

## Day #8: Parenting Time (Visitation)

Hi,

Thanks again for Subscribing. Yesterday we wrapped up the sections on child custody and now we move into the related area of parenting time.

If you are without children then today is the last day you can take a breather as tomorrow we move into the “Eleven Step” Contested Divorce process materials.

### **Parenting Time Law in New Jersey**

Parenting time—formerly referred to as visitation—addresses the specifics of a custody order or agreement.

The parties’ lawyers will do their best to broker a deal or fight for the parenting time sought by their clients. Likewise, judges will make a call if they have to. But in my opinion, the parties themselves are best equipped to work out a reasonable parenting

time arrangement on a day-to-day and hour-to-hour basis.

After all, it will be you who, along with your children, will be implementing the parenting time arrangement into the fabric of your daily lives.

Accordingly, to the extent possible, you should work together to protect the best interests of your children. Ideally, you will push aside your own differences and work towards a fair resolution of the parenting time issue. Obviously this cannot always be done if there are legitimate custody or parenting time concerns involving your partner.

## **New Jersey Parenting Time Law: Basic Concepts**

Custody will determine which party is the parent of primary residence (physical custody) and which party is the parent of alternate residence. Absent good cause otherwise, New Jersey law generally favors liberal parenting time with the parent of alternate residence, so that the children will maintain a post-divorce relationship with both parents.

Exceptions to this general rule do exist, such as when parenting time would not be in the best interests of the children.

One such instance is when the parent of primary residence has a history of abuse or domestic violence. Even then, however, the Courts generally favor restrictions on parenting time (such as requiring that parenting time be supervised) to denying either party parenting time altogether.

One of the seminal New Jersey parenting time cases is McCown v. McCown, 277 N.J.Super. 213, 218 (App. Div. 1994). The McCown Court stated that children have a right to a loving relationship with both parents.

The parent of primary residence generally has a responsibility to foster and develop the relationship between the parent of primary residence and their children. The parent of primary residence may therefore be sanctioned if he or she attempts to alienate the children from their other parent. Such sanctions can include up to the loss of primary custody.

Parenting time rights are generally only guaranteed to the actual parents or guardians. Outside parties generally have no legal right to parenting time, even when those outside parties are non-guardian grandparents. For better or worse, parenting time is not contingent upon the payment of child support.

## **Parenting Time Agreements**

In New Jersey, parenting time arrangements may be determined by the Agreement of the parties or by the Court. Either way, the disposition of this issue must be made in the best interests of the parties' children. Most Courts and family law attorneys alike will look to a traditional parenting time arrangement to provide a basic framework for parenting time. Negotiations will then focus on modifying the Agreement to reflect the wishes of the parties.

The parent of alternate residence is generally given weekends or alternate weekends for overnights, along with an evening or two each week. Fights over specific holidays can oftentimes hold-up an otherwise done deal.

Holidays are generally alternated between both parents based upon even and odd years. For instance, if the Father had the children for Thanksgiving in odd years, then the Mother would have the children for Thanksgiving in even years.

The parties can enter into an Agreement for parenting time/custody as part of the Marital Settlement Agreement or as an independent Consent Order prior to the ultimate disposition of the case.

This Agreement would then be embodied or incorporated into the Marital Settlement Agreement.

## **Modifying Parenting Time Agreements**

Either party may, at essentially any time, move for a modification of the present parenting time arrangement. If the parties cannot agree upon a post-judgment modification, then the party seeking the modification will often file a Motion.

The party filing the post-judgment Motion must first establish a change in circumstances. Then, he or she must also demonstrate that the modification would be in the best interests of the parties' children.

## Conclusion

Parenting time issues can be one of the most contentious parts of the divorce. Luckily, in many instances the parties can work together to create an amicable resolution of the parenting time issue.

Tomorrow we move into the “Eleven-Step” Contested Divorce Process, the heart of these materials.

All the best,

Carl

Carl Taylor, Esq.  
Carl Taylor Law, LLC  
171 Main Street  
Flemington, NJ 08822  
908-237-3096  
[www.carltaylorlaw.com](http://www.carltaylorlaw.com)

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