

## RELOCATION

### INTRODUCTION

There seems to be an increase in the number of relocation cases in recent years. There are a few reasons for this:

- Steady high divorce rate;
- Shifting job market;
- Remarriages;
- Mobility of today's society.

**Statutes** – In Texas, unlike other states, we do not have a specific statute on relocation, nor do we have presumptions specifically applicable to relocation cases. However, the TFC contains a few sections relevant to the issues surrounding relocation.

1. The public policy of this state is to:
  - (1) assure that children will have frequent and continuing contact with parents who have shown the ability to act in the best interest of the child;
  - (2) provide a safe, stable, and nonviolent environment for the child; and
  - (3) encourage parents to share in the rights and duties of raising their child after the parents have divorced.  
153.001(a)(1)
2. “[t]he best interest of the child shall always be the primary consideration of the court in determining the issues of conservatorship and possession of and access to the child.”  
153.002.
3. Section 153.133 requires parents who reach an agreement for JMC to designate the conservator who has the exclusive right to establish the primary residence of the child and either:

- (1) establish a geographic area for that residence or
  - (2) specify that the conservator may determine the residence without regard to geographic location.
4. Section 153.134(b) provides that when there is no agreement between the parents, a court order for JMC must likewise designate the conservator who has the exclusive right to establish the primary residence of the child and either:
- (1) establish a geographic area within which the conservator shall maintain the child's primary residence; or
  - (2) specify that the conservator may determine the residence without regard to geographic location.
5. **Modification** – Section 156.101 provides that the court may modify an order that provides for the appointment of a conservator of a child, that provides the terms and conditions of conservatorship, or that provides for the possession of or access to a child if:
- (1) modification would be in the **best interest of the child**; and
  - (2) the circumstances of the child, a conservator, or another party affected by the order have **materially and substantially changed** since the earlier of the date of the rendition of the order or the date of the signing of a mediated or collaborative law agreement on which the order is based.

This two-prong test applies whether or not you are modifying a JMC or SMC.

Section 156.101 also allows modification upon a showing of best interest and one of the following:

- (1) the filing by a child 12 years of age or older the name of the person who is the child's preference to have the exclusive right to designate the primary residence of the child; OR
- (2) voluntarily relinquishment of the child by the primary conservator for at least six months.

**6. Modification Within One Year** – Section 156.102 contains heightened requirements for modification of primary conservatorship within one year of the earlier of the date of the rendition of the order or the date of the signing of a MSA or CollabLaw settlement agreement on which the order is based.

**Affidavit** – Movant must attach an affidavit with supporting facts alleging one of the following:

- (5) the child's present environment may endanger the child's physical health or significantly impair the child's emotional development;
- (6) the primary conservator is the movant or consents to the modification and modification is in child's best interest; or
- (7) the primary conservator has voluntarily relinquished the primary care and possession of the child for at least six months and modification is in child's best interest.

**7. Increased Expenses** – Section 156.103 expressly allows the court to order that increased expenses resulting from a relocation be paid by the party who is relocating.

**8. 105.002 - Jury Issues**

- (1) a party is entitled to a verdict by the jury and the court may not contravene a jury verdict on the issues of:
  - D. the determination of which JMC has the exclusive right to designate the primary residence of the child;
  - E. the determination of whether to impose a restriction on the geographic area in which a JMC may designate the child's primary residence; and

- F. if a restriction is imposed, the determination of the geographic area in which a JMC must designate the child's primary residence; and  
...

## **RELEVANT CASE LAW – TEXAS**

There are several cases in Texas that have been decided in recent years to give us some guidance regarding relocation cases.

### A. Leading Texas Case - *Lenz v. Lenz*

In *Lenz v. Lenz*, (Tex. 2002), after a lengthy jury trial, the jury returned a verdict permitting MOM to have the sole right to determine primary residence of the child.

The *Lenz* case involved two German citizens – Divorce decree appointed them JMC's of their two sons, with MOM having the exclusive right to determine the children's primary residence within the State of Texas.

A month after decree was entered, MOM filed a Pet/modify, seeking to lift the domicile restriction so that she could return to Germany with kids and remarry.

