

REMOVAL OF MINOR CHILD - DIVORCE CASES

APPLIES TO: Any action affecting the family where periods of physical placement are granted to more than one parent. If a parent has the intent to:

1. Establish his or her legal residence with the child at any location outside the state.
 2. Establish his or her legal residence with the child at any location within this state that is at a distance of 150 miles or more from the other parent.
 3. Remove the child from this state for more than 90 consecutive days.
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WHAT THE MOVING OR REMOVING PARENT MUST DO:

“Court shall order” any parent who is intending to do 1, 2 or 3 above, to provide not less than 60 days written notice to the other parent. 767.481(1): “WE ARE MOVING” notice.

ABOUT THE NOTICE:

1. Must be sent by certified mail
 2. Must state the specific date and location of the move or specific beginning and ending dates and location of the removal.
 3. Must state that the other parent can object as provided in sub. (2)(a)
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WHAT THE OBJECTING PARENT MUST DO:

OBJECTION BY OTHER PARENT PROCEDURES: 767.481(2)(a)

Within 15 days after receiving the “we are moving” notice: Objecting parent to send to moving parent a written notice of objection with a copy to the court.

If moving parent receives the notice of objection within 20 days after sending moving notice, moving parent may not move with or remove the child pending resolution of the dispute, or a final order of the court under sub. (3), unless the moving parent obtains a temporary order to do so under s. 767.225(1)(bm).

WHAT THE FAMILY COURT COMMISSIONER MUST DO:

OBLIGATION OF FAMILY COURT COMMISSIONER UPON RECEIPT OF OBJECTION NOTICE:

1. Promptly refer the parents for mediation and MAY appoint a guardian ad litem. Give

mediation 30 days to resolve the dispute.

- Make sure the Order for Mediation recites obligation of moving parent not to move.

- If GAL is appointed, make sure a special guardian ad litem appointment form is sent instructing the GAL not to perform any services until parties have attended mediation

2. If mediation does not resolve the dispute, the matter SHALL proceed under (3) - (5).

WHAT THE OBJECTING PARENT MUST DO NEXT:
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HOW THE MATTER PROCEEDS UNDER 767.481(3) - (5):

(3)(a): Objecting parent (without equal time) may move for modification of the physical placement order.

Findings: - modification is in best interests
- move or removal will result in substantial change circumst.
(Rebuttable presumption current situation is best)
(Change in economic circumstances or marital status not enough)
(Burden of proof on objecting parent)

(3)(b): Either parent (with equal time) may move for modification of the physical placement order

Findings: - circumstances make it impractical to continue equal time
- modification is in best interests
(Burden of proof on parent filing motion)

(3)(c): Alternative for objecting parent (without or with equal time) to move for an order prohibiting the move or removal.

Findings: - Prohibition of move or removal is in best interests.
(Burden of proof on objecting parent)

(4) Guardian ad Litem must be appointed when above petitions filed, and a hearing held "as soon as possible".

(5) **FACTORS** to be considered under all three types of motions above:

1. Whether the purpose of the proposed action is reasonable.
2. The nature and extent of the child's relationship with the other parent and the disruption to that relationship which the proposed action may cause.
3. The availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent.