

Motions To Relocate with Children

Our society has become increasingly mobile over the past several decades. In years past, it was not unusual for children to grow up, find jobs and marry in the same cities and states where they were born. However, now, with improved transit systems and international corporations, and even the internet with its dating services, it is not unusual for a person to move out of state even across the country based on employment changes, romance or simply to try a new environment.

Such relocations can wreak havoc on family relationships where children are torn between two parents and two states, often having to deal with long distance relationships with their own parent.

As a result of our changing society, state legislatures have attempted to enact statutes setting forth requirements that must be followed when one parent seeks to relocate with the minor children. State laws vary broadly regarding when a parent must provide notification or seek permission to relocate. Generally, minor geographic changes are not considered significant. However, just what is considered minor may be a subject of dispute. In some states a relocation out of the county is significant. In other s it is a relocation of a specified number of miles (50 to 150) away from the other parent. In yet other states, it requires a relocation out of the State.

Since the laws vary broadly, it is extremely important for a parent seeking to relocate with children to know, understand and follow the detailed rules in their particular state. A failure to follow the rules can often result in a change in custody. State laws often spell out requirements which may include:

NOTIFICATION AND OBJECTION.

A parent seeking to relocate must generally notify the other parent well in advance of a move. The timelines for that notification are specified in many state laws. Those same laws also provide specific instructions regarding the information that must be included in the notification.

In states that require notification, the other parent may also usually file an objection to the relocation or file a Motion seeking to prevent the relocation

CONSENT AND ORDER

Yet other states require not only notification, but consent of the other parent to allow the move. In the event the both parents do not consent, often the parent seeking to relocate must bring a motion seeking permission of the court.

PRESUMPTIONS AND BURDENS

Regardless of the procedures required by your states statutes, should the matter proceed to Court, decisions are made and swayed based on legal presumptions and burdens of proof. As a result the particular legal presumptions and burdens of proof in each state can dictate how a case should be presented and provide an early insight into the potential success or failure of a motion to relocate.

Under many state laws the presumption whether to allow or disallow a relocation may depend and change based on the custodial situation.

For example, in many states, where the parent with primary physical custody seeks to relocate, there is often a rebuttable presumption that the intended relocation of the child will be permitted. If there is an objection, the presumption may be rebutted by demonstrating that the detrimental effect of the relocation outweighs the benefit of the change to the child.

That presumption may change, however, if the parents share physical custody. In such cases, the presumption that exists is often to deny the relocation. Again, that presumption may be rebutted by presenting evidence that the relocation is in the child's best interest and that it will not interfere substantially with the nonmoving parent's relationship to their child.

Some factors courts consider when making determinations to allow or disallow a move include:

1. The relative strength, nature, quality, extent of involvement, and stability of the child's relationship with each parent, siblings, and other significant persons in the child's life;
2. Prior agreements in divorce decrees or orders of the parties. Such agreements are often given great deference;
3. Whether the relocation would substantially interfere with the other parent's relationship with the child;
4. Whether the benefit of the relocation outweighs any harm caused by the relocation;
5. The reasons of each person for seeking or opposing the relocation and whether the request is made in good faith or is intended to interfere with the other parent's rights;
6. The age, developmental stage, and needs of the child;
7. The quality of life, resources, and opportunities available to the child and to the relocating party in the current and proposed geographic locations;
8. The availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent;
9. The financial impact of the relocation as it relates to parenting time;

HOW TO PREPARE TO SEEK RELOCATION

Any motion to relocate should be supported by documentation demonstrating that the relocating parent has thought the matter through carefully and that the relocation is in the child's best interest. To prepare their motion, a parent must be specific and thorough in their preparation. A parent should:

- **NEIGHBORHOOD & SCHOOL.** Know where they will be living and describe the benefits of the neighborhood and the schools the child will attend (photos are helpful);
- **DAYCARE.** Research any daycare facilities that they intend to use and include as part of your motion a brochure or contract from the provider;
- **EMPLOYMENT.** If a parent is moving to improve themselves financially, they should include information regarding their new job or planned education including any employment contracts or offers, benefit information or brochures.
- **HEALTH.** If there are any health considerations regarding the move, those should be included as part of the motion along with any medical documentation. For example, if the move is to a warmer climate that benefits asthma (parent or child), the parent may wish to present medical evidence as part of their case.

If the Court allows the relocation, it often requires the party moving to pay more of the transportation costs related to visitation.

There is no "standard" visitation schedule when the visitation must occur at a distance. Often, however, the courts grant the non-custodial parent extended access times for fall breaks, spring breaks, Christmas breaks and summer months.

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