

## International Divorce: The Increasingly International Dimensions of Family Law

Many divorces today involve spouses of different nationalities. Most countries are witnessing a boom in interracial marriages as well as accelerating divorce rates. Statistics suggests that international marriages are even more likely to end in divorce than the typical one-nationality marriage. According to statistics from Japan's Health, Labor and Welfare Ministry, there were 36,039 international marriages registered in 2003, an increase of 30 percent from 1995, but the divorces among these couples had doubled during that period. Small firms and solo practitioners, including divorce mediators, must be able to address international issues such as immigration and custody, as well as international assets and/or multiple domiciles. The authors met with three prominent divorce attorneys, Lou Newman, Raoul Felder, and Rachel Fishman Green, to discuss how the global marketplace is affecting family law practice. The authors first visited the esteemed, and entertaining, Raoul Felder, who had three rules for divorce lawyers.

### Rule #1: Know What You Don't Know: Listen to a Foreign Lawyer

I never handle custody battles that invoke Hague Convention protocols. Hague law has become far too specialized. While I could bring myself up to speed, why should my clients pay me to learn when I can go to outside counsel that specializes in Hague cases. American lawyers will rarely handle these cases. But the British do, and they are better at it, they have much more experience than any American lawyer because every day they navigate through the mish mosh of laws on the European continent. There are many countries and border crossings are very accessible. Family Law is especially complex in Europe because it is not uncommon for a parent to live in a different country from their children and or the custodial parent. I handle more international divorces than most American lawyers but I also know what I don't know and when to listen to the foreign lawyer. The best advice I can give is to get local counsel in the jurisdictions involved.

Sometimes, if the country is not a signatory to the Hague protocols, the only remedy is what we call self help where a parent hires a mercenary to re-kidnap a child. You will find people advertising their services in Soldier of Fortune magazine. Outside of the Hague, unfortunately, this is the last resort. There is a famous case of a British ambassador who kidnapped his child and went to a country where the mother had no legal recourse, despite getting the story featured on 60 Minutes, she couldn't do anything.

### Rule #2: If the IRS Can't Find the Money, Neither Can We

Asset searches are tough to do, there are companies like Kroll that do asset searches, also SafirRosetti, a security and investigation service firm started by former New York City police commissioner Howard Safir, they do many asset searches. I had one case where I felt Kroll did a good job and other cases where I felt that I could have done everything we paid Kroll to do through public records search. The most important piece of advice I give my clients when they

first begin to contemplate divorce is to start collecting information regarding finances. Grab receipts from the trash, copy statements that come in the mail, go through files for evidence of holdings in other countries. The best leads come from the parties we represent. Most of the clients who come to us, mostly women, have a good sense of what's going on, because at some point their husbands boast about their financial successes, and later on, when the marriage goes south, the husband starts hiding the money. With the overseas cases, no matter how good you would like to think you are, if a person is determined to make money that never touches America, forget it. You won't find it. For instance, if you have a knitting production company based in a mill in Malaysia, and you don't take the money out of Malaysia, the earnings stay in Malaysia, the payroll is all paid out of Malaysia. If you have an offshore account, you may see statements come to your address, but if you're careful, nobody will ever know. Typically this kind of subterfuge starts with a design to hide income from the IRS and it eventually is being hidden from the wife. If the IRS can't get the money then we definitely can't.

### Rule #3: If You Are Trying to Hide Assets: Don't

Clients ask how to hide assets all the time. This is what we tell them: Forget it. First of all, they can't get away with it; second, New York has adopted the federal rule that the lawyer must certify every paper in a case. In a divorce you have to file a net worth statement. The attorney is swearing that he or she has no reason to believe the facts are other than as presented in the net worth statement. And that never used to be the law. An ethical lawyer will tell the client "I'm sorry but I am not going to certify something that I have reason to believe is untrue". The other thing we tell them is, we have to go back several years in your divorce case, so you aren't going to get away with it, if you start now. One of the questions on the printed form requires you to disclose any monies transferred in the last three years. I point out to them that this is not a benign document that will be filed away somewhere, rather, it will be scrupulously analyzed by somebody who hates you, along with their team of highly skilled lawyers. I tell them a story of a prominent man who was ruined. Edward Brooke was a popular Massachusetts state congressman from 1967 to 1979. He was thought to be a candidate for vice president. The reason you probably haven't heard of him is that in his divorce case he submitted something in his papers that was not entirely true. His wife and mother-in-law sought their revenge and he was ruined. That's why you've may have never heard of him. So, first of all I tell them it's not ethical and, second of all, you can't get away with it.

