

# **7 FAM 140 CHILD CUSTODY**

*(TL:CON-1 4-15-83)*

## **7 FAM 141 CUSTODY CASES, COMPLEX AND SERIOUS**

Child custody disputes generate many of the most troubling and demanding of the welfare and whereabouts cases. They come to the attention of the consular officer, either directly or through the Department, when a child has been taken to another country by one parent against the wishes of the other parent or in violation of a custody decree or restraining order issued by a court with proper jurisdiction. Parents facing the prospect of permanent separation from a child may be in a highly emotional state. They often enlist the aid of Members of Congress and the press to assist in obtaining information about the child's status and future return.

Parental child abduction is increasing and has become an extremely serious problem in the United States. Child abduction has received much attention from the press, State and Federal governments, and members of the private bar. New private organizations have been established to deal solely with this problem. Most States have enacted the Uniform Child Custody Jurisdiction Act (UCCJA), which eases recognition and adjudication of child custody determinations by State courts. The Act was proposed in 1968 by the National Conference of Commissioners on Uniform State Laws (States individually adopt "uniform acts" if they believe the acts will serve a useful purpose). The federal Parental Kidnapping Prevention Act (PKPA), effective as of December 29, 1980 (as part of Public Law 96-611), provides for automatic recognition of custody decrees entered in the child's home state. It also authorizes the Federal Parent Locator Service of the Department of Health and Human Services to locate abducted children and abducting parents.

These statutes and types of assistance in the United States reinforce the widely held misconception that the U.S. Government has almost unlimited control over U.S. citizens abroad and can easily demand, and ultimately force, the return of children abducted to foreign countries. Parents and their representatives often turn to the Department in desperation over the loss of a child in the belief that they can obtain a quick, easy, and complete solution.

## **7 FAM 142 LIMITS ON CONSULAR ACTION**

The basic principle of international law--that a person residing or traveling abroad is subject to the laws of the host country and the jurisdiction of its courts--applies to minors as well as to adults. The laws of the country where the child is present physically, even though temporarily, are controlling and must be respected. Consular officers should be aware of the limitations imposed by local law and of resource personnel in the host country who can provide more complete information on specific cases.

### **7 FAM 142.1 Legal Authorities in Obtaining Physical Custody**

Consular officers have no legal authority to obtain physical custody of children and return them to the requesting parents. The recovery of children must be done in accordance with the local laws, which probably do not automatically recognize or enforce a custody decree issued by a U.S. court. If the parents cannot reach an agreement, legal action in the foreign country usually is necessary in order to have child returned to the United States.

## **7 FAM 142.2 Evidentiary Weight Accorded Custody Decrees**

U.S. custody decrees may be admitted as evidence in foreign court proceedings and will often be enforced at the local court's discretion as a matter of international comity. However, courts in many, if not most, countries will accept or adopt a U.S. court decree only by completely rehearing the case on its merits. In many countries a U.S. citizen, or any other foreigner, has little chance of being awarded custody of a child when the other parent is a citizen of the country where the case is being heard. In other countries local law favors the granting of custody to the parent of one sex, even when that parent was the abductor.

## **7 FAM 142.3 Prohibition on Offering Legal Advice**

Consular officers must not offer legal advice but may provide general information about the child custody laws of the country and a list of local attorneys. Although consular officers may monitor custody hearings before foreign courts, they may not attempt to influence the decisions of the courts. See 7 FAM 142 Exhibit 142.3 for a sample information sheet which may be reproduced locally and given to inquirers to explain the consular officer's role and limitations.

## **7 FAM 142.4 Prohibition on Force and Deception**

Consular officers must not assist a parent in regaining physical custody of a child by force or deception. Officers should inform the parent of the dangers involved in such action, including the possibility of criminal prosecution if the local laws are violated. Consular officers are under no obligation to report the abducting parent's plans to the local authorities or the other parent but, as circumstances warrant, may inform them if the abducting parent has threatened violence or appears likely to pose a threat to the safety of the child or other parent. Consular officers should bear in mind that, in the past, Foreign Services employees have been accused of collusion in a parent's kidnapping of a child and consular officers have been declared persona non grata for even such a seemingly innocuous action as issuing a passport in cases of this nature.

