

RELOCATING WITH MINOR CHILD(REN)
MORE THAN 100 MILES FROM THE OTHER PARENT:

2017 Wisconsin Act 203, repealing and replacing 767.481, Wis. Stats., eff. April 5, 2018

APPLIES TO: Any divorce or paternity action where periods of physical placement are currently granted to more than one parent in an Order dated on or after April 5, 2018, the parents currently live no more than 100 miles apart, and one parent intends to relocate and reside with the child 100 miles or more from the other parent.

EXCEPTION: If the parents already live more than 100 miles apart, then only 60 days written notice is required to the other parent.

(NOTE: If the most recent placement order in the case was dated PRIOR to 4/5/18, the old procedures under 767.481, 2015 Stats. still apply.

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| WHAT THE RELOCATING PARENT MUST DO: |
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1. FILE A **MOTION** with the court seeking permission for the child's relocation.

The motion must include:

1. A Relocation plan including:
 - The date of the proposed relocation
 - The municipality and state of the proposed new residence.
 - The reason for the relocation.
 - If applicable, a proposed new placement schedule including placement during the school year, summers, and holidays.
 - The proposed responsibility for each parent for transportation of the child..
2. If applicable, a request for a change in legal custody.
3. Notice to the other parent that, if they object, they must file and serve, no later than 5 days before the initial hearing, an objection to the relocation and any alternate proposal, for placement or legal custody.
4. An attached "Objection to Relocation" form, furnished by the court, for use by the other parent if they object.

2. SERVE A COPY OF THE MOTION ON THE OTHER PARENT. Mail service is adequate: At the parent's address per CCAP, or if actual knowledge of a different address, then must serve by mail at both addresses.

WHAT THE COURT MUST DO:

1. SCHEDULE AN INITIAL HEARING to be held within 30 days after the motion is filed and provide notice to both parents of the date of the initial hearing.

* THE CHILD MAY NOT BE RELOCATED PENDING THE INITIAL HEARING.

2. HOLD THE INITIAL HEARING:

A. DEFAULT. If the non-relocating parent defaults, approve the request (unless the court finds that the proposed relocation plan is not in the best interest of the child.)

B. OBJECTION BY THE OTHER PARENT:.

- If there is an objection, the court **must**:

1. Require objector to state their position in writing, including reasons for objecting and proposal for new placement schedule and transportation responsibilities "in the event the court grants permission for the relocation".

Note: Service of this written response is to be by mail to the other parent with the same address requirements as the original mail service. I.e, if they know the other parent has a different address than on CCAP, they must send to BOTH addresses.

2. Refer the parties to mediation, unless undue hardship or safety concerns due to domestic abuse.

3. Appoint a GAL, unless the modification requested would not substantially alter the amount of time a parent has with a child, and the facts and circumstances make the likely determination clear, or the sole purpose of requesting a GAL is a delaying tactic.

- GAL not to start investigation until notified that mediation has failed.

4. Set the final hearing for not more than 60 days from the date of the initial hearing.

- **POSSIBLE TEMPORARY ORDER:** At the initial hearing, or any time after the initial hearing but before the final hearing, a court **may**:

Enter a Temporary Order allowing the parent to relocate if in the child's "immediate best interest". If this is done, Court must inform the parties that this temporary approval of the relocation is subject to revision at the final hearing.

If a court commissioner makes such a Temporary Order, either party may seek a review by hearing de novo, if the party files their de novo request within 10 days after an oral ruling by the commissioner. Circuit Judge is required to hold the de novo hearing within 30 days after de novo request is filed.

3. **HOLD THE FINAL HEARING.**

Standards for deciding the relocation issue depends on the effect of the proposed relocation:

(a) If proposed relocation only minimally affects, or does not affect, the current placement schedule, the court **SHALL** approve the relocation, set a new placement schedule as appropriate, and allocate costs of and responsibility for transportation.

(b) Where effect would be more than "minimal", the court shall use the following factors:

1. The "best interest of the child" factors under 767.41(5)
2. A presumption to approve relocation if the objecting parent has not significantly exercised court-ordered physical placement.
3. A presumption to approve relocation if the relocation is related to domestic abuse of the child or of the other parent.

(c) If the objecting parent has filed a responsive motion seeking a substantial change in placement or legal custody, the court shall use the following factors:

1. The "best interest of the child" factors under 767.41(5).
2. A presumption against transferring legal custody or the residence of the child to a parent who has significantly failed to exercise court-ordered physical placement.
3. A presumption to approve the relocation if the reason is related to abuse of the child or the other parent.

STANDARD: BEST INTERESTS OF CHILD is the standard.

BURDEN OF PROOF is on the movant under any of the above, unless the relocation is related to domestic abuse, in which case the burden of proof is on the objector.

- drafted by L. Mozinski 4/30/18