This was an issue of first impression for our Supreme Court, so relocation cases from other states were reviewed.

### **The Court listed the following factors considered by the New Jersey courts:**

- reasons for and against the move;
- comparison of education, health and leisure opportunities;
- whether special needs or talents of the child can be accommodated;
- the effect on extended family relationships;
- the effect on visitation and communication with the noncustodial parent to maintain and full and continuous relationship with the child; and
- whether the noncustodial parent has the ability to relocate.

### **The Court listed the following factors considered by the New York courts:**

- the parents' good faith in requesting or opposing the move,
- the possibility of a visitation schedule allowing the continuation of a meaningful relationship between the noncustodial parent and the child;
- the degree of economic, emotional, and education enhancement for the custodial parent and the child; and
- the effect on extended family relationships.

### **The Court listed the following factors considered by the California courts:**

- the nature of the child's existing contact with both parents,
- the child's age;
- community ties; and
- health and educational needs.

The Texas Supreme Court stated that of the many cases they cited, most of the courts rely on a **best-interest standard** as the ultimate guide for determining whether a request to relocate should be granted.

In the cases mentioned by the Texas Supreme Court, courts of the other jurisdictions acknowledged the reality that many parents will not remain in the same location after a divorce and recognized the link between the best interests of the custodial parent and the best interests of the child, as well as the importance of preserving the custodial relationship, avoiding relitigation of custody decisions, and strengthening and stabilizing the new postdivorce family unit.

### **Factors Which Court Found Supported Jury's Verdict Allowing Move**

Supreme Court determined the following factors supported jury's verdict that MOM should be allowed to establish KID'S residence w/o a geographical restriction:

1. Kids' strong association with German heritage and culture – MOM and DAD German citizens – married in Germany. Oldest son born in Germany. Both boys spoke German in MOM's home. They watched German movies, listened to taped stories in German, and celebrated German holidays. A psychiatrist testified that maintaining the boys' German culture was important because their cultural identity acted as a mechanism by which to deal with life events.
2. **Extended Family** – Almost all of extended family and close friends live in Germany.
3. **MOM's improved financial situation in Germany** - would contribute to MOM providing better standard of living for KIDS.
4. **MOM's increased well-being in Germany** - Testimony that relocation would positively affect MOM's mental state and boys would benefit from MOM's increased well-being in Germany. Court-appointed psychologist testified that MOM felt lonely in San Antonio and that if she is happier in Germany, natural benefits would flow to KIDS because custodial parent's mental state directly impacts quality of a child's life.
5. KIDS can still maintain frequent contact with DAD while in Germany – DAD could easily relocate to Germany. Besides being a native German, DAD has an advanced German business degree and many employment options in Germany. Factors that were of less influence – Evidence that both boys wanted to remain in San Antonio, boys had a close, loving relationship with DAD, and court-appointed psychologist's testimony that a move away from DAD would be detrimental to KIDS.

Supreme Court concluded – “**no bright line test can be formulated**” regarding relocation cases and emphasized that SAPCRs are intensely fact driven – that the

best interest test considers and balances numerous factors, and relocation must be determined on a case-by-case basis.

B. Cases Since *Lenz*

Texas Courts of Appeals have decided a few relocation issues since *Lenz*.

1. *Echols v. Olivarez* (Austin 2002)

MOM and DAD never married and separated when child was 2. Paternity decree was entered when child was 3 – MOM and DAD appointed JMC's with MOM having right to establish child's primary residence w/I State of Texas.

3 years later, MOM had a second child with another man. During her maternity leave from her employment, her position was filled in her absence. Her employer offered her other positions at her former pay, and also offered her a promotion to a position in **Tennessee** with substantially greater pay.

MOM filed P/Modify, requesting residence restriction be lifted so she could move with KIDS to **Tennessee**. T/Ct court granted motion. DAD appealed; C/App affirmed.

**Factors Which Court Found Supported Findings:**

Ct/App found following factors supported T/Ct's decision to lift residence restriction, allowing MOM to move to **TN** with child.

