

# Family Law

The newsletter of the Illinois State Bar Association's Section on Family Law

## Chair's Column

BY SUSAN W. ROGALINER

Happy spring to you all! Last year my intrepid predecessor, Sally Kolb, devoted her spring chair's column to introducing the in-coming to you all and I thought I would follow her lead. In this April chair's column, I want to introduce you to the incoming chair of the Family Law Section Council for the 2022-2023 year. Our incoming chair is Stephanie Tang and I would like to tell you a bit about Stephanie.

Stephanie attended law school at the University of Illinois College of Law. She had previously attended Northwestern University and graduated with a double major in psychology and legal studies. Stephanie is married to Mark and has a two-year-old son, Connor. She says her life has changed since having Conner as she and her husband are now eating "early bird specials" for dinner and trying to find open

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## Tips for Conducting Virtual Depositions

BY JESSICA C. MARSHALL

In the times of the COVID-19 pandemic, family law practitioners have found themselves conducting nearly everything remotely, and that includes depositions. It is very easy to take someone's deposition in person with reasonable assurance that they are not being fed information by a third party, reviewing notes, or reviewing an electronic device, since they are right in front of you and present in the same room. This becomes much more difficult when a deposition is being conducted via Zoom or other teleconference service. However, remote depositions are incredibly cost-

effective tools and can be done just as well as in person depositions if the proper precautions are taken. It is important to ensure that you are talking all precautions as a practitioner to ensure your witness is not being influenced in their testimony. Here are some tips for effectively ensuring that the deponent is playing by the rules in a remote deposition.

### 1. Ensure all electronic devices are shut off.

At the beginning of the deposition, ask the deponent if there are any electronic

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spaces to roam and play. When she is not working, she is a big crafter. She particularly enjoys scrapbooking. She also enjoys baking cookies with Connor.

Stephanie decided to attend law school during her time at Northwestern where she interned at CARPLS Legal Aid, working at their domestic relations help desk at the Daley Center. There she was able to observe the impact that attorneys had on their clients which inspired her to become a lawyer.

Stephanie chooses to be active with the ISBA because she appreciates how involved and active the Family Law Section Council Members are. She views the Section Council as a wide spectrum of family law attorneys and judges from across the state who introduce a wide variety of

legislation on family law issues. As far as the practice of family law, she considers the most challenging part to be juggling the emotional aspects of the practice and keeping those emotional aspects separate from personal life. She feels it is important to set boundaries for yourself to avoid burn out.

Stephanie advises young lawyers to make sure to keep abreast with recent cases and legislative updates. Stephanie is the current director of online graduate programs and a lecturer for the Loyola University Chicago School of Law. I have very much enjoyed working with Stephanie during her tenure as a member of the Family Law Section Council and welcome her as our incoming chair. ■

## Tips for Conducting Virtual Depositions

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devices in the room. Usually, they will indicate they are looking at a computer monitor or a phone screen, since they are on the video call. You can ask them to pan the room, if you wish, as well, to see if there is anything else in the room. At a minimum, if they show you that they have a cell phone which they are not using for the zoom, you can ask them to show you that they are powering the device off. This not only ensures that they are not texting or reading text messages during the deposition, it also will show you if they are on any sort of phone call during the deposition prior to the deposition beginning. Ask them to power off all devices and verify that they are turned off by having them show them to you afterwards. Additionally, it is prudent after breaks to again ask them to show you their cell phone or other electronic devices to ensure the devices remain powered off.

### 2. Ask if anyone else is present in the room with them.

Again, this is something you may be able

to see if you are inclined to ask them to pan the room before beginning the deposition. Ensure that no one else is in the room with them during the deposition.

### 3. Utilize screen sharing for exhibits.

At this point in everyone's practice during the pandemic, this may sound like common sense. However, many attorneys, shockingly, still are not familiar enough with Zoom to utilize screen sharing. Having your exhibits organized and saved to one folder on your desktop, in the order you will need them, is extremely helpful for a zoom deposition. Use the screen share function to show the witness any exhibits you want them to review. If you are not comfortable with Zoom and screen sharing, practice with someone in advance.

### 4. Be very clear in your opening statements and include instructions for how the deposition will be conducted, since it is being taken remotely.

It is common for the attorney who is conducting the deposition and making a

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record to go through opening remarks and instructions during the deposition. These opening remarks should be amended to include instructions specific to taking a deposition via Zoom or video conference. This includes instructing the deponent that even though they are not present in the same room, the same rules apply, which includes that they may not reference documents, notes, electronic devices, or other items during the deposition, and that they may not communicate with third parties while a question is pending.