## **7 FAM 142.5 Observance of Court Custody Decrees**

Consular officers must not help a U.S. citizen parent to leave the host country, with or without a child whose custody is disputed, if such departure would violate a court order or the laws of that country. Consular officers have no authority to revoke passports already issued to children who are involved in child custody disputes (see also section 7 FAM 146 ).

## **7 FAM 143 CONSULAR ASSISTANCE**

The role of consular officers in child custody disputes is to help inquiring parents locate children abroad, to monitor the welfare of children on the request of a parent, to contact or refer a distressed parent to local governmental or private social agencies which can provide assistance, to provide general information about child custody laws and procedures which can be used to effect a child's return to the United States, and to furnish a list of attorneys if the parents cannot resolve their differences themselves or seem to need legal advice or assistance. Consular officers should be responsive to legitimate requests made by the parents and may suggest a neutral meeting place where they can attempt to work out their differences. At all times, consular officers must attempt to maintain impartiality, regardless of the perceived relative merits of the case, and should avoid attempting to influence either parent in a child custody dispute.

## **7 FAM 143.1 Information Needed to Search Records**

Upon receipt of a request for assistance in a child custody case, the consular officer's first responsibility is to try to locate the child and determine the child's health and present circumstances. If contacted directly by a distressed parent or the representative of such parent, the post should try to obtain the following information essential to the search:

- (1) The child's date and place of birth;
- (2) The date the child was taken to the foreign country;
- (3) The child's address and telephone number, if known or the names and addresses of persons who may have knowledge of the child's whereabouts (such as the abducting parent's family, friends, or business associates);
- (4) The citizenship status of both parents;
- (5) The citizenship status of the child;
- (6) The child's passport number, plus the date and place of issuance of the passport;
- (7) Whether a U.S. State court custody decree exists and, if so, the date of the decree and place of issuance;
- (8) Whether a foreign court custody decree exists and, if so, its date and place of issuance; and
- (9) Previous efforts to resolve the difficulty.

When the Department receives a request for assistance in a transnational child abduction case, it will attempt to obtain and provide the post as much of the essential information as possible (see sample Department telegram requesting assistance, shown in 7 FAM 143 Exhibit 143.1 ).

Custody disputes are often bitter. The inquiring parent or the abducting parent, and sometimes both, often allege that the other parent is an alcoholic, drug addict, criminal, sexual deviate, or one who otherwise might harm the child. Consular officers should not disregard such statements, or claims that the child may suffer from serious disease, but should keep in mind that the statements or claims may be fabricated or exaggerated.

If the child's address or approximate location is not known, the post should use all of the resources normally available in any search for a missing U.S. citizen (see section 7 FAM 110 and 7 FAM 114 Exhibit 114 ). In many instances, the parent will ask that an investigation be as discreet as possible in order to avoid frightening or alerting the person who has the child. Such requests should be honored.

## **7 FAM 143.2 Initial Visit to Child**

When the child is located, the consular officer must make every effort to interview or visit the child personally.

A personal visit usually should be made if the child is residing in or near the city where the post is located. If the child lives at a distance from the post or workload prohibits a personal visit by the consular officer, an appropriate local official residing near the child should be requested to make the visit.

One of these courses of action should be followed in every case unless the parent who is trying to locate the child has requested that the child not be contacted directly. Often, one parent will not accept the other parent's assertion that the child is well unless an impartial third party can confirm the child's welfare.

The person making the visit must observe and report on such factors as the child's demeanor, physical appearance, hygiene, sufficiency of clothing, cleanliness of surroundings, attitude toward both the abducting and inquiring parent, educational progress, and social adaptation in the host country. Any apparent aspect of the abducting parent's attitude also should be reported. Specific inquiry should be made about any special care required by the child, such as the continued use of necessary medication. A sample report on a consular officer's visit to children involved in a custody dispute appears in 7 FAM 143 Exhibit 143.2 .