### International Romance

The authors also visited Lou Newman, of Slade & Newman, to get his insights into the increasingly international dimensions of divorce law. Mr. Newman began with an amusing story about divorce practice in France. I had a case that was brought in Monte Carlo, it was referred to me by Raoul Felder many years ago. Under French law, if your spouse is not home by 5 a.m., you have probable cause to apply to the court for a lawful break-in order, like an arrest warrant. You can go with the prefecture of police to the home of his or her paramour and have them

arrested. So, don't try to get a taxi at 5 a.m. in Paris, because everyone is going home to avoid getting arrested.

### What Attorneys Need to Know When Handling Dual-Nationality Divorces

There are many important things to know about international marriages. In Europe, most European couples have a choice whether to select separate or marital property at the time they register their marriage and that governs. In many countries, e.g. Monaco, this designation is inviolate, it cannot be attacked the way it can be in the United States, or overturned on the basis of undue influence, unless it is fundamentally unconscionable. It is important to note that when you deal with international divorce, allying yourself with legal expertise in the other countries is key. Retaining counsel in the country you are in is necessary.

With international couples, there are many things you don't have to think of in New York. Many European couples aren't sure where they will ultimately live, so at the time of marriage they stipulate the choice of law, and this is binding regardless of which jurisdiction they reside in. This way they avoid wasting time haggling over the choice of law. I suggest pre-nuptial agreements be prepared with half the page in, for example, French, and the other side in English. Protecting assets has become a primary focus of family law. Families with money are very cautious today. Often, parents call me, their son or daughter has gotten engaged and the Parents are more wary than their children of seeing the family fortune dissipated.

### What Is a Lifestyle Worth? And How Do You Do a Thorough Asset Search?

The answer to that depends to an extent on when a client comes in to see me; if they've been served with divorce papers already, or if they want to get out of the marriage quickly, or if they've been abused physically or emotionally. In some cases, you may need to get an order of protection if they are in immediate danger, and that's a tough situation to work with. But if you have someone who says they are "thinking about" getting a divorce then you can do more planning. You have them start making copies of any and all financial documents they can find, credit card statements, checking accounts, and other items that would go toward establishing evidence of assets. Likewise, gathering evidence of their life style is very important. It is very common to see that once a divorce starts, a spouse suddenly earns \$50,000 a year despite the fact that it would take a million dollars a year to support his/her current lifestyle. The court is not always going to impute income. The court can only impute income where a spouse has previously earned a high income but then willfully becomes unemployed prior to a divorce. In that case, a court will use earning potential to calculate income. But to prove other kinds of wealth, you need evidence. I call this the "Fleeter of Foot" Doctrine: The sooner you start gathering evidence the better, and you may need to hire an investigator.

Forensic accountants become important when you need to determine what the actual cost of a lifestyle is or when you want to assign a monetary value on a business or partial interest in a

business. There are some assets that are virtually impenetrable. It is common to see off-shore family trusts with a trust agreement that provides that the trustee is not obligated to follow the instructions of the beneficiary. So there's no way to touch it. The courts are becoming more aware of this but it can pose a serious problem. Again, the more evidence you have, the better off you will be. I like the comfort of a private investigator. An investigator can turn up evidence that you would otherwise miss.

Valuing assets is a critical component of the expertise an experienced matrimonial attorney provides. The reason people come to us is, first of all, to locate assets. They want us to locate assets, value assets, and fight to get their fair share of assets. What people really need from an experienced divorce attorney is financial sophistication. I have a major in accounting and a minor in economics, understand financial statements is important especially in cross-examination of a party who will be caught off guard by questions about balance sheets.

Getting even is not our specialty. In many cases, our client may want the Judge to point the finger and say "you were bad". They need to be vindicated and validated, and it doesn't happen. Even if it goes to trial, which it rarely does, the Judge is not concerned with vengeance.

#### International Issues in Divorce Mediation and Collaborative Law

Rachel Fishman Green is one of New York's most respected divorce mediators. She is a former member of the Board of the Family and Divorce Mediation Council of Greater New York, and she chairs their Domestic Violence Task Force, and their Ethics Committee. She founded ReSolutions, a family mediation law firm based in Park Slope, Brooklyn. In addition, she is a member of the New York Collaborative Law Group.

In contrast to mediation, where both spouses see one mediator/attorney and work together to negotiate the terms of their separation agreement, in Collaborative Law each spouse has his/her own attorney but everyone pledges not to file anything in court, and to put all focus into the negotiation of a settlement, and if negotiations break down the attorneys withdraw.

Ms. Green explained that immigration is the most common international issue she faces in her practice. For example, while a divorce is pending one spouse has not yet completed their paperwork with the INS to get permanent status. The non-citizen spouse's immigration attorney will advise: Don't file the divorce summons until we get the green card process finished. The divorce often has to wait until the immigration is resolved.

