AMERICAN BAR ASSOCIATION
SECTION OF FAMILY LAW
REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

BE IT RESOLVED, That the American Bar Association urge the Congress of the United States to confirm that Federal District Courts have the power to resolve the issue of conflicting state claims concerning jurisdiction over child custody disputes, based on the Federal Parental Kidnapping Prevention Act, and Title III of the Constitution.

REPORT

State legislatures and Congress have enacted civil and criminal statutes to curtail interstate parental kidnapping and to resolve disputes over jurisdiction that typically arise in interstate child custody and visitation cases. In 1980, Congress enacted the Parental Kidnapping Prevention Act (PKPA), which was expressly intended to "avoid jurisdictional competition and conflict between state courts." The PKPA requires States to afford full faith and credit to child custody determinations entered by sister state courts if the court that made the determination exercised jurisdiction consistently with the provisions of the federal Act. Specifically, the PKPA directs the appropriate authorities of every State to enforce and not modify child custody determinations made consistently with its provisions. It further imposes on state courts a federal duty to refrain from conducting simultaneous child custody proceedings when an action is already pending in a court which is exercising jurisdiction in conformity with the PKPA. It also imposes an obligation upon state courts to defer to the continuing jurisdiction of sister state courts under specified circumstances.
Since its enactment in 1980, numerous state courts have ignored, or been ignorant of, the requirements of the PKPA. The result has been continuing "jurisdictional impasses" — competing claims by courts in sister states of jurisdiction over child custody cases involving the same child(ren).

In actions filed in federal courts by plaintiffs seeking relief from alleged violations of the PKPA by sister state courts, four Federal Circuits — Circuits 3, 4, 5 and 11 — have held that Federal Courts have jurisdiction to decide which of two state courts have acted in conformity of the PKPA. But the 9th Circuit ruled that the PKPA did not create a cause of action in Federal Court for a child custody contestant seeking relief from an alleged violation of the PKPA. In January, 1988, the United States Supreme Court affirmed the 9th Circuit decision in the case of Thompson v. Thompson. The Court ruled that the PKPA does not provide an implied cause of action in federal court to determine which of two conflicting state custody decisions is valid. However, the Court acknowledged that "Congress may choose to revisit the issue."

It is the collective opinion of family law practitioners that the original legislation, the PKPA, was intended to resolve what can now be an irrevocable impasse between state courts, that the Ninth Circuit was wrong, and that the U.S. Supreme Court decision in Thompson was unfortunate and should be remedied by Congress at the earliest possible date. Absent enactment of remedial legislation, there is a risk that the matter could be left in the scandalous state it was before the Act, with two states vehemently asserting jurisdiction and two whipsawed parents and children caught in the middle. Passing the recommended clarifying legislation will further public policy against parental kidnapping and prevent the interminable delay in resolving custody disputes that the present state of the law would otherwise promote. We urge the adoption of this resolution.

Harvey L. Golden
Chairman

August, 1988
General Information Form
To Be Appended to Reports with Recommendations

No. (Leave Blank)

Submitting Entity Section of Family Law

Submitted By Harvey L. Golden

1. Summary of Recommendation(s).

That the ABA urge Congress to confirm that Federal District Courts have jurisdiction to resolve the issue of conflicting state claims to jurisdiction over child-custody disputes.

2. Approval by Submitting Entity.

Approved by the Section of Family Law Council at its January, 1987 meeting.

3. Background. (Previous submission to the House or relevant Association position.)


4. Need for Action at This Meeting.

The United States Supreme Court ruled in January, 1988 that the Parental Kidnapping Prevention Act does not provide an implied cause of action to determine which of two child custody determinations is valid pursuant to that Act. There is an urgent need for Congress to expressly provide that child custody contestants have a right to go to Federal Court for the limited purpose of determining which of two courts has jurisdiction in conformity with the PKPA. The role of the Federal Court would be strictly limited to jurisdictional issues in accordance with the PKPA, and would not involve decisions on the merits of custody.


N/A

6. Financial Information. (Estimate of funds required, if any.)

N/A

7. Conflict of Interest. (If applicable)

N/A
8. **Referrals.**


9. **Contact Person.** (Prior to meeting)

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10. **Contact Person.** (Who will present the report to the House)

Leonard L. Loeb and Samuel V. Schoonmaker, III