

Family Focus

DO I NEED A RIGHT OF FIRST REFUSAL IN MY PARENTING PLAN?

Posted by **Stuart Scott** | Mar 1, 2019

Parenting time can be one of the most contentious issues in a divorce. Deciding which parent sees the children, how much and under what circumstances can be a very tricky and emotionally charged effort.

As part of any divorce the parents must either agree to, or a court will order, a Parenting Plan. The Parenting Plan sets forth the time and conditions for each of the parents to have parenting time with their children.

Parents living together as an intact family usually do not have to worry about parenting time for the children when one parent is traveling for work and it is inappropriate for the children to accompany that parent. Once the parents are divorced and living in separate households, a parent who has to travel during their parenting time may make other arrangements for the children such as having another family member or babysitter watch the children while the parent is away during his or her parenting time.

But why not have the children stay with the other parent if one parent is away during their parenting time? As a general rule a parent is not required to turn over their children to the other parent if that parent needs to be away from the children during his or her parenting time. Each parent is generally free to use a family member or sitter to watch the children during the time the parent is exercising parenting time with them, even if the parent is not personally with the children.

The right of first refusal allows the other parent to have parenting time with the children when the parent who has parenting time is unavailable. A prime example of this is a parent who travels for

work.

This means that the parents may agree in advance that whenever one parent is unable to be available during their parenting time, that parent then offers to the other parent the right to exercise parenting time with the children while that parent is unavailable. The parent who receives this offer then has the “right of first refusal,” *i.e.*, that parent may choose to exercise parenting time with the children while the other parent is away, even though it is during a time that parent is not scheduled to have parenting time with the children.

The right of first refusal involves communication between the parents about their schedules. It may come into effect regarding very short time away or only when there is a longer absence anticipated. Some parents will argue that a parent must notify the other parent and give that parent a right of first refusal any time a parent will be away from the children more than two hours during their parenting time. Generally shorter absences are discouraged as triggering the right of first refusal. They can cause over-involvement of the opposite spouse in the parent’s life. They also may cause quite a bit of child juggling back and forth.

Other parents carefully craft language that works with both of their schedules. This maximizes parenting time for the children with both parents regardless of the parenting time schedule which is otherwise in effect. In this scenario only certain more lengthy absences, like overnight time away, triggers the right of first refusal.

In addition to traveling, parents who may have to be on call for work, parents who have periodic requirements such as military duty, and parents who experience countless other reasons why he or she may be unable to engage in parenting time during their scheduled parenting time may take advantage of the right of first refusal.

The right of first refusal may also be part of a Temporary Parenting Plan. During the divorce process, when emotions tend to run high, a temporary right of first refusal can be built into a Temporary Parenting Plan and may soothe inflamed parenting concerns.

For example, a Temporary Parenting Plan might say that any time a parent will be away from a child or children for four hours or more that parent must provide notice to the other parent at least 72 hours in advance of the time the parent will be away. The other parent then has 24 hours to provide notification indicating whether he or she will watch the children while the other parent is temporarily unavailable. This right of first refusal might only last during the pendency of the divorce and later be removed, as parenting issues settle down.

The right of first refusal can be a very effective tool for calming parental concerns during the pendency of divorce. It can also provide a stable base for parenting issues that arise due to ongoing work or personal reasons when one parent may need to be away from the children during their parenting time. If used effectively, it can be an efficient tool to help assist parents and children alike

with both transitioning through the divorce process and establishing solid and acceptable parenting rules moving forward in life post-divorce.

While parties are always able to agree to terms to be included in their parenting plan, whether a Court would order a right of first refusal over the other parent's objection, is something that must be discussed with your attorney.

About the Author

Stuart Scott is a litigation attorney with over 25 years of experience. He has tried hundreds of cases in both state and federal court. Some of his noteworthy victories have been featured in local, state and national publications. Stuart is also listed as a Tennessee Supreme Court Rule 31 Family Law Mediator. Stuart focuses his primary area of practice on family law. He represents people going through divorce and focuses his efforts on providing his legal services and advice to his clients in this area. Mr. Scott may be reached in our Nashville office at 615-620-1710.



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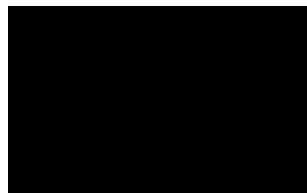
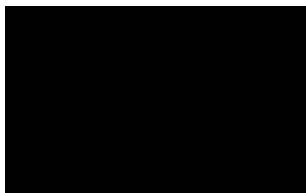
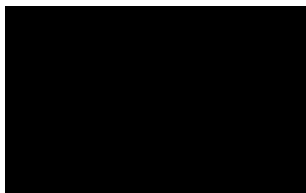
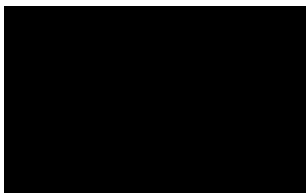


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