DOMICILE RESTRICTIONS
By Norma Levine Trusch

I. INTRODUCTION

Family courts are increasingly having to address the problems caused by residence relocations of custodial parents and the accompanying impact this makes on visitation and custody issues. The trial judge is often faced with determining which parent's relationship with the child is to receive priority, and which parent's "rights" will be ignored. That Americans have become an increasingly mobile society is readily apparent. “Often, women and men both place great emphasis on their employment and must relocate to find work or to promote their education and careers. Relocation may be necessary in order to take advantage of job opportunities in distant locations or to pursue economic stability through residence in areas with lower housing costs." Move-Away Custody Disputes: the Implications of Case-by-Case Analysis & the Need for Legislation, 45 Santa Clara L.Rev. 319.

Changes in corporate structures and downsizing often necessitate relocation for professional survival, and the appearance of more and more women in the work force at professional and managerial levels have made this an issue important to both genders. Add to these factors the fact that after remarriage the new families frequently are constituted by two working adults; and the increasingly frequent joint custodial arrangements and situations where noncustodial parents are more involved with their children and have more elaborate and extensive contact arrangements than had been seen with the past, and the stage is set for a battle over domicile restrictions. One also cannot ignore the factor of increasingly acrimonious divorces and the encouragement to pursue litigation long after the divorce is final to "even the score" and advance individual issues, as well as the influence of overreaching social issues advanced by advocacy groups.

A 1992 article in the Wall Street Journal reported on the impact of societal changes that are reflected in the most difficult removal cases now facing divorced couples, courts, and lawyers:

"The pain of divorce wears new guises in the 1990's. The simultaneous rise of the dual--career couple and the divorce rate in recent years has created crises for an unprecedented number of American parents and children. ... Joint custody or visitation rights, difficult at best, can become a major problem when one parent is transferred or takes a job far away and the other is unable or unwilling to move, too. ... So people with careers they care about are torn between staying close to their kids and working where the opportunity is. The options all have drawbacks. Children are shuttled hundreds of miles back and forth between parents. A distant parent fades from the children's lives. A parent rejects a move in order to stay near the child and rues the sacrifice of career objectives." JoAnne S. Lublin, Cast Asunder: After Couples Divorce, Long-Distance Moves are Often Wrenching, Wall Street Journal, November 20, 1992.

This article is an update of an article I prepared for the ABA Family Law Section meeting in Washington, D.C. in October, 1996.

II. VARIOUS APPROACHES TO THE ISSUE

In many states, the right of a primary custodial parent to relocate with the children has been defined and often limited solely by case law. Other states address the problem by statute.

A. Statutory Examples - The California Family Code provides that "a parent entitled to the custody of a child has a right to change the residence of the child, subject to the power of the court to restraining a removal that would prejudice the rights or welfare of the child." The Illinois statute places the burden of proving that removal is in the best interest of the child on the party seeking the removal. The Illinois court may also require the party relocating the child to give reasonable security guaranteeing the return of the child. Most statutes list factors that the court must consider in determining whether the move should be permitted. These typically include the distance of the move, the motives of the parties seeking and opposing the move, and whether visitation is feasible after the move. Nevada's statute requires agreement of the non-custodial parent or permission of the court before a removal may be permitted. Failure by the parent to get permission from either the noncustodial parent or the court is a factor that may be considered if a change of custody is requested by the noncustodial parent. The approach in Texas is a mixture of approaches, and since I am most familiar with Texas I will use it as an example of the ways in which states struggle with this issue.

B. The Texas Approach

1. Texas Public Policy Regarding Access - Texas Family Code § 153.001 states the public policy of the state: i.e., 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 stable environment for the child; and (3) encourage parents to share in the rights and duties of raising their child after the parents have separated or dissolved their marriage. The argument could be made that this policy dictates <u>some</u> restriction on the right of primary custodial parents to remove the child from geographical proximity to the other parent. And, in fact, the legislature had provided the vehicle for dictating just such restriction.

2. Texas Statutes Allowing Restriction - The Texas Family Code clearly permits a Court, or the parties by agreement, to restrict the domicile of children after divorce by establishing a county of residence *of the child.* This is not mandatory in every case, and the courts have been slow to make a blanket policy allowing restrictions whenever requested. However, with the advent of a recently- passed presumption in favor of joint custody in all cases, this is slowly changing.

3. The Penalty for Moving - Even if there is no restriction of the domicile of the child to a particular county, the Texas Family Code penalizes the custodial parent who moves more than 100 miles from the location of the residence of the other parent by requiring the moving parent to pick up the child from the residence of the noncustodial parent at the end of each of the noncustodial

parent's periods of possession of the child. If the noncustodial parent moves first, he or she is responsible for both picking up and returning the child to the custodial parent.

III. ESTABLISHING DOMICILE RESTRICTIONS

Assuming that there is, as yet, no statute in a state that restricts the residence of the child to a certain geographical area, how does a litigant persuade the trier of fact that such restrictions should be established? Obviously the Court will have to consider many elements which the attorney should address in the evidence presented, among them:

A. The best interests of the child, always first and foremost, which should incorporate the child's individual developmental, physical, educational and emotional needs, and whether these needs can best be met by an individual (the primary custodial parent) or a community.

B. The possibly constitutionally-protected right of the custodial parent to travel freely, start his/her life anew, just as the non-custodial parent has that right without restriction.

C. The right of the non-custodial parent to continue to have access to, and be involved with, the children, and the ability of the non-custodial parent to do so (both financially and physically) after removal of the child to a distant location.

D. The need to consider adjustments to joint custodial arrangements that would have to be made to accommodate a relocation.

E. The need to conserve judicial, financial, and emotional resources of all involved, and to devise methods of avoid post-divorce litigation whenever possible.

IV. ENFORCING DOMICILE RESTRICTIONS

A. Enforcement by Injunction - If the decree contains a residence restriction and a notice requirement and the custodial parent gives the required notice that the domicile is being moved to a area outside of the geographically defined restricted area, the noncustodial parent then has the option of filing a petition for enforcement of the domicile restriction combined with a request for an emergency *ex parte* order enjoining the move. It can be assumed that this will be met with a petition for modification of the restriction to permit the move, and the battle will be joined at the hearing on temporary orders. It would be hoped that courts will give such hearings priority status so that the custodial parent's life isn't held in limbo for an indefinite period of time. If an order denying the removal is granted (sometimes called a Writ of *Ni Exeunt*), the custodial parent then has the option of remaining with the child in the jurisdiction until a final hearing, or leaving without the child, an obviously painful choice, especially if the move is being made to accompany a new spouse or transfer to a new job.

