Registration and Enforcement of Family Foreign Judgments in Mexico

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Introduction

- Comparative law
- Mexico is a civil law system
- U.S. is a common law system
- Base on this differences many situations where the same legal term has different meanings, or where different legal terms have same legal effect
- This can often cause confusion to self represented litigants, lawyers, and judges.
- This presentation will not deal with theoretical examination of differences between the common law and the civil law, but will focus on the similarities of both systems.

Legal terms and concepts

UNITED STATES:	MÉXICO:
o Child Support o Spousal Support o Support of an Adult Child o Support of Parents	o Pensión Alimenticia (alimony or family support)
o Legal and Physical Custody	o Patria Potestad y Custodia
o Community and Separate Property	o Bienes Mancomunados y Separados
o Parentage	o Paternidad

Note: in Mexico “alimony”, refers to food, clothing, medical attention, health insurance, habitation, etc., combine in one concept.

Continued…

UNITED STATES:	MÉXICO:
o Registration of Out of State Support Order o Registration of Out of State Custody Order	o Homologación de Sentencia Extranjera
o Income withholding	o Retención de sueldo
o Letter Rogatory or Letter of Request	o Carta Rogatoria u Oficio Exhortatorio

Laws regulating the Recognition and Enforcement of Foreign Judgments

- Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards.
- Inter-American Convention on Jurisdiction in the International Sphere for the Extraterritorial Validity of Foreign Judgments.
- The US is not a signatory to either of these conventions.

If the Country issuing the order is not a signatory Country

- Mexico may not be bound to enforce the Judgment (unless there is international commitment).
- México's procedural laws will set the standards for recognition.
- If you wish to only register an order, first consider the local Code of Civil Procedure of the particular Mexican state where we are seeking registration. (Baja California, Sonora, Chihuahua, Jalisco, Michoacán, etc).
- If you seek enforcement and execution, a letter rogatory has to conform with the rules set forth in the Mexican Federal Code of Civil Procedures.

International Reciprocity in Registration and Enforcement of Foreign Judgments

- The theory of reciprocity posits that the courts of country A should recognize and enforce the judgments of country B, if and only if, country B is prepared to offer similar recognition and enforcement to the judgments of country A.

International Reciprocity between the US and Mexico

UNITED STATES:	MÉXICO:
o US Constitution, Article IV, (full, faith and credit clause). o CA Family Code §-3405-3453 (Jurisdiction & Enforcement) o Family Code §2090-2093 (Uniform Recognition Divorce Act) o Family Code §4950-4964 (Uniform Interstate Family Support Act "UIFSA") o Family Code §3400-3461 (Uniform Child Custody Jurisdiction Enforcement Act "UCCJEA") o CA Code of Civil Procedure §1913	o Constitución Política de México Artículo 121 (full faith and credit clause) o Mexico's International Reciprocity Declaration. Attachment A. o Civil Code of Federal Procedures (Sections 549-571) o Code of Civil Procedures for the State of Baja California (Sections 585-594)

Note: To enforce a foreign judgment in Mexico the moving party has to use the CCFP, if the intention is only to register, then the you use State Law. Please see attachments B and C.

