **Law Applicable**
 - G/R *Lex Fori* UIFSA 2001 § 303(1) Use local procedural and substantive law
 - Choice of Law UIFSA 2001 § 604 (a)(1) law of issuing state governs nature, extent, duration and amount of current support
 - Statute of Limitation UIFSA 2001 § 604(b) in an action for arrears, whichever statute (issuing or responding state) is longer

Jurisdictional Stalemates

Spring Break Affair in Cancun; Creditor in TX; Debtor (Alleged
Father) in Quebec & never in TX

- No TX-QU reciprocity to establish PAT & C/S
- TX no jurisdiction because Debtor/AF in QU
- QU Local Counsel says no Jurisdiction to Establish PAT in QU because Creditor & Child in TX = Stalemate!
- Creative solutions?
 - (File in TX, Child in TX as a result of AF Acts or Directives?)
 - Ask TX IV-D to ask PA IV-D (PA –QU Reciprocity to initiate to QU?)

International Service of Process

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- 1965 Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters
- 1980 Inter-American Convention on Letters Rogatory and Protocol
- Non-Convention Service
 - Convention Country
 - Non-Convention Country

Hague Service Convention

- Central Authority for Receiving Requests
- Annex to the Convention Forms – (USM 94)
- Article 10 (unless country objects...)
 - a) postal channels directly to Respondent
 - b) court to court
 - c) interested party (attorney) to court
- Brockmeyer v. May, 383 F.3d 798, 801 (9th Cir. 2004)

Non-Convention Service

- FRCP 4(f)
- Check for Hague Article 10 options
- DOS Judicial Assistance Website
 - http://travel.state.gov/law/judicial/judicial_2513.html
- DOS Attorney Lists
 - http://travel.state.gov/law/retain/retain_714.html
- Foreign Legal Consultant

Service in Mexico

- No Federal Reciprocity (despite Fernando Solana '92 Declaration re all MX states & URESA/RURESAs)
- No Effective Central Authority Assistance
- Enforcement Limited
 - Wage Withholding (specific to employer)
 - Criminal Abandonment of Family (rarely used)
- Service of Process:
 - [OGM, Inc. v. Televisa, S.A., 2009 U.S. Dist. LEXIS 33409 \(C.D. Cal. Apr. 15, 2009\)](#)
 - New Developments re Hague Service
 - No Article 10 service options
 - Practice Tips for Civil Law Countries, *See, Caswell* paper in course materials.