

RELOCATION (AFTER DIVORCE)



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Many divorced parents want to know if they or their spouse can relocate out of state (or if within New York State to a far away destination) with their children. The answer, as with many divorce issues, is an unsatisfactory "it depends." In evaluating whether a parent can relocate out of state, the court's decision is based on whether it is in the child's best interest.

The Court considers several factors in making its decision, including:

- The impact of the move on the relationship between the child and the non-custodial parent
- The reason for the move
- The degree to which the custodial parent's and child's life may be enhanced economically, emotionally and educationally by the move
- The feasibility of preserving the relationship between the noncustodial parent and the child through suitable visitation arrangements
- If moving due to a lack of employment, must show a concerted effort to obtain employment in your current residential area

Typically, vague expressions of a desire to pursue a better life will not support an application for relocation. In addition, you can't move without giving adequate notice to your ex-spouse.

The following cases help illustrate the factors the courts consider.

- The mother's relocation was allowed, even though it would eliminate the father's midweek visitation and diminish the frequency of the father's weekend visits. However, the mother was required to pay for the air travel costs of the child to be with the father on numerous extended weekend visits throughout the year in addition to extended summer and holiday visits.
- The mother's relocation was not allowed. The mother had made unimpressive efforts to obtain employment in her current location. There was evidence that the mother's move was motivated by the presence in California of her fiancée. The mother seemed intent upon depriving the father of access to the child which was evidenced by her failure to bring the child to New York to visit with the father during the trial.
- The mother's relocation was not allowed. The child had a close relationship with his father. The mother was gainfully employed and her move was motivated by her new husband's employment in another state. The move would seriously impact on the quantity and quality of the child's future contact with the father given the travel arrangements that would have to be made.
- The father's relocation was allowed. The mother had a troubled relationship with the children. The mother was not working and was in an intensive outpatient rehabilitation

program for alcohol problems. The father had an excellent relationship with the children. The children were involved with the father's extended family who lived in the area of relocation. The area of relocation had high quality educational and recreational opportunities. The father agreed to transport the children at his expense at least four times a year for extended visits with the mother. The proposed move would provide the father with gainful employment.

- The mother's relocation was not allowed. The mother's economic reasons for her move to New Jersey were insufficient. She claimed that the move would allow her to stay home and devote her energies to raising the child as her new husband's business was located in New Jersey. The move would have resulted in the child's lost opportunity to visit with his father.
- The mother's relocation was allowed. The child wished to stay with the mother. The mother would pay for the child's transportation to and from Canada.

When seeking to move or seeking to prevent an ex-spouse from moving, it is important to have an experienced lawyer represent you. The Badanes Law Office has assisted numerous individuals in matrimonial and family law.

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