

NJ Family Law Coronavirus Special Series

Parenting Issues and the Coronavirus Crisis: The New Normal

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This article is the first in a continuing series addressing family law issues arising during the coronavirus crisis. All parents, whether separated, in the midst of a separation, or in an intact family want to protect their children and secure their finances during this global pandemic and economic downturn. You may be wondering what is the best way to accomplish this in the face of constantly changing circumstances. This article will address custody and parenting time issues during a time of crisis.

Especially during a time of crisis, the best interest of the children must remain paramount. Parents who are good at working together, and not so good at working together, must come together to provide comfort, assurance, and consistency for their children during a crisis. This is especially true during this crisis, where the entire schedule and world of the children have changed. Children are no longer in school; no longer in childcare; not maintaining their usual schedule; not seeing their friends; and seeing their parent or parents' home all the time instead of going to work or other activities.

For many parents, the world also has turned upside down for them as well. Some parents have to completely re-adjust their work schedule and process to work from home. Home spaces need to be re-allocated for work and play. Childcare may no longer be available or advisable. Some parents may be temporarily furloughed, or may be suffering the devastating economic consequence of this crisis such as sudden unemployment. While this article focuses on the effect of these kinds of changes on parenting and children, our next article will focus on the financial consequences of these changes and both will have suggested Family Law remedies.

Should Parenting Time Continue During This Health Crisis?

Many parents are wondering if transporting children back-and-forth between homes is safe in this crisis, and can they decide to stop the parenting time while the “stay at home” Guidance in New Jersey is in effect. **The answer is** one parent cannot unilaterally decide to terminate parenting time even in this crisis. The goal is to have both parents work together, with the assistance of attorneys if necessary, to try to figure out what is in the best interest of the children and whether transporting the children, or being in one home versus the other home raises any specific kinds of health issues. Hopefully, the parents will be able to work out a continuation of parenting time in accordance with the parenting schedule on which they have agreed, and which may even be in a Judgment of Divorce or a pendente lite parenting time Order. Judges do not like “self-help”. A Court will not look favorably upon parties making unilateral decisions rather than reaching a consensus with the presently separated or former spouse, or seeking the assistance of the Court.

Can Parenting Time Be Modified Without A Court Order? Does The Modification Have To Be Permanent?

The answer is YES, you can definitely agree with your separated or former spouse to a modification of your parenting time. And NO, the modification does not have to be permanent.

There are many ways to enter into short term agreements for modifications of custody and/or parenting time. The best way to do this would be to work with an attorney to enter into a Consent Order. A Consent Order has the full power of the Court behind it for enforceability, which may become important later, but is done without a court hearing or any court appearance for that matter. Both parties will agree on the terms of the modification, which an attorney will place into the form of an Order. Since both parties agree to this Order, it is called a Consent Order.

Alternately, you and your separated/former spouse can reach an agreement on modifications to your parenting time schedule without a Consent Order. However, it is always better to place in writing any agreement you reach. With a writing, there is no misunderstanding about

the terms and intent of both parties. Preferably, you would have an attorney draft this agreement for you so that it would appropriately modify a pre-existing parenting time schedule, but if you are unable to reach or retain an attorney to do this for you, at least put your agreement in writing and both spouses should sign and date it. Depending on the writing, it may or may not be enforceable, but it will be indicative of intent and certainly is better than an oral agreement.

Is The Loss Of/Furlough From A Job A Change In Circumstance To Modify Parenting Time With Your Children? Will a Court Order More Time With The Children If The Other Parent Objects?

The answer is MAYBE. That is not a very satisfying answer, but this issue requires an analysis of several factors. A furlough from a job is likely to be a temporary change in circumstance. Typically, a change in circumstance must be a permanent and significant change in circumstance to result in a modification. However, these are very unique times and the best interest of the children will be the polestar for the Court. An increase in time for a parent may be a welcome modification both to the parent who has more parenting time, and for the children whose schedules already have been subject to significant change. In such a case, an attorney can draft a Consent Order to reflect this modification and its temporary nature, which could include a resumption of the prior schedule upon the termination of the furlough. Or, the parties could agree to revisit the modified schedule depending on how it is working prior to or at the time of the termination of the furlough. This suddenly available time to be with the children may well provide a good basis in the best interest of the children to modify the parenting schedule for so long as the furlough exists.

However, if the other parent objects to increasing the parenting time or modifying the parenting time schedule, the parent desiring an increase in parenting time could file a Notice of Motion with the Court. Motions are typically heard by the Court every 24 days. Despite the coronavirus crisis, the Courts ARE working; and are deciding emergent applications as well regular Motions. The Courts are hearing Motions remotely, with oral argument by counsel being conducted on the telephone or by video conference.

Will Custody Or Parenting Time Be Limited For Parents With “Essential” Jobs Who Must Work Outside of the Home Or If A Parent May Have Been Exposed To A Person Who Tested Positive for COVID-19?

The answer again is MAYBE.