There are other things that a practitioner should keep in mind when conducting a remote deposition. Illinois Supreme Court

Rule 206 (h)(5) specifically indicates in the October 1, 2021 effective amendments that issues with technology and the resolution of same does not count against the total deposition time allotted. So, for a three-hour discovery deposition, if twenty minutes are spent trying to resolve someone's internet connection issues, that does not chip away at the three hours allotted for the deposition. Illinois Supreme Court Rule 206(a)(2) specifically indicates that the deposition cannot be recorded except as noticed in the notice of deposition. So, even though Zoom does allow video recording, unless you put into the notice of deposition that the deposition would be video recorded as well

as before a court reporter for transcribing testimony, you will not be permitted to video record the zoom. If you wish to video record the zoom, you need to state as such in your notice of deposition.

Video conference and remote depositions have been extremely useful cost-saving tools in litigating cases in family law during the pandemic, and it will continue to be a useful tool in the future. It benefits all of us as practitioners to play by the rules and ensure that these depositions are conducted properly and that the circumstances are not abused. ■

# What to Know Before You Take a Hague Convention Case

BY STACI BALBIRER

Hague Convention cases can be daunting if you have never handled this type of matter. If a client with a possible Hague Convention case calls you, before you agree to take the case you should at least know the answers to the following questions:

## 10 Initial Questions to Ask

### 1. What is the Hague Convention and how does it relate to family law?

The 1980 Hague Convention on the Civil Aspects of International Child Abduction (Convention) was enacted to protect children from the harmful effects of wrongful removal and retention across international boundaries by providing a procedure to bring about their prompt return and ensuring the protection of rights of access. 22 U.S.C. The objectives of the Convention are twofold:

- 1) Securing the prompt return of a child wrongfully removed from a contracting state (Article 1(a)); and
- 2) Ensuring that rights of custody are exercised between contracting states (Article 1(b))

### 2. Is the country from which the child

### was wrongfully removed a signatory to the Hague Convention?

If no, the Hague Convention would not apply.

### 3. Was the child in question wrongfully removed?

Article 3 of the Convention provides that the removal or retention of a child is to be considered wrongful where:

“(a) it is in breach of custody rights attributed to a person, an institution or another body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and (b) at the time of the removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.” (Article 3)

The definition of “custody rights” may vary from country to country so it is critical to familiarize yourself with the specific laws of the country where the child was a habitual resident immediately prior to the wrongful removal.

### 4. Will a party who only has rights of visitation trigger the application of the

### Hague Convention?

No. Mere rights of visitation or “rights of access” as defined by the Convention will not trigger application of the Hague Convention. The Convention distinguishes between rights of access and rights of custody. Furthermore, if the party seeking return of the child was not actually exercising his/her custody rights at the time of the removal, or consented to the removal, the child will not be returned. (Article 3(a)) (Article 5).

### 5. Was the wrongfully removed child a “habitual resident” of the contracting state immediately prior to any breach of custody or access rights?

The Convention does not define “habitual residence” however in *Monasky v. Taglieri*, 140 S. Ct. 719 (2020) the United States Supreme Court defined “habitual residence” and held that a child's habitual residence depends on the totality of the circumstances specific to the case, not on actual agreement between the parents on where to raise their child.

### 6. Is the wrongfully removed child under the age of 16?

If no, the Hague Convention does not

apply. The Hague Convention does not apply to children age 16 and older. (Article 4).

**7. Has the wrongfully removed child resided in the United States for more than a year?**

Hague cases should be commenced within one year from the date of the wrongful removal. Even where proceedings have been commenced after the expiration of one year from the date of wrongful removal, the judicial or administrative authority shall order the return of the child, unless it is demonstrated that the child is now settled in its new environment. (Article 12).

**8. If the Hague Convention return obligation does apply, should I be aware of any exceptions?**

When the return of a child would place the child at a “grave risk” of physical or psychological harm or otherwise in “an intolerable situation, return of the child may not be ordered. (Article 13). Additionally, the return of the child may be refused if this would not be permitted by the fundamental principles of the requested State relating

to the protection of human rights and fundamental freedoms. (Article 20).

**9. If the Hague Convention does apply, where should I file the case?**

A petition for return of the minor child can be filed in either federal or state court.

**10. What is the typical timeframe for a Hague Convention case?**

Courts should act expeditiously in proceedings for the return of a wrongfully removed child. A decision should be reached within six (6) weeks of the commencement of the proceedings. (Article 11).

Of course this list is not intended to be all inclusive but will provide an attorney with a solid start for handling a Hague Convention case. ■



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