

Abuse of Parenting Time

A common problem that parents entangled in divorce or parentage proceedings have encountered is what consequences, if any, the other parent faces if he or she does not exercise parenting time (formerly known as “visitation”) or, in other words, if the other parent refuses to cooperate with the parenting time schedule as ordered. Under the former law, there were few avenues that a parent could take to resolve this issue, absent asking the Court to modify the agreement, requiring proof at a hearing of a “substantial change in circumstances.” Lack of cooperation between the parents affects the best interests of the minor children, who benefit from a consistent schedule with both parents.

Fortunately, under the revised Illinois Marriage and Dissolution of Marriage Act, a new section has been added entitled “Abuse of Allocated Parenting Time.” 750 ILCS 5/607.5. Under this section, a parent, guardian *ad litem*, or child representative may bring a petition to enforce the terms of a parenting plan or allocation judgment, so long as a reasonable attempt has been made to resolve the issue.

If the Court finds in favor of the petitioning parent, then the parent who has violated the parenting time that was allocated to him or her may face at least one of many consequences at the Court’s discretion. The Court has authority to impose additional terms and conditions upon the parent or require that either or both parties attend a parenting class at the noncompliant parent’s expense or require that the parties participate in counseling. The Court also has the option to require the noncompliant parent to post a cash bond or other security to ensure future compliance or order makeup parenting time for the affected child. Of significance, the Court has the discretion to fine the noncompliant parent separately for each incident of missed parenting time, order that he or she reimburse the other parent for “all reasonable expenses” incurred as a result of violating the parenting plan or court order, or hold the noncompliant parent in contempt of court. If the Court holds a party in contempt of court, it has the option of suspending or limiting his or her driver’s privileges, placing the parent on probation, sentencing the parent to prison for up to six months, or fining the parent up to \$500.00 for each offence of parenting time abuse.

The law is cloaked under the best interests standard such that the Court makes the determination of which consequence to invoke based upon the best interests of the minor children in a case.

Furthermore, the Court must require the noncomplying parent to pay the attorney’s fees and applicable expenses of the other parent if he or she prevails on the petition for abuse of parenting time. The sword cuts both ways, however, because the Court may require the petitioner to pay the respondent’s attorney’s fees and costs if it finds that no violation occurred. It is important to note that the first provision here is mandatory, i.e. payment of fees if a parent prevails, while the latter provision is discretionary.