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The United States of America is made up of fifty component states of the federal union. The United States ratified and implemented the Hague Convention on the Civil Aspects of International Child Abduction ("the Hague Convention") in legislation entitled the International Child Abduction Remedies Act, known as "ICARA." The ICARA[3] governs all of the fifty states and the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and Guam. The United States has a parallel system of state and federal courts; a Hague application may be submitted either to a state court or to a federal court. (42 USC §11603.)

Each state has its own rules of civil procedure. The Federal Rules of Civil Procedure (FRCP) govern proceedings in all of the United States District Courts; however, most of these courts also have local rules of procedure which should be consulted. The federal court system is divided into thirteen circuits, including eleven circuits which cover particular geographic areas, the District of Columbia Circuit, and the Federal Circuit. The answers provided here to the various questions are generalizations. Because local practice may vary significantly, current legal advice should always be obtained in the relevant jurisdiction.

The decision about whether to file the Hague Convention action in the federal court or the state court is largely a tactical decision. For example, in Los Angeles, all Hague actions filed in the state court are heard by one judge. Only an experienced local attorney could decide whether the case will likely fare better under that judge in the state court or potentially better before a judge in the local United States District Court. Similarly, given any particular state or federal district, only an experienced attorney can balance the advantages of filing in the federal court, such as preempting a possible removal of the action to the federal court (transfer from state court to federal court), against the disadvantages of filing in the federal court, such as the court's record of returning children to the habitual residences. The decision of where to file may also be impacted by

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[3] The ICARA is found at Title 42, United States Code, sections 11601–11610. When citing, cite as 42 USC §§11601–11610.

which court of appeal would hear any adverse ruling – the local state appellate court or the local federal appellate court. If the issues in the case are complex or novel, it may be wise to file in federal court, which may facilitate bringing experienced Hague counsel from outside the local legal community into the case.

There is only one Central Authority designated for the United States under Article 6 of the Hague Convention, which is the Office of Children's Issues (OCI) in the Bureau of Consular Affairs in the Department of State, located in Washington, D.C. By arrangement between the United States Department of State and the National Center for Missing and Exploited Children (NCMEC), located in Alexandria, Virginia, NCMEC handles applications coming from abroad for the return of children wrongfully removed to or retained in the United States.

1. FORMALITIES

Which formalities and/or documents does the local court require to be submitted with the application?

An "application" for the return of the child is submitted to the Central Authority, pursuant to 42 USC §11602(1). A "petition" is submitted to the courts to commence a civil action for the return of the child or to exercise rights of access to the child, pursuant to 42 USC §11603(b).

The role of legal counsel is in the civil action filed with the courts. Once the civil action is filed, the Central Authority acts as a coordinator or information clearing house. The Central Authority informs the local legal counsel that an application has been forwarded from abroad to NCMEC and informs NCMEC of the name and contact information of the legal counsel.

a–b) Submitted Documentation

There is no standard set of formalities and/or documents required by local courts to be submitted with the application or the petition. However, whether preparing an application or a petition, this initial document should always be accompanied by a supporting affidavit setting out facts sufficient to make a prima facie case for the return of the child. The application and the petition should be accompanied by photocopies of relevant documents, such as birth certificates and marriage certificates, and by custody orders or the text of laws providing for custody of the children when no court order has been issued. Parties should consult the OCI (Office of Children's Issues of the Bureau of Consular Affairs) application form used by the Department of State as a checklist for what should be submitted with the affidavit to accompany the petition. The OCI application form can be obtained by contacting the OCI directly or by accessing its website under "International Parental Child Abduction."

It is highly recommended that an application always be submitted to the Central Authority of the country of the child's habitual residence at the time of the wrongful removal or retention. This application is typically forwarded to the National Center for Missing and Exploited Children (NCMEC), which acts on behalf of the Department of State on applications for the return of children wrongfully taken to or retained in the United States.

A petition to commence the civil action may be filed before the application for the return to the child is submitted to the United States Central Authority. However, it is a better procedure to submit the application to the Central Authority first so that a carefully drawn application which has already passed through the Central Authority is available for evidentiary purposes.

d) Does the Court Have Discretion to Dispense with Formalities?

Judges in the common-law jurisdictions of the United States, both state and federal, do not typically have broad discretion to dispense with formalities. Their systems for taking evidence are, in principle, very formalistic, especially as compared with many other systems. However, the Hague Child Abduction Convention and the ICARA have directly dispensed with many formalities. Both Article 30 of the Convention and its implementing 42 USC §11605 were specifically designed to relax the evidentiary practices of common-law courts. Nonetheless, given the unfamiliarity of many judges with Hague proceedings, it is advisable to respect the formalities whenever possible even though they are not, strictly speaking, required.

e) English Language Required

The affidavit and all accompanying documentation must be translated into English. This will also be required for all petitions, affidavits, and other documents submitted directly to a court in the United States.

f) Certification of the Translation

The Federal Rules of Civil Procedure and the Federal Rules of Evidence, both of which govern the federal civil actions, do not have special requirements for translations. Still, an example of a practice to increase the credibility of the translation, although not mandatory, can be taken from the Texas Rules of Evidence, Rule 1009(a), which provides in part as follows: "A translation of foreign language documents shall be admissible upon the affidavit of a qualified translator setting forth the qualifications of the translator and certifying that the translation is fair and accurate." Of course, the admissibility of a translation is dependent upon the admissibility of the underlying foreign language document, which makes it desirable that both the foreign-language document and the translation be submitted as part of the application. Under certain circumstances, a translation may be admitted at trial either by live testimony or by deposition testimony of a qualified expert translator. In those foreign systems which license "sworn translators," recitation of that standing alone may be sufficient to establish the translator as a "qualified translator." Nevertheless, it enhances the credibility of the translation to describe briefly the translator's educational qualifications and experience. Individual states may have local requirements for translations.

The oath of the translator may be taken before a U.S. Consul or a civil law notary abroad. If the oath is taken before a civil law notary, it is recommended, although not required, that an apostille be affixed to the notary's certification in accordance with the provisions of the Hague Convention of October 5, 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents. Article 23 of the Hague Child Abduction Convention and the ICARA (42 USC §11605) dispenses with such formalities, but experience shows that sometimes an apostille may forestall arguments over translations and give the judge greater confidence when relying on the translated documents.

2. AFFIDAVIT

If a supporting affidavit is required, before whom does it have to be signed in order to meet the regulations of the local court?

The affidavits and other documents appended to an application, as well as any relevant information provided by a Central Authority, are admissible without requirements of authentication in either state or federal court. (See Hague Convention, Article 30; ICARA, 42 USC §11605.) Nevertheless, although not required, having the apostille placed on all documents from abroad is a good idea in anticipation of any questions of authenticity.

Generally, the United States Central Authority becomes aware of a Hague action filed in the United States for the return of a child from the United States to another country from one of two sources: either from the attorney who filed the action in the United States or from the left-behind parent who, having received notice that a custody action has been filed in the United States, notifies the Central Authority in his or her own country, which in turn notifies the United States Central Authority. As a matter of practice, when the United States Central Authority becomes aware of the case seeking the return of a child from the United States, the Central Authority generally sends the judge presiding over the case a copy of the following:

1) The text of the Hague Convention;
2) The text of the ICARA;
3) The Explanatory Report on the Convention by Elisa Pérez-Vera, and
4) The analysis of the Convention which was published in the Federal Register.

If the Central Authority becomes aware that an action for custody of the child has been filed in a court within the United States, it may also send the court a notice concerning the application of Article 16 of the Hague Convention. Counsel may also send an Article 16 notice to the state trial court to prevent a court from rendering a final custody decision, but care must be taken to not enter an appearance for the client in the state court custody action.

