

## Minnesota Divorce Law and the Ability to Move Out of State

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### The Rights of Divorced Parents When One Parent Wants to Move Out of State

We live in a very mobile society. People often move from one state to another because of work, to find a better job, for a new relationship, or to relocate closer to extended family. This article is about what happens to parenting-time plans and custody agreements when one parent wants to move out of state. If you anticipate that you or your spouse may want to move out of state after your divorce is finalized, an attorney can help you prepare a strategy so that your divorce decree anticipates this potential reality. Understanding the law is important to protect your interests in moving or to protect your interests in keeping your children in close proximity to where you live. Let's look at a couple of common examples.

Example #1 - Jane and John are divorced. Jane has sole physical custody of their two children and John has parenting time every Wednesday overnight and every other weekend. Jane received a promotion at work, but the promotion requires her to move from Minnesota to California. John does not want Jane to move because that will reduce his parenting time with the children. Minnesota law requires that when parents cannot agree to allow the custodial parent (Jane) to move, the Court must look at the following best interest factors to make the decision:

- (1) The child's relationship with the parents and others;
- (2) The child's development and needs;
- (3) The feasibility of preserving the child's relationship with the non-relocating parent;
- (4) The child's preference;
- (5) Whether there is a pattern by the relocating parent to promote or thwart the child's relationship with the other parent;
- (6) Whether relocation will enhance the child's and the relocating parent's quality of life;
- (7) Each parent's reasons for opposing or supporting relocation; and
- (8) The safety and welfare of the child or relocating parent relating to domestic abuse.

The parent requesting the move has the burden of proving that the move is in the child's best interest, except where there is domestic abuse. When determining whether a custodial parent can relocate a child out of state, the analysis does not simply revolve around how the move will affect visitation; the key question is whether the move is in the child's best interest according to the standards set forth above. The court will not approve a move if its purpose is to interfere with parenting time but the court will also not deny the move simply because it may require an adjustment in the existing pattern of parenting time. Additionally, Minnesota law presumes that a non-custodial parent (John) is entitled to spend 25% of the time with his children. This presumption may be overcome, but it certainly adds another layer of legal analysis if one party wants to move out of state.

The outcome for this particular example really depends on many other factors. If Jane and John can agree to give him more parenting time in the summer and extended time over school breaks and they have the financial ability to afford the costs of transportation, the court may very well grant Jane's request to relocate and take the children with her.

Example #2 – Jane and John are still divorced and have two kids, but in this case John has parenting time with the children every other week (joint physical custody). In this situation, a different law applies if Jane requests to move out of state with the children. That is because Jane is not simply asking to move out of state; she is asking for a modification in custody. It would be impossible for John to have parenting time every other week if the children lived in California. According to Minnesota law, modifications of custody are more difficult to obtain than a request to move out of state.

The first hurdle in filing a motion to modify custody is that it cannot be filed within one year after the initial order was issued or two years after any previous modification. If the child is endangered then the time constraints are lifted. Second, to obtain a modification of custody, the requesting parent must make an initial showing that the move out of state would be in the child's best interest. If that initial showing is made, the party requesting the modification must establish one of the following: (1) that both parties agree to the modification; (2) that the child has been integrated into one parent's family with the consent of the other party; or (3) the child's present environment endangers the child's physical or emotional health or impairs the child's development.

Joint physical custody arrangements make a request to move out of state very difficult to obtain. In the second example, Jane may very well have to give up her promotion because of her past commitment to jointly share physical custody of the children with the children's father. The rationale is that stability of custody is presumptively in the child's best interest.

### Locale Restrictions and Divorce in Minnesota

Minnesota law allows divorcing couples to agree to limit the geographic location in which they will raise their children. Whether the parties agree to joint physical or sole physical custody, one measure of protection to ensure that the children cannot be removed from the state is the inclusion of a locale restriction. For example, Jane and John could have agreed that neither party will move out of the school district, or out of the 25 mile radius from which they live, or out of state. If such a locale restriction exists, and one party decides he or she wants to move out of state with the children, the law governing motions to modify custody apply rather than the laws regarding a motion to move out of state.

As you can see, your rights to move out of state can be significantly affected by the divorce laws in Minnesota. You should consult and retain counsel if you want to protect your rights to move or if you want to ensure your children are raised where you live.

Contact Cundy and Martin today with your custody questions.

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