

SEATTLE, WA, October 06, 2013 /24-7PressRelease/ -- **1. The Washington State Relocation Act** RCW 26.09.520 provides: "The person proposing to relocate with the child shall provide his or her reasons for the intended relocation. There is a rebuttable presumption that the intended relocation of the child will be permitted. A person entitled to object to the intended relocation of the child may rebut the presumption by demonstrating that the detrimental effect of the relocation outweighs the benefit of the change to the child and the relocating person, based upon the following factors. The factors listed in this section are not weighted." The eleven factors to be considered by the court are listed in a previous Legal Guide. They may be summarized as the child's relationship with each parent, prior agreements, detrimental effects, serious parenting problems, good faith of the parties, the needs of the child, resources available to the child and the relocating party, alternative options, whether both parents can relocate, the financial impact, and the need for a speedy decision.

2. Legislative history The relocation statute was adopted by the Washington State legislature in 2000. Before that, a custodial parent who wanted to relocate had to file a petition to modify the Parenting Plan. Trial could take a year or more. The case law made it difficult for the custodial parent to justify relocation. The legislative hearings were intense. Custodial parents (most often women) did not want to be blocked from relocating for important family or employment reasons; non-custodial parents (most often men) did not want to have their relationships with their children disrupted by moves to distant locations. Important compromises were made by both sides. Relocation cannot be based on trivial reasons; notice must be given; and an early trial date is required. The court must consider the detrimental effect of relocation to both the child and the relocating parent. Finally, the court must consider the detriments and benefits of relocation for the both the child and the relocating parent.

3. In re Horner In *In re Marriage of Horner*, 151 Wn.2d 884, 93 P.3d 124 (2004), the non-custodial father objected to relocation by his former wife with their child. The mother notified the father that she intended to relocate from Vancouver, Washington, to Edmonds so that she could care for her ill parents. The State Supreme Court reversed the trial court's decision blocking the relocation: "The CRA [Child Relocation Act] shifts the analysis away from only the best interests of the child to an analysis that focuses on both the child and the relocating person. RCW 26.09.520. The CRA creates a rebuttable presumption that relocation will be permitted. Id. To rebut this presumption, an objecting party must demonstrate "that the detrimental effect of the relocation outweighs the benefit of the change to the child and the relocating person..." The Court held that "Particularly important ... [in the Horner case] are the interests and circumstances of the relocating person. Horner, at 894.

4. In re Osborne In *re Custody of Osborne*, 119 Wn.App. 133, 79 P.3d 465 (Div. I 2003) held: "Rather than contravening the traditional presumption that a fit parent will act in the best interests of the child . . . the relocation statute establishes a rebuttable presumption that the relocation of the child will be allowed. Thus, the Act both incorporates and gives substantial

weight to the traditional presumption that a fit parent will act in the best interests of her child. The burden of overcoming that presumption is on the objecting party, who can prevail only by demonstrating that the detrimental effect of the relocation upon the child outweighs the benefit of the change to the child and the relocating person." Osborne, *supra*, 119 WnApp. at 144-145.

5. In re Fahey In *In re Marriage of Fahey*, 164 Wn. App. 42 (2d Div. 2011), rev. den. 164 Wn. 2d 42, the custodial mother's move to Omak, Washington was allowed over the father's objection. The Court of Appeals held that "...the trial court did not err when ruling that Lisa was Nichole and Shannon's primary residential parent under the 2002 permanent parenting plan, applying the child relocation statutes, applying the rebuttable presumption in favor of Lisa's relocation decision, and approving the children's relocation to Omak. We also hold that, under the facts of this case, the trial court did not discriminate against Lawrence based on his disability or gender. Finally, we hold that the trial court's decisions to impose limitations on Lawrence's visitation rights under the new parenting plan and to deny the appointment of a GAL, after entering its final orders were not based on untenable grounds. We affirm."

6. In re RFR In *In re Parentage of RFR*, 122 Wn.App. 324, ___ P.3d ___ (Div. II 2004), a father objected to the proposed relocation of his child by the mother. No parenting plan was in place. The Court stated, "...[T]he relocation act requires proof that the decision of a presumptively fit parent to relocate with the child ... will in fact be so harmful to a child as to outweigh the presumed benefits of relocation to the child and relocating parent. Osborne, 119 Wn.App. at 146-47.... Here, [the father] has not met his burden of showing that the statute violates his substantive due process rights... Osborne suggests that the ... objecting parent's ability ... to prevent the relocation ... is limited by the right of the relocating parent ... to care for the child in the manner in which he or she sees fit. In this situation, the trial court was required to intervene and necessarily choose between the parents' competing interests." *In re Parentage of RFR*, *supra* at 332-333.

[Bruce Clement](#)