

NE EXEAT AGREEMENTS
IN
INTERNATIONAL CUSTODY MATTERS

by

William M. Hilton, CFLS
Box 269, Santa Clara, CA 95052-0269
TEL: (408) 246-8511 FAX: (408) 246-0114

NATURE OF THE PROBLEM

During the process of court proceedings involving children it may be that there is concern that the children will be removed from the United States. While it is a truism that, if a parent wants to abduct a child he or she will generally be successful, reasonable steps may be taken to reduce the probability of abduction.

One of these steps is to obtain a Ne Exeat FN1 order and an order restricting the issuance of travel documents for the children.

In the case where the parents are solely United States Citizens and the children do not have dual nationality, a restriction on the issuance of travel documents by the United States Department of State may be readily obtained.

The restriction on the issuance of travel documents for the children becomes somewhat more difficult when the children are dual nationals, e.g., have citizenship or nationality in more than one country. This is because the general rule is that a national of a country may obtain travel documents for the children from the embassy or consulate of that particular country as no restriction placed on such issuance of such documents by a United States Court will have any legal effect.

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1. NE EXEAT: A writ which forbids the person to whom it is addressed to leave the country, the state, or the jurisdiction of the court.

Nonetheless the following steps should be taken to minimize the possibility of removal of the children:

- o Enter a Ne Exeat Order with the local court that prohibits the removal of the children from the United States and restricts the issuance of travel documents for the children.
- o Obtain a block on the issuance of travel documents for the children from the Passport Services section of the United States Department of State.
- o Make a formal request to the various consular agencies of the country in which the children have dual citizenship to either block the issuance of travel documents or to notify the parents when such documents are requested. Since the request is made by both parents, it is felt that it may have more weight than an order issued by a court. It is to be understood, however, that no international law requires compliance with such requests, but some countries will comply voluntarily.

NE EXEAT AGREEMENT

Set forth as Exhibit A is the text of a proposed stipulation (agreement) concerning the non-removal of children from the United States. It is not meant to be comprehensive and the facts of the particular situation will dictate its actual language.

Certified copies of this stipulation and order should be obtained, one for every agency that it will be sent to as well as one certified copy for each party.

A certified copy should be sent to:

Office of Citizenship Appeals and Legal Assistance
Passport Services
Department of State
1425 K Street, N.W., Room 300
Washington, DC 20522-1705

A typical letter of transmittal to the Passport Services is attached as Exhibit B

In addition to the letter and stipulation and order sent to the U.S. Government, copies of the stipulation and order should also be sent at least to the following:

- o Embassy of the country of dual nationality in the United States, Mexico and Canada.
- o Consulates of the country of dual nationality in the United States, Mexico and Canada.

A typical letter of transmittal to the foreign government agency is attached as Exhibit C. Note that a copy of this letter is to be sent to the U.S. Department of State.

=====EXHIBIT A=====

(TITLE:) STIPULATION RE: NE EXEAT; ORDER, JUDGMENT AND DECREE

(Father) and (Mother) are the parents of: (Enter the names and dates of birth of all children involved).

(Father) resides at (Street, City, State, Telephone Number).

(Mother) resides at (Street, City, State, Telephone Number).

(Children) reside at (Street, City, State).

(Father) and (Mother) agree that neither parent will cause the removal of their children from (describe the geographic area, e.g., the area bounded by a circle of 50 miles radius centered upon Silver City, New Mexico) without the written consent of both parents or order of the court.

(Father) and (Mother) agree that no United States Passport or other travel document will be issued to the children by any agency of the United States Government without the written consent of both parents or order of the court.

(Father) and (Mother) agree that any passport or travel document previously issued to or on behalf of the children by the United States of America or any foreign government shall at once be placed in the care of (name party or agency who will have custody

of the travel documents, e.g., attorney for a party, court, etc.) and shall not be released from this care without the written consent of both parents or order of the court.

(If applicable:) (Father) and (Mother) agree that no travel documents shall be issued to or on behalf of their children by (name of dual national nation, e.g., Slovenia, India, etc.) without the written consent of the both parents or order of the court. (Father) and (Mother) further agree that a copy of this stipulation and order shall be sent to the various agencies of the government of (name of dual national nation, e.g., Slovenia, India, etc.) within and without the United States with a letter requesting that the aforesaid nation honor the terms of this stipulation and order.

While both parents are aware that this stipulation and order may not be binding on the government of (name of foreign government), it is their express request that nonetheless it be honored by the government of (name of foreign government).

We both understand, agree to and will abide by all the terms of this stipulation.

(Father)

(Mother)

The Court has read the above stipulation, approves of it in its entirety and ORDERS, ADJUDGES AND DECREES that the parties are to carry out each and every one of its terms.

The Court extends its greetings to the government (name of foreign government) and respectfully requests that this agreement and order be given serious consideration by the government of (name of foreign government).

Date:

Judge of the (name of court)
State of (State)
United States of America

=====EXHIBIT B=====

[Date]

Office of Citizenship Appeals and Legal Assistance
Passport Services
Department of State
1425 K Street, N.W., Room 300
Washington, DC 20522-1705

re: U.S. Passport Restrictions

This office represents [Name of client], who is the [Petitioner or Respondent] in the matter of [Provide the relevant court data, e.g., Superior Court of California, County of Santa Clara, No. 368098, etc.].

Enclosed is a certified copy of the [Name of Order, e.g. "STIPULATION RE: NE EXEAT; ORDER, JUDGMENT AND DECREE", etc.] of the [Name of Court, e.g., Superior Court of California, County of Santa Clara], issued on [Date of issuance].

The aforesaid document orders that [Describe the language in the

order that, e.g., prohibits the issuance of a passport except under specified conditions.]

Accordingly it is respectfully requested that no passport, either an original or a duplicate, be issued for [Full name and date of birth of the child(ren), including any known alias for the child(ren)] without prior order of the court or prior written consent of both parties.

Should an application be made for a passport without the required order or written consent, it is respectfully requested that your office promptly notify [Name, address, telephone and FAX number of person to notify] of the application, stating the name of the person applying and the date of application.

Your cooperation is appreciated.

Respectfully

[Name of sender]

=====EXHIBIT C=====

[Date]

Consulate [or Embassy] of [Name of Foreign Government]. FN2
[Street]
[City, State, Zip or Postal Code]

re: Travel Document Restrictions.

Enclosed is a certified copy of the STIPULATION RE: NE EXEAT;
ORDER, JUDGMENT AND DECREE.

Both (Father) and (Mother) have agreed to the above order which specifically states that their children are not to be removed from the United States and that neither parent shall obtain any form of travel document for or on behalf of their children without the written consent of both parents or order of the court.

As you will also note both (Father) and (Mother) have specifically agreed that no travel documents are to be issued for or on behalf of their children by the government of (name of foreign government). While it is understood that this may not be binding on the government of (name of foreign government), both parties have requested that, nonetheless, the government of (name of foreign government) honor their agreement and the order of the (enter name of the court entering the stipulation and order).

It is further respectfully requested that, should the government of (name of foreign government) receive a request for travel documents for or on behalf of their children, that (name of person) be notified at once via telephone (enter telephone number) or by FAX (enter FAX number).

2. Note: Consult the World Almanac for the proper name of the Foreign Government.

Your anticipated cooperation in this matter is appreciated.

Very Respectfully

[Name of sender]

cc: United States Office of Citizenship Appeals and Legal Assistance