



Mediating International Parental Child Abduction and Custody Agreements

Child custody disputes are among one of the most difficult areas of Family Law, involving established principals of law fraught with emotions that often cloud clear decision making. Litigation usually provides only a short term solution, and the judicial system sometimes proves a poor decision maker for what are private and ongoing and changing family circumstances. Who better to make decisions for a child then their parents who can witness firsthand their needs as they mature and grow? When parents are able to set aside destructive emotions of anger and retaliation, and work together to create an agreement that meets the needs of the entire family, a win-win and long term solution can be reached creating stability for all family members.

Navigating the path of mediation is appropriate so long as unintended consequences do not result. If there has been a history of child abuse or neglect or domestic violence then the mediator must be clear that reaching resolution is a realistic outcome and that the both parties are entering into this decision making process of their own free will.

International parental child abduction cases provide their own set of unique issues when it comes to creating a workable agreement regarding the upbringing and care of the child(ren). Whilst it is possible to move past the disruption that the abduction has caused, further elements that the author has noted in these cases are the escalated emotions of fear and retribution. Inevitably, access to both parents' means constructing a cross border agreement and building trust between the parties after an abduction has occurred is paramount to making these international agreements work. Understanding the history of the family dynamic and the circumstances surrounding the abduction are paramount in the mediator's initial inquiries. The decision as to whether parents can be

together for the mediation, separated or whether it is appropriate to conduct the mediation telephonically or through video-conferencing must not be minimized. Equally, as assessment of how well the parties understand a common language must be made as often the nuances of language can be missed if one of the parties are not conversing in their native tongue.

Is appropriate for the minor child(ren) to participate, and is the determination of that based on the parameters set out in the Hague Convention? What weight should the mediator attach to the psychological and emotional health of the child and the parents? Is a mediator qualified to determine if the child has been subjected to “undue influence” and its relevance thereof, or is such an evaluation better left to an expert?

The goal of mediation is to solve immediate visitation and communication matters and to lay a foundation for the family unit to function in a manner that serves the best interests of the child despite the broken parental relationship. As such, once the mediator has completed the fact gathering exercise and made the decisions outlined above, the more detailed issues can be addressed: dual citizenship and multiple passports; travel planning and cost; telephone and skype access; visits based on the school calendar, summer activities, and parents’ work schedules; access to extended family members, language classes for child so they reach or retain fluency in both parents’ languages; responsibility for medical care; need for counseling; decision making with regard to disciplinary, educational and religious matters; and finally, procedures for reviewing the agreement if circumstances change.

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