B. Enforcement by Contempt and/or Custodial Change - If notice is required and has not been given, or if the notice was made shortly before or after the move, then the noncustodial parent obviously has grounds for bringing a contempt action against the custodial parent for violation of the notice requirements and/or residence restriction. In all likelihood, this will be accompanied by an application for writ of habeas corpus for return of the child and/or a motion for modification of custody.

The question that will be facing the courts is: should a finding on contempt for violation of relocation restrictions result in punishment in the form of a change of primary custody? Is the violation in and of itself a material change of circumstances that would support a modification of custody? The author's inclination would be against reopening the custody issue absent positive action being taken by the noncustodial parent, but it would not be surprising if many motions for enforcement are accompanied by petitions for modification, so the issue could be joined at the time of the hearing of the contempt motion.

V. MODIFYING DOMICILE RESTRICTIONS

With the popularity of mediation, domicile restrictions are being found more frequently in divorce decrees. Even is domicile restriction is not mandatory, agreeing to remain in the area is often the key to settling contested custody matters, and many mediators are quick to suggest it as a method of resolving such cases. Often these agreements are entered into innocently, and in good faith, with the litigant having no intention of moving until changed circumstances are perceived as making continued restriction untenable. Sometimes they are made casually, or even in bad faith, with the clear intention of attempting to overturn them as soon as the decree awarding the litigant primary custody is final. Either way, attempts to modify domicile restrictions will be making their ways to the courts more frequently in the future, and questions will arise regarding what elements the courts should consider in determining if the removal should be permitted, whether there should be a presumption for or against permitting removal of children by the primary custodial parent, and what weight should be given to the child's needs and preferences as opposed to the parent's. Most importantly, does a motion to modify domicile restrictions reopen the question of primary custody, and should it?

With the exception of the Texas cases and the cases decided after 1996, most of the following material was provided by Nancy Zalusky Berg of Minneapolis, Minnesota, from her excellent articled entitled “Post Decree Custody Modification: Moving Out of State and Changes to the Parenting Relationship” prepared for the BNA Vail Institute. This author owes her an immense debt of gratitude for her comprehensive review of relocation cases throughout the United States, which she go generously shared.

A. Texas Relocation Cases:

1. Ex parte Rhodes, 352 S.W.2d 249 (Texas 1961). Betty Sherrill (formerly Rhodes) argued that relocation restrictions, in effect, prohibited her from remarrying and moving, or from seeking gainful employment in another county without the consent of the district judge, thus depriving her of liberty without due process of law. The court held that she was free to move on her own, but must

obtain the consent of the court only if she desired to take the child with her. The court stated:

"(A) restrictive residence provision ... is one of an extreme nature. It may drastically affect the freedom of decision of the custodian of the child as to what is best for the child. And...if request for removal to another county is denied, it may materially restrict the right of a citizen (who would not move without her child) to change the place of his or her residence. ...(T)he appellate court will look with care to see whether there has been an abuse of discretion on the part of a court which denies permission to remove the residence of the child to that of the new residence of the person having been adjudged to be the proper person to be custodian of the child."

2. Ex Parte Sandefer 468 S.W.2d 184 (Tex. Civ. App.--Eastland 1971, no writ), demonstrates the importance of careful drafting in domicile restriction cases. In Sandefer, the provision in question read as follows:

"The minor children shall remain permanently within the jurisdiction of this Court and neither party shall remove said children from the jurisdiction of this Court unless by mutual agreement of the parties or further order of this Court."

When Mrs. Sandefer moved with the children from Taylor County to Dallas County, her ex-husband filed a motion for contempt. Since the Court of Domestic Relations of Taylor County's jurisdiction was not limited to the geographical boundaries of Taylor County because it had concurrent jurisdiction with all the District Courts in Taylor County in all cases involving divorce and custody and support of minor children, the Court found that the decree didn't limit domicile of the children to Taylor County.

3. In Wilkerson v. Wilkerson, 483 S.W. 2d 690 (Tex. Civ. App.--Waco, 1972, writ ref'd n.r.e), the court refused to modify a domicile restriction to permit a mother to remove the minor child from Hill County, Texas. The mother alleged that the restriction drastically affected her freedom as custodian of the child to do what is best for the child; and that it materially restricted her right to change her own place of residence and deprived her of her liberty, since she would not move her residence without the child.

B. Relocation Cases Across the Country

1. In a 1990 Pennsylvania relocation case, Judge Beck, in reviewing the state of the law across the nation in these types of cases, stated "our research has failed to reveal a consistent, universally accepted approach to the question of when a custodial parent may relocate out-of-state over the objection of the non-custodial parent. In fact, the opposite is true. Across the country, applicable standards remain distressingly disparate." Gruber v. Gruber, 583 A.2d 434, 437 (Pa. Super. 1990).

Prevailing standards in the 1970's and 1980's created either a presumption or burden or left it entirely to the discretion of the trial court.

2. Bernick v. Bernick, 31 Colo. App. 485, 505 P.2d 14, 15-16 (1972). In the absence of a clear showing to the contrary, decisions of the custodial parent reasonably made in a good faith attempt to fulfill the responsibility imposed by the award of custody should be presumed to have been made in the best interests of the children.

Probably the most quoted and followed case is the following:

3. D'Onofrio v. D'Onofrio, 144 N.J. Super. 200, 365 A.2d 27, 29-30 (1976). After divorce, the children belong to a new family unit consisting of the children and the custodial parent and what is advantageous to that unit as a whole, to each of its members individually and to the way they relate to each other and function together is obviously in the best interests of the children. Thus, the custodial parent should have the burden of first demonstrating that some real advantage will result to the new family unit from the move. Where the custodial parent meets that threshold burden, the court is then to consider a number of factors in order to accommodate the compelling interests of all the family members: (1) the prospective advantages of the move in terms of its likely capacity of improving the general quality of life for both the custodial parent and the children; (2) the integrity of the motives of the custodial parent in seeking the move in order to determine whether the removal is inspired primarily to defeat or frustrate visitation by the non-custodial parent; (3) whether the custodial parent is likely to comply with substitute visitation; (4) the integrity of the non-custodial parent's motives in resisting the removal; and (5) whether, if removal is allowed, there will be a realistic opportunity for visitation in lieu of the weekly pattern which can provide an adequate basis for preserving and fostering the parent relationship with the non-custodial parent.

