

In-State Relocation

Illinois' removal law and the cases decided under it do not apply to situations where a custodial parent wants to relocate within Illinois. Even where parents have joint custody, if one parent is identified as the "primary," or "residential" parent, that parent can sometimes move within Illinois with virtually no opposition from the court.¹ See our article on in-state relocation.

Where the parents agree to share joint custody, the joint parenting agreement will usually contain language (usually very broad and poorly tailored language) to the effect that they will jointly make all decisions affecting the rearing of the children – including all decisions impacting education and religious upbringing. It would seem therefore, that one parent's unilateral decision to move to a new community would violate the "joint decision making language of the joint parenting agreement. After all, a move to a new community necessarily means a change in schools and religious resourced. So, it would seem that a joint custody arrangement calling for joint decision making regarding the children would serve as a kind of de facto "residential radius clause." Illinois courts, however, have been reluctant to follow this reasoning. Instead, the courts have reasoned that decisions concerning the children's education and religious upbringing are not impacted by the location of their residence. When a "primary" or "residential" parent relocates, court permission is not needed. All that has to be addressed is the visitation schedule – to accommodate the new distance, travel time, and any other particulars brought about by the relocation.²

Residence Radius Clauses: Parents will sometimes agree to joint custody and place a limit on how far away from each other they may move. In some cases, a judge may even order such an arrangement. In one famous case, although the divorcing parents each sought an award of sole custody, the court made an award of joint custody and identified the mother as the "primary physical custodian." The court's order also contained a "relocation radius clause;" specifically, it required that both parents would continue to live within one of two counties. According to the court's order, if the mother were to live outside the two counties, the father would automatically become the primary physical custodian and the children would automatically be placed with him and the mother would be awarded a reasonable visitation schedule. On the other hand, were the father to move beyond the two-county limit, then the mother would automatically be awarded sole custody of the children.³

This article was written by the law office of Cowell Taradash, P.C., whose attorneys are familiar with the latest court decisions, recent changes in the law and even the tendencies of many judges. We can help. Contact us at 866.987.6723 or info@illinoisdivorce.com.