

2013 - Relocation Workgroup
DOMESTIC RELATIONS COMMITTEE
MINUTES

January 7, 2013
Arizona State Courts Building
1501 W. Washington
Conference Room 119A/B
Phoenix, Arizona 85007

Present: Thomas Alongi, William Fabricius, David Horowitz, Judge Carey Hyatt, Kathy McCormick, Shannon Rich, Merrill Robbins (for Donnalee Sarda), Leslie Satterlee, Ellen Seaborne, Russell Smolden, Steve Wolfson.

Present Telephonically: Daniel Cartagena, Mary Ellen Dunlap.

Absent/Excused: Judge Lela Alston, Judge Michael Bluff, Donnalee Sarda.

Presenters/Guests: Kay Radwanski (AOC), Kelly Jarrell (Cochise County Superior Court).

Staff: Kathy Sekardi (AOC), Kym Lopez (AOC).

CALL TO ORDER

Without a quorum present, the January 7, 2013 meeting of the 2013 Relocation Workgroup of the Domestic Relations Committee was called to order by Ellen Seaborne, Chair.

REVIEW PROPOSED RELOCATION BILL

Members discussed the following subjects regarding the proposed relocation bill:

- 1) Parties who move and need to give notice.
 - a) Parent.
 - b) Third party situations.
 - c) Legal guardian – non-parent (dependency matter).
- 2) Parties who need to receive notice of a move.
 - a) The other parent (even if no parenting time has been exercised).
 - b) Third parties with visitation rights.
 - c) Grandparents or great-grandparents.
- 3) Parties who do not need to receive notice of a move.
 - a) Parents whose parental rights have been severed.
 - b) A parent with an unknown address?
 - c) Parents in domestic violence situations who have a court-ordered protected address (or have an application pending).
 - d) ARFLP Rule 7 – protected addresses.
 - i) Concern about protected address for a parent who should be given notice/pleading.
- 4) How notice should be given to parties?
 - a) Service of process – formal (personal or certified mail). ARFLP Rule 40-43.
 - b) Notice of change of address – through COSC.
 - i) Concern if this form needs to be modified.
 - c) COSC “protected address” v. Order of Protection “protected address” – (not protected under Rule 7).
 - i) Clerks cannot remove address from paperwork if documents are submitted with protected address.
 - ii) Confuses litigants.

- d) Address Confidentiality Program through Secretary of State – might want to include statutory reference A.R.S. Section 41-161 to 41-169 (41-163).
- e) How is notice given to a parent whose address is unknown?
- 5) How much time before a move should notice be given?
 - a) Time for parents to have meaningful discussion prior to deadline for objection (non-parent: 40 days won't be enough for assessment to object, get appointment with an attorney, try to mediate, etc.).
 - b) Parties should be able to extend time, if agreement can be reached, then be able to object without penalty.
 - c) Compelling reasons to relocate – (60 days too long, 30 days not enough time).
 - d) Include stipulation regarding good cause – 60 days.
 - e) 60 days allows for emergency situations – without prejudice (i.e., temporary change of physical LDM parent).
 - f) Time to hearing – varies from county to county and judge to judge.
 - i) Critical to differentiate types of moves. For example, small address change vs. long-distance moves that greatly impact parenting time.
 - g) Emergency temporary order – usually post-decree. Most judges will give this type of hearing top priority.
 - h) Conciliation court – may take 30 days to set appointment.
 - i) If notice can be given earlier, should it include the language “when knew”.
 - i) This was problematic and serves as a disincentive.
- 6) What the notice should say?
 - a) Should it be a form?
 - b) Assists self-represented litigants.
 - c) Script into statute – previous area of agreement.
 - d) Pleading – notice/objection to relocate.
 - e) Does it need a specific address?
 - i) Renters may not know address.
 - ii) Unknown issues may change original address.
 - f) Impact to parenting time plan (access).
 - g) Include conditions language – such as a school change.
 - h) Simplified modification of parenting time form order (408.02(H)), file parenting plan, form signed by judge, if no objection filed or notice of objection in front of court. Need provision if relocation goes forward to obtain new parenting plan.
 - i) Concerns regarding “reasons” and level of specificity – may lead to more objections.
 - j) Who is moving; moving party to specify address if known, explain why address may be unknown; school or district if known, reason(s) why unknown; if moving parent has protected address, specify protected address; anticipated date of move; description of how parenting plan will be impacted; measures the moving parent is willing to take to minimize impact of parenting time on the non-moving parent.
 - k) Detailed parenting plan filed with clerk and served on the other party. This will become the default order if the request to relocate is not objected to.
 - l) A notice of intent to relocate should be filed with the clerk and served on the other parent.
- 7) Consequences for inaction.
 - a) Spell out in statute.
 - b) Simplified parenting time change – default.
 - c) Fees and costs (480.05) may not need to be included. Subsection B is not what current law states, resolves bad faith objections, discretionary, shifts burden to non-moving parent. Attorney fees mandatory in these situations.
- 8) How to object to a move?

- a) If parties agree, should be able to extend time to object to the move and to object without penalty (if petition filed, need notice to the court of the agreement).
- b) Should this parallel the notice requirements?
- 9) If not in the notice, what should the receiving parent do to object to the move?
 - a) Detailed reasons for objection and why remedial measures are not in the child's best interests.
 - b) Non-moving parent shouldn't be penalized for not articulating reasons why objecting to proposed relocation.
 - c) Concerns about relocation orders being made solely by judicial review – judgment on the pleadings.
 - d) Dismiss frivolous objections – “reasonable basis” subjective?
 - e) Court can temporarily allow or deny relocation, without prejudice. If a hearing is needed, then subject to 25-411 factors (set hearing, proffer facts).
 - f) Need to tell objecting parent they must file response papers (petition becomes the notice).
 - g) If there is no objection, the burden is on the non-moving parent to file with court; need a new parenting time plan. A simplified-modification petition with new parenting time plan, order filed and logged with court, order signed by judge would insure that a parenting plan is in place. If objected to, file response and request a hearing. Use the same framework as simplified-modification for child support. If objection, the issue gets litigated and the burden is on the moving parent to do the work. The benefit is if there is no objection, the judge signs the parenting plan and court order. This puts in place a court order that dictates what happens after relocation takes place.
 - h) Consider that every relocation issue will go into the court for fees, waiver/deferral, requires affidavit of service, dismissals, etc. But a simple notice does not require fees, etc.
- 10) What is considered relocation as opposed to a simple change in address.
 - a) Change in school.
 - b) Change in parenting time.
 - c) Increase in travel time.
 - d) A change that significantly impacts the non-moving parent's ability to participate in school activities.

Dr. Fabricius suggested striking 25-408(D)(3)(a) from the “old” previous version of the relocation draft (correlates to striking 25-408(I)(1) page 2, lines 40-41). An unofficial vote showed four members in favor to strike and one member opposed to striking.

AT THE NEXT MEETING WE WILL WORK ON DEFINING:

- 1. What is considered a relocation as opposed to a simple change in address? (Need to finish this discussion.)**
- 2. Can a parent creep? (Moving in small increments to eventually achieve a long distance move?)**
- 3. What factors should the court look at to help determine whether the relocation is in the child's best interests?**
- 4. If a relocation is allowed, what parenting time should the non-moving parent have?**
- 5. Should there be sanctions for abusing the process? If so, then what sanctions would be imposed?**
- 6. Other considerations?**

Next meeting:

February 8, 2013

10:00 am – 3:30 pm

Arizona States Court Building

1501 W. Washington

Conference Rooms 119 A/B

Phoenix, AZ 85007

Meeting adjourned at 2:58 pm