

## **WBASNY Letterhead with address and phone number and website**

### **Frequently Asked Questions (FAQs) about Relocation for the Parent Currently Residing in New York State**

This document was created by the Children's Rights Committee of the Women's Bar Association of the State of New York ("WBASNY") and approved by the Board of WBASNY in March 2009 as a public service to parents who want a basic understanding about relocation issues. This document is intended to be useful to parents facing relocation whether or not the child resides with them or the other parent and whether or not there is a court order in effect giving custody to either parent. It is intended for informational purposes only, and is not to be relied on as legal advice in lieu of your own counsel. It is always best to speak to an attorney about your individual situation, since relocation is complicated and a court hearing about relocation is often long and difficult. If you or the other parent or child lives in another state or if there are domestic violence, custody, support or paternity issues, it is especially important that you speak with an attorney about your situation. If you are unable to afford counsel, you may ask the court to appoint counsel for you and the court will consider your request.

**If you are relocating because you are concerned about safety issues, consult an attorney or domestic violence advocate or call the New York State Domestic Violence Hotline (English: 1-800-942-6906, English TTY: 1-800-818-0656, Spanish: 1-800-942-6908, Spanish TTY: 1-800-780-7660).**

**Q: Do I need to ask the court for permission to move away with my child (also known as permission to "relocate")?**

**A:** In most cases, if you do not have the consent of the other parent, you should ask the court for permission to relocate. You should speak to an attorney to determine if you need the court's permission to relocate.

If the other parent consents to the move, or if there is a prior divorce judgment or separation agreement which allows the move, you can move without asking the court's permission. However, if the other parent brings an action challenging the move in court before or after it has taken place, it will be up to the court to decide **AFTER A HEARING** if it is in your child's best interest to move away with you.

**Q: Is the court bound by a prior separation agreement or stipulation or consent that permits me to relocate with my child?**

**A:** No. An agreement between the parties or a signed and notarized consent by the other parent is but one factor to be weighed by the court in determining whether the relocation would be in the child's best interests.

**Q: What will the court consider in deciding whether to allow me to move away with my child?**

**A:** The court will consider the **best interests of your child** above the needs and desires of the other parent and yourself.

**Q: If I want to keep my address and other information private when I ask the court for permission to relocate, what should I do?**

**A:** You should ask the court for an order keeping your address and other information secret. You will need to explain your reasons for this request.

**Q: What if relocation is so important to me that I am prepared to relocate without my child if the court denies my request to relocate with my child?**

**A:** In that event, the court will consider transferring custody to the other parent if such transfer will be in the child's best interests. However, if the court decides that transfer of custody to the other parent would be very upsetting to the child, unsafe, or otherwise not in the child's best interests, the court may decide to allow you to relocate with your child. It is also possible that the court will make it a condition to your keeping custody of your child that you not relocate, if it is not in the best interest of the child to live with the other parent in New York.

**Q: Will my current support order remain in effect in my place of relocation?**

**A:** Yes. You can file your existing support order in your new county, even if the county is in another state. However, many courts take into account the other parent's expenses in travel necessitated by the move and may reduce your support order as a result.

**Q: If I relocate with my child in violation of a court order or agreement, will I lose my right to child support?**

**A:** If you relocate with your child in violation of a court order or agreement, it is possible you will lose your right to child support, but it will be up to the court to decide. If the other parent stops paying you child support without permission from the court, the other parent will be in violation.

**Q: If I relocate with my child in violation of a court order or agreement, could I be charged with civil or criminal penalties?**

**A:** Yes. You should speak to an attorney about any possible civil or criminal

consequences.

**Q: Will the court want to know how my child feels about the move?**

**A:** Yes. The age and maturity level of your child and other issues may affect how much weight the court gives to your child's wishes. The court may appoint an attorney for your child to advance your child's position and interests. The court may wish to speak with the child and the child's attorney alone, without either parent or their attorneys present (if they are represented by attorneys).

**Q: Will the court consider allegations of domestic violence as a reason for relocating?**

**A:** Yes. The court will consider domestic violence as a factor in determining the best interests of the child. Issues of domestic violence will be considered by the court together with the other factors. The facts and history of domestic violence will be important.

**Q: What other factors may the court take into account in deciding whether relocation is in your child's best interests?**

**A: The Court may consider the following:**

**Is the move necessary (rather than merely better) for economic reasons?**

If you are claiming this, you should be ready to prove that you have tried and were not able to find work and/or living conditions on comparable terms where you currently live. If the move is deemed necessary, the court is more likely to consider the move to be in your child's best interests.