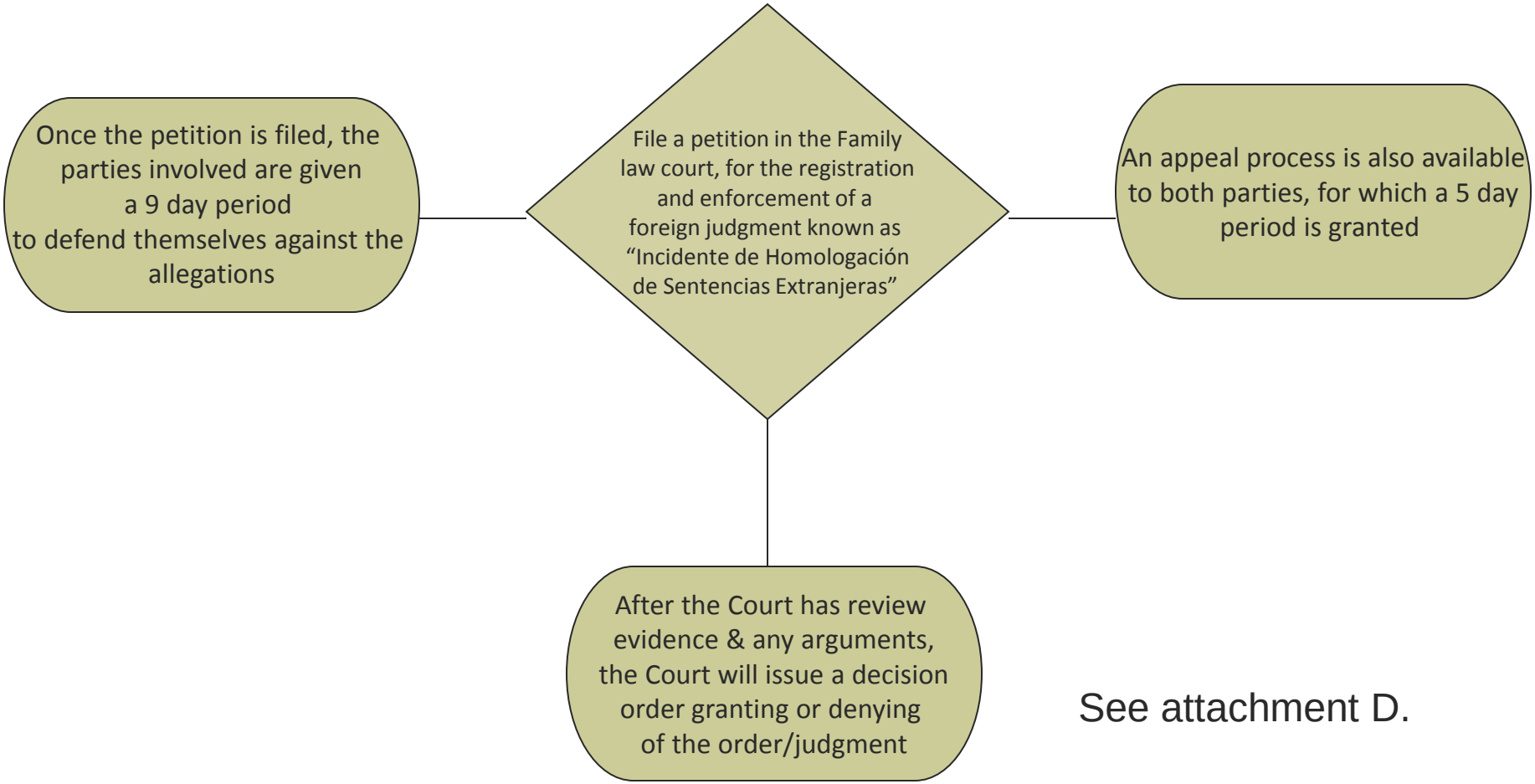
Conditions for Registration and Enforcement of Foreign Judgments under Mexico's Federal Code of Civil Procedure

- In order for a state court in Mexico register and enforce a California Judgment, all requirements for letters rogatory must be satisfied.
- The court rendering the judgment had proper jurisdiction to try the matter and to pass judgment on it.
- Service of process on defendant has been made in due legal form.
- There must be no similar case in a Mexican court as result of the same legal action.
- The judgment must not be contrary to Mexican public policy.
- The judgment must fulfill all the formal requirements to be considered authentic (Two step process)
  - Certification by court officials (clerk)
  - Apostille from the Secretary of State.

Procedure for Registration (Homologacion) according to FCCP in Mexico

- The process for homologación is considered a summary proceeding.
- Petition's for registration and enforcement of judgment must be prepare on pleading paper.
- Once a pleading for registration and enforcement is filed, the Respondent must be personally served with a copy of it.
- Respondent has 9 days to file a Response and oppose to the registration and enforcement of the judgment.
- The court will set up a hearing date for review any evidence.
- Once the evidence is review, the court will issue a order either granting the registration and enforcement of the order.

Diagram of Registration and Enforcement of Foreign Judgments in Mexico.