There is some precedent in U.S. federal districts courts for deciding a case on the affidavits without taking live testimony. However, the more common practice is for the court to hold an evidentiary hearing, sometimes on very short notice. In one case, a Texas-state appellate court ruled that the respondent parent had been deprived of the right to introduce evidence in violation of her constitutional right to due process of law. The appellate court reversed a decision by the trial court granting return of the child. (*Velez v. Mitsak*, 89 S.W.3d 73 and 89 S.W.3d 84 (Tex.App. – El Paso 2002).)

3. PRELIMINARY RELIEF

a) What preliminary relief is available and when is it granted?
b) Is the following relief available to the applicant prior to the first hearing?

   i. Restraint against child or abducting party from leaving the local country;
   ii. Depositing of passports with the court;
   iii. The bringing of the child, with or without the assistance of the police and/or social workers, to the court, and
   iv. Temporary physical custody to the applicant pending the decision in the main claim.

All of the suggested relief, including restraining orders, the deposit of passports, the appearance of the children in court, and *pendente lite* awards of custody, may be ordered by the court under Section 11604 of the ICARA (42 USC §11604). However, the court may not order a child removed from a person having physical custody and control of the child unless the applicable requirements of state law for a change of custody are satisfied. This requirement applies to federal, as well as state, courts. (42 USC §11604(b).)

c) Under what circumstances would the court grant any preliminary relief?

The courts may issue preliminary relief, as allowed by federal or state law, to protect the well-being of the child involved or to prevent the child's further removal or concealment before the final disposition of the petition. This relief is subject to section 11604(b) of the ICARA (42 USC §11604(b).)

4. ORIGINAL DOCUMENTS

Will the local court insist that original documents be submitted with the application or would it, in cases of urgency, accept the filing of faxed copies with originals to be submitted at a later date?

The acceptance of faxed copies in place of originals is governed by local state and federal rules. Given the diversity in local rules, even within the federal court system, it is the preferred practice to submit an application for the return of the child through the Central Authority. The application provided to the Central Authority should provide the court with complete documentation of a *prima facie* case in support of return, and may, where appropriate, anticipate some defenses available under the Convention. (For available defenses, see Hague Convention, Articles 12(2), 13, and 20.) A faxed copy of the application and its accompanying affidavits and documents may be more readily acceptable to the court if they reflect on the face of the documents or through an accompanying affidavit that they have been faxed to the court from the U.S. Central Authority or from the NCMEC.

5. DEFENSE

Time for Filing and the Effects of the Failure to File

a) Within what period after service must the defendant submit a statement of defense?

Generally, a written statement of "defense" should be filed at or before the time set for a hearing or for an appearance by the respondent. The ICARA does not set a specific time for a response. The papers served may require the respondent to appear and show cause why the child should not be returned forthwith. The court may set the response time for within a few days after service. In some cases, an ex parte order may be obtained requiring the authorities to pick up the child and place her/him in foster care or with the local child protective services pending the hearing. Such orders are issued in emergency situations to avoid further flight by the alleged abductor.

b) If no statement of defense is filed, would the court automatically grant judgment in favor of the applicant?

If an appearance is not made by the respondent to contest the application at the time and place specified, the court may immediately order the child's return. This judgment might not be precisely "automatic"; the judge would probably require at least the application to be submitted into evidence. However, the effect in practical terms is almost automatic if the respondent fails to appear and the petition or the application proves all of the elements of a *prima facie* case for return.

6. TIME FRAMEWORK

From Application to Hearing to Judgment

a) Is there always a preliminary hearing whether the matter is opposed or unopposed?

There is seldom a preliminary hearing whether the matter is opposed or unopposed. If there is to be a contested trial, the case may go immediately to trial, or a trial date may be set in the near future.

b) What is the usual time period between submission of the Hague application and the date of the first hearing?

The date of the first hearing is likely to be within ten days after the Hague application is submitted to the court. In some cases, the hearing may be held within a week from filing.

c) Would there be more than one preliminary hearing before the final hearing?