1. No Vindictive Motive. No evidence MOM had vindictive motive in moving child from TX – Move was result of birth of a second son, loss of position in TX, and new position in TN offering additional financial security.
2. Child would be direct beneficiary of MOM's promotion, both in terms of financial benefits and in her well-being as his primary caretaker. MOM would be better able to care for child in new position because it offered additional flexibility and her employer accepted her work ethic regarding work and family life.  
Ct/App added:  
A child's best interest cannot be determined in a vacuum. Although consideration of visitation rights of noncustodial parent is important, we must primarily concentrate on general quality of life for both child and custodial parent in assessing whether a change is in child's best interest.
3. MOM's intent was to continue to foster and encourage child's relationship with DAD by giving DAD more visitation, reducing her summer visitation, and paying a majority of costs to transport child to visit DAD.

2. In re: C.R.O. and D.J.O., (Amarillo 2002)  
Parents divorced in GA and appointed JMC's of their two sons with MOM having right to primary custody and **no residence restriction**.

MOM remarried and moved with KIDS to Texas. DAD then moved to Florida for his job. MOM's new husband took new job in Hawaii for a substantial pay increase. MOM notified DAD of intended move.

DAD filed M/Modify requesting dom restriction to Fort Bend County. DAD also got a TRO preventing MOM from removing kids from juris.

MOM's new husband moved to Hawaii and MOM and KIDS stayed in TX. Several months after filing M/Modify, DAD quit job in Florida and started a business in Texas.

**RULING:** T/Ct modified decree by restricting kid's primary residence to Fort Bend County or contiguous counties as long as DAD lived there.

Ct/App Aff – Factors Court Found Supported Findings – to impose domicile restr:  
**THEREFORE, MOM could not move KIDS.**

1. **Quality of kids relationship with DAD** - Although Ct found MOM was a full-time caregiver to her sons and was completely devoted to them, Ct also found DAD was close to KIDS and maintained frequent/consistent contact since divorce in spite of distance between them.
2. If KIDS moved to Hawaii, rela'p with DAD would be detrimentally impacted and access practically nullified due to travel time involved and time difference.  
Summer/holiday visitation would not be frequent enough to maintain type of relationship DAD currently enjoys with KIDS.
4. **DAD's efforts** – DAD testified he considered moving to Hawaii – contacted a headhunter & searched for a job there, but was unable to find a position in his field.
5. **Instability in boys' prior residences** - KIDS lived at 9 diff residences in 8 years. Also evidence of MOM's new H having a prior affair, which DAD used to raise concern about stability of her marriage.
6. **Extended family** - Both sets of grandparents lived in Florida, and extended family members in TX – no family or friends in Hawaii.

**Less compelling were MOM's reasons for moving to Hawaii:** financial stability, nice home, smaller city with less pollution, travel/leisure opportunities for the family, less demanding job for new husband, and desires of older son.

Ct found that in spite of these benefits, best interests of KIDS and public policy of Texas would be served if DAD were permitted to maintain meaningful, frequent, and continuing contact with KIDS and was able to participate in raising KIDS.

3. **Hoffman v. Hoffman (Austin – Nov. 2003).**

Parents divorced in Williamson County in 1999 and were granted JMC of 2 KIDS. MOM – exclusive right to determine primary residence, but restricted to Wmson, Travis, and contig counties until July of 2002, unless parties agreed otherwise in writing or DAD moved away from Wmson County.

MOM notified DAD in Jan 2002 she planned to move to PA with KIDS. MOM and DAD met & married in PA, and families of each still in PA.

DAD filed a M/Modify requesting a domicile restriction.

T/Ct ruled best interest of kids to move to PA with MOM and such relocation was not a mat/subst change/circ because MOM had told DAD for a long time that such was her intention, and move was contemplated at time of agreement.

**Factors Which the Court Found Supported Findings:**

Ct/Appeals held following factors supported T/Ct's decision best interest of KIDS to move to PA with MOM and no mat/subst change in circumstances to warrant modification:

1. Happiness of custodial parent - Court stated best interest of KIDS determined by quality of life for both KIDS and parent, considering custodial parent's happiness as factor of KIDS' best interest. In PA, grandmother could provide daily care for KIDS while MOM finished college, which would ultimately give MOM more job opportunities.
2. Education and employment opportunities for MOM.
3. KIDS could strengthen rela'p w/ maternal grandmother.