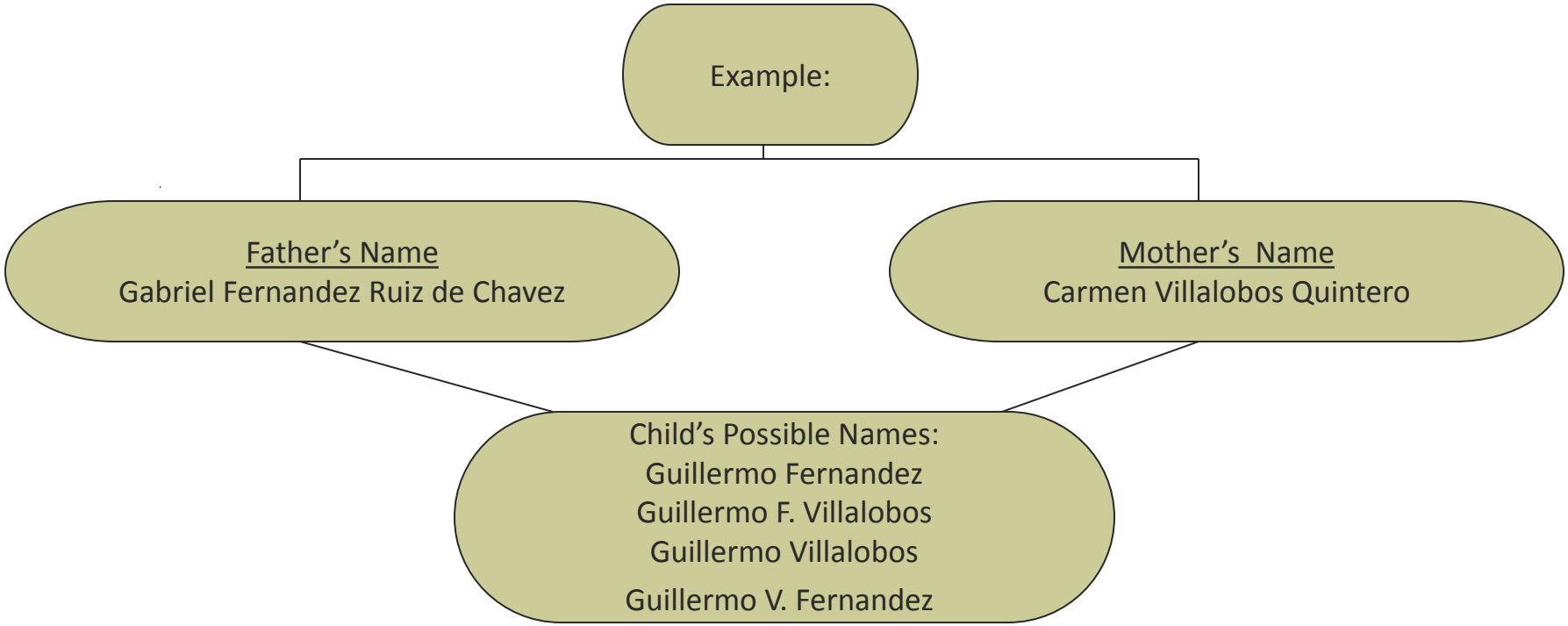
See attachment D.

Guidelines on drafting Letters Rogatory.

- Should be written in simple English
- Should be addressed "To the Appropriate Judicial Authority”
- Include a brief synopsis of the case, including identification of the parties and the nature of the claim and relief sought to enable the foreign court to understand the issues involved
- State the nature of the assistance requested
- Include a statement expressing a willingness to provide similar assistance to judicial authorities of the receiving state