### **7 FAM 143.3 Request for Assistance of Local Authorities**

When requesting the assistance of local authorities in verifying the whereabouts and well-being of a minor U.S. citizen, the post should point out, if necessary, that the interest of the U.S. Government is in ascertaining the health and welfare of one of its citizens. This is an internationally recognized function of any nation's consular service. The consular officer may wish to refer to Article 5 (h) of the Vienna Convention on Consular Relations (see section 7 FAM 102 Appendix A ) or similar provisions of a bilateral convention, if applicable.

If there is evidence of child abuse or potential danger or harm to the child, as when the child is confined in unsanitary surroundings, the post should make strong representations to the local authorities for a thorough investigation and, if necessary, the removal of the child into the protective custody of the local courts or child welfare service. This is especially important when the person with the child is known to be dangerous or mentally ill. See section 7 FAM 181 for further information on handling cases involving child abuse.

If an amicable resolution of the child custody dispute is not possible, the consular officer should provide a list of local attorneys to the parent or parents. If necessary, the officer should assist the U.S. citizen parents in maintaining contact with the attorneys they have selected. The officer should stay familiar with the status of any legal proceedings which may be instituted. If it appears that the rights of a U.S. citizen parent or child are not being respected under local law and generally accepted international standards of justice, the consular officer should follow up with representations to the local officials. In this connection, see Chapter 900, Judicial Assistance for U.S. Citizens Abroad, and Chapter 1000, Relations with Host and Third Countries.

consular officer should suggest that the parent(s) consult a physician, psychologist, social worker, or member of the clergy. Consular officers should be familiar with local government agencies and private organizations, particularly those within the American community, which can help citizens cope with child custody disputes or the disintegration of a marriage.

While there is little the consular officer can do in legal terms, the hard facts of the situation must be conveyed in a sympathetic manner, reinforced by a willingness to be helpful in any way permissible. It is important for the officer not only to be understanding, but also to avoid taking the side of one parent and judging the merits of the case, especially when all the persons involved are U.S. citizens. The role of the consular officer is largely that of a sympathetic listener who can explain the legal and practical limits on available local assistance and direct attention to steps which may be taken within those limits.

### **7 FAM 143.4 Subsequent Consular Officer Actions**

Consular responsibility to report the welfare and whereabouts of a child may not end after the first report is made to the Department (CA/OCS/CCS) and the limitations explained. The post may be asked to visit the child again or advise the aggrieved parent and Department on the status of the case. If communications between the distressed parent and child have broken down, or if the parent has evidence that the child's condition has changed, such a request should be honored. If communications do not resume, it may be necessary to conduct periodic visits at reasonable intervals to monitor the child's well-being.

The Department considers, as a general rule, that quarterly visits for 1 year are reasonable, absent unusual circumstances. If the 1-year period elapses without deterioration of the child's condition, the periodic visits should be terminated. Circumstances such as serious or prolonged illness of the child or a change of residence may require more frequent visits for a short time. Any questions regarding the advisability of visits or other monitoring of a child's welfare should be addressed to the geographic division of CA/OCS/CCS which has jurisdiction over the case.

## **7 FAM 144 REFUGE**

Foreign Service posts may not offer refuge to persons involved in childcustody disputes, except as provided in 2 FAM 229.1 :

Refuge may be afforded to uninvited persons who are in danger of serious harm, as from mob violence, but only for the period during which active danger continues. With the concurrence of the Department, refuge shall be terminated on receipt of satisfactory assurances from the established national government that the refugee's personal safety is guaranteed against lawless or arbitrary actions and that the refugee will be accorded due process of law.

A consular officer could, for example, allow an American citizen who is fleeing attempted violence or a credible threat of violence from a spouse or parent to enter and remain at the post for a limited period of time until steps can be taken to arrange police protection, a restraining order, a safe haven elsewhere, or other suitable protection.

