

7 FAM 950 SERVICE OF PROCESS

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

7 FAM 951 AUTHORITY

(CT:CON-127; 01-26-2006)

- a. The Federal law governing service of process in civil cases is found in Rule 4, Federal Rules of Civil Procedure, Rule 4(f)(1) F.R.Cv. P. (28 U.S.C. Appendix Rule 4).

(f) Service Upon Individuals in a Foreign Country.

Unless otherwise provided by federal law, service upon an individual from whom a waiver has not been obtained and filed, other than an infant or an incompetent person, may be effected in a place not within any judicial district of the United States:

(1) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents; or

(2) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

(A) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or

(B) as directed by the foreign authority in response to a letter rogatory or letter of request; or

(C) unless prohibited by the law of the foreign country, by

(i) delivery to the individual personally of a copy of the summons and the complaint; or

(ii) any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or

(3) by other means not prohibited by international agreement as may be directed by the court.

- b. **Consular Role:** Usually, the consular officer becomes involved in

service of process requests in the following situations:

- (1) **General Information:** Referring inquirers to the Department of State, Bureau of Consular Affairs Internet web page judicial assistance feature;
 - (2) **Notarial for Service by an Agent:** Administering an oath or affirmation (7 FAM 850) for an affidavit of service by a private agent when service of process is accomplished by an agent in the foreign country such as an attorney or process server. (See 7 FAM 953.4);
 - (3) **Notarial for Waiver of Service:** Providing a notarial service when the person to be served executes an acknowledgment or affidavit on a voluntary waiver of service before a consular officer. (See 7 FAM 953.3 and 7 FAM 840);
 - (4) **Letters Rogatory:** (See 7 FAM 953.6). Transmitting a letter rogatory to the Foreign Ministry of the host country under cover of a diplomatic note when service is attempted pursuant to a letter rogatory (28 U.S.C. 1696; 22 CFR 92.54). Letters rogatory are forwarded to the U.S. embassy by the Department (CA/OCS/ACS) or forwarded directly by the requester. 7 FAM 953 provides a description of a variety of methods used to serve process abroad. Letters rogatory are also used for service of documents under the Foreign Sovereign Immunities Act (FSIA) (28 U.S.C. 1608) on an agency or instrumentality of the foreign government. Such cases are transmitted to posts by CA/OCS/PRI, which is responsible for the service provisions of the FSIA. (See 7 FAM 955).
- c. **Prohibition against Service of Process by U.S. Foreign Service Officers:** Foreign Service officers are prohibited by Federal regulations (22 CFR 92.85) from serving process on behalf of private litigants or appointing others to do so, state law notwithstanding, unless directed by the Department. Such authorization is extremely rare, and requires authorization by CA and L/CA. Questions about the prohibition should be directed to CA/OCS/PRI (ASKPRI@state.gov). 7 FAM 954 provides information on service of subpoenas by consular officers pursuant to 28 U.S.C. 1783; 22 CFR 92.86.

7 FAM 952 PROVISIO ON VIOLATIONS OF JUDICIAL SOVEREIGNTY

(CT:CON-127; 01-26-2006)

Certain countries have informed the Department that some methods of service constitute violations of their judicial sovereignty. On November 7, 2000, the Department of State notified the Administrative Office of U.S. Courts of the expressed concerns of these countries to service by mail. See the Department of State Internet page, Office of the Legal Adviser, Digest of International Law feature. See Memorandum of the Administrative Office of the U.S. Courts (November 6, 1980) at Cumulative Digest of United States Practice in International Law, 1981-1988, Department of State, Office of the Legal Adviser, 1447 (1994). (See 7 FAM 953.5 Service by Mail).

7 FAM 953 METHODS OF SERVICE OF PROCESS

7 FAM 953.1 Threshold Question – Is Eventual Enforcement of a U.S. Judgment in the Foreign Country Foreseen?

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If eventual enforcement of a U.S. judgment abroad is envisioned, requesters are advised to consult foreign legal counsel very early in the process of the U.S. legal proceeding, long before any judgment is rendered, before counsel begin filing the complaint, serving process, discovery, trial, etc. This may help ensure that the foreign requirements for enforcement are not inadvertently violated in the U.S. action. In countries whose laws do not provide for other methods of service, letters rogatory may be the only method of service if enforcement is anticipated. (See 7 FAM 953.5 Service by Mail).

7 FAM 953.2 Service By Publication

(CT:CON-127; 01-26-2006)

Service by publication may also be a viable option; however, this may not be a valid method of service under the laws of the foreign country. If enforcement of a U.S. judgment in a foreign country is anticipated, local foreign counsel or American foreign legal consultants abroad should be consulted before proceeding with such a method of service.

7 FAM 953.3 Waiver Of Service

(CT:CON-127; 01-26-2006)

Waiver of service (Rule 4(d) F.R.Cv.P.) may also be a viable option; however, this may not be a valid method of service under the laws of the foreign country. If eventual enforcement of a U.S. judgment in a foreign country is foreseen, it may be prudent to consult local foreign counsel or U.S. legal consultants abroad before proceeding with such a method of service. Waivers of service may be executed before a U.S. consular official abroad in the form of an acknowledgment or affidavit. See the Bureau of Consular Affairs Internet page about notarial and authentication services abroad. (See 7 FAM 840 and 7 FAM 850).