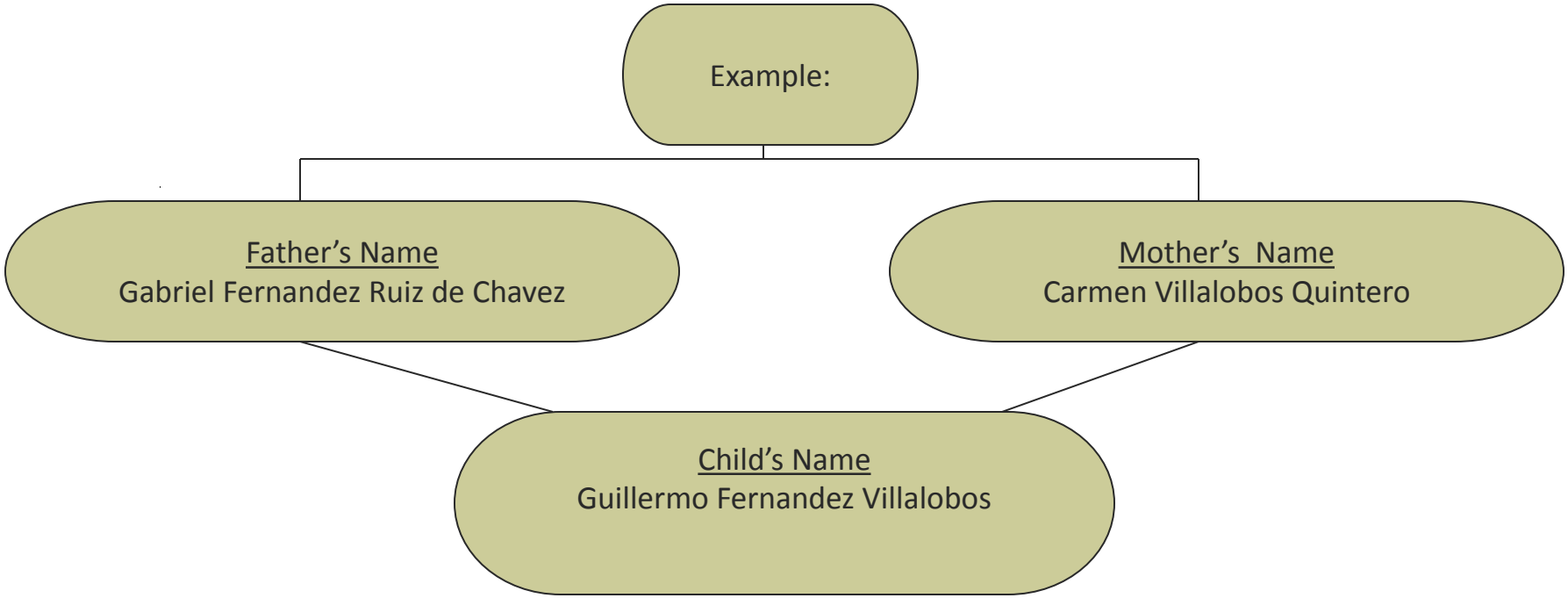
Recommendations……

- The names of natural persons, as opposed to corporate persons, in the US and in Mexico are composed differently.
- In California, §102425 of the California Health and Safety Code does not proscribe the format or the order of the name of a child.



Continued…

- In Mexico, the Civil Code of each Mexican state establishes the manner in which to compose the names of natural persons. First name followed by First Paternal Last Name and First Maternal Last Name



Result &Suggestions…

- As you can see, this difference can create identification problems in Mexico because the Mexican court that receives the Letter Rogatory, might think that the person trying to enforce and register the judgment, is different from the one that appears in judgment entered by the California Court.

- To avoid this problem, we suggest to always enter the parties full name on the Letter Rogatory as and AKA.

Who can assist us on Registering and Enforcing a Judgment in Mexico

IF IT'S A CHILD SUPPORT OR CUSTODY AND INTERNATIONAL RESTITUTION ORDER :

- DIF (Desarrollo Integral para la Familia): this is the Social Services Department of each state. Their Prosecution Unit for the Defense of the Minor and the Family, known as "Procuraduria para la Defensa del Menor y la Familia," will process the request.
- Their duty is to provide judiciary assistance and social stabilization, specially for minors the elderly and disable people with low economical resources.
- Under the Manual for Collection of Child Support and International Restitution of Minor Children of Mexico's Minister of Foreign Affairs the National and State offices of DIF are in charge of processing these cases.
- Public Defenders office in Family Matters of each State.
- Private attorney.
- What do they need? (please see contact list)

Continuance…

IF IT'S A DIVORCE JUDGMENT:

- If it's only for Registration (to obtain a divorce certificate from Mexico's Recorder's Office) we just have to send the LR to the family Judge were the parties got married in Mexico.

- If it's for enforcement of assets and debts, we can request the assistance of the Public Defenders office in Family Matters of each State.

- Private attorney.