Refuge cannot be granted to prevent the execution of the laws or court orders of the host country, even when those laws or court orders may appear to be administered in a manner unfair to the interest of the U.S. citizen.

A parent cannot remain indefinitely at the post in order to prevent the other parent from taking the child or to avoid the enforcement of a court order requiring the return of the child to the other parent.

## **7 FAM 145 REPORTING AND PRIVACY ACT IMPLICATIONS IN CUSTODY CASES**

As in all welfare and whereabouts cases, the Department and the post must keep all interested parties fully informed of any significant developments. The post should report to the Department (CA/OCS/CCS) in full detail the steps taken to locate the child and conditions in which the child was found, any direct contact with either party in the dispute, and the progress of any court case which may have been instituted. Such reports may consist of copies of communications sent to parents or their authorized representatives. The release of information to parents or others is governed by the Privacy Act, certain aspects of which are discussed below.

## **7 FAM 145.1 Privacy Act Provisions on Parents and Legal Guardians**

The Privacy Act of 1974 pertains to U.S. citizens and lawfully admitted resident aliens. The Act permits, but does not require, release of information about minors to either parent, regardless of which parent has custody. The Department considers as a "minor" any U.S. citizen or lawfully admitted resident alien under the age of 18 years. Since the Act makes no distinction between U.S. citizen and alien parents, or between married and unmarried parents, any parent or legal guardian, regardless of citizenship or marital status, may obtain access to records about a minor. Fathers of children born out of wedlock should provide proof of paternity. A person acting officially in the place of a parent, such as a court-appointed guardian, has the same rights as a parent.

The release of information about a minor to parents and legal guardians is discretionary. Consular officers should refuse to release information about the location of a minor when, in their judgment, to do so would be unwise in view of the circumstances of the case. For example, when there is reason to believe that disclosure of such information could place the child or other people in jeopardy, information concerning the child's whereabouts should not be released. Unless a child asserts rights under the Privacy Act and objects to the disclosure of information, the consular officer may release information about the child's welfare. See 7 FAM 145 Exhibit 145.1, which provides a sample for reporting information which can be released to a child's inquiring parent.

Information which should not be released, but which is essential for a full understanding of a case, should be sent separately to the Department.

Grandparents and other relatives, individual members of Congress, and the press may not receive information unless written permission has been given by one of the parents or the child, authorizing such disclosure.

## **7 FAM 145.2 Rights of Parent Who has Child(ren)**

A parent, including a non-U.S. citizen parent, acting on behalf of a minor, is considered the same as the minor for the purpose of giving consent for the disclosure of information. In cases where the parent with physical custody of the child is a U.S. citizen or lawfully admitted resident alien, the parent's right to privacy is protected by the Privacy Act. In these circumstances, before the child's address or other information which relates to both the child and the parent can be disclosed, the post should obtain a written Privacy Act waiver from the parent authorizing such release. If the parent in the United States who is seeking access to information about the child obtains a court order requiring the release of information about the child, the Department must comply.

Since aliens who are not legal permanent residents of the United States do not, themselves, have rights under the Privacy Act, information which relates solely to such parents is not protected.

## **7 FAM 145.3 Rights of the Child in Custody Disputes**

Minors also have personal privacy rights under the Privacy Act. Guidelines for the implementation of the Act state that "there is no absolute right of a parent to have access to a record about a child absent a court order or consent." Therefore, if a child objects to the release of information, it should not be released unless the inquiring parent has obtained a court order requiring its release.

## **7 FAM 145.4 Establishing Communication between Parent and Child**

When a child's address is not provided to the inquiring parent, the consular officer may wish to suggest alternative methods for establishing a line of communication between the parent and the child. For example, suggest that the child's return address be a post office box or Poste Restante at a local post office. If no such facilities exist in the host country, the post may, as a last resort, receive and forward mail to the child.

