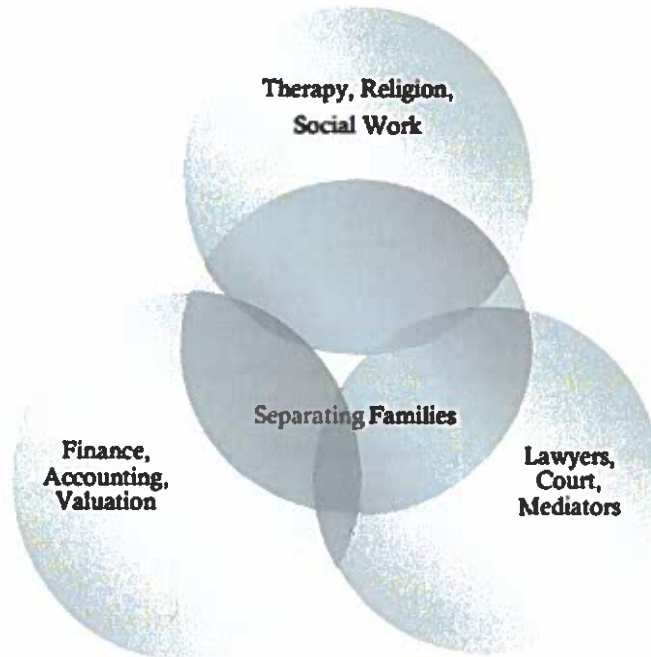


SENSIBLE SEPARATION

This issue of *Sensible Separation* will focus on children of divorce.

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Sensible Separation is an interdisciplinary newsletter for professionals assisting families with divorce or separation. If you would like to contribute an article, please submit to GKincaid@hrkklaw.com. For more information about divorce mediation, please visit www.SensibleSeparation.com. Another opportunity to share helpful thoughts or insights about our work exists on the Sensible Separation FACEBOOK page, which is located at www.facebook.com/sensibleseparation. Please visit our site. We appreciate the traffic and any helpful information that you would like to share.

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In this issue of *Sensible Separation* there are two articles that focus on children's activities. The first is from Daniel R. Victor, an attorney in Bloomfield Hills, Michigan. Mr. Victor recognizes the unique problems that divorcing families face when it comes to finding the time, energy and money necessary to support their children's activities. These problems are not only logistical, but also somewhat philosophical. Specifically, now that a child may have less time with a custodial parent, should the level of commitment to activities be reduced to reflect the reduced parenting time? Mr. Victor makes a convincing argument that divorcing parents should remain committed to their children's activities..

Recent court cases and guidelines changes have altered the process of thinking about the allocation of costs between the parents for their children's activities or private school. While these expenses were once part of child support, it appears that the guidelines committee and the Kansas appellate courts have effectively nudged them off the worksheet. In the second article, I interviewed a number of lawyers, guidelines committee members and a judge to help me better understand this new approach to the allocation of children's activity expenses. I've tried to explain the rationale and suggest some models for mediators and lawyers when working with their clients.

Finally, there is an article from Amy Hyken-Lande with timely tips for divorcing parents.

I. When Parenting Time Conflicts with Extra-Curricular Activities: Keeping Kids Out of the Middle

by Daniel R. Victor

Defining "Parenting Time"

When a child's extra-curricular activities and a parent's regularly scheduled parenting time conflict, the issue of which should take precedence frequently appears. This article will explore that issue in an attempt to justify the conclusion that, despite its name, "parenting time" occurs during an individual child's schedule. In most cases, the parenting schedule is secondary in nature to the paramount interest of encouraging children and young adults in their pursuits and activities that occur after school and often overlap with "parenting time."

Before two parents are divorced, all of a parent's time is "parenting time" regardless of whether the parent is at work, at home, or out of the country. Married parents are never officially off-duty. However, the implementation of a parenting time schedule after a divorce, where one parent is with the children while the other is not, means that each parent is technically not responsible for where the child needs to be and may decide whether or not the child goes to a function or activity, if that parent decides that an individual activity is less important than time spent elsewhere.

When it comes to extra-curricular and social activities for children, the endless number of time-consuming academic, competitive, and community and family gatherings in which children are involved can often take up a significant portion of a child's time. Weekends are oftentimes less of a break for parents and children, and more of an intense car-pooling shuffle. For an "intact" family, these extra-

curricular activities are difficult to plan, difficult to attend, and sometimes, impossible to justify. But every day, parents sacrifice their own free time and balance the responsibilities of these schedules with each other for the sake of their children's extra-curricular educations and the benefits that come from learning outside of the classroom.

Turning Regular Parenting Time into Normal "Good Parenting"

What is it with intact families that prompts parents to sacrifice the time and money in order to provide their children with these benefits? For some, it is the blessing of being able to provide their children with the extra, experiential education that they did not receive when growing up. For others, it is a chance to encourage a specific talent or promise in a unique field of expertise that makes the child feel like a success and, in turn, gives his or her parents a similar feeling of pride.

But even though a parent's desire to give everything to a child can last forever, marriages don't always last that long. And when parents get divorced, everyone's schedules change, including the children's. In the blink of an eye, kids go from spending every Saturday morning on the soccer field playing with friends to spending what is now known as "parenting time" – time when parents receive their children and the chance to do with them what they wish before it is time to be separated once again. The time that used be the child's time – when parents' plans were sacrificed for the good of giving their child the chance to play and learn with friends – is now called the parent's time, and the sacrificing party is no longer the parent.