The burden established in D'Onofrio is set out in detail because numerous states have adopted this as their method of resolving relocation cases. See, e.g., Bachman v. Bachman, 539 So.2d 1182 (Fla. 4th Dist. Ct. App. 1989); Matilla v. Matilla, 474 So.2d 306 (Fla. 3rd Dist. Ct. App. 1985); Yannas v. Frondistou-Yannas, 395 Mass. 704, 481 N.E.2d 1153 (1985); Hale v. Hale, 12 Mass. App. 812, 429 N.E.2d 340 (1981); Anderson v. Anderson, 170 Mich. App. 305, 427 N.W.2d 627 (1988); Bielawski v. Bielawski, 137 Mich. App. 587, 358 H.W.2d 383 (1984); Schwartz v. Schwartz, 107 Nev. 378, 812 P.2d 1268 (1991); Ramirez-Barker v. Barker, 107 N.C. App. 71, 418 S.E.2d 675 (1992); Fortin v. Fortin, 500 N.W.2d 229 (S.D. 1993); Taylor v. Taylor, 849 S.W.2d 319 (Tenn. 1993); Lane v. Schenck, 158 Vt. 489, 614 A.2d 786 (1992); Love v. Love, 851 P.2d 1283 (Wyo. 1993); Staab v. Hurst. 868 S.W.2d 517 (Ark. App. 1994).

4. Matter of Marriage of Meier, 286 Or. 437, 595 P.2d 474, 479 (1979). Despite competing interests of the parents, the determination whether to permit or

prohibit removal of the child from the state is addressed to the sound discretion of the court, the paramount consideration being the best interests of the child.

5. Jafari v. Jafari, 204 Neb.622, 284 N.W.2d 554, 555 (1979). The general rule in cases where a custodial parent wishes to leave the jurisdiction for any legitimate reason is that the minor children will be allowed to accompany the custodial parent if the court finds it to be in the best interests of the children to continue to live with that parent. A **presumption** analysis.

6. Arquilla v. Arquilla, 85 Ill. App.3d 1090, 407 N.E.2d 948, 950 (1980). The test is not simply to establish the best interests of the child, but whether the general quality of life for both the custodial parent and the child will be improved by the removal. A **discretionary** analysis.

7. Marriage of Ditto, 52 Or. App. 609, 628 P-2d 777, 779 (1981). In many cases the happiness and well-being of the custodial parent becomes an ingredient of the welfare of the children.

8. Henry v. Henry, 119 Mich.App. 319, 326 N.W.2d 497, 499 (1982). The best interests of the child is to be decided in an earlier custody hearing; the test for relocation is the best interests of the new family unit. The arbitrary imposition of the best interests of the child test in all matters concerning children is illogical at best and cruelly insensitive at worst.

9. Auge v. Auge, 334 N.W.2d 393 (Minn. 1983). If denial of permission to remove a child from this state would likely effect a modification of custody, removal may not be denied absent an evidentiary hearing. Permission to remove may be granted to the custodial parent without an evidentiary hearing if the party opposing removal fails to make a *prima facie* showing sufficient to support a ruling in its favor. The custodial parent is presumptively entitled to permission to remove the child out of state unless the party opposing the motion establishes that removal would endanger the child's physical or emotional health and is not in the best interests of the child, or that the purpose of the move is to interfere with visitation rights of the noncustodial parent.

Standards in the 1990's have become more blurred with the court's effort to recognize equally the parent's and children's interests.

10. Gruber v. Gruber, 583 A.2d 434 (Pa. Super. 1990). When a custodial parent seeks to relocate at a geographical distance and the non-custodial parent challenges the move, the custodial parent has the initial burden of showing that the move is likely to significantly improve the quality of life for that parent and the children. In addition, each parent has the burden of establishing the integrity of his or her motives in either desiring to move or seeking to prevent it. The court must then consider the feasibility of creating substitute visitation arrangements to ensure a continuing, meaningful relationship between the children and the non-custodial

parent. Sensitive case-by-case balancing is required to ensure that all interests -- both parents' and the children's -- are treated as equitably as possible. See also, Plowman v. Plowman, 597 A.2d 701 (Pa. Super. 1991).

11. Nichols v. Nichols, 792 S.W.2d 713 (Tenn. 1990). Burden of proof was on the father, as party moving for change of custody following his divorced wife's departure from the state, to establish his case. Change of custody from mother to father was warranted where the mother's move from state would frustrate extensive visitation which father had previously enjoyed with children (close to a *de facto* joint custody agreement) as well as deprive children of ties which they had formed in area, where father had since remarried, and where children were now part of an extended family with two step-sisters and step-brother with whom they had bonded and formed close relationships.

12. Hobos v. Hobos, 562 N.E.2d 1292 (Ind. App. 3 Dist. 1990). Statute requiring notice be given to non-custodial parent of intent to move out of state does not impose upon the moving party the obligation of establishing a change of circumstances so substantial as to render the existing custody order unreasonable. This is true because the moving party is not seeking a change in custody, but seeking to maintain custody in a different location. Mere inconvenience to the child and non-custodial parent, resulting from a change of residence, will not constitute a basis for changing custody to the other parent. A **presumption** analysis.

13. Smith v. Mobles, 561 N.E.2d 504 (Ind. App. 3 Dist. 1990). The factors which are to be considered when determining whether to modify custody when the custodial parent indicates her intent to move out of the state include the distance involved in the proposed change of residence and the hardship and expense involved for the noncustodial parent to exercise his visitation rights. In this case, where custody was transferred from the moving mother to the father, the dissent criticized the majority for incorrectly treating this custody determination as if it were an initial custody decision and not a modification; in an initial proceeding the court presumes the parties are equally entitled to custody, while in a modification hearing the petitioner bears the burden of overcoming the custodial parent's right to continued custody. The dissent also criticizes the majority's reference to school, church, and community relationships as "crucial relationships," with the dissent finding the truly "crucial" relationship to have been that between the children and the moving custodial parent.

14. Geiger v. Geiger, 479 N.W.2d 704 (Minn. Ct. App. 1991). Father's liberal visitation schedule did not make him a *de facto* joint physical custodian of the children for purposes of determining mother's entitlement as sole physical custodian of children to remove residence of the children to another state.

