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SEILLER WATERMAN FAMILY PRACTICE LAW UPDATE

NEW RULES REQUIRE COURT ORDER TO MOVE OUT-OF-STATE WITH A CHILD *By Stacy Anne Hoehle*



Effective January 1, 2011, parties to domestic relations cases in Kentucky became subject to new statewide rules. Pursuant to KRS 403.130, the new rules are a separate section of the Rules of Civil Procedure known as the Kentucky Family Court Rules of Procedure and Practice (FCRPP). These rules are applicable to all actions for dissolution of marriage; custody and support; visitation and timesharing; property division; maintenance; domestic violence; paternity; dependence; neglect or abuse; termination of parental rights; adoption; and status offenses, or any other matter exclusively within family law jurisdiction, except for any special statutory proceedings.

One major change to the practice of family law regards relocation with a child. The new rule states "If either parent intends to move with the child(ren) from the Commonwealth of Kentucky to another state, or more than 100 miles from the present residence of the child(ren), he or she shall give notice to the other parents at least sixty (60) days prior to such move. Either parent may file a motion for change of custody or time sharing if the other parent is not in agreement with the move, or an agreed order if they are in agreement. No relocation of the children shall occur unless the court enters an order modifying the status quo."

This new rule requires a parent wishing to relocate out of state, or more than 100 miles away, to obtain a court order permitting the move, even if the other parent acquiesces. If the parties agree about the relocation, an Agreed Order may be tendered to the court. If the parties do not agree, the court will hold a hearing.

The necessity of a court order for relocation complicates what could otherwise be a simple move. For example, a parent living in downtown Louisville who wants to move to Jeffersonville, Indiana will now need a court order to do so because the

move is across state lines. This will also be a pressing issue in Ashland, Paducah, Owensboro, Northern Kentucky, and Fort Campbell since these metropolitan areas go beyond the state's border.

This relocation rule is supposedly based on *Pennington v. Marcum*, a Kentucky Supreme Court case decided in 2008. The Court considered whether a parent's desire to relocate would cause a change in custody or parenting time. Different statutes govern the standard courts apply to modify custody and parenting time. The Court held that changing how much time a child spends with each parent does not alter the child custody arrangement in the custody order or divorce decree.

The new rule may have been motivated by Justice Venters' dissent in *Pennington*. This dissent stated that the trial court "took the unilateral relocation of the child as a *fait accompli* without adequate consideration of impact of the relocation on the child and on the child's other family relationships." Venters argued that a parent's unilateral relocation with a child encourages the parent to undertake unannounced relocations, and that the state should adopt a policy that requires joint custodians to discuss relocation before it occurs.

Whether this rule is entirely proper remains to be seen. In addition, FCRPP 7(2) will add to the congestion in courts and frustration of parents under financial strain since the cost of moving may now include legal fees to obtain a court order, even if the relocation is a stone's throw from one side of the Ohio River to the other. If you are considering relocation with your child, we can help you file the right pleadings with the Court to comply with the new relocation rule.

For more information on this topic or any other legal concerns or questions, please contact your Seiller Waterman attorney.

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