First, parents with jobs that have been designated as essential may have to work longer or different hours. Therefore, parenting time schedules might need to be modified because of changes in work hours. These modifications also can be accomplished with a Consent Order. As discussed earlier, it is optimal to place any modification of custody or parenting time in writing, best in a Consent Order or next in a written agreement signed by both parties. Since any modification of these issues is significant, it would be best to email your attorney and ask him/ her to review the language or write the language for you.

In other circumstances, parents may find out that they have been exposed to a person who tested positive for the Coronavirus. There is a lot of legitimate fear in the current crisis, which results in some parents wanting to limit parenting time because they are worried about the children going back and forth to multiple homes. Unless there is a danger to the children being in the presence of the other parent, or the other parent’s home and persons living there, a Court would likely enforce a current parenting schedule. However, if a parent has been exposed to a person who tested positive for the virus, or has traveled to an area for which the CDC has issued Guidance to self-quarantine, it is highly likely that a Court will temporarily suspend/modify parenting time for the appropriate period of quarantine, and time necessary to clean/disinfect the premises. There is no doubt that both parents want to preserve the safety and well-being of their children; and therefore should be able to agree on a “time- out” from the parenting time schedule. While there will be a desire to continue to have some contact with the children, social distancing walks or other physical contact versus FaceTime or other video options, will have to be discussed in each household. A Court will look at the facts and circumstances of each case to make a determination on issues like these. However, it is always best to try to reach an agreement with the other parent because it will take weeks for a Court to address the issue, unless of course it is an emergency. Courts will address emergencies quickly, especially emergencies concerning children.

Are The Courts “Open” To Help If There Is A Pre- Judgment Or Post- Judgment Custody/Parenting Time Problem That Cannot Be Resolved?

As discussed above, **the answer is** YES. Whether you are in the process of divorce, or are already divorced, you are entitled to seek relief from the Court. The Courts are open and functioning, albeit remotely. If you have an emergency, an attorney on your behalf can file an application called an Order To Show Cause. That application should get a virtual immediate response from the Court, with likely a temporary solution and a return date to Court in the not too distant future for everyone to be heard on a more permanent solution.

If you have an issue that is not emergent, but unlikely to be resolved or disappear due to changing circumstances over the next 30 to 60 days, an attorney on your behalf can file a Notice of Motion in Court for you. There are so many circumstances that are constantly changing during this crisis causing parents to face issues never before considered. These are difficult and trying times. A Court may be needed to resolve some of these parenting issues.

However, there are multiple ways to try to resolve your issues without the assistance of the Court, including contacting an attorney to try to negotiate a resolution on your behalf; or use the services of a mediator (typically an experienced Family Law attorney or retired Judge). A creative and thoughtful attorney should be able to mold a consensual resolution to most of the custody/parenting time issues raised as a result of the current crisis. The goal is to protect the children, stay out of Court, and try to stay psychologically and physically positive.

Resources To Help Parents And Children During the Coronavirus Crisis

Non-Legal Help

Often parents need more than legal help for their custody and parenting time issues during the Coronavirus Crisis. The effects that the Coronavirus Crisis have on children and the disruption it causes in their lives is undeniable. Mental health professionals are valuable resources who can help parents and their children cope with these issues. The below online resources, which were kindly provided to us by Carolee Kallman, MA, LPC, LCADC, and

Sharon Ryan Montgomery, Psy.D., may help your family cope with the issues created by the Coronavirus Crisis.

<https://ct.counseling.org/2020/03/the-counseling-connoisseur-how-to-talk-to-children-about-the-coronavirus/> This article provides parents with tips for talking to children about the Coronavirus. The article stresses honesty and for parents to reassure their children during the crisis. The author uses an acronym "CAPES" to help parents remember the important points when talking to their children about the Coronavirus Crisis.

C – Create a calm setting

A – Ask what they already know

P – Provide age-appropriate answers

E – Empower them with tools

S – Safety

<https://www.afccnet.org/Portals/0/COVID19Guidelinesfordivorcedparents.FINAL.pdf?ver=2020-03-17-202849-133> This article gives seven guidelines for parents who are divorced or separated and share custody of their children during the Covid-19 Pandemic. These guidelines make clear that working together and staying informed are best practices to ensure the best interest of their children remain paramount.

<https://www.youtube.com/watch?v=AO140pLEqm4&feature=youtu.be> This webinar presents skills and strategies to use with your co-parent during the Coronavirus Crisis. The tips provided in the Webinar help make a challenging time easier and help co-parents navigate together through the Coronavirus Crisis.

Coronavirus and Your Parenting Issues

Every New Jersey family is experiencing parenting issues during the Coronavirus Crisis. It is important to be aware of your options and how the Court is handling these fluid and constantly changing issues. If you find yourself experiencing custody and parenting time issues during the Coronavirus Crisis, we are here to help. For further information please contact Jan L. Bernstein at 201-975-4417 or JBernstein@PhillipsNizer.com.