15. Jaramillo v. Jaramillo, 823 P.2d 299 (N.M. 1991). This case involved a removal motion in a joint physical custody arrangement. The court held that

allocating burdens and presumptions in this context does violence to both parents' rights, jeopardizes the true goal of determining what is in the child's best interests, and substitutes procedural formalism for the admittedly difficult task of determining, on the facts, how best to accommodate the interests of both parents and the children. The court observed that procedure by presumption is always cheaper and easier than individualized determination, but when the procedure forecloses the determinative issues of competence and care, and when it explicitly disdains present realities in deference to past formalities, it needlessly risks running roughshod over the important interests of both parent and child. In almost every case in which the change in circumstances is occasioned by one parent's proposed relocation, the proposed move will establish the substantiality and materiality of the change. It then becomes incumbent on the trial court to consider as much information as the parties choose to submit, or elicit further information on its own motion, and to decide what new arrangement will serve the child's best interests. In such a proceeding, neither parent will have the burden to show that relocation of the child will be in or contrary to the child's best interests. Each party will have the burden to persuade the court that the new custody arrangement or parenting plan proposed by him or her should be adopted by the court, but that party's failure to carry this burden will only mean that the court remains free to adopt the arrangement or plan that it determines best promotes the child's interests. Imposing any presumptions that the moving parent must show that the move is in the child's best interest violates that parent's right to freedom of travel, and placing a presumption on the non-moving party to show that proposed move would be contrary to the child's interests violates the liberty interest of that parent.

16. In re Marriage of Carlson, 280 Cal. Rptr. 840 (Cal. App. 5 Dist. 1991). While applying California's statute addressing removal, the court held that it was appropriate to consider the effect the mother's contemplated move would have on the father's exercise of visitation and the father, as a non-custodial parent, did not have an affirmative burden to prove the move would be detrimental to the children in order to obtain a restraining order. While noting that the noncustodial parent's ability to exercise visitation is not the sole or preeminent factor, it is one of the significant considerations the trial court must take in to account in evaluating the child's best interests. The court also found the denial of the right to move with the children did not violate the mother's constitutional right to travel, as she was not prevented from leaving the state without the children.

17. Eckstein v. Eckstein, 410 S.E.2d 578 (S.C. App. 1991). While noting South Carolina's presumption against removal, this court held that the trial court erred, based on the facts of the case, by requiring wife who was given custody of the children to reside within a 250-mile radius of the residence of the father. While the trial court pointed to the adverse effect from not seeing their father regularly, there were no findings showing such a limitation was in the best interests of the children and the wife had demonstrated that she would probably

be forced to move to another state in order to maximize her employment potential as an engineer and neither parent had family living in South Carolina.

18. Hemphill v. Hemphill, 572 N.Y.S.2d 689 (A.D. 2 Dept. 1991). The search in removal cases is for a **reasonable accommodation** of the rights and needs of all concerned, with appropriate consideration given to the good faith of the parties in respecting each other's parental rights. The courts' approach to issues of this nature is on an *ad hoc* basis. Thus, there is a balancing test to be applied by courts in these cases. A persuasive argument can be made that rigid adherence to the exceptional circumstances test impermissibly infringes upon the rights of custodial parents to marry, travel and, generally, to live their lives. This New York court criticizes what it calls New Jersey's "equal protection" approach whereby short of an adverse effect on the noncustodial parent's visitation rights or other aspects of the children's best interests, the custodial parent should enjoy the same freedom of movement as the noncustodial parent. While balancing of rights is critical, New York maintains an "exceptional circumstance" approach, placing the burden on the moving party to show that exceptional circumstances justify allowing the removal. See also, Cassidy v. Kapur, 564 N.Y.S.2d 581 (A.D. 3 Dept. 1991). This line of cases and the "exceptional circumstances" test seem to have been overturned in the Tropea decision discussed elsewhere herein.

19. Williams v. Pitney, 567 N.E.2d 894 (Mass.1991). This case involved joint legal custody and a separation agreement prohibiting removal without the other party's consent. The court applied the "real advantage" standard. The statute, which contains the real advantage standard, supersedes the parties' own agreement and such an agreement is not an absolute bar to subsequent modification of the judgment. Thus, the court considers in the process of determining the best interests of the child where there is a real advantage to the move. Among the factors to be considered are where the moving party has established good and sincere reasons for wanting to relocate, no intent to deprive the non-custodial parent of contact, the impact of the denial of the move upon the children and custodial family and whether there was a real advantage to the custodial family unit.

20. Lamb v. Wenning, 583 N.E.2d 745 (Ind. App. 1 Dist. 1991). In this joint legal custody case, the majority held that in a removal case, there is not to be a re-trial of the original custody decision. A move out of state is not *per se* a change of circumstances. The statute requiring notice of intent to move and a hearing to review and modify, if appropriate, the custody, visitation, and support orders, was not enacted to punish parents who move, but to provide a means for modifying visitation and support orders which would be made unreasonable because of a long distance move by the custodial parent. The dissent argues that because this involves joint legal custody, the trial court must be free to view the underlying factors for the initial award of custody as significant or determinative.

21. In re Marriage of Carlson, 576 N.E.2d 578 (Ill. App. 3 Dist. 1991). Where both parents have joint custody of a child, a parent's request to remove the child from the state should be given particularly close judicial scrutiny. The trial court must determine whether current circumstances are such that removal from the state is in the best interests of the child and the court is not bound by the prior custody arrangement, even if those arrangements have been by agreement of the parents. Several factors for the court to consider are the likelihood that the proposed move will enhance the general quality of life for both the custodial parent and the children; the motives of the custodial parent in seeking the move; the motives of the resisting noncustodial parent; the interest of the children in having a healthy and close relationship with both parents as well as other family members; the visitation rights of the noncustodial parent; whether a realistic and reasonable visitation schedule can be reached. It is necessary to consider both direct and indirect benefits to the children from the proposed move.

22. Dobbins v. Dobbins, 584 So.2d 1113 (Fla. App. 1 Dist. 1991). A custodial parent's **freedom to move is qualified by the special obligation of custody**, the state's interest in protecting the best interests of the child, and by the competing interests of the noncustodial parent. Therefore, in some cases, one parent's relocation has been found to constitute a substantial change warranting modification.

23. Schwartz v. Schwartz, 812 P.2d 1286 (Nev. 1991). In removal cases, the proper calculus involves balancing between the custodial parent's interest in freedom of movement as qualified by his or her custodial obligation, the state's interest in protecting the best interests of the child, and the competing interest of the noncustodial parent. Determination of the best interest of a child in a removal context necessarily involves a fact-specific inquiry and cannot be reduced to a rigid "bright-line" test. This court then goes on to adopt the D'Onofrio factors.