There may be more than one preliminary hearing only if difficult legal issues are raised or if expert testimony is required. Otherwise, there will be only one hearing. The ICARA sets a heavy burden of proof – "clear and convincing evidence" – for any defense raised under Article 13b or Article 20 of the Convention. (See 42 USC §11603(e)(2)(A).) This provision tends to streamline the trial process by sorting out defenses that are not supported by convincing evidence.

d) What is the time period from submission of the application to final hearing if the matter is opposed?

The time period from submission of the application to the final hearing can be less than one week.

e) Within what period should the judgment be given and is this time-period generally observed?

The court's judgment is frequently announced orally at the close of the evidentiary hearing. The court's pronouncement is taken down verbatim by the court reporter. The written judgment is either drawn up and signed by the judge or drafted by the attorney for the prevailing party. If prepared by the attorney, the judgment must be submitted to opposing counsel for approval (as to form only) before being submitted to the judge for signature; the expectation is that the judgment would be both prepared and reviewed quickly for immediate submission to the court. The judgment is generally signed within a week after the judgment is announced.

7. WITNESSES

Witnesses, Reports, and Cross-Examination

a) What witnesses would usually be called for the final hearing – both factual and professional?

The witnesses called at the final hearing include the applicant and the respondent. If there is a dispute about where the child's habitual residence was at the time of removal or retention, testimony on this issue may be taken first. This could involve family friends, school teachers, sports coaches, and others familiar with the family as witnesses. One federal circuit court, the First Circuit, has found that the question of whether there was a removal or retention should be decided ahead of the question of where that child's habitual residence was at the time in question. (*Toren v. Toren*, 191 F.3d 23 (1st Cir. 1999).) This sequence of the issues seems counterintuitive; and, except in federal district courts within the First Circuit which are bound by this case, it is suggested that the first order of proof be directed to a determination of the child's habitual residence at the time of the alleged removal or retention.

b) If a psychiatrist's report is requested, how much weight is given to the report?

Psychiatrists' reports are not usually ordered by the court in Hague Convention cases, but the testimony of a psychiatrist or a psychologist hired by the respondent might be offered in support of a claim of habitual residence or to show grave psychological risk under Article 13b. Trial courts, both federal and state, perform a "gatekeeper" function

with a view to keeping "junk science" out of the evidence. In federal courts, an expert witness who is employed or retained by a party must submit a report in advance, pursuant to Rule 26(a)(2)(B) of the Federal Rules of Civil Procedure, unless the court directs otherwise.

c) What other professional opinions could be requested by the court?

The court will generally not request other professional opinions. However, counsel might deem it necessary or desirable in some cases to have expert testimony or an affidavit concerning an aspect of the Hague Convention or on substantive law of the country of the child's habitual residence. In at least one federal circuit (the Ninth Circuit), the applicant is required to plead and prove not only that he or she has rights of custody under the domestic law of the country of the child's habitual residence before the wrongful removal or retention, but also that the conflict of laws rules of that country (including the rules concerning recognition of foreign custody orders) would not serve to eliminate such rights. (*Shalit v. Coppe (Shalit)*, 182 F.3d 1124 (9th Cir. (Alaska), 1999).) The rights of custody envisaged in Article 3 of the Hague Convention may not only derive from domestic law or custody orders, but may also derive from or be modified by application of conflict of laws rules.

d) Is there the opportunity for cross-examination of a court-appointed expert?

There is an opportunity to cross-examine a court-appointed expert, but the United States courts will rarely appoint experts in Hague Convention cases.

e) Can opposing expert-opinions be submitted by the parties?

A party may submit an opposing expert-opinion, subject to the Federal Rules of Civil Procedure, Rule 26(a)(2), requiring the disclosure of the expert's identity and a detailed report of the expert's testimony, and Federal Rules of Evidence, Rules 702–705, relating to the testimony of experts and the rendering of expert opinions. The disclosures are due 90 days before the trial in the federal court, unless the judge orders otherwise. Notwithstanding the 90-day requirement, the expert should be identified as far in advance of trial as possible. Also, the judge should be asked to set a date for submission of the expert's report to the adverse party, which date should be at least 10 days before trial.