7 FAM 953.4 Service By Agent

(CT:CON-127; 01-26-2006)

- a. If personal service is desired in countries which are not party to the Hague Service Convention, the most expeditious method may be to retain the services of a local foreign attorney or process server. Rule 4(f)(2)(C) Federal Rules of Civil Procedure provides for personal service unless prohibited by the laws of the foreign country. The attorney (or agent) can execute an affidavit of service at the nearest U.S. embassy or consulate, or before a local foreign notary which can be authenticated, either with an apostille for countries party to the Hague Legalization Convention, or by a U.S. consular officer at a U.S. Embassy abroad. See the CA Internet web page guidance about notarial and authentication services.
- b. **Validity of Service:** The court in the United States where the U.S. action is pending will determine if service is valid for the purposes of U.S. state or federal law. However, the laws of the foreign State may not recognize service by agent as valid. Because service by agent is not recommended in cases where the enforcement of a judgment may be attempted later, interested parties should consult their local (foreign) attorneys about using this method.
- c. **Permissibility of Notarial Service for Affidavit of Service:** The Department (CA/OCS/PRI and L/CA) have determined that provision of a routine notarial service in the form of administration of an oath by a consular officer to a private individual who effected personal service of documents on a person in the foreign country, is permissible, notwithstanding a declaration or reservation by a country party to the Hague Service Convention about the exclusive use of a particular method of service. Challenges to the validity of service may be raised should eventual enforcement of a U.S. state or federal judgment be attempted in the foreign country.

7 FAM 953.5 Service by International Registered Mail

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- a. Registered mail, with return receipt requested, may be sent to most countries of the world. The U.S. Postal Service's instructions on international registered mail give detailed information on mail service in most foreign jurisdictions. (Rule 4(f)(2)(C)(ii) F.R.Cv.P.) 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. **(see discussion below regarding treaty obligation to refrain from this method of service in certain countries.)** To ascertain whether such mail service exists in a foreign state, requesters may contact their local U.S. Post Office to review the International Mail Manual and consult the business section on international mail of the U.S. Postal Service web page for general information, or contact the Government Printing Office.
- b. American courts have held that formal objections to service by mail made by countries party to a multilateral treaty or convention on service of process at the time of accession or subsequently in accordance with the treaty are honored as a treaty obligation, and litigants should refrain from using such a method of service.
- c. The following countries objected to the provisions of Article 10 of The Hague Service Convention regarding service via postal channels. Service by international mail should not be attempted in these countries. (See 7 FAM 953.4).

Note: Service by registered mail **should not be used** in the following countries which notified the treaty repository that it objected to the method described in Article 10(a) (postal channels):

Argentina

Bulgaria

China, PRC

Croatia

Czech Republic

Egypt

Germany

Greece

Hungary

India

Japan

Korea

Kuwait

Lithuania

Mexico

Norway

Poland

Russian Federation

San Marino

Seychelles

Slovak Republic

Sri Lanka

Switzerland

Turkey

Ukraine

Venezuela

These countries have notified the Hague Conference on Private International Law and the Government of the Netherlands (the repository) on accession, ratification or subsequently that they object to service in accordance with Article 10, sub-paragraph a of the Convention, via postal channels.

For a definitive up to date information about countries objecting to service by mail (Article 10 a), see the status table of the Hague Conference on Private International Law Hague Service Convention web page and review the reservations and declarations for each country.

- d. **Note about Japan:** Japan did not object to the provisions of Article 10(a) of the Convention on accession. However, subsequently, Japan provided a clarification of its position on the subject to the Hague Conference on Private International Law. While Japan does not formally object to service by postal channels, it may not recognize the method of service when enforcement of a foreign (U.S.) judgment is attempted. At a meeting of The Hague Conference on Private International Law Special Commission April

17-20, 1989 the Japanese delegation issued a statement regarding service by postal channels. See 28 Int'l Leg. Mat. 1556 (1989) and Hague Service Convention Practical Handbook, 1992 ed., p. 134. See the Service of Process in Japan feature on the Department of State, Bureau of Consular Affairs Internet page and Japan's response to the 2003 Questionnaire of the Hague Conference on Private International Law in preparation for the 2003 Special Commission on the Practical Operation of The Hague Service Convention.

7 FAM 953.6 Service by Letter Rogatory

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A letter rogatory, also known as a "letter of request", is a request from a court in the United States to a court in a foreign country requesting international judicial assistance. In some countries service by letters rogatory is the only recognized method of service. Service of process by judicial authorities in the receiving State pursuant to a letter rogatory from a court in the sending State is based on comity. Procedural requirements vary from country to country. See the Bureau of Consular Affairs web page guidance on "Preparation of Letters Rogatory", and our country-specific flyers for any peculiarities of particular countries, or consult the appropriate geographic division of the U.S. Department of State, Bureau of Consular Affairs, Office of American Citizens Services (CA/OCS/ACS). Letters rogatory are also used for compulsion of evidence. 7 FAM 930.28 provides a more extensive discussion about letters rogatory. 28 U.S.C. 1696 and Rule 4(f)(1) F.R.Cv. P. (28 U.S.C. Appendix Rule 4) and Rule 9(c) provide for service of process pursuant to a letter rogatory. *7 FAM Exhibit 953.6 A provides sample language to be used in transmitting a letter rogatory through the diplomatic channel. 7 FAM 953.5 B provides a sample Certificate Returning an Executed Letter Rogatory.*

7 FAM 953.7 Multilateral Conventions on Service

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- a. **Summary:** The United States is a party to two multilateral treaties on service of process, the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters (Hague Service Convention) (20 U.S.T. 1361; 658 U.N.T.S. 163, T.I.A.S. No. 6638; 28 U.S.C.A.) (Appendix following Rule 4 FRCvP) and the Inter-American Convention on Letters Rogatory

U.S. Department of State Foreign Affairs Manual Volume 7 – Consular Affairs (Inter-American Service Convention) and Additional Protocol. Procedures for service under these treaties are summarized below, and explained in greater detail in the Department of State, Bureau of Consular Affairs Internet web pages about the operation of the conventions. For questions regarding requests from foreign States for service of documents in the United States, (see 7 FAM 963).

- b. **Consular Role:** If a requesting party encounters problems in dealing with the central authority of the host government in a country which is party to either convention, the consular officer may be requested to make appropriate inquiries of that central authority about the cause of the difficulty. Therefore, consular officers should attempt to establish rapport with the foreign central authorities and maintain the current name and address of the foreign central authority in countries where the conventions are in force.
- c. **U.S. Central Authority:** The U.S. Central Authority for both conventions is the Office of International Judicial Assistance, also known as the Office of Foreign Litigation.