24. In re Marriage of McGinnis, 9 Cal. Rptr. 2d 182 (Cal. App. 2 Dist. 1992). In a case involving joint physical custody, the court held that the same removal analysis applied. Namely, that the moving party must demonstrate that the move is in the best interests of the children, i.e., that it is essential and expedient and for an imperative reason. The court must also consider the effect of the move upon the children when an equally capable and involved parent remains in the community and offers the children the opportunity to remain where they have lived almost all of their lives. (California also has a statute making mediation mandatory in removal cases.)

25. Ramirez-Barker v.Barker, 418 S.E.2d 675 (N.C. App. 1992). A change in a custodial parent's residence is not itself a substantial change in circumstances justifying a modification of a custody decree. If, however, the relocation is detrimental to the child's welfare, the change in residence of the custodial parent is a substantial change in circumstances and supports a modification of custody. Likewise, if there is competent evidence that a proposed relocation of the

custodial parent's residence will likely or probably adversely affect the welfare of the child, this evidence supports, in the event the move occurs, a finding of changed circumstances, which would then necessitate a "best interests" analysis. If, however, the evidence does not reveal any likely or probable adverse effect on the welfare of the child, the relocation of the child must be allowed and the visitation privileges modified. This court also adopted the D'Onofrio best interest factors.

26. In re Marriage of Yndestad, 597 N.E.2d 215 (Ill. App. 2 Dist. 1992). Petitions to remove a child from Illinois are governed by statute, despite any provisions in a joint parenting agreement purporting to limit the right of removal. The impact of the proposed removal upon the joint custody rights of the nonresidential custodian is, however, an important factor in determining whether removal is in the child's best interests. This factor is to be considered along with the other best interest criteria, such as the likelihood for enhancing the general quality of life for both the custodial parent and the children, the motives of the custodial parent in seeking the move, the motives of the noncustodial parent in resisting visitation, the visitation rights of the noncustodial parent, and whether a realistic and reasonable visitation schedule can be reached if the move is allowed.

27. In re Marriage of Smith, 491 N.W.2d 538 (Iowa App. 1992). The parent opposing the removal and seeking custody must establish by a preponderance of evidence that conditions have so materially and substantially changed that the children's best interests make it expedient to make the requested change. A parent previously granted custody should not be prevented from moving unless there is a specific showing that the move would be against the child's best interests.

28. Kerkvliet v. Kerkvliet, 480 N.W.2d 823 (Wisc. App. 1992). Based on a state statute, the standard that must be met for modification where a removal is contested is that the modification in custody or physical placement must be in the best interest of the child and that the move will work a substantial change in circumstances. Factors which the court must consider are the purpose of the proposed move, the effect of the proposed move and alternative arrangements to continue the child's relationship with the non-custodial parent.

29. Wilson v. Messinger, 840 S.W.2d 203 (Ky. 1992). This state treats the issue as a modification of custody proceeding. The father, who opposed the custodial mother's proposed move away from the area where the father lived, failed to establish that the child's environment seriously endangered her physical, mental, or emotional health so that there was a likelihood that the child would be harmed if custody with the mother was not modified.

30. In re Marriage of Murphy, 834 P.2d 1287 (Colo. App. 1992). A *prima facie* case for removal is established when the petitioner shows a sensible reason for the move and that the move is consistent with the child's best interests. Once a *prima facie* case is established, the burden shifts to the non-custodial parent. The

court should grant removal unless the non-custodial parent proves that the child's move outside the state is detrimental to the child's best interests. Placing this burden on the opposing party is fair because it encourages private resolution of the emotional and ideological issues both parents invariably confront in these cases. Further, the nature of our mobile society combined with economic and social realities have now made these out-of-state moves frequent and predictable. Consideration of the best interest criteria here includes whether there is a sensible reason for the move, a reasonable likelihood the proposed move will enhance the quality of life for the child and custodial parent, whether the court is able to fashion a reasonable visitation schedule for the non-custodial parent after the move, the motives of the parent resisting removal, whether the noncustodial parent's motion to prevent removal is in effect a request for a change of custody and none of the modification criteria have been established, and the emotional harm that may be presumed to occur to the child if it is necessary or desirable for the custodial parent to leave the state and the child is not permitted to go.

31. Rampolla v. Rampolla, 635 A.2d 539 (N.J. Super. A. D. 1993). In a joint physical custody case, the appellate court held that in denying the mother's motion to relocate with the two children, the trial court erred in failing to address whether the father could relocate as a method of ensuring the vitality of the shared custody arrangements.

32. Radford v. Propper, 597 N.Y.S.2d 967 (A.D. 2 Dept. 1993). The threshold question that must be answered is whether the proposed move would effectively deprive the noncustodial parent of that frequent and regular access to his or her children so as to require the relocating parent to demonstrate exceptional circumstances. Here the court should not look solely at numerical distance, but it should also take into account other factors such as travel time, the burdens and expense involved in traveling, the number of visitation hours that would ultimately be lost, the frequency of visitation, the regularity with which the noncustodial parent exercised visitation, and the involvement of the noncustodial parent in the lives of his or her children. Where a proposed move may or is likely to deprive a noncustodial parent of regular and meaningful access, two further tests must be satisfied by the custodial parent wishing to relocate: (1) the relocating parent must establish the existence of exceptional circumstances to warrant the relocation, such as some compelling concern for the welfare of the custodial parent or the children (marriage of the custodial parent alone is rarely sufficient), and then the relocating parent must establish (2) that the relocation is in the best interests of the child.

33. In re Marriage of Creedon, 615 N.E.2d 19 (Ill. App. 3 Dist. 1993). Complaints about the unpredictability of these decisions and the lack of black-letter rules to some extent reflects a refusal to accept that the resolution of these cases requires a balancing process. The Illinois Supreme Court has wisely refused to take a one-sided approach, calling instead for decisions to be made on a

case-by-case basis, depending to a great extent upon the circumstances of each case.

34. Ayers v. Ayers, 508 N.W.2d 515 (Minn. 1993). In a joint physical custody situation, the trial court in a removal case correctly evaluated the motion under the best interest criteria rather than the endangerment standard used in other modification motions or the Auge presumption.