In determining KIDS best interests, these opportunities outweighed fact that move would reduce DAD's time from 153 days/yr to only 53 days/yr, that KIDS would be forced to travel, and MOM had not worked since divorce and had nearly depleted all money she received from large divorce settlement.

4. **Knopp v. Knopp (May 2003)**

MOM appointed SMC on divorce. MOM moved KIDS w/ her to Calif in 2000, and 1 mo later filed M/Modify requesting DAD to have supervised possession in California.

DAD filed a counter-petition, and T/Ct gave him SMC.

Houston C/App affirmed, citing several cases in their determination of best interest of children and of material/substantial change of circumstance.

**Factors Which the Court Found Supported the Findings:**

Ct/App found sufficient evidence to support T/Ct's finding that MOM's move constituted mat/subst change in circumstances and that appointing DAD SMC was in best interest of KIDS.

1. Significant distance of move- Court said that although relocation does not, as a matter of law, constitute a mat/subst change in circ, it is hard to imagine how a

finding of changed circumstances would not be appropriate where a relocation of significant distance occurred.

2. DAD participated in KIDS extracurricular activities in Texas.
3. Relocation deprived DAD of meaningful access to KIDS – DAD forced to fly 3 ½ hours to LA and then drive for 2 hours to Santa Barbara to pick KIDS up for visitation. B/c of travel time, DAD had to return KIDS to MOM's house by 9:30 a.m. Sundays, significantly shortening weekend time.
4. MOM did not have a good reason for making drastic change in KIDS lives – Though MOM testified she had better job opportunities in CA & she could be more involved w/KIDS because health had improved as a result of move, she had not worked since divorce.
5. No friends or family in California – Large network of friends/family in Texas.
6. MOM ignored KIDS well-being in moving – MOM took KIDS to California without first telling DAD and only incentive for moving was she thought there would be more work opportunities in CA. MOM took KIDS out of school in Texas in November, before the school semester was over, and also forced her son to miss a spelling bee in which he was a finalist.

**C. Cases Preceding Lenz**

Before TX S/Ct's *Lenz* opinion was released, a few TX Courts of Appeals issued significant opinions in the relocation context.

**1. *Jenkins v. Jenkins* (Dallas 2001) (not designated for publication)**

*Jenkins* is an unpublished opinion in a case originating in Dallas County. Jury returned a verdict that MOM be named SMC of the couple's 5 year old triplet daughters, and that she should have right to establish KIDS' residence w/o regard to geographic restriction. In spite of jury's verdict, T/ct entered a Decree restricting residence of KIDS to Dallas and contiguous counties. MOM appealed, claiming t/ct abused discretion by imposing domicile restriction contrary to jury's verdict. As in *Lenz*, the *Jenkins* case was decided prior to the amendment of Section 105.002 of TFC, which now states that court may not contravene a jury verdict on issue of determination of whether to impose a domicile restriction.

**Factors Which the Court Found Supported the Findings**

Court of Appeals determined following factors supported verdict that no residence restriction should be imposed:

1. Relocation would allow MOM to be closer to her own family and support system, from whom she needed economic and physical support;
2. MOM had better employment prospects at a university;
3. MOM could live in grandmother's house for free;
4. MOM expressed desire to continue to foster KIDS's relationship with DAD, and she testified that there was an airport near her grandmother's home.

2. **Franco v. Franco (El Paso 2002)**

Parents divorced and appointed JMC's of twin daughters, with alternating weeks of possession. Neither parent given exclusive right to establish primary residence of KIDS, but domicile restriction to El Paso County – Parties enjoined from moving KIDS residence from El Paso County w/o court approval.

3 years later, MOM filed M/Modify, requesting permission to move to San Antonio. T/Ct granted M/Modify and gave MOM right to est prim/residence of KIDS w/ no domicile restriction.

DAD appealed – Ct/App affirmed T/Ct.