- (1) Contact information for the U.S. Central authority is:

Office of International Judicial Assistance
Civil Division, Department of Justice
1100 L St. N.W.
Room 11006
Washington, DC 20530
tel: 202) 307-0983
fax: (202) 514-6584.

- (2) On June 1, 2003, the U.S. Department of Justice delegated the service of incoming foreign civil process to a private contractor, Process Forwarding International (PFI).
- (3) Information about how to submit requests for service of foreign documents in the United States pursuant to the Hague Service Convention, the Inter-American Service Convention, or requests (letters rogatory) from foreign tribunals of countries not party to any treaty on service of process is available at Hague service web site. The U.S. Marshals Service web page features "Foreign Process" and "Foreign Civil Process."
- (4) **U.S. Notification about Department of Justice Contractor:** The United States Department of State notified all foreign embassies in Washington, DC, the Hague Conference on Private International Law and the Organization

of American States of the change. **See:**

- (a) Circular note from Secretary of State Colin L. Powell to chiefs of mission in the United States on provision of certain judicial assistance (June 4, 2003);
- (b) Letter from David Epstein, Director, Office of Foreign Litigation, Department of Justice, to Enrique Lagos, Assistant Secretary for Legal Affairs, Organization of American States, on provision of certain judicial assistance (April 30, 2003) on the Department of State, Office of the Legal Adviser, Digest of International Law web page; and
- (c) Hague Conference on Private International Law web page for U.S. Notice to the Hague Conference on Private International Law.

d. **Hague Service Convention:** The Hague Service Convention provides for service of process by a designated central authority pursuant to a formal request, and includes alternative methods of service to which countries may object in the form of declarations/reservations. The Hague Conference on Private International Law web page provides information about the Hague Service Convention.

- (1) **Hague Service Convention Request Form:** The form required for transmittal of service requests to the foreign central authority Form USM-94, Request for Service Abroad of Judicial or Extrajudicial Documents, is available from the U.S. Marshals Service web page. For guidance on completing Form USM-94 and transmitting it to the foreign central authority, see the Bureau of Consular Affairs Internet page for the State Department Circular About the Operation of the Hague Service Convention.
- (2) **Hague Service Convention In Force:** For the current list of countries and dependencies party to the Convention, see the Status Table for the Hague Service Convention on the Hague Conference web page. The column captioned “Entered into Force (EIF)” reflects when the treaty became valid in that country.

Note: The Hague Conference *web site* designates months with Roman Numerals.

COUNTRY/DEPENDENCY	ENTERED INTO FORCE	NOTES
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	(EIF)	
<i>Albania</i>	<i>07-01-2007</i>	
Anguilla (UK)	<i>10-02-1982</i>	
Antigua and Barbuda	<i>11-1-1981</i>	
Argentina	<i>12-01-2001</i>	Objects to service by mail (Article 10(a))
Aruba (Netherlands)	<i>07-27-1986</i>	Not Extended to Netherlands Antilles
Bahamas	<i>02-01-1998</i>	
Barbados	<i>10-01-1969</i>	
Belarus	<i>02-01-1998</i>	
Belgium	<i>01-18-1971</i>	
Bermuda (UK)	<i>07-19-1970</i>	
Botswana	<i>09-01-1969</i>	
Bulgaria	<i>08-01-2000</i>	Objects to service by mail (Article 10(a)).
Canada	<i>05-01-1989</i>	
Cayman Islands (UK)	<i>07-19-1970</i>	
China PRC Hong Kong SAR Macao SAR	<i>01-01-1992</i>	China (PRC) objects to service by mail (Article 10(a))
<i>Croatia</i>	<i>11-01-2006</i>	<i>Objects to service by mail (Article 10(a))</i>
Cyprus	<i>06-01-1982</i>	
Czech Republic	<i>06-01-1982</i>	

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Denmark	<i>10-01-1969</i>	
Egypt	<i>02-10-1969</i>	Objects to service by mail (Article 10(a))
Estonia	<i>10-01-1996</i>	
Falkland Islands (UK)	<i>07-19-1970</i>	See Argentina declaration.
Finland	<i>11-10-1969</i>	
France	<i>09-01-1972</i>	Extended to the entire territory of the French Republic, including overseas Departments (French Polynesia).
Germany	<i>06-26-1979</i>	
Gibraltar (UK)	<i>07-19-1970</i>	See Spain declaration.
Greece	<i>09-18-1983</i>	Objects to service by mail (Article 10(a)).
Guernsey, Bailiwick of (UK)	<i>07-19-1970</i>	
Hungary	<i>04-01-2005</i>	Objects to service by mail (Article 10(a)).
<i>India</i>	<i>08-01-2007</i>	<i>Objects to service by mail (Article 10(a)).</i>
Ireland	<i>06-04-1994</i>	
Isle of Man (UK)	<i>07-19-1970</i>	
Israel	<i>10-13-1972</i>	
Italy	<i>01-24-1982</i>	
Japan	<i>07-27-1970</i>	Objects to service by mail (Article 10(a)). See Japan country specific flyer.
Jersey (UK)		

Korea, <i>Republic of</i>	<i>08-01-2000</i>	Objects to service by mail (Article 10(a)).
Kuwait	<i>12-01-2002</i>	Objects to service by mail (Article 10(a))
Latvia	<i>11-01-1995</i>	
Lithuania	<i>06-01-2001</i>	Objects to service by mail (Article 10(a)).
Luxembourg	<i>09-07-1975</i>	
Malawi	<i>12-01-1972</i>	
Mexico	<i>06-01-2000</i>	Objects to service by mail (Article 10(a)).
<i>Monaco</i>	<i>11-01-2007</i>	
Montserrat (UK)	<i>07-19-1970</i>	
Netherlands	<i>01-02-1976</i>	
Norway	<i>10-01-1969</i>	Objects to service by mail (Article 10(a)).
Pakistan	<i>08-01-1989</i>	
Pitcairn (UK)	<i>07-19-1970</i>	
Poland	<i>09-01-1996</i>	Objects to service by mail (Article 10(a)).
Portugal	<i>02-25-1974</i>	
Romania	<i>04-01-2004</i>	
Russian Federation	<i>12-01-2001</i>	Objects to service by mail (Article 10(a)). See Russia country specific flyer. Russia does not consider the Hague Service Convention to apply to the United States.

