

Modifying Parenting Plans

Changing the Terms of Your Custody and Visitation Order

by Marci R. Carroll, Esq.

Parenting plan terms (formerly known as custody and visitation orders) are another one of those aspects of your final order that is always subject to modification if circumstances have changed substantially or in certain other, limited situations. Simply deciding that you want to spend more time with your child in and of itself is not enough.

Before electing to go back to court and filing a parenting plan modification motion, review your existing parenting plan order carefully. Almost all parenting plans entered in the last few years require parents to go through mediation *before* filing a modification motion on parenting plan issues with the court. Moreover, be aware that even if your existing order does not require you to go to mediation first, the family court will most likely require you to go through the mediation process before scheduling a final contested hearing on your motion. Of course, even if the mediation process is successful and results in an agreement regarding changes to the existing parenting plan order, a motion must be filed asking that the family court incorporate those agreements into a supplemental parenting plan order and presenting the modified parenting plan terms in a comprehensive and enforceable manner.

The family court may change the terms of your parenting plan if a substantial change in your, your co-parent's, or your children's circumstances can be shown and the proposed change is in your children's best interests. Further, the change in circumstances must be based on facts not known or anticipated at the time of the existing parenting plan order. Unless otherwise agreed by the parents, a change in a parent's economic status as the result of a parent's involuntary loss of employment, a parent's remarriage or cohabitation, and a reasonable choice of caretaking arrangements, do not constitute a substantial change in circumstances. Unfortunately, what *does* constitutes a "substantial change in circumstances" and what is necessary to promote the "best interests of a child" are rather ill-defined concepts. The instincts of an experienced domestic relations attorney can prove especially beneficial if you are contemplating moving for a modification on this basis.

In rare circumstances, the family court will modify your existing parenting plan order where the existing plan is not working as contemplated and that the plan is in some specific way manifestly harmful to your children. A substantial change in circumstances is not required in this instance.

Of course, an agreement on any requested modifications to the existing parenting plan order between you and your co-parent is almost always a sufficient basis. The parents' agreement must be knowing and voluntary and must not be harmful to the child.

Your existing parenting plan order can be modified without showing a change of circumstances in certain other situations so long as the proposed modification is in your children's best interests.

- Where the moving parent has in actuality been caring for the minor children in substantial deviation from the terms of the existing parenting plan consistently for a period of at least six months prior to the filing of the modification motion, the family court can modify the existing court order to reflect those *de facto* arrangements.
- Minor modifications in the terms of the parenting plan order do not require a showing of a substantial change in circumstances either.
- Finally, the reasonable and firm preferences of your children who have reached at least fourteen years of age may form the basis for a parenting plan modification; although it is sometimes possible to push the envelope to include younger children, fourteen tends to be the "magic age" at which children's preferences are taken into account by the family courts. A few words of caution with respect to this last category are in order. What your child is telling you about his or her preferences very well may not be what he or she is telling your co-parent; be wary that your child is telling you what he or she believes you want to hear. Be cautious that your child is not, as is a natural tendency for children, playing parents off of each other to cut the "best deal" or reacting against disciplinary measures imposed by your co-parent. Furthermore, consider that your children may waffle in his or her preferences as to parenting plan terms. Modifying existing parenting plan terms on the basis of a mature child's preferences is certainly not an uncommon occurrence, but it is a basis for modification which should be approached and undertaken with a certain degree of caution.

Evidence of multiple false domestic violence or child abuse and neglect referrals by one parent against the other parent does not necessarily provide an independent basis for modifying an existing parenting plan order, but such evidence may be a factor considered by the family court in reallocating custodial responsibilities between parents.

Finally, relocation of either parent such that the existing parenting plan terms are impacted can trigger a parenting plan modification. For more information on this ground for modification, please refer to the companion article *On the Road Again: Moving When a Child Is Subject To A Parenting Plan* available on this web site.

Regardless of the ground upon which you base your parenting plan modification motion, the professional services of a knowledgeable and experienced domestic relations attorney can prove invaluable in constructing and presenting your motion effectively and

in representing you in the mediation and/or settlement negotiations involved. The parenting plan order needs to be drafted so that each parent's time with the children is clearly defined and less subject to varying interpretation. The right language in the parenting plan and order can make a big difference in each parent's compliance with and ability to enforce the terms of the parenting plan order in contempt proceedings. The skill of an experienced domestic relations attorney in obtaining and drafting such a comprehensive parenting plan order can be invaluable.

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