

## Walker, Marti

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**Sent:** Wednesday, November 29, 2017 2:25 PM  
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**Subject:** SCAC--TRCP 308b--enforcement of foreign decrees and arbitration awards in cases involving husband-wife or parent-child controversies under the Texas Family Code  
**Attachments:** FAMLAW DRAFT Rule 308b 11 29 17 Final Draft.doc

Dear SCAC member—I have attached a revised version of TRCP 308b, changed in response to comments at the last SCAC meeting. I am attempting to get a redline, and if I can I will forward it to you.

Highlights of this new version of the Rule are:

1. A party seeking recognition or enforcement of a foreign judgment or arbitration award must provide written notice of this fact within 60 days of filing his/her first pleading, along with an explanation of the basis for the request.
2. A party who intends to oppose recognition or enforcement must provide written notice of opposition within 30 days receiving the notice in 1, along with an explanation of the basis for the opposition.
3. Within 75 days of when the first notice was filed, the court must have a pretrial conference to set deadline and make orders regarding proof of foreign law, translation of foreign language documents, and designation of testifying experts.
4. The court must have a hearing at least 30 days prior to trial on the question of enforceability. The court must rule within 10 days after the hearing, and must sign an order within 15 days after the hearing. The written order must include findings of fact and conclusions of law.
5. If there is a temporary hearing, the court must set deadlines that are appropriate to the temporary situation.

6. In the event of default, the proponent still must present evidence of why the foreign judgment or arbitration award should be recognized and enforced. Even in a default situation, the court must conduct a hearing on the record and issue a written order containing findings of fact and conclusions of law.

There are continuing discussion among some members of the subcommittee about Rule 308b(b), and whether the rule should say “under the Hague Convention ... including The ICARA” or something different. That issue may not be resolved before the meeting on Friday, December 2, and it will no doubt be discussed by those who are interested in the subject. Additionally, the full subcommittee has not seen and commented on the attached revision, but the closeness of the meeting requires that this draft be provided to the full committee now.

Thanks.

Richard R. Orsinger

**Rule 308b. Determining the Enforceability of Judgments or Arbitration Awards Based on Foreign Law in Certain Suits Under the Family Code**

**(a) Applicability.**

(1) Except as provided by Subsection (b), this rule applies to the recognition or enforcement of a judgment or arbitration award based on foreign law in a suit involving a marriage relationship or a parent-child relationship under the Family Code.

(2) Rules 203(c) and (d) apply to an action to which this rule applies.

(3) Rules 203(a) and (b), Texas Rules of Evidence, do not apply to an action to which this rule applies.

**(b) Exceptions.**

(1) This rule does not apply to an action brought under the Hague Convention on International Child Abduction, including the International Child Abduction Remedies Act (22 U.S.C. §§ 9001 et seq.).

(2) In the event of a conflict between this Rule and any federal or state law, the federal or state law will prevail.

**(c) Notice**

(1) A party who intends to seek recognition or enforcement of a judgment or arbitration award to which this rule applies must:

(a) provide written notice to the court and all parties in either the party's original pleading, or not later than 60 days from the date of the filing of the party's original pleading; and

(b) describe the basis for the court's authority to recognize, enforce or decide to enforce the judgment or arbitration award.

(2) A party who intends to oppose the recognition or enforcement of a judgment or arbitration award to which this rule applies must:

(a) provide written notice to the court and to all parties of the party's objection within 30 days of service of notice required by Subsection (1); and

(b) explain the basis for the party's opposition and whether the party asserts that the judgment or arbitration award violates constitutional rights or public policy.

**(d) Pretrial Conference.**

(1) Not later than the 75th day after the date a party files notice of the intention to seek recognition or enforcement of a judgment or arbitration award to which this rule applies, the court shall conduct a pretrial conference to set appropriate deadlines and make other appropriate orders regarding the following:

(A) the submission of materials or sources that the court may consider in determining foreign law;

(B) the translation of foreign language documents; and

(C) the designation and disclosure of information concerning expert witnesses who will testify regarding recognition or enforcement of judgment or arbitration award.

**(e) Hearing.**

(1) The court must, after timely notice to the parties, conduct a hearing on the record at least 30 days before trial to determine whether the judgment or arbitration award based on foreign law may be enforced.

(2) The court must make the determination required by Subsection (1) no more than 10 days after the hearing.

**(f) Order.** Within 15 days of the hearing required by Subsection (f), the court must issue a written order regarding its determination. The order must include findings of fact and conclusions of law. The court may issue any orders necessary to preserve the principles of comity or the freedom to contract for arbitration while protecting against violations of constitutional rights and public policy. The deadline for making a determination and signing a written order may not be altered absent urgent circumstances.

**(g) Hearings on Temporary Orders.** Notwithstanding any other provision of this rule, the court may set filing deadlines and conduct the determination hearing to

accommodate the circumstances of the case in connection with issuing temporary orders.

**(h) Default Orders.**

(1) The recognition or enforcement of a judgment or arbitration award based on foreign law shall not be taken as confessed by the failure of a party to file an answer. In the event of a default, the court shall require that the party seeking the recognition or enforcement of the judgment or arbitration award establish its enforceability.

(2) In the event of a default, the establishment of the enforceability of a judgment or arbitration award based on foreign law must include a hearing on the record and a written order of the court containing findings of fact and conclusions of law.

**(i) Definitions.** As used in this Rule ----

(1) “Comity” means the recognition by a court of one jurisdiction of the laws and judicial decisions of another jurisdiction.

(2) “Foreign law” means a law, rule, or code of a jurisdiction outside of the states and territories of the United States.

**Addition to Rule 203, Texas Rules of Evidence**

Rule 203. Determining Foreign Law

**(e) Suits Brought Under the Family Code Involving a Marriage Relationship or Parent-Child Relationship.** Subsections (a) and (b) of this rule do not apply to an action in which a party seeks a determination of foreign law and to which Rule 308b, Texas Rules of Civil Procedure, applies.

**Addition to Rule 1009, Texas Rules of Evidence**

Rule 1009. Translating a Foreign Language Document

**(h) Suits Brought Under the Family Code Involving a Marriage Relationship or Parent-Child Relationship.** Except as provided by Rule 308b, Texas Rules of Civil Procedure, this rule applies to a translation of a foreign language document in

a suit brought under the Family Code involving a marriage relationship or parent-child relationship.

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