35. Love v. Love, 851 P.2d 1283 (Wyo. 1993). Cases involving relocation of parents are fact sensitive. The court stated it would be remiss to attempt to define a bright line test for their determination. Courts must remember that the best interests of the child standard was applied at the time of the initial custody award. Therefore, the review looks more closely at balancing the continued rights of the parties with the best interests of the child as established at the time of the divorce. The test this court then chose to utilize is that so long as the court is satisfied with the motives of the custodial parent in seeking the move and reasonable visitation is available to the remaining parent, removal should be granted. A **presumption** analysis.

36. Carter v. Schilb, 877 S.W.2d 665 (Mo. App. W.D. 1994). In determining whether to grant the custodial parent's motion to remove children from the state, the paramount concern is the best interests of the child. There are four factors which have been recognized in making this determination: (1) whether the prospective advantages of the move will improve the general quality of life for the parent and the child; (2) the integrity of the custodial parent's motives in relocating; (3) the integrity of the noncustodial parent's motives for opposing the relocation and the extent to which it is intended to secure a financial advantage with respect to continuing child support; (4) the realistic opportunity for visitation which can provide an adequate basis for preserving and fostering the noncustodial parent's relationship with the child if relocation is permitted. The court also stated that the denial of the mother's right to take the children with her out of the state was not a denial of her constitutional right to travel or right of freedom of personal choice in matters of marriage and family life. While the mother and her new husband are free to leave the state, they may not take the child as it is not in her best interest to move from Missouri.

37. In re Chester, No. 95CA0708 (Colo. Ct. App., Oct. 12, 1995). In a joint custody situation, the burden of proof for resolving a request by a parent to remove his or her children from the state is shared equally by both parents. As in Jaramillo, neither parent should bear the burden to show that relocation of the children will be in, or contrary to, their best interests, but instead each parent has the burden to persuade the court that his or her new parenting plan should be approved and the trial court must consider as much relevant information as the parties submit and decide what new arrangement will best serve the children's interests, including the facts previously set forth in Murphy.

38. Church v. Church-Corbett, No. 72079 (NY Sup. Ct. App. Div. 3d Dept. April 20, 1995). This case involved parents with a separation agreement providing joint legal custody with mother having primary physical custody and no provision for relocation. Noting the law regarding relocation that the presumption that relocation is not in the child's best interests may be rebutted upon a showing of exceptional circumstances by the relocating parent, it pointed out that the emerging trend justifying relocation requires proof that the move is required by economic necessity rather than economic betterment.

39. Pollock v.Pollock, 880 P. 2d 633, (Ariz. Ct. App. 1995). The court held that the burden of proof in removal cases should be on the custodial parent who is seeking to move and take the child to another locale. The interests of the parties and the child are to be best safeguarded by clear and careful fact finding rather than heightened burdens of proof or the inequitable application of constitutional rights for or against one party or the other. Factors the courts are to consider include (1) whether the request to move is made in good faith and not simply to frustrate the other parent's right to maintain contact with the child; (2) the prospective advantage of the move for improving the general quality of life for the custodial parent and the child; (3) the likelihood that the custodial parent will comply with modified visitation orders; (4) the extent to which moving or not moving will affect the emotional, physical, or developmental needs of the child; (5) the integrity of the non-custodial parent's motives in resisting the move. This court agreed that it is not a prerequisite for the custodial parent who wants to move to show that the move will result in a "real advantage" for the custodial parent and child. The prospective advantage is only one factor among many to be considered by the trial court.

40. Everett v. Everett, 660 S. 2s 599, (Ala. Ct . Civ. App. 1995). Where a couple's son suffers from behavioral problems and has a need for care and treatment, the appellate court held that residential restrictions imposed by a trial court on a custodial mother and her children served the children's best interests and did not run afoul of the mother's constitutional rights.

41. Mennemeyer v. Mennemeyer, 887 S.W.2d 555, (Ky. Ct. App. 1994). Where the parties shared joint custody and father moved to modify custody based solely on the mother's planned relocation to Florida with the child, the appellate court reversed the trial court's granting the modification, holding a trial court may not modify a joint custody award over the objection of one party without first making a finding that there has been an inability or bad faith refusal of one or both parties to cooperate; removal alone is not enough. Any non-consensual modification must then be made anew under best interest criteria as if there had been no prior custody determination.

42. In re Sheley, No. 34407-2-I (Wash. Ct. App. May 30, 1995). A trial court's statutory authority to devise parenting plans that will promote the best interests of the child includes the authority to restrict a custodial parent from

relocating the child. However, because the right to travel and to choose where one will live and work is embodied among those liberties found in the United States Constitution, the trial court's authority must be tempered. Residential restrictions may not be imposed on a custodial parent absent a showing of specific detriment to the child if the child is relocated; even then, it stated, the detriment to the child must be balanced against the social, professional, economic and psychological advantages of the move to the parent desiring to relocate with the child. Primary residential care may be conditioned upon a parent remaining in a particular locale only if the detriment to the child outweighs the advantages of the move and only if the child's best interests would be better served by remaining in that locale in the primary residential care of the other parent, than by relocating with the parent who would otherwise be designated the primary residential parent.

The Family Law Quarterly, Volume 29, Number 4, Winter 1996, notes some additional recent cases:

43. Martin v. Ellis, 647 So.2d 790 (Ala.Civ. App, 1994). The Court modified custody of a six-year-old daughter to the father who already had custody of an eight-year-old after the mother's relocation created difficulties with visitation and hindered the development of a sibling relationship.

44. Jones v. Jones, 903 S.W.2d 277 (Mo. Ct. App. 1995). The mother's move was motivated in part by a desire to distance the children from the father. The father had evidenced a genuine desire to have more contact with the children and there were few realistic opportunities for visitation, so the court ordered the children returned to Missouri.

45. Gander v. Gander, 895 P.2d 1285 (Nev. 1995). The custodial father was allowed to move because there was strong family support in the new location; a new job would allow him to afford a college education for his children; his motives were honorable; he had always accommodated the mother's visitation; and he agreed to lessen the child support to provide a transportation offset.

46. Tent v. Tent, 890 P.2d 1309 (Nev. 1995). The trial court should have allowed the custodial mother's request to move to Ohio. The court should look at the extent to which the move will enhance the quality of life for both the children and the custodial parent, the motives for the move, and if visitation is possible and reasonable for the noncustodial parent.

47. Cook v. Cook, 898 P.2d 702 (Nev. 1995). Placing the burden on the party opposing the move to show it is not in the child's best interest is not to be used to "chain custodial parents, especially women, to the state of Nevada." The court granted the mother's request to move with the child and her new husband where the mother's motives to move because of a job offer were honorable and she proposed liberal visitation and transportation cost sharing.

