



The Move-Away Case

Can One Parent Relocate with the Kids?

What happens if I or my ex-spouse get transferred or offered a job in another city?

If you are the custodial parent and you want to take the children with you, in most states you must obtain a court order prior to moving. Although most, if not all, courts follow a “best interests of the child” standard, courts nationwide differ on how they approach the standard and factors that prove best interests.

Look to your state’s statutes or case law to determine the factors the court will consider in granting permission to relocate. As a general proposition, courts will look at the continuity and stability of the custody arrangements and the harm that may result from disruption of established patterns of care. These factors weigh heavily in favor of maintaining ongoing custody arrangements. If your case is litigated, the court may consider the following additional factors:

- reasons for the proposed move, which include whether the move is intended to frustrate the existing parenting schedules;
- effect of the proposed move on parental visitation and access to the child;
- whether the new visitation schedule will be adequate to foster a strong relationship between the left-behind parent and the child;
- treatment of relocation in the separation agreement;
- impact of the move on the current relationship between the left-behind parent and the child;
- extent to which visitation has been exercised or allowed;
- distance and travel arrangements required by the move;
- living conditions and educational, religious, recreational, medical, and other facilities available in the new location;

- demographics of the proposed location;
- compliance with prior court orders;
- availability of transportation and ability of the parties to meet transportation costs;
- possibility of transferring custody to the noncustodial parent;
- wishes of the child, if the child is of the age and maturity to have a say;
- lifestyle of the child in each location, including emotional, educational, and economic factors;
- availability of extended family or support groups in each location;
- incidence of domestic violence or false domestic violence allegations;
- special needs of the child and resources to meet those needs in each location;
- stability of the home environment and desire to continue that arrangement;
- quality and continuity of the child’s education;
- distance/proximity between the two homes; and
- desire of the noncustodial parent to assume custodial responsibilities.

If you are not the primary custodial parent or if the children are not moving with you, your time-sharing schedule may need to be altered. The most cost-effective method for modifying the existing schedule is through mediation. If airline travel is required, check with the airlines servicing the two locations regarding regulations governing travel of unaccompanied minors. Generally speaking, since regular weekly contact and access maybe impossible, most parents

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negotiate a parenting plan that affords the moving parent more vacation time with the children and/or monthly visits with the child in the home state. Whether you are the moving parent or the parent who remains behind, the issues presented by a relocation case are difficult and emotionally charged.

Must I notify my ex-spouse before I move?

Every state requires some notice before relocation takes place. States vary on the time requirements and when the notice provision is triggered. Check your state laws to determine when you must provide notice of an intended move.

If you fail to comply with notice requirements, the judge will not look favorably on your decision and could require the return of the child. Failing to provide notice could be viewed as an attempt to exclude the nonrelocating parent from the child's life.

Prior to the divorce, if you suspect that your spouse may seek to relocate with the children in the future, negotiate a clause in the settlement agreement that requires notice with sufficient time to seek court intervention. If you are the custodial parent, negotiate a clause that allows you to move if the noncustodial parent moves from the current location. If your agreement is silent as to notice requirements, the judge may not look favorably on your decision to move without informing the other side. In most jurisdictions, major decisions involving the children should be shared by the parties.

Who makes the relocation decision?

If you and your spouse cannot agree on whether the children will move or on changes to your visitation arrangement, the case will be heard by a judge. After hearing all the facts and

applying state law, the judge will decide. The burden is on the relocating parent to prove that the proposed move is in the best interest of the child.

How can I keep in touch with my kids if my spouse moves with them?

Modern communication technologies make keeping in touch with your child after the relocation easier than ever. Because children generally are introduced to computers as preschoolers, your child likely will feel comfortable with the medium. Request that the custodial parent set up a computer with videoconferencing and a scanner. That way you can communicate visually with the child in real time. The child can scan or fax homework and other school projects to you. A multitude of games are available for parents and children to play from different locations over the Internet. Email allows you to stay in touch daily. If reaching the child by telephone becomes a problem, request a cellphone or a private telephone in the child's room with voicemail.

Many schools offer access to student records, grades, and school information over the Internet. Parents in remote locations can have immediate access to report cards, assignments, and teacher comments; teachers often provide parents with email addresses, which can be used for virtual parent-teacher conferences. This allows parents to maintain contact with the school in ways that previously were impossible. Another effective way to keep in touch with a young child is to read and record a favorite book for the child to play at bedtime. Making and providing links to recordings or snail-mailing CDs, DVDs, or videos is a great way to stay in touch.

How far is too far?

Each request to move must be considered on its own merits and viewed in light of the relevant facts and circumstances of the family while giving paramount consideration to what is in the best interests of the child. In one state, a move across town may result in travel time in excess of one hour. Some jurisdictions define by statute the distance or the amount of travel time that automatically triggers a relocation case. In other jurisdictions, relocation becomes an issue in any move that impacts the contact and access schedule. The facts of your case will determine whether the move qualifies as a relocation and warrants a modification of your child's contact and access schedule.

How does relocation affect child support?

All states have child support guidelines that set the amount of child support to be paid by parents. Most states provide for an adjustment to the child support obligation based on the cost of exercising contact and access. However, do not expect a dollar-for-dollar reduction in child support as a result of relocation. **FA**