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Saint Christopher and Nevis	July 19, 1970	
Saint Helena (UK)	07-19-1970	
<i>Saint Vincent and the Grenadines</i>	10-27-1979	
<i>San Marino</i>	11-01-2002	<i>Objects to service by mail (Article 10(a)).</i>
<i>Seychelles</i>	07-01-1981	<i>Objects to service by mail (Article 10(a))</i>
<i>Slovakia</i>	06-01-1982	<i>Objects to service by mail (Article 10(a))</i>
<i>Slovenia</i>	06-01-2001	
<i>Spain</i>	08-03-1987	
<i>Sri Lanka</i>	06-01-2001	<i>Objects to service by mail (Article 10(a))</i>
<i>Sweden</i>	10-01-1969	
<i>Switzerland</i>	01-01-1995	<i>Objects to service by mail (Article 10(a))</i>
<i>Turkey</i>	04-28-1972	<i>Objects to service by mail (Article 10(a))</i>
<i>Turks and Caicos Islands (UK)</i>	07-19-1970	
<i>Ukraine</i>	12-01-2001	<i>Objects to service by mail (Article 10(a))</i>
<i>United Kingdom</i>	02-10-1969	<i>Objects to service by mail (Article 10(a))</i>
<i>United States of America</i>	02-10-1969	
<i>Venezuela</i>	07-01-1994	<i>Objects to service by mail (Article 10(a))</i>

<i>Virgin Islands (UK)</i>	<i>07-19-1970</i>	
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NOTE: For the current list of countries and dependencies party to the Convention, see the Status Table for the Hague Service Convention on the Hague Conference web page. The column captioned “EIF” (Entered into Force) reflects when the treaty became valid in that country. The Hague Conference designates months with Roman Numerals. It is important to read the reservations (Res), Declarations (D) and Notifications (N) for each country. The foreign central authorities (Auth) are also listed on the Hague Conference Service Convention page.

- (3) **Declarations and Reservations:** It is important to read the reservations (Res), Declarations (D) and Notifications (N) for each country. Not all the provisions of the treaty apply to each country. The treaty allows countries to object to certain provisions such as service by a consular officer and service by postal channels. The declarations also note translation requirements.
- (4) **Hague Service Convention Foreign Central Authorities:** The foreign central authorities (Auth) are also listed on the Hague Conference Service Convention page.
- e. **Inter-American Service Convention:** The Inter-American Convention on Letters Rogatory and Additional Protocol is similar in scope and also provides for service of process by a designated central authority pursuant to a formal request. **Only countries party to both the Convention and the Additional Protocol have a treaty relationship with the United States.** See Treaties in Force on the U.S. Department of State web page. The Inter-American Convention on Letters Rogatory (OAS Treaty Text B-36 and List of Ratifications for OAS Treaty Text B-36), done at Panama January 30, 1975; and Additional Protocol (OAS Treaty Text B-46 and List of Ratifications for OAS Treaty Text B-46) with Annex (regarding service of process) done at Montevideo, Uruguay on May 8, 1979. Senate Treaty Doc. 98-27; 98th Congress; 2d Session. See the Department of State Circular on the Operation of the Inter-American Service Convention, and see Message to the Senate Transmitting the Inter-American Convention on Letters Rogatory and Additional Protocol (1984); Executive Order 12638 -- Delegation of Functions Relating to the Implementation of the Inter-American Convention on Letters Rogatory and Additional Protocol (1988).

- (1) **Inter-American Service Convention In Force:** The Inter-American Service Convention is now in force between the United States and Argentina, Brazil, Chile, Colombia, Ecuador, El Salvador, Guatemala, Mexico, Panama, Paraguay, Peru, United States, Uruguay, and Venezuela. **For the most up to date information about ratifications and accessions to the Convention and the Additional Protocol, see the OAS web pages.**
- (2) **Inter-American Service Convention Request Forms:** Requests for service in a foreign country party to the Convention and Additional Protocol are transmitted on a Form USM-272 (English) and Form USM-272-A (Spanish), Convention Form, available at the office of any United States Marshal or the U.S. Department of Justice’s contractor, Process Forwarding International (PFI).
- (3) **Transmittal of Requests Under the Inter-American Service Convention:** Unlike the Hague Service Convention, requests under the Inter-American Convention on Letters Rogatory and Additional Protocol for service abroad and service in the United States cannot be sent directly to the foreign central authority. Rather, requests are submitted to the U.S. Central Authority’s contractor Process Forwarding International (PFI).

7 FAM 954 SERVICE OF SUBPOENAS ON U.S. CITIZENS OR LEGAL PERMANENT RESIDENTS

7 FAM 954.1 Procedures

(CT:CON-127; 01-26-2006)

- a. **Authority:** 28 U.S.C. 1783 provides for service of a subpoena on a U.S. citizen or lawful permanent resident of the United States. 22 CFR 92.86 provides that subpoenas may be served by consular officers. Note that U.S. law enforcement agency representatives at posts abroad do not have the authority to serve such documents. However, it may be prudent for a U.S. law enforcement agency representative to accompany the consular officer when service is made. See paragraph d below regarding safety of the consular officer and service of a subpoena. Subpoenas may not be served on host country nationals and third country nationals who are not

U.S. citizens or U.S. Lawful Permanent Resident Aliens. (See 7 FAM 944).

