



Child Custody and the Right to Move Away

For those of you who are interested in understanding the law concerning custodial parents who wish to move out of the area with children over the objections of the non-custodial parent, this article is meant for you.

Presumptive Right to Move

In our increasingly mobile society, custodial parent's frequently desire to move out of state or to a different part of the state with the children, leaving the non-custodial parent far behind. Such moves are usually based upon the fact that the custodial parent has found a new job that requires the move or has a network of family members that he or she would like to live near. Based on these realities, California law provides that a parent who has primary physical custody of a child has a presumptive right to change the child's residence - i.e., to move away with the child, subject to the power of the court to restrain a removal that would prejudice the rights or welfare of the child.

A custodial parent seeking to relocate with a child bears no burden of establishing that the move is "necessary." In fact, the non-custodial parent bears the initial burden of showing that the proposed relocation of the child's residence would cause detriment to the child, requiring a reevaluation of the child's custody.

Procedural Safeguards

Based on our strong public policy favoring stable custody arrangements, trial courts will usually make an immediate interim ruling staying the move-away until the parents have been given the opportunity to participate in meaningful mediation, to obtain an independent custody evaluation and, ultimately, to present their positions at a meaningful hearing - including the right to present live testimony.

If the non-custodial parent makes such an initial showing that the move-away would be detrimental to the child, the court must perform the delicate and difficult task of determining whether a change in custody of the child.

Child's Relationship with Non-Custodial Parent a Factor

Among the factors that the court ordinarily will consider when deciding whether to modify a custody order in light of the custodial parent's proposal to change the residence of the child are the following: the child's interest in stability and continuity in the custodial arrangement; the distance of the move; the age of the child; the child's relationship with both parents; the relationship between the parents including, but not limited to, their ability to communicate and cooperate effectively and their willingness to put the interests of the child above their interests; the wishes of the child if the child is mature enough for such an inquiry to be appropriate; the reasons for the proposed move; and the extent to which the parents currently are sharing custody.

In light of the above criteria, the court can deny the proposed move if: the custodial parent has a history of not sharing custody with the non custodial parent; if the court finds the proposed move is being made for vindictive purposes; and if the court finds the move would be detrimental to the strong relationship between the child and the non-custodial parent.

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