**Factors Which the Court Found Supported Findings**

Ct/App determined following factors supported T/Ct's decision to allow MOM to relocate to San Antonio:

1. Lots of testimony from which T/Ct could infer DAD had no plans to remain in El Paso – it had always been his intent to return to New Orleans, that he and current wife planning to move to New Orleans, that plans were so well known to KIDS that wife's ex-H had filed a lawsuit to prevent move, that wife had represented to Ct in that suit that she would be moving to New Orleans w/i 6 mos.
2. DAD never disapproved of uprooting KIDS from El Paso – he just wanted to dictate location of move.
3. MOM remarried, and new husband was a military physician stationed in San Antonio.
4. MOM believed current job was at risk due to recent layoffs, and she had secured a job with SW Bell in San Antonio, w/ a greater salary and benefits package than current employer. When MOM first felt job was at risk, she approached DAD for financial assistance – he refused to help her even though his salary was 2x MOM's salary and there was no child support order.
5. MOM remarried w/o knowing whether KIDS would be able to move to San Antonio, but MOM testified she couldn't leave KIDS.
6. Mom's husband adores KIDS and has good relationship with them.
7. MOM planned initially to fly w/KIDS until they adjusted to flying alone. She admitted it will be an adjustment for KIDS to move away from DAD.

Ct/app said where the options are status quo versus a parent's relocation, a court would inquire into factors previously considered by the courts including:

- motivation for move,
- impact on KIDS in terms of time spent with non-relocating parent,
- age of KIDS;
- nature of relationship between KIDS & non-relocating parent, and
- desires of KIDS.

Court pointed out in footnote, "Relocation away from a parent who visited infrequently or pursuant to SPO would have far less impact on a child than relocation away from a parent who had possession every other week for several years.

**3. *Brady v. Brady (Houston 2002)***

Unpublished – case originating in Harris County. Parents divorced in 1999 and appointed JMC's of 2 KIDS. DAD given exclusive right to establish primary residence W/O geographical restriction.

4 months later, MOM filed M/Modify asking for primary and a geographical restriction. While case pending, DAD moved w/KIDS to Maryland.

3 months after move, T/ct refused to grant MOM primary possession of KIDS but restricted primary residence to Harris County and ordered DAD to return kids to Harris County.

Factors Which the Court Found Supported Findings

Ct/App determined following factors supported T/ct's decision to restrict primary residence of KIDS to Harris County:

1. After divorce, youngest child sustained a traumatic head injury & undergoing medical treatment in Harris County.
2. MOM presented evidence KIDS would benefit from closer relationship & increased interaction with her.
3. DAD uprooted KIDS and moved to Maryland with little notice to MOM.
4. No relatives in Maryland.
5. Instability of DAD's employment could result in further relocation.
6. DAD indicated willingness and ability to follow T/ct's order and return to Harris County.

Ct/App added, "Moreover, it is a matter of public policy that there be a high degree of stability in young children's homes and surroundings."

4. **Bates v. Tesar (El Paso 2002)**

Parents divorced in Dallas County in 1996. MOM appointed SMC, & DAD PC of two KIDS. MOM, as SMC, granted exclusive right to establish primary w/o geographic limitation.

2 years later, MOM remarried – w/in 1<sup>st</sup> year of marriage, MOM told DAD moving to move Port Lavaca, Texas

DAD filed M/Modify, seeking JMC and domicile restriction to Dallas or contiguous . T/ct granted DAD's M/Modify, appointed parents JMC's, & restricted primary residence of KIDS to Dallas County, ordering MOM to return KIDS to Dallas.

Ct/Appeals affirmed. In its opinion by Justice Ann McClure, it made the following conclusions:

1. Evidence both legally and factually sufficient to support findings that grounds for modification had been met under statute in effect at the time. Court declined to hold that relocation, irrespective of distance was, in and of itself, sufficient to establish a mat/subst change of circumstance. However, Court did conclude that in event the move involved a significant distance, a finding of material change may be appropriate.
3. T/ct did not abuse discretion in issuing restriction solely to Dallas County.