## **7 FAM 146 PASSPORT POLICY**

The information provided in this section is the general passport policy regarding child custody cases. Specific questions should be referred to Citizens Consular Services (CA/OCS/CCS) by telegram (see Chapter 7 FAM 1300 , Passport Services for U.S. Citizens Abroad).

### **7 FAM 146.1 Application by Both Parents**

In the absence of a local court order granting sole custody of the minor child to one parent (or a court order restraining a parent from removing the child from the country, or a written request for denial from the parent having sole custody), both parents are considered to have legal control of the minor. A passport will be issued to the minor on the application of either or both parents. This means that if one parent has obtained a passport for the minor child, and refuses to permit the other parent to use the passport to travel with the child, the other parent may obtain another passport for the child. This exception to the general rule (that a person may have only one valid passport at a given time) is necessary because of the exceptional circumstances of child custody cases.

### **7 FAM 146.2 Application by Authorized Representative**

An authorized representative of a parent or legal guardian may execute an application on behalf of a minor child if proof of custody is presented. An authorized representative must have a notarized power of attorney.

### **7 FAM 146.3 Physical Custody Necessary**

A parent who wishes to obtain a passport for a minor child abroad must have physical custody of the child (the child must physically appear for the passport) and must have the proper documentation (such as, citizenship evidence for the child and identity evidence for the parent).

### **7 FAM 146.4 Restraining Orders**

Occasionally, a post is given official notice that a court in the host country has awarded sole custody to one parent, or has issued a restraining order preventing removal of the child from the country. If the other parent (even though a U.S. citizen) then applies for a passport for the child, the application should be disapproved pursuant to 22 CFR 51.71(d). The Department honors custody orders in the country where issued.

If, however, the court order was issued in a country other than the host country, that court order may be disregarded. This includes U.S. custody orders. A court order issued in the United States cannot serve as a basis for denial of passport by a Foreign Service post unless that U.S. court order has been recognized by a court of competent jurisdiction in the host country and the post has official notice of that recognition.

### **7 FAM 146.5 Departure Not Guaranteed**

Although a U.S. passport has been issued, the issuance does not guarantee that the child will exit the country, especially if the child is a dual national with concurrent citizenship in the host country. The objecting parent may contact the local officials and request the officials to bar the child from leaving the country. Should such a situation arise, the parent seeking to take the child out of the country should be provided a list of attorneys and be advised to retain local counsel. The consular officer should not take sides in the matter or attempt to intercede with the local authorities (other than to find out the reason for the ban) without the express approval of the Department.

## **7 FAM 146.6 Effect of Custody Orders**

Parents in the United States and abroad who have custody decrees issued by U.S. courts may file a formal objection to the issuance of a passport to a minor child by a domestic Passport Agency by making a written request to Passport Services (CA/PPT/C) and enclosing a copy of the custody decree. The decree must award custody to the parent making the request or forbid the child's departure from the court's jurisdiction. Passport Services will enter a notice in its computerized name-check system and will attempt to notify the objecting parent if an application is received. A temporary notice can be entered, pending the receipt of a court order.

Since foreign court orders in child custody matters are not automatically binding in the United States, a passport requested in the United States cannot be denied merely because of the existence of a foreign court order. However, a parent who objects to the issuance of a passport to a child and submits a foreign custody decree to CA/PPT/C may be informed if the child applies for a passport in the United States. The name-check notice entered by Passport Services does not affect passport issuance abroad but, through the name-clearance process, helps the Department to locate a child whose whereabouts previously had been unknown.

## **7 FAM 146.7 Revocation of Passport**

When a passport has been issued, it cannot be revoked merely because the child is involved in a custody dispute. The reasons for which a passport may be revoked appear in 22 CFR 51.71. Unless the custodial parent objects to the issuance of a passport and submits a copy of the court order, either parent is entitled to obtain a passport for a minor child and cannot be considered to have acted illegally in obtaining the document, assuming the child is a U.S. citizen and the application shows the child's true identity. If the parent who was not awarded custody of the child has a passport in the child's name and if a court will not authorize the child's travel, the court can order the noncustodial parent to surrender the passport to the court, the custodial parent, or the Department.

