

7 FAM 930 COMPULSION OF EVIDENCE

*(CT:CON-187; 09-11-2007)
(Office OF Origin: CA/OCS/PRI)*

7 FAM 931 TESTIMONY BY LETTERS ROGATORY/LETTERS OF REQUEST

7 FAM 931.1 Purpose

(CT:CON-126; 01-25-2006)

- a. When a witness is unwilling to testify voluntarily, the usual way to compel the required evidence is by a letter rogatory, also known as letter of request, from a court in one country to a court in another country, requesting judicial assistance. (See 22 CFR 92.54.) Letters rogatory may also be used to serve legal documents (28 U.S.C. 1696). (See 7 FAM 950).
- b. The Department’s authority to receive and transmit letters rogatory is from 28 U.S.C. 1781.
- c. Letters rogatory typically take from 6 months to a year to execute. Persons who inquire concerning this option should be advised of the protracted time frame involved. Consular officers should nevertheless make monthly inquiries of the host government to trace their progress.
- d. 7 FAM 962 provides information regarding criminal matters.

7 FAM 931.2 Issuance

(CT:CON-126; 01-25-2006)

- a. See the Department of State, Bureau of Consular Affairs Internet page for our “Preparation of Letters Rogatory” feature.
- b. Letters rogatory must be issued under the seal of the court and the signature of the judge and addressed, simply:

**To the appropriate judicial authority of
(name of country).**

- b. Some foreign jurisdictions require that the request be authenticated by

the U.S. Department of State Authentications Office and by the consul of the foreign country in the United States (see 7 FAM 870) or authenticated in accordance with the Hague Legalization Convention (see 7 FAM 876). Requests under the Hague Evidence Convention (see 7 FAM 935.1) need no authentication; submit them directly to the foreign central authority.

- c. For matters pending before an administrative law judge, it is advisable to obtain a letter rogatory from a U.S. District Court under the All Writs Act, 28 U.S.C. 1651, as many countries will not execute a letter rogatory issued by an administrative law judge.

7 FAM 931.3 Submission to Department

(CT:CON-126; 01-25-2006)

- a. Letters rogatory and accompanying documents must be translated into the language of the foreign country and submitted in duplicate (an original and one copy of both the English language version and the translation) directly to the Department (CA/OCS/ACS) or to the U.S. Embassy. The Department also requires submission of a certified check or international money order for the current fee for letters rogatory (see 22 CFR 22.1), made payable to the American Embassy, with the documents as a deposit for costs incurred in executing the request.
- b. 7 FAM 960 provides information regarding requests from foreign tribunals for assistance from the United States.

7 FAM 931.4 Review of Letters Rogatory by CA/OCS

(CT:CON-126; 01-25-2006)

CA/OCS/ACS will review the letters rogatory for technical completeness (number of copies, translations, seals). (See the CA/OCS Intranet letters rogatory feature). For legal questions, consult CA/OCS/PRI (ASKPRI@state.gov), which may consult with the Office of the Legal Adviser and the Department of Justice (DOJ) as appropriate.

7 FAM 931.5 Submission to Foreign Ministry

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- a. When the documents have been reviewed by the Department (CA/OCS) for compliance with these provisions and host country requirements, they are sent to the consular officer. The officer's role in the execution of the letter rogatory is not limited to transmitting the documents to the Foreign Ministry. The officer must also report to the Department (CA/OCS):

- (1) The date the documents were received at the post;
- (2) The date they were transmitted to the Foreign Ministry; and
- (3) The dates they were received by the Ministry of Justice and the court that is to execute the request.

b. *7 FAM Exhibit 931.5* provides a sample diplomatic note transmitting a letter rogatory and a preparation guide.

7 FAM 931.6 Return of Executed Letter Rogatory to the Department

(CT:CON-126; 01-25-2006)

When a letter rogatory has been completed, return it to the Department in an envelope sealed with a rubber seal and bearing the mailing address of the clerk of the court in the United States from which the request came, as well as the name and docket number of the case. Before placing the executed request in the envelope, the consular officer should endorse on it a certificate stating the date and place of its receipt.

7 FAM 932 RETENTION OF LOCAL COUNSEL FOR A U.S. PROSECUTOR

(CT:CON-126; 01-25-2006)

Some countries require that local counsel be retained when testimony or other evidence is to be obtained by letters rogatory. In such cases consular officers will be called upon by the Federal agency concerned to retain a local attorney for the prosecutor in the United States. Be certain to receive an appropriation number and funding code before retaining such counsel. (See 2 FAM 283).

7 FAM 933 EXPEDITIOUS EVIDENCE GATHERING: AUTHENTICATED COPIES OF DOCUMENTARY AND PHYSICAL EVIDENCE

7 FAM 933.1 Urgent Need for Evidence

(CT:CON-126; 01-25-2006)

a. Government agencies often require documentary and physical evidence relating to criminal and civil cases pending in U.S. courts. The constraints of the Speedy Trial Act (18 U.S.C. 3161) or similar State laws frequently

require that such evidence be obtained expeditiously. Requests for evidence must come from the Department and should be given priority by the consular officer.

- b. In no case should a consular officer obtain documentary evidence (corporate or bank records, for example) in a civil or criminal case, when such requests are made by private persons or do not come through the usual channels of the host country judicial system. If a request comes from outside the Department, consult CA/OCS before providing assistance for clarification of the propriety and validity of the request.

7 FAM 933.2 Scope of Consular Assistance

(CT:CON-126; 01-25-2006)

- a. While not an investigative agency, the Department sometimes will ask consular officers to obtain records (such as business registrations and bank records) where there is a government interest.
- b. Occasionally, a consular officer may be requested to perform such tasks as obtaining authenticated copies of fingerprints, voiceprints, handwriting analysis reports, host country passport files or photographs, or arranging for appraisals or for medical examinations of witnesses. All such evidence must be authenticated (see 7 FAM 875 and CA/OCS Intranet, judicial assistance feature, Department of Justice Authentication Certificate Models).

7 FAM 933.3 Expeditious Transmission of Evidence

(CT:CON-126; 01-25-2006)

- a. A consular officer may be asked to send evidence to the Department by pilot package on a commercial aircraft. In such cases, be sure that the requesting party understands that the airlines charge for such services and that payment must be arranged in advance (in the form of a Federal appropriation number and fund code, ideally prepayment of the carrier: alternatively by monies received by the Department).
- b. At times, requesting U.S. authorities may send messengers to hand-deliver the evidence or request that post personnel traveling to Washington hand-deliver the evidence to the Department (CA/OCS).

7 FAM 934 ABSENCE OF OFFICIAL RECORD

(CT:CON-126; 01-25-2006)

The certification of absence of official record (7 FAM 875) should be used when appropriate, and the documents must then be authenticated by the

consular officer, using the specific Authentication Certificate, **not** a Form DS-1982, General Authentication Certificate. The CA/OCS Intranet judicial assistance feature and the Department of Justice Authentication Certificate Models provide additional information.

7 FAM 935 INTERNATIONAL CONVENTIONS ON EVIDENCE

7 FAM 935.1 The Hague Evidence Convention

(CT:CON-187; 09-11-2007)

- a. The Hague Convention on the Taking of Evidence Abroad in Civil and Commercial Matters (Hague Evidence Convention) is a multilateral treaty that establishes procedures for the taking of voluntary depositions and commission and the compelling of evidence pursuant to a formal letter of request transmitted in accordance with the Convention to the foreign central authority.
- b. **Reservations and Declarations:** Some countries that are party to the Convention have made reservations and declarations regarding the applicability of each article of the Convention in their country. For example, certain countries object to the provisions of Article 17 the taking of voluntary evidence by a person appointed as a commissioner. The Hague Conference on Private International Law Hague Evidence Convention Status Page, lists declarations and reservations for each country party to the Convention. Persons interested in the Convention should examine those reservations and declarations. In particular, see; declarations and reservations against pretrial discovery of documents.

