

## THE INTERNATIONAL FAMILY LAW GROUP

### iGuides to family law and practice

#### Acting for the party who has abducted the child to England

There are a number of important issues and aspects to consider when acting for a party accused in civil proceedings of abducting a child

##### Before proceedings have began

- Do not seek a residence order – this will be stayed once proceedings commence
- Do not contact the other parent - there could be defence to the abduction in any event. Wait for proceedings to commence (they might not)
- Do not apply for relocation orders in the country to which the child has been taken as this will only result an immediate return application and in any event is evidence of a retention?
- Ascertain where the passports and travel documents of the abducting party and child are located
- If the child is not with the abducting party, ascertain where the child is (NB a court may order you to disclose this information by ordering you to attend court and to disclose the client's file of papers)
- Expect that frequent, without notice applications will be made to secure the whereabouts and return of the child

##### When the client has been served with the proceedings

- Be aware that non means and non merits public funding is not available as it is for Hague Convention applicants but ordinary legal aid is available
- Insist that the client is absolutely frank about the full details surrounding the entry into this country at the first interview. Take great pains to concentrate in the affidavit on the period leading up to the removal from the other country and gather all the information to support the client's case. For example, did the other parent have rights of custody in the other country, ascertain where the child was last habitually resident, what was said about the terms of coming to this country, were there any letters of consent, were one way airline tickets purchased, did the client come here with an overnight bag or all belongings etc?
- Know the defences are available and carefully prepare this with the client.
- Be aware that the parent from whom the child has been abducted will instruct highly specialist solicitors and Counsel so make sure there is team is in place equipped to handle these cases. Use specialist Counsel. See the warnings and guidance directed to the lawyers acting for an abducting party in the SRA Family Law Protocol at 3.4
- Suggest Mediation as an opportunity to produce a better overall settlement. In some situations this may be the only chance an abducting parent may have to remain in this country. Use the specialist abduction service provided by reunite
- If appropriate, seek a direction from the English court ordering a return that the court of the child's origin will allow a relocation back to England: see *C v B (Abduction: Grave Risk)* 2006 1 FLR 1095
- Consider as soon as possible comprehensive undertakings to be put in place if the client is ordered to return with the child.
- never (openly) negotiate return of the child who has been abducted and financial matters; but do discuss contact issues
- consider realities of relocation applications in the home country - is it a reality or on paper only? This may have some bearing on any return order

See separate fact sheet on child abduction

This is taken from "A Practical Guide to International Family Law" (Jordans 2008) by David Hodson, with acknowledgement. Further details can be found within the book and from David Hodson

This iGuide is for information only and specialist legal advice should always be taken. For further details contact The International Family Law Group at 020 3178 5668 and [www.iflg.uk.com](http://www.iflg.uk.com).

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