

## **HAGUE CONVENTION MEDIATION PROGRAM**

### **What Is Mediation?**

Mediation is a voluntary process in which individuals in a dispute can talk with each other—assisted by an impartial expert who will guide the discussion but who will not impose any decisions—in an effort to end the conflict. The process is frequently used in disputes over the custody of children in order to keep control over decisions about the future of children in the hands of those who know them best—their parents—and to permit planning for the future to be done with a minimum of harm to the children. In many cases, it also permits a resumption of healthy communications between parents. If a voluntary (and enforceable) agreement cannot be reached, both parties can still seek a court decision that will resolve the dispute.

### **What Is the Hague Convention Mediation Program and How Does It Differ from Traditional Family Mediation?**

The Hague Convention Mediation Program (“Mediation Program”) is focused on resolving Hague Abduction Convention access cases, and in particular, issues related to a future time-sharing parenting schedule. Although the Mediation Program cannot address child support or immigration issues, it can help to resolve questions of travel and other expenses necessary to facilitate an international time-sharing schedule of parents and their children. Mediation services are also available upon request in Hague Abduction Convention return cases, where the focus is on issues related to the return of the child. The Mediation Program could also potentially be used to mediate non-Hague international parental child abduction cases.

All Mediation Program cases are referred to law school based mediators with specialized training and expertise. In certain cases, select law students trained in mediation will participate as observers or in playing a more active role under the direct supervision of a mediator. The scope of student participation will be determined on a case-by-case basis; no student will participate without the consent of both parents and their attorneys.

If the parents agree, the mediation may include a parenting coordinator trained in psychology and child development. S/he will assist in the

discussion, provide information about the children's needs and long-distance parenting, and help to insure successful parent-child reunification and the carrying out of any agreement that is reached.

It is usually not possible to have all of the parties in the mediation together in the same location; accordingly, the Mediation Program relies heavily on technology (e.g., videoconference, telephone, email) in conducting mediations.

It is strongly recommended that both parents have attorneys. For financially-eligible families, assistance finding an attorney may be available.

Parents seeking the return of, or access to, children under the Hague Abduction Convention need not choose between mediation and filing a Hague petition in court. They can do both, in any sequence. However, Hague Convention return cases are time-sensitive, so "left behind" parents in return cases must consult with an attorney before making a decision about whether to participate in the Mediation Program. If parents pursue mediation but do not reach a voluntary (and enforceable) agreement, both parents can still seek a court decision to resolve the dispute.

### **What Happens Before, During, and After Mediation?**

Once the U.S. Department of State is informed that both parents are interested in mediating a particular case, the case will be referred to a law school for consideration. The mediator will reach out to both parents, or their attorneys (if applicable), answer any questions they may have, and determine if the law school is able to offer mediation services. If the law school is able to accept the case for mediation and both parents wish to proceed with mediation, the mediation will commence as soon as possible.

Throughout the mediation process, parents and their attorneys will have the opportunity to speak with each other and the mediator in an effort to reach an agreement. If a parenting coordinator is participating, s/he may provide important child-related information for the parents to consider. If, at any time during the mediation, either parent or the mediator determine that mediation should not continue, the process will end.

At the conclusion of the mediation, if an agreement has been reached, the parents (and their attorneys, if applicable) may work together to draft, sign, and record the agreement (that is, take steps to have it entered as a court order). It may be necessary to take additional steps to ensure that the agreement is enforceable in the courts of all the countries that are or may become involved in the case, which may require parents to work with attorneys in multiple countries. If the parents wish, a parenting coordinator may be available to assist them in complying with their agreement.

If an agreement is not reached, the parents can seek a court determination of any unresolved issues.

### **What Is Mediation Confidentiality?**

In general, nothing discussed during the mediation process can be disclosed outside of the process by the mediators or by the parents. Confidentiality protection allows parents in a mediation to discuss parenting issues, or to propose ideas for an agreement, comfortably without concern that what they say will be used “against” them in a future court proceeding. However, the same confidentiality protection may not exist in some countries outside of the United States. Confidentiality will be discussed in more detail prior to, and during, the mediation process.

### **Is There a Cost for Using the Mediation Program?**

There is no charge for mediation or parenting coordination services offered through the Mediation Program. However, there may be fees associated with hiring an attorney in the event that a parent is not able to secure *pro bono* (free) legal services.

### **Questions About the Mediation Program?**

The U.S. Department of State’s Office of Children’s Issues is the primary contact for the Mediation Program. Questions about the Mediation Program can be directed to the Office of Children’s Issues by calling 1-888-407-4747 or 202-501-4444 (if calling from outside the United States).

For cases in Maryland, questions can also be directed to Professor Robert Rubinson at the University of Baltimore School of Law. You may contact him by phone at 410-837-4094 or by email at [rrubinson@ubalt.edu](mailto:rrubinson@ubalt.edu).

For cases in all other states, questions can also be directed to Professor Douglas Frenkel at the University of Pennsylvania Law School. Contact him by phone at 215-898-8427 or by e-mail at [DFrenkel@law.upenn.edu](mailto:DFrenkel@law.upenn.edu).

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