**If you cannot prove that the move is necessary for economic reasons, are you moving just to get a better job, more affordable living costs, or simply a fresh start?**

If you cannot prove that the move is necessary for economic reasons, and you are moving just to get a better job or more affordable living costs in the new location, or simply a fresh start, the court may ask you to show more reasons why the move will be in the child's best interests.

**Are you relocating in order to remarry or, if you were never married before, to marry someone other than the other parent?**

If so, the court may want to know that your new spouse tried but was unable to find a job on equally good terms in the area where you currently live. The court will also want to know about the effect of the remarriage on your child's lifestyle and the relationship of your child with your new spouse.

**Are you relocating for health or educational reasons or compelling family**

**circumstances (such as the need to care for an elderly parent)?**

The court may consider these reasons good reasons depending on other facts.

**What kind of relationship do you have with your child?**

The court will always consider the quality of your relationship with your child one of the most important factors in deciding your child's best interests.

**What kind of relationship does the other parent have with your child and how will the move affect that relationship?**

The court will always consider this one of the most important factors in deciding whether the move is in the best interests of your child. If the other parent has proven that he/she often and regularly visits with the child, the court may decide not to allow the move because it is against the child's best interests. Some judges appoint mental health professionals to evaluate the child's relationship with the other parent, and the likelihood of continuing that relationship if the child moves. The distance and expense involved in visitation will affect how easy it will be for the other parent to continue his/her relationship with the child.

**What are the other parent's reasons for opposing the move?**

Every case is different, but the court will be interested in knowing the reasons that the other parent opposes the move.

**Will the move cause siblings to be separated?**

The court may consider keeping siblings together a factor in determining the child's best interests, especially if your child does not want to be separated from a sibling. However, the court will make its own decision about what is in the child's best interests.

**Will the move affect the child's ties to friends and family?**

The court will want to know how the move will affect your child's relationships with extended family and community, not just with you and the other parent.

**How will the move affect the quality of the child's lifestyle?**

The court will compare the quality of the child's lifestyle in the new location with the quality of lifestyle in the old location, not just in financial terms but in the quality of relationships and enrichment opportunities the child is likely to have.

**Can the other parent also relocate?**

If the court determines that your reasons for moving are good, it may consider the possibility of a parallel move by the other parent as a way to avoid keeping you

from moving.

### **Points to Consider Regarding Relocation**

- **There may be costs involved in long distance transportation and communication for visitation (also known as “parenting time”), such as plane fares and other transportation costs and internet and telephone charges. Since you are the parent who wants to relocate, the court may say that you have to pay these costs or reduce your support order to pay for them.**
- **The court may order much longer visitations with the other parent at one time (for example, during school vacations, long weekends and summer recesses) to make up for the regular visitations, which are lost due to the distance.**
- **If the visitation is supervised, it may not be possible to find someone to supervise for such long periods at a time and may become too costly.**
- **If there is a relocation trial, it is likely to be difficult and last over a period of many months and sometimes years.**
- **It is always best to seek legal advice before taking action to relocate.**
- **If you are concerned that the other parent is going to, or already has, relocated with your child, you should go to court to challenge the move or seek legal advice.**

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Women’s Bar Association of the State of New York (“WBASNY”) has 3800 members from eighteen chapters across New York State, and is dedicated to promoting the advancement of women in the legal profession. WBASNY addresses complex legal issues as an advocate for change for women and children throughout the state and promotes the fair and equal administration of justice.

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Research sources consulted in preparing this document were :

- 1) Legal Information Bulletin by Cornell Law School commenting on the effects of the 1996 Court of Appeals decision in Tropea v. Tropea, 87 N.Y. 2d 727(1996) available at [http://www.law.cornell.edu/nyctap/comments/i96\\_0048.htm](http://www.law.cornell.edu/nyctap/comments/i96_0048.htm);
- 2) Alan D. Scheinkman, et al., 12 N.Y.Prac., New York Law of Domestic Relations, Chapter 22, “Relocation with Children,” Sections 22:1-22:13;
- 3) 65 AMJUR TRIALS 127, “Relocation of Children by the Custodial Parent,” New York Supplement through November 2008.
- 4) Lawyer’s Manual on Domestic Violence, Representing the Victim, 4<sup>th</sup> Edition, Edited by Jill Laurie Goodman and Dorchen A. Leidholdt, Supreme Court of the State of New York, Appellate Division, 1<sup>st</sup> Department (2005).
- 5) Eschbach v. Eschbach, 451 N.Y.S 2d 658 (1982)