The most complex international issues typically involve child custody and residency. One couple I saw had been separated for several years and were merrily co-parenting their daughter even having dinner together every Sunday night until the mother met a divorced man online and decided to move to Australia. The father felt that the mother was trying to shut him out from their daughter's life and furthermore felt that she was living in an utter fantasy-land. For one thing, her new lover had three daughters from his first marriage, then there was the exorbitant expense of round-trip travel that would stretch their modest budgets, and because Australia is

halfway around the world, they had the added problem that their summer vacations wouldn't even coincide. He understood that from a legal perspective he had a very strong case and could probably have prevented his wife from moving to Australia; but he had decided that he did not want to engage lawyers and have a battle (and he lacked the funds to do so) and also very much wanted to continue the caring relationship which they had preserved after the marriage ended.

The mother fought hard, and in the end, the father reluctantly agreed to let the mother take the child to Australia for a trial of one year, at which point they would revisit whether she should come back here. They signed their settlement agreement and filed their divorce papers. A few months later, I got an e-mail from the mother. After she had gotten her way in the agreement, she backed out and she moved without her child.

Another case I had was a couple who were both Arabic. In light of the Iraq war, war on terrorism, and their perception that the US was losing favor in the eyes of the world, they decided to leave the US, but were conflicted about where to live.

He felt that moving back to his Arabic homeland was the only thing to do, based on their wealth and size of both of their extended families. She had a great job here, and was concerned that she would lose all of her legal rights, and rights to her children, if she moved back. They finally agreed that he would move back to their country and she would move to Switzerland with the children. We spoke at length about the risk that if he decided to keep the children while they were visiting him, there would most likely be nothing she could do about it, because of that country's laws. Their settlement agreement addressed this explicitly; and contained provisions to try to protect her; gave her remedies, procedures; and stipulated, of course, that no matter where in the world they lived, the agreement was to be interpreted by New York law.

A couple who recently sought mediation were both from other countries and had five children. Their split brought about exorbitant increases in their family expenses, and the extremely high cost of living here in New York led the mother to propose an idea in mediation that she might, in the future, move back to Europe with the children. Because they had a rent-free apartment there, in her parents' building, and would be near cousins and family, and because of the less acquisitive values endemic to her native country, she felt she would be able to live comfortably on the monthly amount of support her husband offered. She would not have had a hope of getting permission to take children out of the country without father's permission in a court settlement, and there would have been no discussion of it, but in mediation we were able to consider the benefits and detriments of this proposal.

#### Issues in the Non-Profit Sector: Language Barriers, Locating Spouses, and Indigent Clients

The authors also spoke with Amy Hozer, a Staff Attorney at The Family Center in Manhattan which serves individuals and families coping with terminal illness. Her practice includes elder law, trusts and estates, public benefits and family law.

Ms. Hozer pointed out that the additional time and expense incurred in an international divorce, unwelcome by anyone, is exceptionally burdensome for indigent clients and non-profit organizations. For low-income clients, locating an estranged spouse is often very difficult given the tendency for such individuals to change their phone numbers, their residences, and even their states of domicile on a regular basis. This task is inevitably made more complicated when the search for these missing spouses is conducted in a foreign country.

Time differences, language barriers and slow international mail service are frequent impediments to effective and expedient divorce litigation. If contact is actually made, negotiating the transaction by phone or other means is often very difficult. Language barriers impede meaningful conversation and it may take months for documents such as a separation agreement to go back and forth between the parties' countries thereby making it extremely difficult for practitioners to meet the timing requirements set forth in the CPLR. These obstacles not only slow down the divorce process, but they can also lead to great expense.

Frequently, a Defendant must be personally served if contacting him proves impossible. The cost of international personal service can be over ten times that of domestic personal service -- an extreme hardship for non-profit organizations. Although alternate service is sometimes permitted, such a remedy usually necessitates judicial permission and is granted only after attempts at personal service have been exhausted, at which point excessive resources have already been expended. Accordingly, international divorces can prove to be very costly and an increase in such divorces will likely be an unwanted financial burden for non profit organizations.

The authors are Norah Hart and Miriam Treuhaft, divorce attorneys practicing in New York City. The attorneys at Treuhaft & Zakarin, LLP are dedicated to helping individuals and families find affordable and lasting solutions to family problems. We have offices in Brooklyn and Manhattan and are skilled and experienced in Divorce Mediation, Uncontested Divorces, Separation Agreements, International Divorce, Child Support and Child Custody, Asset Searches and Asset Division, Co-Parenting Agreements, Adoption, Surrogate Parenting Agreements, and New York Domestic Partnership.