## **7 FAM 147 ASSISTANCE WHEN THE CHILD IS IN THE UNITED STATES**

Periodically, posts will receive requests for assistance from persons in the host country who are anxious to ascertain the welfare or whereabouts of their minor children whom they believe are in the United States. Consular officers are under no obligation to provide such assistance. In the interest of good public relations, however, officers may wish to provide some of the following information:

- a. Aliens should be urged to contact their Embassy in the United States or the consulate having jurisdiction over the State where the children are living.

b. Under certain conditions, the Department of Health and Human Services (HHS) can provide assistance in locating and contacting persons in the United States. There are no provisions for a consular officer to request such assistance on behalf of a U.S. citizen residing abroad.

c. The text of the Uniform Child Custody Jurisdiction Act (UCCJA) appears with other uniform acts in Volume VIII of the Martindale-Hubbell Law Directory. Information and legal advice on the applicability of the UCCJA, the enforcement of custody decrees, and other aspects of child custody law in the various States may be obtained from the Attorney General of the appropriate State or from a private attorney in that State.

d. Upon request the Department (CA/OCS/CCS) will provide further information and addresses of HHS and State government officials to assist inquirers at the post.

e. Generally, the names of attorneys may be obtained by writing to the local bar associations in the States. The Directory of Lawyer Referral Services, published by the American Bar Association, 1155 E. 60th Street, Chicago, Illinois 60637, contains the addresses of local bar associations.

# **7 FAM 148 THE HAGUE CONVENTION ON CHILD ABDUCTION**

In October 1980, the Hague Conference on Private International Law unanimously adopted the Hague Convention on the Civil Aspects of International Child Abduction, which was signed by the United States on December 23, 1981.

## **7 FAM 148.1 Purpose**

The purpose of this multilateral treaty is to secure the prompt return of children wrongfully removed from or retained in any country which is a party to the Convention. It provides for return of the abducted child to its habitual residence through an application made by an aggrieved parent or representative to a central authority in the country where the child is located.

The central authority should take all appropriate measures to locate the child, prevent further harm, and to secure the voluntary return of the child. Failing voluntary return, the central authority should refer the case to the appropriate judicial or administrative authorities and monitor and report on all proceedings to ensure prompt consideration of the application.

The Convention addresses itself solely to ensuring return of children to their place of residence, thereby hoping to deter potential future child abductions and ensuring that the underlying merits of the case would be considered by the court with the most interest and knowledge of the facts.

## **7 FAM 148.2 Ratification**

The Convention is a treaty of the United States which requires ratification by two-thirds of the Senate. Legal ratification is currently under consideration.

Ratification of the Hague Convention will remove from consular jurisdiction the welfare and whereabouts function and the limited judicial assistance provided to inquiring parents by consular officers in countries which also are parties to the treaty. These functions will be performed by the signatory countries. Further information on the progress of the Convention will be provided to affected posts as developments occur.

## **7 FAM 148.3 Recognition by States of Foreign Court Decrees**

Several States in the United States have entered into arrangements with some foreign countries to provide reciprocal automatic recognition of court child custody and support orders. The number of States and countries involved in such arrangements is slowly increasing.

## **7 FAM 149 UNASSIGNED**

# 7 FAM 142 Exhibit 142.3

(TL:CON-1; 4-15-84)

## Sample of Information Sheet: Assistance in Child Custody Disputes



United States Department of State

Washington, D.C. 20520

### ASSISTANCE IN CHILD CUSTODY DISPUTES

The Department of State receives many requests for advise and assistance from parents whose children have been taken from the United States or prevented from returning to the United States by the other parent. The Department and American Embassies and Consulates will do whatever they can to assist parents who are involved in child custody disputes; however, in most cases, the amount and type of assistance which the Department and its Foreign Service posts can offer is quite restricted. While the Department attempts to be of assistance in these matters, it cannot assume responsibility for any failure or inability to comply with the wishes of parents or guardians.