8. THE HEARING

Attendance and Length of the Hearing

a) What are the circumstances under which the applicant himself or herself could be excused from attending the hearing?

Technically, a case might be made by submitting the application and accompanying document into evidence without having the applicant present at the hearing. However, experience shows that judges want to see the person to whom they are being asked to entrust children. Thus, the applicant should plan on attending the hearing.

b) If the hearing is not concluded on one day, does the hearing continue the next day or is it postponed to a later date?

If a hearing is not completed in one day, it generally continues to the next day and is carried through to a conclusion without any postponement. On occasion, an unfinished hearing may be postponed to a later date; however, the postponement is inconsistent with the Hague Convention's provision for expeditious proceedings.

c) Within what period must the judgment be granted?

There is no fixed period within which the judgment must be granted. However, if it is not done within six weeks after the application is filed with the court, the Central Authority may ask the court about the reasons for delay.

9. APPEALS

Procedures and Safeguards

a) Within what period after the handing down of the judgment must an appeal be filed?

A notice of appeal from a decision of a federal district court must be filed with the district clerk within 30 days after the judgment or order appealed from is entered, unless the United States or one of its agents or officers is a party, in which case the time for filing a notice of appeal for any party is 60 days The time for filing a notice of appeal may be extended if any of certain specified motions is timely filed by any party, or if a motion for extension of time is filed. Following the filing of a notice of appeal, there are deadline periods set for the filing of the trial court record and the appellant's brief. The time and procedures for filing a notice of appeal from the decision of a state court vary from state to state.

In the federal courts, the appellant's opening brief is due within 40 days after the record is filed with the clerk of the court. In the state courts, the time for filing each brief is governed by local state rules.

b) Within what period must the respondent's brief be filed?

For a federal appeal, the appellee must file his or her answering brief within 30 days after the appellant''s brief is served. For state courts, the times and procedures may vary from state to state.

In the federal court, the appellant may file a reply brief within 14 days after service of the appellee's answering brief. A reply brief is not required, but is highly recommended. Again, the time-frames will vary from state to state.

c) Within what period should the appeal judge's decision be handed down?

Generally speaking, there is no fixed period of time within which the appeal court's decision must be handed down.

d) If an appeal is dismissed or the lower court affirmed, is there any right of a further appeal?

Generally speaking, there is no further *right* of appeal in civil cases. However, a party may seek *discretionary review* from the United States Supreme Court by filing an application for a writ of certiorari following a decision of a United States Court of Appeals or, if the case is in a state-court system, following a decision of the highest state court of review.

A party may seek rehearing in the federal Court of Appeals, but less than 10% of petitions for rehearing are granted. A party may also seek *en banc* review by all of the given circuit's judges. The grounds for *en banc* review are very limited and generally relate to consistency of law or significant federal legal questions of first impression. *En banc* review, which can add many months onto a case, are disfavored and seldom ordered. Neither rehearing nor *en banc* review are conditions precedent to seeking review in the United States Supreme Court.

e) Is such further appeal automatic? If not, what are the guidelines?

Review by the United States Supreme Court is neither automatic nor a review by right. Grant of a writ of certiorari is discretionary. The United States Supreme Court looks particularly to cases where the decision of a federal circuit court is contrary to the decision of another such court or to cases in which a federal statute has been declared invalid. As of February 1, 2004, no writ of certiorari has been granted by the United States Supreme Court in a case brought under the Hague Child Abduction Convention, despite a number of applications.

f) Does an appeal-judgment immediately become enforceable or is there a further delay?

The appeal-judgment, or decision of the Court of Appeals, generally does not take effect until a "mandate" is issued to the trial court, indicating that the time for all rehearings or review of the appellate decision has expired. Issuance of the mandate is delayed by the filing of any motions for rehearing and by the filing of a petition for writ of certiorari in the Supreme Court.

g) What steps are taken to prevent the child from being taken into hiding by the abducting party?