- b. **How You Will Receive the Subpoena:** Consular officers serve only Federal criminal subpoenas unless otherwise advised by the Department (CA/OCS), in coordination with L/CA. Occasionally, a consular officer may be instructed by the Department (CA/OCS) to serve a State criminal subpoena.
 - (1) If a post receives a request for service of a subpoena directly from a court in the United States or from United States government or private legal counsel, consult CA/OCS/PRI before taking any action. Post should notify CA/OCS/PRI immediately via phone, email, fax or cable.
 - (2) Legal questions may be addressed by posts to CA/OCS/PRI (ASKPRI@state.gov).
- c. **Who May be Served:** The consular officer usually receives a Federal criminal subpoena for service on a U.S. citizen or legal permanent resident, (sometimes referred to as LPR), from the Department (CA/OCS/ACS) by fax, scanned attachment to an email, or express delivery. Pouch transmittal generally should not be used in cases of service of a subpoena due to time constraints.
- d. **Safety of the Consular Officer and Serving a Subpoena:** The Department (CA/OCS/ACS) will ask the U.S. Department of Justice and the Federal or state prosecutor if there is any reason to be concerned about the safety of the consular officer when making arrangements to serve the subpoena on the witness.
- e. **Timing of Service of Subpoena:** A subpoena must be served as soon as possible. The date of the witness's appearance, noted on the subpoena, is often only days away from the consular officer's receipt of the documents. The facsimiles are to be given the same weight as originals once the FAX or email copies of the order and subpoena are received, and the subpoena must be served according to the Department's instructions. Certified copies of the subpoena and the order will be sent subsequently to the consular officer by the fastest means available when feasible.
- f. **Instructions on How to Effect Service:** The Department's memorandum transmitted to post by fax, email or express delivery accompanying the subpoena provides guidelines for service that include the residence and work place address for the witness, along with instructions on how the subpoena should be served.
 - (1) **Personal Service:** It is preferable that you serve the subpoena personally on the witness. People being served

with a subpoena may not want to be served, and may try to avoid you. All your efforts to effect service should be carefully documented. This will be committed to an affidavit when you complete the RETURN portion of the subpoena. If you hand the subpoena to the person and he or she refuses to grasp it; drops it on the floor; has you give it to the secretary – they have been served. Even throwing it over the fence has been considered valid service when it was not possible to gain access to the individual any other way.

- (2) **Leaving the Subpoena for the Witness:** While it is preferable to personally hand the witness the subpoena (or order to show cause, the copy of the court order, Government Travel Request (GTR) and any cash specified in the instructions), this may not always be possible. In such cases, a subpoena may be served by delivering it or leaving it for the party for whom it is intended. If the Department furnishes specific instructions for personal hand delivery and the consular officer is unable to carry them out, the officer should report to CA/OCS/ACS briefly the reasons and circumstances of alternative delivery.
- g. **Proof of Service:** After service has been made, the consular officer must supply, in an affidavit executed before another consular or diplomatic officer, the information called for in the space on the subpoena marked "RETURN." This is a no-fee service under Schedule of Fees item 58 (a). Promptly send the completed subpoena, with order attached, to the Department (CA/OCS) for relay to the clerk of the appropriate U.S. District Court. The consular officer must note in the "RETURN" space on the subpoena that this instruction (either to pick up the documents or to have the documents mailed) was given to the witness. Include this information when reporting to the Department that service was made.
- h. **Fees and Expenses of Witnesses:** In Federal cases tender a GTR to the witness only at the time service is made. The GTR is for roundtrip air travel between the witness's residence and the city where the court is sitting. Travel is to be at economy jet rates and no U.S. government funds shall be used to pay for first-class travel unless no other commercial service is reasonably available, or such travel is necessary for reasons of disability or medical conditions. Cash in the amount specified in the instruction must also be tendered to the witness at the time service is made. The U.S. Department of Justice (DOJ), Justice Management Division, Simplified Acquisitions Service Staff, processes requests from DOJ

attorneys for witnesses located in foreign countries who require prepaid transportation and/or small cash advances. CA/OCS's point of contact at the Justice Management Division, Simplified Acquisitions Service can be reached at 202-307-1954; fax: 202-307-1931. That office will send telegrams directly to U.S. embassies and consulates notifying posts of the U.S. Government's need for the travel of the witness, providing points of contact in the U.S. Attorney and U.S. Marshal's Offices and fiscal data against which the travel may be charged. CA/OCS/ACS will coordinate with the Federal prosecutor and the U.S. Department of Justice, Justice Management Division, Simplified Acquisitions Service Staff regarding fiscal data against which fees and expenses of witnesses should be charged in cases where the consular officer will be effecting service of the subpoena on the U.S. citizen or U.S. lawful permanent resident.

See also ...

U.S. Marshals Service Witness Security

U.S. Attorneys Manual 3-19.100

U.S. Attorneys Manual 3-8.232

- i. **ETA of Witness:** Inform the Department (CA/OCS/ACS) by telegram, email or fax of the witness's estimated time of arrival if known.
- j. **Post Expenses:** A consular officer who will incur travel expenses in effecting service should contact the Department (CA/OCS/ACS) for an appropriation number and fund code against which the travel may be charged. The appropriation number and fund code will not be the same as those used for the GTR.

7 FAM 954.2 Civil and Administrative Subpoenas

(CT:CON-127; 01-26-2006)

Consular officers may receive requests for service of civil and administrative subpoenas. Refer such requests to the Department (CA/OCS/PRI) (ASKPRI@state.gov), which will confer with L/CA regarding the propriety of complying with such requests.

7 FAM 954.3 Service of Subpoenas On Host Country or Third Country Nationals or

Institutions

(CT:CON-127; 01-26-2006)

- a. Consular officers should be aware that some countries are particularly sensitive to service of administrative subpoenas or charging letters from U.S. administrative agencies, such as the Securities and Exchange Commission (SEC), Federal Trade Commission (FTC), Commodity Futures Trading Commission (CFTC), Internal Revenue Service (IRS), and others. Report to the Department (CA/OCS) any information available about proper methods of service of such documents in their host country.
- b. A subpoena issued in the United States for service on a person other than a U.S. citizen or permanent resident alien has no force or effect outside the United States. Consular officers have no authority to serve subpoenas on non-U.S. citizens or permanent resident aliens. Promptly report such requests to the Department (CA/OCS/PRI) (ASKPRI@state.gov) because often they have resulted in protests from host governments and should be avoided. The Department will inform the issuing authority of its error.