**Factors Which Court Found Supported Findings**

Ct/Appeals found following factors supported T/Ct's decision to restrict primary residence of KIDS to Dallas County and order MOM to return KIDS to Dallas County:

1. MOM's credibility and demeanor;
2. MOM's disregard of judicial system – failed to give required advance notice of intended move, her story that she moved before the TRO was served on her was somewhat unbelievable, she filed an unsuccessful motion to transfer case from Dallas County, and she violated court's order to return KIDS to Dallas County by a certain date following trial;
3. DAD's involvement in KIDS' school events, programs and in helping KIDS with homework;
4. MOM's downplaying of DAD's involvement with KIDS and failure to give DAD's relationship with KIDS significance it deserved;
5. Drive from Port Lavaca to a major airport is 2-3 hours, KIDS had been missing school on Friday afternoons in order to make flights, and they were not accompanied by an adult on the flights;
6. MOM's refusal to pay transportation expenses for KIDS to travel to Dallas to see DAD and unwillingness to make KIDS available to him more than 1X per month;
7. MOM's failure to have KIDS telephone DAD on his birthday;

8. Move was not necessitated by employment transfer, nor was there a mandatory reason requiring the move;

Factors that were less influential were:

- KIDS preference to live in Port Lavaca,
- social study recommendation that KIDS remain in Port Lavaca and perception that KIDS were more affectionate and happy in MOM's home and more reserved with DAD;
- DAD's failure to exercise Wed night possession & summer possession due to work,
- MOM's husband's ability to earn twice as much money in Port Lavaca, and
- presence of extended family in Port Lavaca.

## **RELOCATION CASES – OTHER STATES**

The paper sets out several recent relocation cases from other states.

**Trend in the Law** – The trend in the law is toward making decisions about relocation of children based on the facts of each case rather than by applying an automatic presumption for or against relocation.

**States with Presumption in Favor of Relocation:** Minn, Okla, S. Dakota, Washington.

States with BOP is on party opposing relocation: Arkansas, California, Kentucky, Montana and Wyoming.

**State with a Presumption Against Relocation:** Alabama.

**States with BOP on Party Seeking to Relocate:** Arizona, Idaho, Illinois, Louisiana, Missouri, Nebraska, and West Virginia.

**Split BOP** (generally requires that the party who seeks to move to show a good faith reason for the move; then BOP shifts to party opposing move to show why move is not in child's best interests): Alabama, Conn, Nevada, New Hampshire, New Jersey, and Pennsylvania.

**Presumption Based on Amount of Time with Child** (generally presuming that move is permissible if there is a primary custodian, but the presumption does not apply if the child spends approximately equal time with both parents): Tennessee, West Virginia, Wisconsin.

**States with Explicit Statement in a Statute or Case Law Stating no Presumption or directing equal BOP:** Colorado, Florida, Georgia, New Mexico, NY and S. Carolina.

**Notice Requirements** – In the 31 states with a statute on the issue of relocation, 18 of those state statutes explicitly require the parent seeking to relocate to give notice to the other parent. A notice period of 30 to 60 days is common. Notice is usually by CMRRR.

**Common elements of the notice**, include: address of intended new residence, date of planned move, reason for move, proposed revised parenting time schedule, and the rights of other parent to object to relocation.

**Factors** – Courts in other states have considered the following factors in deciding whether or not to permit relocation:

6. Motives of parent seeking to move;
7. Motives of parent opposing the move;
8. Quality of relationship and frequency of contact between child and each parent;
9. History or threats of domestic violence;
10. Likelihood of improving quality of life for the child;

11. Likelihood of improving the quality of life for the custodial parent and the degree to which the benefit to the custodial parent will provide a benefit to the child; and
12. The feasibility of restructuring parenting time in order to preserve the relationship between the child and parent w/o primary custody if the move is allowed.

## **TRYING THE RELOCATION CASE**

The most difficult relocation cases are those in which both parents are involved in all aspects of the child's life – the parent who is left behind will suffer a great loss and feel as if his/her ongoing parenting efforts are not being valued.

The first step in preparing any relocation case for trial is to interview the client extensively – does the client REALLY need to move?

- If the client is moving, read all documents relevant to the case – divorce decree, employment search records and offers, attempts to seek employment in the current jurisdiction, the child's school records, medical records, and extracurricular records, journals, calendars and other relevant documents.
- Have the client prepare a list of potential witnesses with a synopsis of each witness' testimony.