48. Bennett v. Bennett, 617 N.Y.S.2d 930 (App. Div. 1994). A custodial parent was not permitted to relocate with the children from Broome County to New York City to pursue her educational goals because her relocation was prompted by a desire for betterment rather than necessity, and thus, exceptional circumstances do not exist.

49. Evans v. Evans, 8 Cal. Rptr. 412 (Ct. App. 1960). The court held that removing a child from the state of residence and establishing a new home elsewhere was not considered wrongful conduct if frustration of the other parent's visitation rights was not the specific intent of the removal.

C. Trends in Relocation Law

1. Burgess and Tropea.

Until April of 1996, New York and California were among the most restrictive states regarding relocation: New York by case law and California by statute. The decisions in the Burgess case in California (Burgess v. Burgess, 51 Cal. Rptr. 2d 444, 913 P.2d 473(S. Ct. Cal. 1996) and the Tropea case in New York (Tropea v. Tropea, 87 N.Y.2d 727, 665 N.E.2d 145, 642 N.Y.S.2d 575 (1996) made national news because they reversed what had seemed to be a national trend towards more restrictions on the ability of the custodial parent to move. (See Appendix A.) Illinois, another formerly highly restrictive state, is also moving towards allowing removals more freely than in the past. Post-*Eckert* Trends in Child Removal: A Review of Appellate Cases, Illinois Bar Journal, Volume 84, February 1966.

An interesting thing happened in the California and New York cases: Dr. Judith S. Wallerstein (author of Second Chances and other books and publications on the affect of divorce on children) entered the fray with an *amicus curiae* brief to the California Supreme Court in the Burgess case. It is the author's understanding that a copy of the Burgess brief made it to the attention of the Tropea court. Whether or not that is true we may never know, but both courts reversed long-held positions and permitted moves by custodial parents. Anyone interested in relocation law should be familiar with the Burgess case, the Tropea case, and Dr. Wallerstein's brief. I included them as a part of my 1996 article that I presented in Washington, D.C., for the serious student of this subject.

2. Recent Cases - Following are a selection of cases that have been reported since I originally wrote this article and since Burgess and Tropea:

a. Landingham v. Landingham, 685 So. 2d 946, (Fla. App. 1 Dist. 1996). The Florida court held that public policy favors the right of a custodial parent to maintain freedom of movement if the move is made for well-intentioned purposes. Therefore, they held that a if voluntary move by the custodial parent outside the state is found to be well-intentioned and determined to be in the best interest of the child it may be a substantial change of circumstances that would

justify modification of a relocation restriction in a divorce decree. The court determined that it would not require an that an "extraordinary" standard be applied to modification of a relocation restriction as would be applied in a custody modification.

b. Stout v. Stout, 560 N.W.2d 903 (N.D. 1997). In 1979, North Dakota removed statutory language that had granted the custodial parent the "right" to remove a child. The court held that the amendment was intended to minimize the possibility of a custodial parents defeating the visitation rights of a noncustodial parent by moving the children out of the state. The court instructed the lower courts, in determining whether the change in the child's residence is in the child's best interests must consider the prospective advantages of the move, the integrity of the custodial parent's request to move and the noncustodial parent's objection, and the opportunities for visitation after the move. In determining whether to allow the custodial parent to move, the court should not insist that the advantages of the move be sacrificed and the opportunity for a better life and more comfortable lifestyle for the mother and children be forfeited solely to maintain weekly visitation by the father where reasonable alternative visitation is available and the advantages of the move are substantial.

c. In re the Matter of the Custody of D.M.G. and T.J.G., Minor Children, 951 P.2d 1377 (Mont. 1998). The Montana Supreme Court found it an abuse of discretion to require a mother to return to the state or lose her primary custodial status for a two-year period. Absent case-specific proof of the best interest of a particular child, the court found no compelling state interest justifying a court ordering a custodial parent to live in a state other than in the one he or she free chooses in interference with the parent's right of interstate travel.

d. In re the Marriage of Christopher and Deborah Cooper Condon, 73 Cal. Rptr. 2d 33 (Ca 2 Ct. App., Dist 7, 1998). In this case the California court expanded on Burgess and allowed a mother to relocate with her children to Australia on the condition that she permanently concede to the jurisdiction of the California courts and that she post an adequate monetary bond to ensure that the children would be returned for visitation periods with the father. Central to the Court's concern was the provision in the Australian Family Law Regulations that control how an Australian court responds to orders made through Hague Convention procedures for the return of children illegally removed or retained from their "habitual residence." The regulations require the court to return children who hae been illegally removed to or retained in Australia, provided less than one year has elapsed. If more than one year has passed the court must still make the return order, unless it is satisfied the child has "settled in his or her new environment", therefore giving parents who have been illegally denied custody of their chidlren after one year's absence from their home no assured methods of securing the return of their children.

e. Baldwin v. Baldwin, 710 A.2d 610 (Pa.Super. 1998). In this case the mother, who had primary physical custody of the child was not permitted to relocate, along with the child, from Pennsylvania to South Carolina. The father opposed the move because of his concern for the child and his desire to maintain a father-daughter relationship, the mother failed to seek local employmnt, and she had, at all times, refused to allow the father to see his daughter during scheduled visits. In explaining its decision, the Court held that, in addressing relocation, the trial court must consider the custodial parent's desire to exercise autonomy over basic decisions that will affect his or her life and that of the children; a child's strong interest in maintaining and developing a meaningful relationship with the noncustodial parent; the interest of the noncustodial parent in sharing in the love and rearing of his or her children; and finally, the state's interest in protecting the best interests of children. The Court then applied the factors it set out in Gruber (See 1 above) in making its determination.

f. Ireland v. Ireland, 717 A.2d 676 (Conn. 1996). The Connecticut Supreme Court held that the custodial parent seeking permission to relocate bears the initial burden of demonstrating, by a preponderence of the evidence, that the relocation is for a legitimate purpose and the proposed relocation is reasonable in light of that purpose. Once the custodial parent has made such a *prima facie* showing, the burden shifts to the noncustodial parent to prove, by a preponderence of the evidence, that the relocation would not be in the best interest of the child. It further held that it is proper, in relocation cases, to consider the interests of the family unit as a whole, including the independent intrests of the custodial parent, since this is necessary to determine the child's best interests. The Court adopted, for use in future relocation cases, the Tropea factors set forth by the New York Court of Appeals (see below)

g. Watt v. Watt, No. 96-322 (Wyo. 01/19/1999). Despite a divorce decree that provided for an automatic change of custody from the mother to the father if the mother moved more than fifty miles from Upton, Wyoming, the court permitted her to move with the children to Laramie in order to attend a graduate pharmacy program at the University of Wyoming. The Court held that, "(i)n light of our ... concern for the protection of constitutional liberties of the citizens of the State of Wyoming, we hold that an intrastate relocation by a custodial parent, taking the children along, cannot by itself be considered a change in circumstances sufficiently substantial and material to justify reopening the question of custody." The Court held that the custodial parent's right to move with the children is constitutionally protected.