7 FAM 955 SERVICE PURSUANT TO THE FOREIGN SOVEREIGN IMMUNITIES ACT

(CT:CON-127; 01-26-2006)

- a. 28 U.S.C. 1608, the Foreign Sovereign Immunities Act of 1976 (FSIA) (28 U.S.C. 1330, 28 U.S.C. 1602) provides for service of process on a foreign state with the assistance of the Department of State in an action where the foreign state is a defendant and where service cannot be effected by the other methods prescribed in the Act. (See 22 CFR 93). Information about the service provisions of the FSIA is available from the Department of State, Bureau of Consular Affairs Internet page:

See ...

FSIA Checklist for Plaintiffs

Service Provisions of the FSIA

- b. **CA/OCS/PRI Action Office:** Requests for service of FSIA cases are referred to posts only by the Department, Bureau of Consular Affairs, Overseas Citizens Services, Office of Policy Review and Inter-Agency Liaison (CA/OCS/PRI) (ASKPRI@state.gov). Such cases are rare, but complex, demanding special attention on the

U.S. Department of State Foreign Affairs Manual Volume 7 – Consular Affairs
part of the consular officer. Contact the Department (CA/OCS/PRI) **immediately** regarding any request sent directly to the consular officer by a U.S. court or attorney before taking any action.

- c. **Consular Role:** The consular officer is required to effect service on the defendant foreign state by diplomatic note. Proof of service is made by attaching a certified copy of the Embassy’s note to the second set of documents (summons, complaint, and notice of suit) and returning those documents, with the note, to the Department (CA/OCS/PRI) for relay to the clerk of the court. 7 FAM Exhibit 955c provides a sample certification using the prescribed wording.
- d. **Not Discretionary:** Service pursuant to the FSIA is a statutory obligation; **the consular officer may exercise no discretion in complying with the Act.** 7 FAM Exhibit 955d provides an excerpt of a Circular Diplomatic Note of December 10, 1976, apprising foreign missions of the Act. The officer must report to the Department (CA/OCS/PRI) (ASKPRI@state.gov) the date the documents were received by the embassy, the date they were transmitted to the foreign ministry, and the date the executed request was sent to the Department (CA/OCS/PRI) for relay to the court. This report must also give the invoice, registry, and pouch numbers by which the documents were returned to the Department (CA/OCS/PRI).
- e. **Model Diplomatic Note Transmitting FSIA Case:** The diplomatic note transmitting the documents to the Foreign Ministry should conform generally to the following language, formatted as required by the Department’s Correspondence Handbook, 5 FAH-1, or the Secretariat Handbook. CA/OCS/PRI will adjust the text as appropriate in transmitting it to the U.S. Embassy, after clearing our instruction with L/CA, L/DL and the appropriate regional bureau desk.

Sample Text of Diplomatic Note

[Complimentary Opening]

The Embassy of the United States has the honor to refer the Foreign Ministry to the lawsuit entitled [title of lawsuit], in which the Government of [name of country] is a defendant. The case is pending in the United States District Court, **[District], [City, State]**, docket number **[Docket Number]**. The Embassy herewith transmits a summons and complaint. This note constitutes service of these documents upon the Government of **[name of country]** as contemplated in Title 28, United States Code, Section 1608(a)(4).

Under applicable United States law, a defendant foreign state in a lawsuit must file an answer to the complaint or some other responsive pleading within 60 days from the date of service of the complaint (that is, the date of this note) or face the possibility of having judgment entered against it without the opportunity of presenting evidence or arguments in its behalf. Accordingly, the Embassy requests that the enclosed summons and complaint be forwarded to the appropriate authority of the Government of [name of country] with a view towards taking whatever steps are necessary to avoid a default judgment.

Please note that under United States law and procedure, neither the Embassy nor the Department of State is in a position to comment on the present suit. Under the laws of the United States, any jurisdictional or other defense including claims of sovereign immunity must be addressed to the court before which the matter is pending, for which reason it is advisable to consult an attorney in the United States.

In addition to the summons and complaint, the Embassy is enclosing a “notice of suit” prepared by the plaintiff, which summarizes the nature of the action which has been filed against the government, and the factual allegations on which the case is based. The notice of suit includes a copy of pertinent United States laws concerning sovereign immunities.

[Complimentary Closing]

- f. **Status Reports:** Posts should communicate with CA/OCS/PRI by email with reports about the status of the request.
- g. **Proof of Service:** The embassy should affix the consular certification to a certified copy of the diplomatic note transmitting the summons, complaint and notice of suit (or default judgment) to the Foreign State. Fax an advance copy to CA/OCS/PRI at 202-736-9111 or transmit a scanned copy by email. The original/certified copy should be sent via express courier service to CA/OCS/PRI for transmittal to the U.S. court.
- h. **Response by the Foreign Government:** Any response by the foreign government to the U.S. Embassy diplomatic note should be conveyed to CA/OCS/PRI, with a consular officer certification of any diplomatic note. Under United States law and procedure, neither the Embassy nor the Department of State is in a position to comment on the present suit. Under the laws of the United States, any jurisdictional or other defense including claims of sovereign immunity must be addressed to the court before which the matter is pending, for which reason it is advisable for the foreign

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government to consult an attorney in the United States.

7 FAM 956 SERVICE IN SECTION 340 INA CASES

(CT:CON-127; 01-26-2006)

- a. Consular officers must deliver, or assist in delivering, to designated persons documents relating to proceedings pursuant to 8 U.S.C. 1451 (Section 340 of the Immigration and Nationality Act (INA), in the cancellation of certificates of naturalization when such documents are received from duly authorized officials of the Federal courts.
- b. Responsibility for providing detailed instructions on the procedure for delivering such documents rests with the court or with the U.S. attorney concerned; consular officers must follow such instructions carefully. 7 FAM Exhibit 956 provides; a sample certificate of service, affidavit of consular officer serving process, and affidavit of second consular officer (or diplomatic officer), which constitute proof of service.

