

DOMESTICATION OF FOREIGN DIVORCE JUDGMENTS IN CALIFORNIA STATUTORY FRAMEWORK, COMITY, AND PRACTICE CONSIDERATIONS

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Abstract

This article examines the recognition and domestication of foreign divorce judgments in California, with particular attention to statutory authority under the California Code of Civil Procedure, the doctrine of comity, and controlling case law such as *Hilton v. Guyot*¹ and *In re Stephanie M.*² It explores procedural requirements, the necessity of verifying authenticity in light of widespread document fabrication in certain jurisdictions, and the impact of residency and divorce-by-power-of-attorney rules in countries like Iran. Special focus is given to the immigration consequences of non-recognition, including potential allegations of bigamy or polygamy stemming from hastily obtained Islamic divorces. Drawing on decades of practical experience, the article offers a comprehensive framework and practice tips for California attorneys navigating the intersection of family law, international procedure, and immigration risk.

Keywords

California family law; Domestication of foreign judgments; Foreign divorce recognition; Doctrine of comity; Code of Civil Procedure section 1715, subdivision (b)(3)(A); Code of Civil Procedure section 1723; *Hilton v. Guyot*; *In re Stephanie M.*; Iranian divorce law; Power of attorney divorce; Immigration consequences; Polygamy risk; Document authentication; Fabricated foreign documents; International family law practice

Introduction

International marriages are increasingly common in California, a state that is home to diverse immigrant and expatriate communities. With these marriages often come international divorces—decrees issued by courts outside the United States. The recognition of such judgments within California is critical for determining marital status, enforcing property division, and clarifying custody or support rights. This process—often called ‘domestication’—involves the interplay of California statutes, the doctrine of comity, and judicial discretion.

One might think, for example, of a couple married in Iran, living in Los Angeles, and divorcing in Iran. Without recognition in California, the marital status here remains legally ambiguous—complicating property sales, remarriage, and even child custody arrangements.



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California Statutory Framework

A. Code of Civil Procedure section 1715, subdivision (b)(3)(A)

California permits recognition of certain foreign-country judgments through the California Uniform Foreign-Country Money Judgments Recognition Act, codified at Code of Civil Procedure (“CCP”) sections 1713–1724. Section 1715, subdivision (b)(3)(A) specifically authorizes recognition of: “A judgment for divorce, support, or maintenance, or other judgment rendered in connection with domestic relations.”

B. Code of Civil Procedure section 1723

CCP section 1723 provides flexibility beyond the Act’s scope:

“This chapter does not prevent the recognition under principles of comity or otherwise of a foreign-country judgment not within the scope of this chapter.” Even if a judgment does not fit neatly within the statutory scheme, courts may still recognize it under comity.

The Doctrine of Comity

A. U.S. Supreme Court: *Hilton v. Guyot*

In *Hilton v. Guyot*, the Supreme Court defined comity as: “... neither a matter of absolute obligation... nor of mere

courtesy... but the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience and to the rights of its own citizens.”³ Comity is discretionary—it allows, but does not compel, a California court to honor a foreign judgment.

B. California Supreme Court: *In re Stephanie M.*

In *In re Stephanie M.*, the court confirmed that: “The courts of this state may... recognize the judgment of a court of a foreign nation when the foreign court had proper jurisdiction and enforcement does not prejudice the rights of United States citizens or violate domestic public policy.”⁴

Practical Requirements for Recognition in California

To secure recognition, the moving party should be prepared to prove:

1. Jurisdiction – At least one spouse was domiciled in the foreign country at the time of the divorce.
2. Notice and Opportunity to be Heard – Both parties were given proper notice and a fair chance to participate in the proceedings.
3. Authenticity – A certified copy of the foreign decree, with a certified English translation.
4. No Violation of Public Policy – The judgment does not discriminate or contravene California’s family law principles.
5. No Prejudice to U.S. Citizens – Enforcement does not impair the legal rights of citizens.

Procedural Steps in California

From practical experience and filings, the following steps can serve as a model:

1. Prepare Petition – There is no Judicial Council form, so it must be prepared the old fashioned way on pleading papers. Clearly state the statutory basis⁵ and recite facts establishing jurisdiction, notice, and procedural fairness.
2. Attach Exhibits – Certified foreign decree and certified translation.
3. Points & Authorities – Cite *Hilton* and *Stephanie M.* to establish comity principles.
4. Prepare a Declaration- Explain the facts of marriage, entry of the divorce in the foreign jurisdiction and the necessity for the domestication in California.⁶
5. Proposed Order – A short order registering the judgment as valid in California.
6. Serve Opposing Party – Even if consent is expected, ensure service meets statutory requirements.
7. Hearing – Be prepared to address public policy and jurisdictional questions.

Comparative Perspective: Other U.S. States

While California relies heavily on comity, other states vary:

- New York – Recognizes foreign divorces under comity if jurisdiction, notice, and fairness are satisfied.⁷
- Texas – Uses comity but has specific statutory bars for judgments violating state policy.⁸

- Florida – Recognizes foreign divorces if both parties participated; ex parte divorces often rejected.⁹ This national context shows that while comity is a common thread, the precise requirements differ, underscoring the need for state-specific analysis.

Common Pitfalls and Grounds for Denial

- Deficient notice to the respondent.
- Lack of proof that the foreign court had jurisdiction.
- Procedural irregularities in the foreign forum.
- Substantive violations of public policy (e.g., unilateral divorce without due process).