Provisional measures may be taken by a trial court or an appellate court, if it is exercising jurisdiction over an action. The respondent may be ordered to not take the child our of the jurisdiction, or the child might be placed immediately in foster care or with local Child Protective Services.

h) Would an appeal by the abducting party automatically prevent return of the child to the foreign jurisdiction or would that parent have to file an application to prevent removal?

An appeal by the abducting or wrongfully-retaining party does not automatically prevent return of the child to a foreign jurisdiction. That party, no doubt appealing the finding of abduction or wrongful retention, must seek a stay order to prevent the removal. In more than one case, a child has been returned to the foreign jurisdiction and the return order has subsequently been reversed on appeal. These cases pose significant practical problems. (See, for example, *Fawcett v. McRoberts*, 326 F.3d 491 (4th Cir. 2003), cert. den. December 8, 2003.)

10. COSTS

Attorney's Fees and Costs

a) What is the basis for calculating attorney's fees?

The most common basis for calculating attorney's fees is an hourly rate for work done. The rates charged vary from locality to locality, with the highest hourly rates usually being in the larger cities.

b) What are rough estimates for attorney's fees, including the fees for attorneys and barristers, under the following circumstances?

   i. An unopposed application resulting in the immediate return of the child by consent;
   ii. An opposed application with one or more preliminary hearings and one or more days for trial;

iii. An appeal, including the application to prevent an immediate return to the foreign jurisdiction, and
iv. Any subsequent appeal.

The United States has only licensed lawyers in both the state and federal systems. Lawyers are licensed by the state, enabling them to practice in any state court of the licensing state. Lawyers in good standing in the state may petition for admission to practice before the federal courts. The United States does not have a distinction between lawyers and attorneys; there are no limitations upon which attorneys may appear in court. For example, the distinction between barristers and solicitors does not exist here. Some firms engage paralegals, trained assistants who help with document and evidence review, research, and pleadings preparation; the time of the paralegal is generally charged to the client and is charged at a substantially lower cost than the time for the attorney.

Generally, payment of a retainer will be required before the attorney will undertake representation of the party; time will be charged against the retainer at the hourly rates specified in the fee agreement. Days in court may be charged at a fixed daily rate. The contract may require the retainer to be replenished if the funds are exhausted.

It is difficult to estimate fees because they will vary widely from one geographic area to another and within any one area. Still, for the separate phases, a party can expect attorney's fees of *no less than*:

a. An unopposed petition	–	$ 5,000
b. An opposed application and trial	–	$15,000
c. First appeal and stay application	–	$25,000
d. Certiorari petition	–	$25,000

c) What are the possibilities of obtaining legal aid and what percentage of local costs would this cover? What are the criteria, and is there a difference between obtaining legal aid for an application for return and an application for access?

Generally speaking, legal aid is not available in the United States for applicants seeking the return of children under the Hague Convention. However, if the applicant cannot afford to pay legal fees for proceedings in the United States, the NCMEC will try to obtain (and is usually successful in doing so) the services of a lawyer in the relevant jurisdiction on a *pro bono* or a reduced-fee basis. Recruitment of lawyers acting *pro bono* is facilitated by the provisions in the ICARA favoring the assessment of the applicant's legal fees and other expenses against the abductor in the case of an order mandating the return of the child.

Parties may also seek the assistance of the NCMEC for access applications, but several United States District Courts have held that an application for access may not be brought before a federal court under the Hague Convention.

d) Are costs usually awarded in favor of the successful party? If so, what extent would the attorney's fees be covered by such an order for costs?

The federal implementing legislation mandates the charging of necessary expenses, including attorney's fees and court costs, against the respondent where the return of the child has been ordered. (42 USC §11607(b)(3).) The language of §11607(b)(3) provides that the court "shall order the respondent to pay *necessary expenses* incurred by or on behalf of the petitioner." In assessing legal fees, the court will assess whether they were necessary under the circumstances of the case. If the case involved novel or difficult issues, requiring the hiring of an attorney with extensive experience in handling Hague Convention cases, the judge will presumably take this into account.

The award may be denied if the respondent establishes that an order would be "clearly inappropriate." (42 USC §11607(b)(3).)

e) If an order of costs was made in favor of the left-behind parent, would such order for costs also include travel costs, hotel, loss of income, and other costs?

The necessary expenses to be charged to the respondent include specifically the cost of "foster home or other care during the course of proceedings in the action, and transportation costs related to the return of the child." (42 USC §11607(b)(3).) It is possible that other travel costs, hotel expenses, and even loss of income, might be claimed to be necessary expenses.

11. LOCAL AUTHORITY

The Central Authority and Legal Assistance

The Central Authority's website is an excellent source of information and should be reviewed by any family involved in an international custody dispute. The website is http://travel.state.gov/int'lchildabduction.html

a) What is the address of the local Central Authority and what assistance is it able to give?

The U.S. Central Authority is:
Office of Children's Issues
United States Department of State
Office of Children's Issues
SA-29
2201 C Street, NW
U.S. Department of State
Washington, DC 20520
USA
Telephone number: 202/ 736-9090
Toll Free Number *within the USA*: 888 / 407 / 4747
Facsimile number: 202/ 736-9133

Note: Security-related mail processing continues to cause significant delays in the delivery of mail to U.S. government offices. Therefore, it is recommended that the application be sent via facsimile or a courier service, preferably FedEx.

For claims made outside the United States for return of children allegedly wrongfully brought to or retained in the United States, the contact information is:

National Center for Missing and Exploited Children
699 Prince Street
Alexandria, Virginia 22314

For the United States and Canada:	800 / 843 / 5678
For Mexico:	001 / 800 / 843 / 5678
For Europe and Taiwan:	00 / 800 / 0 / 843 / 5678
For South Korea:	001 / 800 / 0 / 843 / 5678
For Japan and Australia:	011 / 800 / 0 / 843 / 5678
For Hong Kong:	022 / 800 / 0 / 843 / 5678
For all other countries:	011 / 703 / 522 / 9320

b) Is the Central Authority staffed by attorneys or only administrative staff?

The Office of Children's Issues is staffed by administrative personnel. The NCMEC, which handles applications coming from abroad, has some lawyers on its staff but cannot itself take a case to court. However, upon request the NCMEC will attempt to find a competent lawyer to take the case to court in the locality where the child is found.

c) Will there be direct contact between the parties and a government attorney?

Generally, there will not be contact between the parties and a government attorney. However, if the child is located in the State of California, a representative of the Child Abduction Unit of the District Attorney's Office in the county of suit may assist in getting the case to court and, in some cases, a deputy district attorney will attend the hearings. (California Family Code §§3131, 3133, 3455.) Questions about the nature and extent of assistance offered in a particular case must be addressed to the Child Abduction Unit of the county in which the child is located. (See, for example, the website of the Los Angeles County District Attorney (which explains their services, lists their contact information, and contains links to other resources, including the link for the Office of Children's Issues of the United States State Department.)

Other states which have adopted the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) have given law enforcement authorities permission to participate in Hague Convention cases, but it is not known whether other such states have provided funding for this function.

12. ATTORNEYS

Availability and Experience

a) Are all attorneys able to act in matters falling under this Convention?

Generally speaking, all attorneys are able to act in matters falling under the Hague Convention, with the limitation that they are not to undertake representation in matters for which they are not competent.

b) Is there any professional grouping which allows the foreign practitioner to know that he is dealing with a practitioner familiar with Hague applications?

Many states of the United States have board-certified specialists in family law. However, not all such specialists will have handled a Hague Convention application. Members of the U.S. Branch of the International Association of Matrimonial Lawyers (IAML) are likely to have familiarity with the Hague Convention. (The IAML website is http://www.iaml.org.)

13. VISITATION RIGHTS PENDING DECISION

What visitation rights would the local court allow the left-behind parent pending final judgment and would financial or other security be required?

Any court exercising jurisdiction in a Hague action, state or federal, may allow visitation for the left-behind parent, consistent with the child's well-being and local state law. (42 USC §11604.) The court, in an appropriate case, may require financial or other security. (42 USC §11604.)