Relocation cases rarely settle out of court because the advantages of the move to the relocating parent and the disadvantages to the nonrelocating parent are perceived as paramount and insurmountable by each of them.

**Know Your Judge** – It is important to know your judge. If the judge is an advocate of residence restrictions, consider making a jury demand since a jury's verdict is binding on the issue of residence restriction.

## **Representing the Parent Desiring to Relocate**

In trying the case in favor of relocation, highlight the advantages and downplay the disadvantages by provided solutions or minimizing negative consequences. Focus on the following factors, which have appealed to the courts in prior cases:

1. The other parent's lack of interest in the child;
2. The likelihood of the other parent relocating;
3. Prior connections with the new location;
4. Presence of extended family and friends in the new location;
5. Reasons for the move as being a true need, rather than just a desire;
6. Your client's acknowledgment of the importance of the relationship between the children and the other parent and their intent to continue to foster that relationship;
  
7. Your client's proposed possession schedule which would minimize impact of move;
9. Your client's offer to pay extra travel expenses and accompany kids on flights until they are comfortable;
10. The connection between custodial parent's well-being and best interest of child;
11. The benefits to the child to the move.

## **Representing the Parent Trying to Prevent the Relocation**

If your client wants to prevent the relocation, the following factors have been successfully presented:

1. The quality of your client's relationship with the children;
2. The degree of your client's involvement with the children, – including school, homework, special projects and extra-curricular activities;
3. The impact of the move on that relationship;
4. The other parent's desire to place their new relationship (new spouse, new employer, etc.) above that of the P-C relationship;
5. The other parent's lack of efforts to find work in the area where your client resides;
6. Your client's efforts in considering a parallel move;
7. Lack of contacts with the new location;
8. Any vindictive motive of the other parent for the move;
9. The stress of moving on the children (new schools, new friends, etc.);
10. The stress of travel and fear of flying many children have; and
11. The other parent's desire to move rather than need to move.

## **Remedies of the Court**

The following are types of remedies the court has available in relocation cases:

3. Allowing or not allowing the move;
4. Adjusting parenting time, including modification of custody;
5. Allocating transportation costs;
6. Adjusting child support;
7. Ordering the parties to keep each other advised regarding addresses and telephone of residence and other places the child will be;
8. Allocation of attorney's fees;
9. Ordering mediation;
10. Ordering psychological evaluations or social studies.

### **AAML's MODEL RELOCATION ACT**

In 1997, in response to the lack of historical uniformity across states regarding the question of relocation, the *Model Relocation Act* was drafted by the AAML to propose accepted procedures for handling these cases. The *Model Relocation Act* listed several factors to be considered in relocation cases. See Exhibit A.

The *Model Relocation Act* noted that, “(W)hile the list of factors (to determine contested relocation) is comprehensive, it does little to resolve the dilemma so often presented in litigation. If the contestants are two competent, caring parents who have had a healthy post-divorce relationship with the child, the competing interests are properly labeled ‘compelling and irreconcilable.’ ... (E)ven a perfect list of factors, when applied to decide such a contest, will not resolve the dilemma, that is, relocation is often a problem seemingly incapable of a satisfactory solution.”

### **American Law Institute**

American Law Institute, Principles of the Law of Family Dissolution (2000) – [akfamilylaw.org/principles\\_ali.htm](http://akfamilylaw.org/principles_ali.htm) (website describing project)

### **National Conference of Commissioners on uniform State Laws**

In 2005, the National Conference of Commissioners on Uniform State Laws appointed a Study Committee on Relocation of Children to make a recommendation regarding whether a uniform act on relocation should be drafted.

Judge Debra Lehrmann from Fort Worth is the chair of the Study Committee, and Professor Jeff Atkinson of DePaul University College of Law in Chicago, Illinois, is the reporter.

## **CONCLUSION**

Many divorced parents seek the court's permission each year to move their children to a new location away from their other parent.

Relocation should be approached on a case-by-case basis in light of Texas public policy, the Texas Family Code, relevant case law and social science literature.