D. The AAML Model Relocation Statute

The author was co-chair of the Special Concerns of Children Committee of the American Academy of Matrimonial Lawyers when it drafted a Model Relocation Statute. There has been some discussion that a relocation statute may be presented to the Texas Legislature

in 1997. There were major disagreements in the AAML committee over presumptions, burdens of proof and factors to be considered in determining whether or not a relocation of the children should be permitted, but a consensus was reached on most debated elements. With the prevalence of joint custody, some restriction on relocation of children after divorce is obviously the battleground of the future. A copy of the model relocation statute is appended hereto as Appendix A.

V. TRIAL OF THE RELOCATION CASE

One of the experts in the trial of relocation cases is Barbara Ellen Handschu of Buffalo, New York. I highly recommend Barbara's article Trial Preparation of a Relocation Case, 2 American Journal of Family Law 377 (Winter 1988) and have used her comments therein as inspiration in preparing this section of the article.

A. Representing the Primary Custodial Parent

The primary focus in representing the parent wishing to move with the child is the reasons for the move and the conditions that will be available for the child in the new location. Following is a checklist of possible areas of evidence and argument for the court:

1. The primary reason for the move is not to frustrate the ability of the non-custodial parent to have access to the child.

2. Visitation after the move will be possible both financially and logistically.

3. The parent wishing to move has made good-faith attempts to negotiate an agreement for the move with the non-custodial parent.

4. The non-custodial parent has been uninvolved with the child and has not regularly exercised visitation rights.

5. There is a compelling reason for the move, i.e. new employment in a unique position after a careful search of every possible nearby locale, a new spouse being transferred to another branch of his company.

6. There are advantages to the parent and/or the child in the new location, i.e., excellent schools, needed medical facilities, proximity to extended family and support networks, etc.

7. There are well-though-out alternative access arrangements, including an agreement to reduce support in order to handle added transportation costs.

8. The non-custodial parent is violent and threatening and is a negative influence in the life of the child.

9. The non-custodial parent does not pay child support regularly causing economic hardship for the family, and the move away will enable the custodial parent to get employment that will provide for the child's needs.

10. The cost of living in the present location is causing economic hardship that a move to a less expensive area of the country would alleviate.

11. The parent wishing to move would assist the non-custodial parent in moving to the same locale.

12. The child wishes to move to the new location with the parent.

B. Representing the Parent Resisting the Move

When representing the parent resisting the removal of the children from the present residence, the emphasis should be on the relationship between the noncustodial parent and the child and the motives of the parties, Following is a checklist of possible areas of evidence for the court when representing that parent:

1. The custodial parent has a history of attempting to frustrate the ability of the non-custodial parent to have access to the child and to alienate the child from the non-custodial parent.

2. Visitation after the move will be difficult is not impossible either financially or logistically.

3. The move is being made without sufficient notice and no attempt had been made to negotiate an agreement for the move with the non-custodial parent.

4. The non-custodial parent has been involved with many of the child's activities and has regularly exercised visitation rights.

5. There is no compelling reason for the move.

6. There are advantages for the child in the current location that will not be available after the move.

7. The child is deeply attached to friends, teachers and/or relatives in the area.

VI. V. PROBLEMS IN PROOF AND PUBLIC POLICY

Restrictions on relocation pose unique problems in proof and demand public policy decisions that have not, as yet, been clearly made in Texas. For instance (with thanks again to Nancy Zalusky Berg):

A. How does one prove, with any certainly, the motives of either parent seeking to remove or opposing such a move?

B. How does one balance the need to protect competing rights with the need for judicial economy and limited resources of the parties if full evidentiary hearings are always needed?

C. Do presumptions and burdens of proof have a place in this analysis or should we simply have all parties on an equal footing with equal burdens? Should a distinction be made depending on whether custody is truly shared?

D. What is the best evidence to determine the impact of a removal or a denial of removal on the children? Should a non-custodial parent have access to the children for psychological testing and should the other party be required to submit to testing? Should the court have jurisdiction over new spouses or significant others so that their roles can be assessed? Should the court simply order custody evaluations in all relocation cases, requiring all parties to submit?

E. How does one balance the right of the custodial parent to get on with or improve his or her life with the non-custodial parent's rights to continued contact with the children?

F. Is this debate really centered on gender roles and the court's view of gender roles?

G. How much say should the children have in the analysis?

H. How do you evaluate the veracity of the moving parties' claimed career motives? How do you assess whether the new location would be better for the children? Statistics regarding school districts? Career opportunities in the area?

VII. SOME POSSIBLE APPROACHES

A. Do away with all presumptions and have each removal motion be considered a new custody determination with the trial court considering all relevant factors, including the best interests of the children and the parties' motives for both seeking the move and opposing the move. [The author would strongly oppose such an approach. It creates a new standard for modification outside of those dictated by statutes, and would put an added burden on the courts.]

B. Allow parties and/or the court to address removal issues at the time of the divorce. This has been the Texas approach to date, and seems to be working fairly successfully.

C. Make mediation mandatory or require binding arbitration in relocation disputes to reduce the use of judicial resources. These provisions are already making their way into mediation agreements.

D. Advise parties up front that because of the divorce, they are of necessity losing some of their rights to relocate, the special obligations of custody, and apply this to both

custodial and non-custodial parents. Certainly the issue of relocation and the impact of a move on the ability of the children to have meaningful contact with both parents should be broached with every client by the responsible practitioner.

VIII. CONCLUSION

The "hot button" issues in family law change from year to year, decade to decade. Since the author has been in practice she has seen the spotlight focus in turn on child support guidelines, wage withholding, visitation guidelines, joint custody, battered women, marital torts and sex abuse allegations; fed in part by the activities of father's groups, mother's groups, welfare reformers and psychologists. The spotlight, over the past few years, has moved to relocation restriction. It will be interesting to see where we will be on this issue at the turn of the century. It's not too far away.

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