14. ARTICLE 13B

Defenses

a) This section has been described as allowing the local court to "drive a horse and carriage" through the treaty. Applying a scale of 1 to 5 (1 being liberal and 5 being a conservative, limited application of Section 13b), how would you grade the attitude in your local courts?

Given that Article 13b claims must be proven by "clear and convincing evidence" pursuant to the ICARA (42 USC §11603(e)(2)(A), courts in the United States generally should be graded at "5," very conservative.

b) If the child objects to the return, to what extent does the local court accept the doctrine of alienation?

Courts in the United States are likely to consider alienation in weighing whether a child has the maturity to object or in deciding whether to return the child despite the child's objection to the return. The existence of a "parental alienation syndrome" is the subject of dispute, so litigants may want to present expert evidence on this issue. Still, the reality of parental alienation in an international child abduction case does not depend on the existence of a recognized syndrome.

15. ACCESS

Obtaining and Enforcing Access or Visitation

a) What is the attitude in local courts concerning the enforcement of visitation rights in favor of a non-custodial parent?

   i. If the child was habitually resident in the jurisdiction of the foreign court, or
   ii. If the child was habitually resident in the jurisdiction of the local court.

Federal courts have shown reluctance to get involved in the enforcement of foreign visitation rights under the Hague Convention. In contrast, state courts having jurisdiction in family matters are generally inclined to find a way to honor visitation orders issued by a foreign court, if such foreign court had exercised jurisdiction on grounds consistent with the Uniform Child Custody Jurisdiction Act (UCCJA) or the newer UCCJEA and if due process (notice and opportunity to be heard) had been accorded to the litigants. Courts would look to the provisions of whichever of these acts is in force in their jurisdiction in order to determine whether to consider a possible grant of access.

b) If visitation rights are enforced in favor of the non-custodial parent, would the local court impose guarantees on the non-custodial parent in order to ensure that the child be returned to the jurisdiction of the local court? Is a specific access order necessary?

Guarantees might be imposed upon a non-custodial parent as a condition of access. Some states have recently adopted provisions which grant broad powers to courts to restrict access and to require security where there is a risk of international removal of the child. Further, even in the absence of specific legislation, some state courts have imposed conditions, including monetary surety bonds, upon international relocation to protect local jurisdiction. (See, for example, *Marriage of Condon* (1998) 62 Cal.App.4th 533 (California); *Marriage of Abargil* (2003) 106 Cal.App.4th 1294 (California).) It is also a federal crime to remove a child from the United States in an attempt to obstruct a parent's right to custody. (International Parental Kidnapping Act of 1933, 18 USC §1204.)

c) Would a court order be necessary in the foreign country or could the left-behind parent get an access order even if such order had not been granted?

Under the UCCJA or the UCCJEA, most states will defer to the state with jurisdiction over custody, even if a foreign jurisdiction, to issue orders of visitation or access. However, under exigent circumstances, a state can exercise emergency jurisdiction to award custody or visitation to the left-behind parent. Further, under the ICARA, the court is empowered to make such orders as are necessary for the well-being of the child. (42 USC §11604.) A court hearing the Hague action can order visitation or access for the left-behind parent pending resolution of the Hague action.

16. ARTICLE 15

Requesting the state of Habitual Residence for a Determination of Wrongful Removal or Retention.

a) Who has the jurisdiction to give the necessary certification under this article?

In principle, either a federal court or a state court in the jurisdiction where the child was resident should have jurisdiction to make an Article 15 certification under the relevant declaratory judgments legislation. In practice, the authors are aware of only two cases in which such certifications were made, in state courts, only one of which was expressly made under a state declaratory judgments act. Neither of these determinations had been requested by the foreign country to which the child had been taken.

b) Do the local courts usually make a request under this section?

Requests by local courts in the United States under Article 15 for a determination by the state of the child's habitual residence that the removal or retention was wrongful are extremely rare.