#### Consular Assistance

In child custody controversies in which children have been taken to another country or have been kept abroad by one parent, the Department of State, through its Foreign Service posts, can attempt to locate the children, monitor their welfare upon the request of a parent, make available general information about child custody laws and procedures, and furnish a list of attorneys in the foreign country should the parents indicate the need for legal advice or assistance. The Department can provide information about the welfare of a child under the age of eighteen to either parent, regardless, Department officers can alert the local authorities or social service agencies.

#### Requests for Assistance

Persons who desire the Department's assistance in ascertaining the welfare or whereabouts of a child should send the following information to the Office of Citizens Consular Services (CA/OCS/CCS), Department of State, Washington, D.C. 20520, or to the U.S. Embassy or Consulate nearest the child's foreign residence: the full name of the child; the child's date and place of birth; passport data, if known; any available information about the child's departure from the United States or destination; and the names and, if possible, the addresses and telephone numbers of persons with whom the child travelled or is believed to be staying. Information concerning the provisions which have been made for custody of the child or a copy of any pertinent court decree is helpful. Parents should include telephone numbers where they can be reached if the Department or a Foreign Service post needs further details. The Office of Citizens Consular Services can be reached by telephone at (202) 632-3444.

#### Jurisdictional Limitations and Legal Assistance

If an amicable settlement of a child custody dispute cannot be worked out by the parents, the only recourse may be a court action in the country where the child is located. The law of the country in which the child is physically present, even temporarily, is controlling.

Traditionally, the legal doctrine to which most countries have adhered is that the presence of a child within a particular country renders its courts competent to determine who should have custody of the child, regardless of any prior custody judgment issued by a court in another country. As a result, it is not unusual to find conflicting custody decisions in different jurisdictions. Courts in some countries have honored American custody decrees, but on the whole the outcome is unpredictable. The United States Government cannot force a foreign country to honor any American court order regulating custody or visitation rights.

Although U.S. consular officers can provide lists of attorneys in their consular districts, they cannot recommend any particular attorney, offer legal advice, represent U.S. citizens in custody or other hearings before foreign courts, or attempt to influence the outcome of those hearings.

Consular officers have no legal authority to obtain physical custody of children and return them to the United States. They cannot assist a parent in acquiring physical custody of a child illegally or by force or deception. Officers cannot help a parent to leave a foreign country with a child whose custody is disputed if the departure would violate a court order or the laws of the foreign country. They can, however, provide a passport for a U.S. citizen child whose custody is disputed if the child appears in person and they have not received a court order issued by the foreign government barring the child's departure from the country or awarding custody to someone other than the parent accompanying the child.

#### Passport Denial

When there is controversy concerning the custody of a minor, a passport-issuing office in the United States or abroad may deny issuance of a passport to the minor if it receives a court order from a court within the country in which passport services are sought. The court order must give custody of the child to the person who has requested that passport services be denied or must specifically forbid the child's departure from the country without the court's permission. Even in cases where a passport cannot be denied, parents can be notified if passport applications are submitted in the names of their children. Generally, after a passport has been issued, it cannot be revoked merely because the bearer has become involved in a child custody dispute.

Persons interested in passport denial may write to the Office of Citizenship Appeals and Legal Assistance (PPT/C). Department of State, Washington, D.C. 20520.

# 7 FAM 143 Exhibit 143.1

## Sample of Department Telegram Requesting Assistance in Child Custody Case

### Sample of Department Telegram Requesting Assistance in Child Custody Case

UNCLASSIFIED

CA/OCS/EMR:WAlper  
3/25/83 Ext. 23732  
CA/OCS/EMR:EBMiller

ROUTINE

LONDON

E.O. 12356: N/A

TAGS: CASC AND COUNTRY SYMBOL (SMITH, ANNA MARIE)