Practical Takeaways for Immigration-Family Law Crossovers

1. Verify Prior Marital Status Early – Before filing for recognition of a foreign divorce (or before marrying in California), confirm whether both spouses were domiciled in California when the foreign action began.
2. Use Domestication Proceedings Proactively – If the foreign divorce could be challenged under Family Code section 5001, a successful domestication action under Code of Civil Procedure sections 1715/1723 can provide evidence to USCIS that California recognizes the divorce.
3. Coordinate with Immigration Counsel – Immigration petitions may stall or be denied if marital validity is unclear under California law.
4. Document Jurisdictional Facts – Maintain evidence showing that at least one spouse was domiciled abroad when the foreign divorce was initiated, to avoid a section 5001 bar.

Verification and Authenticity: The Risk of Fabricated Foreign Documents

In some jurisdictions, including Iran, divorce can be obtained by granting a power of attorney to another person (often an attorney-at-law or a family member) to represent a spouse in court. While lawful in those jurisdictions, this procedure can obscure whether either spouse actually met California’s jurisdictional expectations for recognition—namely, that at least one spouse be domiciled in the issuing jurisdiction at the time the divorce proceedings commenced. Courts should require documentation proving both the validity of the power of attorney under foreign law and the connection of at least one party to the forum, to avoid recognition of ‘forum-shopped’ divorces that lack meaningful ties to the issuing court.

Immigration Consequences of Non-Recognition in California

Another risk—particularly in immigration contexts—is the potential for a polygamy allegation if a spouse enters a new marriage based on a hastily obtained Islamic divorce that California later refuses to recognize. In some Islamic jurisdictions, a unilateral or ‘Talaq’ divorce can be declared and registered quickly, sometimes without proper notice or

participation by the other spouse. If California deems such a divorce invalid due to domicile or procedural defects, the subsequent marriage may be viewed not only as void but also as evidence of bigamy or polygamy under U.S. immigration laws, which can have severe criminal and immigration consequences.

Recognition of a foreign divorce in California is not only a family law issue—it can have significant immigration consequences. Under federal law, the validity of a marriage for immigration purposes is determined by the law of the state where the marriage took place.¹⁰ If California will not recognize a prior foreign divorce, then any subsequent marriage celebrated in California may be deemed invalid for immigration purposes, rendering a spouse ineligible for “immediate relative” status under Immigration and Naturalization Act section 201(b)(2)(A)(i).

Case Example: USCIS Notice of Intent to Deny

In a recent USCIS¹¹ case, a U.S. citizen petitioned for her spouse’s immigration benefits based on a California marriage. USCIS based on *In Matter of Ma*¹² alleged that the spouse’s prior Iranian divorce was invalid under California Family Code section 5001 because both spouses were domiciled in California when the foreign divorce proceeding began. Section 5001 of the Family Code provides: “A divorce obtained in another jurisdiction shall be of no force or effect in this state if both parties to the marriage were domiciled in this state at the time the proceeding for the divorce was commenced.”

Since California would not recognize the Iranian divorce, USCIS determined that the petitioner’s current marriage was invalid under state law—and therefore under immigration law—leading to a Notice of Intent to Deny.

Conclusion

Recognition of foreign divorce judgments in California is a discretionary process rooted in statutory authority and the doctrine of comity. The practitioner’s role extends beyond satisfying procedural requirements—it includes ensuring the authenticity of the foreign judgment itself. Given the documented prevalence of fabricated documents, especially

in jurisdictions lacking direct diplomatic channels, California courts must insist on confirmed, authenticated decrees before granting recognition.

This diligence is not only vital to the integrity of California’s judicial system but also to the immigration process. As illustrated by recent USCIS actions, a foreign divorce unrecognized in California can invalidate a subsequent marriage for immigration purposes, derailing spousal petitions under the Immigration and Nationality Act. By securing and verifying genuine judgments, practitioners protect their clients’ family law interests, preserve the integrity of court proceedings, and prevent devastating collateral consequences in the immigration context.

1 *Hilton v. Guyot* (1895) 159 U.S. 113.

2 *In re Stephanie M.* (1994) 7 Cal.4th 295.

3 *Hilton v. Guyot*, *supra*, 159 U.S. 113.

4 *In re Stephanie M.*, *supra*, 7 Cal.4th 295.

5 Code Civ. Proc., § 1715, subd. (b)(3)(A) and/or Code Civ. Proc., § 1723)

6 In one case, the parties married in Abu Dhabi, UAE, moved to Los Angeles and married again here, and had a child here. A decade later they moved back to Iran and dissolved their marriage under Iranian law. The Iranian judgment dissolved the Abu Dhabi marriage but did not address the California marriage. Both parties became remarried, but registration and recognition of the Iranian divorce was necessary to terminate their California marriage.

7 *Greschler v. Greschler* (1980) 51 N.Y.2d 368.

8 Tex. Civ. Prac. & Remedies Code, § 36A (Uniform Foreign-Country Money Judgments Recognition Act) & § 36A.004, subd. (c)(3) regarding non-recognition if the judgment “is repugnant to the public policy of this state or the United States.”

9 *Carrasco v. Jimenez* (Fla. Ct. App. Mar. 5, 2025, No: 4D2023-0461, 4D2023-3105).

10 *Matter of Ma* (B.I.A. 1974) 15 I&N Dec. 70.

11 United States Citizenship and Immigration Services; hereinafter “USCIS”.

12 *Matter of Ma*, *supra*, 15 I&N Dec. 70.