Country	Entered Into Force (EIF)	Notes
Argentina	July 7, 1987	Objects to All of Chapter 2 – voluntary depositions.
Australia	December 22, 1992	Objects to pre-trial discovery of documents
Barbados	May 4, 1981	
Belarus	October 6, 2001	Voluntary depositions permitted without prior permission of Central Authority

Bulgaria	January 22, 2000	Objects to voluntary deposition provisions of Articles 16,17,18,19 of Chapter 2. Objects to Pretrial discovery of documents.
China, People's Republic of	February 6, 1998	Objects to Chapter 2 provisions regarding voluntary depositions.
China, Hong Kong SAR		Permits voluntary depositions
China, Macao SAR		Permits voluntary depositions
Czech Republic	July 11, 1976	
Denmark	October 7, 1972	
Estonia	April 2, 1996	
Finland	June 6, 1976	
France	October 6, 1974	Convention applies to entire Territory of France: Metropolitan France, Overseas Departments (French Guyana, Guadeloupe, Reunion, Martinique) and all other French overseas territories.
Germany	June 26, 1979	Permission of the Central Authority of Germany required before voluntary depositions may be taken on a case by case basis
Greece	March 19, 2005	
Hungary	September 11, 2004	Consular depositions (Article 15) without prior permission of Central Authority permitted. Commissioners (Article 17) may apply to Central Authority for permission to take depositions outside of consular auspices. Objects to pre-trial discovery of documents.

<i>India</i>	<i>April 8, 2007</i>	
Israel	September 17, 1979	
Italy	August 21, 1982	
Kuwait	July 7, 2002	No declarations or reservations.
Latvia	May 27, 1995	
Lithuania	October 1, 2000	Prior permission required for consular and commissioner depositions of willing witnesses who are citizens of Lithuania
Luxembourg	September 24, 1977	Prior permission of Central Authority required for depositions by commissioners (Article 17)
Mexico	September 25, 1989	Objects to provisions on voluntary depositions and pretrial discovery of documents.
Monaco	March 18, 1986	Depositions require permission of the Central Authority.
Netherlands	June 7, 1981	Extended to Aruba
Norway	October 7, 1972	Consular depositions require prior permission of Central Authority.
Poland	April 13, 1996	Objects to Chapter 2, except Article 15.
Portugual	May 11, 1975	Depositions require prior permission of the Central Authority. Objects to pretrial discovery of documents.
Romania	October 20, 2003	No voluntary depositions. Objects to pretrial discovery of documents.
Russian Federation	June 30, 2001	Not in Force between Russian Federal and the United States – No Central Authority Named By Russian Federation.

Seychelles	March 7, 2004	Objects to pretrial discovery of documents.
Singapore	December 26, 1978	Objects to all of Chapter 2 – voluntary depositions by consuls or commissioners. Objects to pretrial discovery of documents.
Slovak Republic	July 11, 1976	
South Africa	September 6, 1997	Objects to Articles 15 and 16. Evidence may not be taken under Article 17 without prior permission of Central Authority.
Spain	July 21, 1987	Voluntary depositions may be taken without prior permission of the Central Authority on consular premises. Objects to pretrial discovery of documents.
Sri Lanka	October 30, 2000	Objects to all of Chapter 2 – voluntary depositions. Objects to pretrial discovery of documents.
Sweden	July 1, 1975	Taking of depositions requires prior permission of Central Authority. Objects to pretrial discovery of documents.
Switzerland	January 1, 1995	Taking of depositions requires prior permission of the Central Authority of the Canton.
Turkey	October 12, 2004	Commissioners may apply to Central Authority for permission to take depositions. Objects to pretrial discovery of documents.
Ukraine	April 1, 2001	Objects to Chapter 2, except Article 15, 20, 21, 22 – no depositions by commissioners. Consular depositions permitted.
United Kingdom	September 14, 1976	Extended to Akrotiri and Dhekelia, Sovereign Base Areas in the Island of Cyprus; Anguilla, Cayman Islands, Falkland Islands, Gibraltar, Guernsey, Isle of Man, Jersey
United States	October 7, 1972	

Venezuela	December 31, 1993	Venezuela objects to Chapter 2 – taking of testimony by commissioners
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c. Reference and Resources:

Hague Conference

Hague Conference on Private International Law Hague Evidence Page

Outline of the Hague Evidence Convention

Conclusions and Recommendations of the 2003 Special Commission on the Practical Operation of the Hague Evidence Convention

2003 Questionnaire for Special Commission on the Practical Operation of the Hague Evidence Convention

Practical Operation Documents

Department of State

Department of State, Bureau of Consular Affairs, Judicial Assistance Page Operation of the Hague Evidence Convention and Country Specific features

d. **Model Letter of Request:** A model letter of request recommended for use can be found on the Hague Conference on Private International Law home page.

e. **U.S. Central Authority:** The U.S. Central Authority for the Hague Evidence Convention is:

Office of International Judicial Assistance
Civil Division
Department of Justice
Washington, DC 20530

Requests from foreign courts may be sent directly to the U.S. Central Authority.

f. **Requests from U.S. Courts to Obtain Evidence Abroad:** Letters of request by parties in the United States pursuant to the Convention are transmitted by the requesting court directly to the foreign central authority.

g. **Foreign Central Authorities:** Under the terms of the Convention, each country establishes a “central authority” that receives requests and monitors their execution. The Hague Conference on Private International Law Hague Evidence Convention Authorities Page includes certain information about foreign central authorities. Because the consular officer may be called to contact the central authority in the host country to ascertain the status of a request from time to time, the officer should maintain a current record of the name and address of the host country

central authority.

- h. **In Force:** See the Hague Conference on Private International Law Hague Evidence Convention Status page for a current list of countries party to the Convention.

7 FAM 935.2 Other Treaties

(CT:CON-126; 01-25-2006)

- a. The United States is not a party to the Inter-American Convention on Letter Rogatory provisions regarding the taking of evidence. The United States is a party to the Inter-American Convention on Letters Rogatory and Additional Protocol provisions on service of process. (See 7 FAM 950).
- b. 7 FAM 960 provides information regarding treaties on Mutual Legal Assistance in Criminal Matters.

7 FAM 936 THROUGH 939 UNASSIGNED

7 FAM EXHIBIT 931.5

SAMPLE OF A DIPOMATIC NOTE TRANSMITTING A LETTER ROGATORY

(CT:CON-187; 09-11-2007)

(Appropriate complimentary opening)

The Embassy of the United States of America presents its compliments to the Ministry of Foreign Affairs and requests the Ministry's aid in transmitting the enclosed request for international judicial assistance to the appropriate judicial authority of the Republic of Argentina.

The Circuit Court for the Fifth District of California has transmitted the annexed letter rogatory in the matter of *Syvia Maria Gomez de Suarez v. Jose Antonio Munoz Rivas*. The case is a civil matter pending before the Circuit Court for the Fifth District of California concerning a motion for divorce. The letter rogatory requests compulsion of evidence from *Jose Antonio Munoz Riva, 1258 Avenida Colombia, Buenos Aires, Argentina*. The Circuit Court has provided funds to reimburse any costs incurred in executing the letter rogatory.

The Embassy is grateful for the Ministry's assistance in the interests of justice. Be assured that the Circuit Court will provide similar assistance to the judicial authorities of Argentina. The Embassy would appreciate being kept advised of the progress of the letter rogatory specifically the date it is assigned to the appropriate judicial authority for service.

(Appropriate complimentary closing)

GUIDE FOR PREPARATION OF A DIPLOMATIC NOTE TRANSMITTING A LETTER ROGATORY

In addition to following standard guidelines for preparation of a diplomatic note, be sure to:

1. Include the name of the court which has action in the case.
2. Specify the names of the litigants.
3. Indicate whether the case involves a civil or criminal matter.
4. Specify what type of case is involved (brief details).
5. Mention the type of action to be effected (service of process/obtaining evidence).
6. Name the person to be served or deposed.
7. Include the full address given in the letter rogatory.
8. Indicate the arrangement for payment of costs of service.
9. Specify the concern for the pursuit of justice.
10. Volunteer reciprocal assistance.
11. Request that the Ministry keep the post informed of progress in execution of the request.

(For instructions on how to format a diplomatic note, see the Department's Correspondence Handbook, 5 FAH-1 .)