SUBJECT: W/W: CHILD CUSTODY; ANNA MARIE SMITH; JULY 4, 1976, OHIO

REF: STATE 12345

1. DEPT. CONTACTED BY MR. ROBERT SMITH CONCERNING HIS DAUGHTER ANNA MARIE SMITH. MR. SMITH RECEIVED LEGAL CUSTODY OF ANNA FOLLOWING DIVORCE PROCEEDINGS COMPLETED NOV., 1977. HIS EX-WIFE, INGA MARIE SMITH (NEE JONES), RECEIVED VISITATION RIGHTS. DURING ANNA'S VISIT TO HER MOTHER OVER CHRISTMAS SHE AND MRS. SMITH DISAPPEARED. MR. SMITH HAS RECENTLY LEARNED THAT MRS. SMITH AND THE CHILD TRAVELED TO LONDON MARCH 15 VIA TWA NO. 458 FROM NEW YORK. THEY ARE BELIEVED TO BE RESIDING WITH A MAN NAMED JOHN JACOBS AT 431 MAIN STREET, LONDON. MR. JACOBS IS BELIEVED TO BE EMPLOYED BY CHASE MANHATTAN BANK.

2. POST IS REQUESTED TO ATTEMPT TO LOCATE ANNA MARIE AND REPORT HER WELFARE AND WHEREABOUTS BY OFFICIAL DIRECT RELAY TELEGRAM TO MR. ROBERT SMITH, 2560 PENN. AVE., WASHINGTON, D.C. 20006, TELEPHONE (202) .....

VANCE

UNCLASSIFIED

# 7 FAM 143 Exhibit 143.2

## Sample of Post Telegram Reporting on Visit to Children Involved in a Custody Dispute

(Page 1 of 2)

Sample of Post Telegram Reporting on Visit to Children  
Involved in a Custody Dispute

<h1>TELEGRAM</h1>			
		INDICATE <input type="checkbox"/> COLLECT <input type="checkbox"/> CHARGE TO	
12065 E.O. <del>12812</del> TAGS: SUBJECT:  ACTION:	FROM AmEmbassy STOCKHOLM	CLASSIFICATION UNCLASSIFIED	
	N/A		7
	CASC (Jones, Jason St. James) (Jones, Jennifer Ann) W/W: Child Custody		
	SECSTATE WASHDC PRIORITY		
	UNCLAS STOCKHOLM		
	Ref: State 12345		
	<p>1. On May 9 Consul in Stockholm made a lengthy personal visit to the two Jones children at their home and conversed with them for more than an hour. This was the latest of several contacts with children over the months since inquiries were first received about their welfare. The children are healthy and happy, are performing well in school, and say that they are happier residing in Sweden than they were in the U.S.</p> <p>2. Children live in a spacious, comfortable home in a prominent and prestigious location. Others in the neighborhood are doctors, attorneys, successful business people and diplomats. House is located in an area rich in its natural setting, and children have opportunity</p>		
DRAFTED BY:	DRAFTING DATE	TEL. EXT.	CONTENTS AND CLASSIFICATION APPROVED BY:
JAEmerly	2/18/83	x23712	ADJacobs
CLEARANCES:			
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Sample Report on Visit in a Custody Dispute--Continued

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to enjoy woods, a lake, and the sea. Their physical environment at home would be characterized as upper middle class, if not higher, in the US.

3. Jason has been doing very well in mathematics and better than average in other subjects. Like his sister, he is picking up the Swedish language. Jason has been building radio-controlled scale model boats and entering them in a local competition. A look at two samples of his work indicated that the youngster has considerable talent in this area. Jason said that he particularly enjoys the fact that he resides close to the seaside.

4. Jennifer is doing generally well in all subjects at school and making progress with Swedish. She says that she has a large number of friends and has never been happier than she is now. She indicated that until a few months ago she had been writing periodically to her father in the United States but that she had ceased doing so when she no longer received replies.

5. By any reasonable judgement, these two children enjoy a fine home environment, receive attention and love, and are happy and satisfied. We trust that this information will be useful in answering inquiries about the Jones children.

SMITH

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