

## Securing counsel

The United States ratified the Hague Convention with a reservation as to Article 26 relating to legal representation. Because of this reservation, U.S. courts are not required to appoint counsel to represent parties in Convention cases. Nor is the federal government required to assume any costs or expenses resulting from the participation of attorneys or from court proceedings in Hague Convention cases.

In 1995, the Department of Justice Office of Juvenile Justice and Delinquency Prevention funded the American Bar Association's creation of the International Child Abduction Attorney Network (ICAAN) to expand the pool of attorneys who provide pro bono or reduced-fee legal assistance in Hague cases involving children in the United States. When the U.S. Department of State assumed responsibility for handling "incoming" cases, a task previously handled by the National Center for Missing and Exploited Children (NCMEC), most of the attorneys in the ICAAN network became members of the Department's "Hague Convention Attorney Network."

**Hague Convention Attorney Network.** A significant issue for Hague Convention cases is the difficulty some litigants have in finding affordable legal representation. The Department of State, acting in its capacity as U.S. Central Authority for the Hague Abduction Convention, administers an attorney network composed of attorneys willing to accept a Hague case on a pro bono or reduced-fee basis.

The process for obtaining representation through the Hague Convention Attorney Network begins with the left-behind parent making a written request for legal assistance. To qualify for assistance, a parent must include with the application an assessment of his or her financial ability to hire counsel using the U.S. Federal Poverty Guidelines used by the Legal Services Corporation. Based on the information provided by the left-behind parent, the State Department will prepare a list of private attorneys who agree to consult with the applicant about potential representation. The applicant then contacts one or more of the attorneys. Because of the likelihood of language barriers, members of the Hague Convention Attorney Network are given access to a language line that is available through the State Department at no cost to attorneys or Hague applicants to facilitate telephone communications. Based on the discussions with the prospective client, the attorney may offer pro bono, reduced-fee, or full-fee representation, or may decline to offer representation. The parent may still be responsible for any court fees and costs.

**Court-Appointed Counsel for Parties, Children, Guardians *Ad Litem*.** Despite the Article 26 reservation, courts retain the discretion to appoint counsel to represent parties, either on a pro bono basis, or with compensation if funding is available. A review of doz-

ens of reported cases shows that trial and appellate courts appoint counsel<sup>1</sup> for left-behind parents, abducting parents, and for children<sup>2</sup> or their *guardians ad litem*. Most local bar associations have attorneys who will appear on a pro bono basis to represent those who are otherwise unable to retain counsel. Some bar associations maintain lists of attorneys who are proficient with cases involving questions of jurisdiction in child custody cases.

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1. *See, e.g.* Seaman v. Peterson, 766 F.3d 1252, 1259 n.8 (11th Cir. 2014) (counsel appointed on appeal after initially representing self pro se); Sanchez v. R.G.L., 761 F.3d 495, 508 (5th Cir. 2014) (citing Fed. R. Civ. P. 17(c)(2)); Patrick v. Rivera-Lopez, 708 F.3d 15, 18 (1st Cir. 2013) (court appointed counsel for abducting parent); Whiting v. Krassner, 391 F.3d 540 (3d Cir. 2004); Holder v. Holder, 392 F.3d 1009 (9th Cir. 2004); San Martin v. Moquillaza (unreported disposition), No. 4:14-CV-446, 2014 WL 3924646, at \*1 (E.D. Tex. Aug. 8, 2014) (counsel appointed for abducting parent and for children); Taveras v. Morales, 22 F. Supp. 3d 219, (S.D.N.Y. 2014) (separate counsel appointed for respondent and child); Gavia v. Hernandez, No. 2:13-cv-00987, 2013 WL 6115725 (D. Utah. Nov. 20, 2013) (same counsel); Vasquez v. Vasquez, No. 3:13-CV-1445-B, 2013 WL 7045041 (N.D. Tex. Aug. 27, 2013) (same counsel); In re D.T.J. 956 F. Supp. 2d 523 (S.D.N.Y. 2013) (counsel appointed for child).

2. *See* Fed. R. Civ. P. 17(c)(2): “A minor or an incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court must appoint a guardian ad litem—or issue another appropriate order—to protect a minor or incompetent person who is unrepresented in an action.” *See also*, Kufner v. Kufner, 519 F.3d 33 (1st. Cir. 2008) (appointing counsel pursuant to above rule).