7 FAM 957 SERVICE AT REQUEST OF CONGRESS OR U.S. GOVERNMENT AGENCIES

(CT:CON-127; 01-26-2006)

Consular officers have no authority to serve legal process, such as subpoenas or citations, in connection with congressional investigations, on persons in their consular districts, nor may they serve such process at the request of U.S. Government agencies other than the Department of State. Refer to the Department (CA/OCS/PRI) (ASKPRI@state.gov) all requests for such service. (See 22 CFR 92.91).

7 FAM 958 SERVICE ON U.S. MILITARY PERSONNEL ABROAD

(CT:CON-127; 01-26-2006)

- a. Neither the Department of Defense (DOD) nor the military departments have a uniform policy concerning the service of civil or

criminal process on military personnel abroad or at sea. DOD and its components, however, in accordance with applicable policies and procedures, will allow and assist in the service of civil process on their personnel in certain circumstances, to be initially determined by the staff judge advocate of the appropriate DOD component. Significantly different policies and procedures apply to service of criminal process. For guidance on cases concerning civil or criminal service of process on U.S. military personnel, consult with CA/OCS, which will contact DOD for instructions.

- b. Relevant “Status of Forces” agreements in some countries may prohibit local authorities from serving American judicial process on U.S. military installations.
- c. Commanders may impose restrictions upon persons entering their installations, limiting the service of process to registered mail or service outside the military installation.
- d. Generally, commanders or other officials in charge when contacted about service of process on an employee will bring the matter to the attention of the individual and will determine whether he or she wishes to accept service voluntarily. If the individual does not desire to accept service, the party requesting such service will be notified and will be advised to follow the procedures prescribed or recognized by the laws of the foreign country.
- e. In countries party to The Hague Service Convention or Inter-American Service Convention and Additional Protocol, the foreign Central Authority may attempt to accomplish service under the applicable Convention if the prevailing Status of Forces agreement (SOFA) permits access to the base. Installation commanders may impose reasonable restrictions upon persons who enter their installations to serve process. It may therefore be necessary for the foreign Central Authority to effect service on the individual outside the installation. Some foreign Central Authorities may decline jurisdiction over cases involving U.S. military personnel depending on the SOFA agreement applicable (if any).
- f. Likewise, a request for service on U.S. military personnel pursuant to a letter rogatory may prove difficult as the foreign court may decline jurisdiction. It may be necessary to retain the services of a private attorney or other agent to effect service on the individual outside the U.S. military installation. Service by registered mail is also another option.
- g. Inquirers may be directed to the Judge Advocate General’s office for the appropriate branch of the U.S. military at the U.S. base abroad for further guidance (See Judge Advocate General Corps).

See:

HHS/OCSE's A Caseworker's Guide to Child Support and the Military (which includes information about service of process);

Cook, The Armed Services And Model Employer Status For Child Support Enforcement: A Proposal To Improve Service Of Process, Thesis, The Judge Advocate General's School, United States Army, Charlottesville, VA (1996);

A Guide to Child Support Enforcement Against Military Personnel, Serving the Soldier, (February 1996), Administrative and Civil Law Department, Legal Assistance Branch, the Judge Advocate General's Legal Center and School, U.S. Army, Charlottesville, VA 22093-1781;

Barber, Soldiers, Sailors and the Law, Family Advocate, ABA Family Law Section, Vol. 9, No. 4, 38, 41 (Spring 1987).

7 FAM 959 SERVICE ON DEPARTMENT OF STATE PERSONNEL

(CT:CON-127; 01-26-2006)

- a. **Official Capacity:** See 7 FAM 980 and 22 CFR 172 for service on U.S. State Department personnel in their official capacity.
- b. **Personal Capacity:** The Department is not an agent for the service of process upon its employees with respect to purely personal, non-official litigation. Service is usually attempted by private litigants by international registered mail, return receipt requested, or by an agent, usually a foreign attorney retained for that purpose. The Department recognizes that its employees overseas should not use their official positions to evade their personal obligations and will counsel and encourage Department employees to accept service of process in appropriate cases. (See 22 CFR 172.2(d)).

7 FAM EXHIBIT 953.6 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 that service of process be effected upon *Jose Antonio Munoz Rivas* at the address listed in the letter rogatory, *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 .)

7 FAM EXHIBIT 953.6 B CERTIFICATION RETURNING AN EXECUTED LETTER ROGATORY

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

VENUE.

Japan)	
(Name of Country))	
)	
Prefecture of Tokyo)	
(Name of County, Province, etc.))	
)	ss:
City of Tokyo)	
(Name of City))	
)	
Embassy of the United States of America)	
(Name of Foreign Service Post))	

I hereby certify that I received the annexed letters rogatory and accompanying documents

on the date shown below.

(Date of Receipt)	April 15, 2005
	Ministry of Foreign Affairs
of Japan	
(Transmitting Authority)	
(Signature of Consular Officer)	
	Marlowe K. Thurgood
(Typed Name of Consular Officer)	
	Vice Consul of the United States of America
(Title of Consular Officer)	
(Date)	April 19, 2005
(SEAL)	

7 FAM EXHIBIT 955C SAMPLE OF A CERTIFICATE OF SERVICE FSIA

(CT:CON-127; 01-26-2006)

