

International divorces rising

By Evie Jeang

Sally Field was once nominated for a Razzie award as Worst Actress for her role in “Not Without My Daughter,” the story of an American married to an Iranian male who was forced to “abduct” her own child out of the Middle East. The movie was filmed in 1991, but the story resonates even more in the present day. Since the world has become a smaller place due to the Internet and the ease of international travel, the number of transnational marriages — marriages between citizens of different countries — has increased. As expected, the rate of international divorces also has increased, creating a whole new field for enterprising family lawyers. The number of divorces from China has increased significantly, especially in California, due to the high prevalence of Chinese individuals who reside or have family in California.

There is no official specialty of “international divorce law.” So-called international family lawyers are really only domestic family lawyers with international experience. This experience mainly consists of mitigating divorces when one or both parties are not citizens of the U.S. and may have shared property or assets located overseas. This is a “Wild West” frontier in the legal field (a rarity), and family lawyers need to expand their knowledge of this area, whether they desire to or not. That there are immense opportunities, though the learning curve is high.

Handling the complexities of international divorce not only requires solving legal obstacles, such as arguing jurisdiction and obtaining evidence located in other countries, but

it also requires a keen understanding of other cultures, customs and values. Managing time is also crucial to success due to the variable rates at which other cultures perform tasks, process paperwork and function as a judicial system.

Jurisdiction. Determining jurisdiction may be the most important issue because where to file the divorce may depend on what laws will benefit your client the most. Arguing to have the divorce case heard in a country without spousal

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or child support rules can benefit a client who provides financially for his or her family. In general, Far Eastern countries tend to retain a more male-dominated attitude, which lessens the power females have to try to obtain spousal or child support. On the other hand, Western countries have enacted many laws to provide better care to those who are dependent on a primary wage earner.

Attorneys in the U.S. must work with local counsel if filing in another country, however, so they should be prepared to find quality peers in the countries they may deal with. They should also be aware that divorces originating in foreign countries may not be recognized by U.S. courts.

Cultures and customs. Viewpoints, mores and customs vary across countries, and foreign views may be regarded as racist and offensive from an American standpoint

— but they cannot be ignored. For instance, in Japan the noncustodial parent is considered to be a “danger to family peace.” As such, joint custody is not permitted. Japanese courts favor what can informally be called a “clean break divorce,” where most times the husband (who is the primary wage earner) loses any right to see the child, but also does not have to pay child support — which Japanese law considers to be purely a private civil matter. This arises from longstanding Japanese views on marriage and familial dynamics and runs opposite to the American belief that joint custody is the healthiest choice for the child. There are no Japanese laws that address visitation rights.

On a broader basis, Western culture could be classified as individualistic, and Far Eastern culture as familial. Failing to acknowledge this could spell disaster for your client.

Time. The issue of time is threefold in the international setting. Correspondence with opposing counsel may take much longer than in domestic cases because the pace of life in another country may clash with American norms. Obtaining evidence in a foreign country may be extremely difficult as well, which can delay moving forward with your case. Not to mention, physical time issues (e.g., time zone differences) can make life difficult when making phone calls and scheduling meetings.

Child custody. The issue of child abduction — one parent absconding with a child without the other parents’ permission — is an explosive issue that can greatly complicate an international divorce. Attorneys must consider the Hague Abduction Convention when gauging

how easily one might retrieve the child from another country. The convention, entered into force in 1983, is a multi-lateral treaty that expedites returning a child abducted internationally by a parent from one member nation to another. The treaty does not provide substantive rights or consider the merits of a child custody dispute — it only determines in which country those issues should be heard. This means returning the child to the member nation, but not specifically to the left-behind parent.

Nonmember nations are extremely difficult to deal with, particularly those in Asia. In recent times, the U.S. has even declared certain member nations, such as Mexico and Greece, to be “noncompliant” for various reasons.

Transnational marriages and divorces comprise an exciting new niche, where attorneys have infinite creative license since there is so little legislation governing international matters. While the possible benefits are great, there is certainly some risk to this field due to the lack of definitive laws to follow. Family attorneys in general need to at least be aware of the risks and benefits to taking these types of cases, which will undoubtedly increase with time.

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