

LAWYERING

Quick Court Action Can Bring the Return of a Kidnapped Child. By Peter M. Walzer

Practice Tips: Getting Their Attention

## To Catch a Child Thief

*Quick court action can bring the return of a kidnapped child*

BY PETER M. WALZER

**I**T WAS SIX in the morning. My client and I were parked a block away from the dingy North Hollywood apartment her ex-husband had just rented. He had been on the run since he had abducted their child a month earlier. With guns drawn, police banged at the door and served him with an order to turn over the child. A few minutes later, they carried out a crying boy and put him into the patrol car. Mother and son were reunited at the police station.

Despite the trauma of the rescue, this is one of the success stories. Every year more than 100,000 children are kidnapped by a parent in this country. Typically the kidnapping parent moves to another state or country. Once there was little the courts could do to help return the child even when the child was located. Now courts have the tools to quickly enforce custody orders from other states and countries.

Every state has some version of the Uniform Child Custody Jurisdiction Act, which applies in interstate and international child custody cases. The law requires the state to recognize custody orders from other jurisdictions. It allows parents to register a custody order from another state or country so that the local court can order a kidnapping parent to release the child to the custodial parent. California's version is at Civil Code section 5150 et seq. In addition, 15 countries have signed the Hague Convention on Civil Aspects of International Child Abduction, which enables parents to recover stolen children from these countries.

If you receive a call from a parent saying he or she believes the stolen child is in your jurisdiction, you must act quickly. Child snatchers are elusive; they often move from state to state to avoid capture. The objective is to convince a California court to issue a turnover order without asserting jurisdiction over

custody, which would require a full-blown custody hearing. An ex parte turnover order can be obtained if you do the following:

- Register with the local court a certified copy of the court order that grants custody to your client. If the order is in a foreign language, obtain a certified translation. Attach to the custody order a caption page that states, "Custody Order of [name of country or state]; Civil Code Section 5164." Attach to the foreign court order a Declaration under the Uniform Child Custody Jurisdiction Act (Judicial Council form MC-150). Once the decree is filed in a California court, it becomes enforceable here.

- Include proof that the abducting parent had notice of the custody proceeding. This can be done by attaching proof of service or a hearing transcript. If there is no court order establishing custody, ask an attorney in the court that has jurisdiction over custody to get an order and deliver it to you immediately. Both the custody order and the California court order can be served on the abducting parent at the same time.

- File an ex parte application for immediate turnover of the child and set an order to show cause hearing. If you can show that giving notice would cause the child's removal from the jurisdiction, the court will make an ex parte order. If you do this ex parte, submit a temporary restraining order (Judicial Council form 1285.05) containing the following wording: "The respondent is ordered on receipt of this order to turn [child's name] over to the petitioner or to any Los Angeles County sheriff. The petitioner is awarded sole custody and possession of [child's name] pending the hearing on the order to

show cause." Be sure to check the box labeled "other" on the order to show cause form, and type in: "enforcement of [name of country or state] order." Indicate that you are making a special appearance. Both of these precautions will prevent the court from asserting custody jurisdiction.

- Ask for attorneys fees, witness costs, travel and other expenses from the court with custody jurisdiction. Attach a declaration showing all fees, costs and projected expenses, as authorized by Civil Code sections 5157, 5160, 5164 and 5168.

Retrieving the child can be dangerous and requires the following precautions. Obtain at least three certified copies of the turnover order. One should be delivered to the local law enforcement agency; one should be served on the abducting parent; the third should go to your client. Schedule a time for picking up the child when you can be sure the child is at home and law enforcement officers can be present. Make certain someone is guarding all the building's exits.

*The objective is to get a California court to issue a summary order to turn over the child without asserting jurisdiction over custody.*



ANOTHER METHOD of getting a turnover order is to obtain a warrant in lieu of a writ of habeas corpus. Submit a proposed order with the application for the writ and the writ itself and schedule a hearing; notice is not required if you can show good cause, such as a belief that the child may be removed from the jurisdiction.

The writ gives the local district attorney authority to pick up the child and deliver him or her to the court.

The order should include the following provisions:

- The district attorney shall take all actions necessary to locate and return

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the child and assist in the enforcement of the custody order in any appropriate civil or criminal proceeding. C C §4604.

- The district attorney is authorized to search the premises where the child is reasonably believed to be present.

- The district attorney may place the child in protective services or foster care until the time of the hearing.

- State the punishment for violation of the warrant.

- The order is enforceable by any law enforcement officer in California.

This procedure has several advantages over an ex parte order. The district attorney's office routinely handles child abductions and is more experienced in such matters than other law enforcement agencies. The hearing is prompt, and it is less likely a judge will conduct a full-blown custody hearing using this procedure because its purpose is limited to releasing the child to the custodial parent.

A disadvantage is that the child may be in the custody of law enforcement or child protective services for several days until the hearing. Many parents prefer using an ex parte hearing to avoid this.

At the hearing you should establish the wrongful abduction and your client's right to custody. The issues should be limited to whether there was a valid custody order in the other state or country and the abducting parent had notice and an opportunity to be heard at that custody hearing.

Regardless of which procedure you use, be prepared for the abducting parent's attorney to claim the California court has jurisdiction over custody and to call for a full custody hearing. If the attorney can show your client abused the child or has placed the child in imminent danger, the court could take jurisdiction over custody and create costly delays in getting the child back.