<p>Certificate of Service Under the Foreign Sovereign Immunities Act</p>	
VENUE.	
Islamic Republic of Mauritania) (Name of Country))	
Province of Trarza) (Name of Country, Province, etc.))	
City of Nouakchott) (Name of City))	ss:
Embassy of the United) State of America) (Name of Foreign Service Post))	
I certify that this is a true copy of the diplomatic note of the Embassy of the United States of America which was delivered to the Ministry of Foreign Affairs of the Islamic Republic of Mauritania.	
(Number of Diplomatic Note)	Diplomatic Note Number 101
(Date of Note)	March 14, 1994
(Signature of Consular Officer)	Elizabeth C. Halbert
(Typed Name of Consular Officer)	Consul of the United States of America
(Title of Consular Officer)	Embassy of the United States of America
Name of Foreign Service Post (SEAL)	March 16, 1994
(Date)	

**7 FAM EXHIBIT 955D
EXCERPT, CIRCULAR DIPLOMATIC NOTE
FROM THE SECRETARY OF STATE DATED
DECEMBER 10, 1976, ON FSIA SERVICE OF
PROCESS REQUIREMENTS**

(CT:CON-127; 01-26-2006)

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in
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by
Eleanor C. McDowell

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**DEPARTMENT OF STATE PUBLICATION 8909
Release September 1977**

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SOVEREIGN IMMUNITY

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By a circular note dated December 10, 1976, the Department of State informed all foreign embassies in Washington of the enactment of the Foreign Sovereign Immunities Act and called their attention to significant aspects of the legislation, as follow:

1. The legislation will make substantial changes in United States law on the question of when a foreign state has immunity from suit. The legislation incorporates the restrictive doctrine of sovereign immunity which the United States has consistently followed since the Tate Letter of 1952, as the appropriate rule of modern international law. It has been the practice of the United States Government, since 1973, not to claim immunity for itself in foreign courts in any case when immunity would not be accorded to a foreign state under the new legislation.
2. The new legislation will eliminate the current practice in the United States of seizing or attaching foreign government property, as a method for obtaining jurisdiction against a foreign state or its entities. Section 1609 of the statute affords an absolute immunity from such jurisdictional attachments.
3. In addition to questions of state immunity, the new legislation will also prescribe the jurisdiction of Federal courts in the United States over foreign states and their agencies and instrumentalities. Under the statute, jurisdiction does not arise from the attachment of property, or from the service of process. Instead, jurisdiction depends on the existence of some connection (or contact) between the United States and the events giving rise to the litigation. These required connections (or contacts) are mentioned in the text of section 1605 of the statute. They are also incorporated by reference into the jurisdictional provisions of section 1330.
4. The statute also requires that adequate notice of a suit be given to the foreign state. This notice must be given by the service of judicial documents (in particular, a summons and complaint) in accordance with section 1608 of the statute. This service of notice, again does not confer jurisdiction, but is intended to inform the foreign state of the existence of the legal proceeding. It should also be noted that section 1608(a)(4) of the statute requires the Department of State to deliver this notice through diplomatic channels, in cases where other methods of service are unavailable.
5. The new legislation will provide, under limited circumstances, for execution against certain commercial and commercially related property, in order to satisfy a

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STATE TERRITORY, JURISDICTION, AND IMMUNITIES

final judgement against a foreign state or its entities. These limited circumstances are prescribed in section 1610(c) and 1611 of the statute. It should be noted that under section 1610(c), a foreign state or its entities must be afforded a reasonable opportunity to satisfy a judgement before execution can be accorded.

6. The new statute precludes the Department of State from making decisions on state immunity. Such decisions must be made exclusively by the courts. Thus, when the legislation takes effect on January 19, 1977, the Department will not be able to continue its prior practice of entertaining diplomatic requests to determine questions of sovereign immunity, or of conveying such determinations of immunity to an American court...

Dept. of State File No. P77 0014-208.

**7 FAM EXHIBIT 956
SAMPLES OF CERTIFICATE OF SERVICE OF
PROCESS, AFFIDAVIT OF CONSULAR
OFFICER WHO SERVED PROCESS, AND
AFFIDAVIT OF SECOND OFFICER ABOUT
SERVICE OF PROCESS**

(CT:CON-127; 01-26-2006)

Sample of a Certificate of Service of Process
on a Designated Individual or Company

State of California

VS.

CR. No. 09200

Harold D. Brown

REQUESTING AUTHORITY:

Circuit Court of the

Circuit, State of California
SERVE AT:

Kevin Sheridan, 55 Elgin

Road,
Ballsbridge, Dublin Ireland

NAME OF ATTORNEY OR
OTHER ORIGINATOR:

Xavier Sanchez
Prosecuting Attorney
Los Angeles, California

NAME AND ADDRESS
Road,
OF PERSON SERVED

Kevin Sheridan, 55 Elgin
Ballsbridge, Dublin, Ireland

SIGNATURE OF PERSON SERVED:

DATE OF SERVICE:

Sample of an Affidavit of a Consular Officer Who
Served Process

VENUE.

	Ireland)	
(Name of Country))	
	County of Dublin)	
(Name of County, Province, etc.))	
	City of Dublin)	ss.
(Name of City))	
	Embassy of the United States)	
	of America)	
(Name of Foreign Service Post))	

I hereby certify that I have personally served a certified true copy of an indictment and a copy of a warrant, copies which are attached hereto, on the individual at the address shown on the annexed certificate of service on the date indicated.

(Signature of Affiant)

Malcom D. Simms

(Typed Name of Affiant)

Vice Consul of the United States

(Title of affiant)

March 17, 1994
(Date)

Sample of an Certification of a Second Consular Officer About
a Consular Officer a Affidavit of Service of Process

VENUE.

Ireland)
(Name of Country))
)
County of Dublin)
(Name of County, Province, etc.))
) ss.
City of Dublin)
(Name of City))
)
Embassy of the United States)
of America)
(Name of Foreign Service Post))

SUBJECT: Service of Process By Malcolm D. Simms
(Typed Name of Consular Officer)

Vice Consul of the United States of American
(Title of Consular Officer)

I certify that on this day the individual named above appeared before me and, being
duly sworn, maed the statements set forth in the attached instrument.

(Signature of Consular Officer)

John B. Skeffington

(Typed Name of Consular Officer)

Consul of the United States of America

(Title of Consular Officer)

March 14, 1994

(Date)