Granted, there is no manual for how to be a married parent. But for some reason, most married parents do not feel competition resulting from time away from their child that is imposed by countless hours of practices, tutors, games, coaches and events. It is only when, as a result of the divorce, parents have something at stake – something to gain or lose – that the inability to sacrifice for their children develops. When one parent has limited access during the week, accommodating a child's desire to be at a practice, tournament or party, where that parent's only contact with his child will be the drive to and from the activity and then waiting in the parking lot for it to end, can feel like an unreasonable expectation.

Effective Parenting Plans

During a non-custodial parent's parenting time, that parent ultimately has the final say in what the child does during that time. However, when the custodial parent disagrees with the non-custodial parent's decision to keep the child from the scheduled activity, there are reasonable solutions that can be arranged. If the issue ultimately comes before the judge, one would expect most judges to accommodate the child's desire and best interests.

It is usually in the child's best interests to maintain the regularly scheduled activity and either provide the non-custodial parent with parenting time on a different date, or try to convince that parent that it really is in the child's best interest for the parent to attend and encourage participation.

Conclusion

It is this author's opinion that, more often than not, a child's only release from the traumatic and unnecessary drama of divorce is the self-expression that is gained and encouraged during extra-

curricular activities. Regardless of the activity, the odds are that when engaged in that activity, the child will have a chance to be free from thinking about the divisiveness of the divorce and the breakup of their family. Add to that the confidence born from mastering a unique skill and there is little excuse for a parent who decides that his or her time with the child is more important than sitting on the sidelines cheering, or even sitting in the parking lot reading.

Courts, lawyers, and mediators should make it their policy to do everything within their power to keep children from being forced to choose time with their parents over their extra-curricular activities. It is in the best interests of children to develop skills that give them confidence from successes and lessons from mistakes, and it is in the best interests of children for professionals to guide parents to make sure that a child's experiential and extra-curricular learning is maintained.

Daniel Robert Victor is an attorney in Bloomfield Hills, Michigan, specializing in family law. He is a graduate of the James Madison College at Michigan State University and the Vermont Law School. He is co-author of the brief on behalf of the appellants in the grandparent visitation case, DeRose v. DeRose, and donates his time to the non-profit Grandparents Rights Organization. Mr. Victor has also taught family law at DCL at Michigan State University.

II. Allocation of activity costs between divorcing parents.

By Greg Kincaid

Both case law and revisions to our Kansas Child Support Guidelines have restricted, and perhaps even eliminated, the use of child support adjustments to allocate children's activities or private school expenses between parents.

I reach this conclusion by speaking with one of the ranking members of the Guidelines committee, one of our family law judges, and reviewing the definitions set forth at II.A of the Kansas Child Support Guidelines that were enacted pursuant to Administrative Order 284 and came into effect on January 1, 2016.

Historically, attorneys looked at the children's activity expenses and tried to include them somewhere on the child support worksheet under the assumption that the custodial parent would pay them along with all other direct expenses, like clothing and school lunches. This aided the custodial parent; they were not forced into tracking down the non-custodial parent for reimbursement.

In July 2001, *Ronen v. Ronen*, was handed down by the Kansas Court of Appeals. The Ronen Court concluded that sports and scouts were normal activities that normal children incur and accordingly child support already covered them in some fashion. More specifically, they should not be described as a "special needs," which results in an increase in child support. The court concluded its decision by noting that "Money spent on extracurricular activities like baseball, basketball, soccer and Boy Scouts are normal expenditures already accounted for in the child support schedules. We recommend that the parties seek to agree between themselves on whether the expense of extracurricular activities will be shared in some way."

This left many practitioners advising their clients that regular and normal activities were part of child support but not extraordinary expenses. For instance, recreational soccer had to be treated differently than club soccer. The latter being a fair subject for a child support adjustment. In fact, line E.4 of the worksheet read, "Special Needs/Extraordinary Expenses."

The January 1, 2016 revisions removed the reference to Extraordinary Expenses found on line E.4 of the worksheet. Further section IIA, a definitional section, was totally revamped to provide that the purpose of child support is pay both the direct and indirect expenses of the children. Direct expenses is defined to include a more expansive list of activities including, "school, church, recreational club, or sports club..."

Several questions arise. First, if a family is involved with more than the average amount of activities is there a way to force an unreasonable parent to pay their fair share? Arguably, yes. One would have to argue that for this particular family the activity is more important (crucial) and not just for entertainment and therefore it is a "special need." This might get a trial court past the *Ronen* case.

Second, for mediators and attorneys, how do we suggest the cost be discussed and shared as the *Ronen* court encouraged? Equally? *Pro rata*?

Several practitioners I spoke with suggested that the first step might be consider whether the paying spouse has already agreed to the extended child support tables (high income families). If so, then sharing in these expenses might be "double dipping." Assuming that the extended table is not being used, then prorating (using Line D.2) might be reasonable. However, if some component of child support already includes activities, it might also be fair to reduce the child support income (line D.1) by the amount of child support being paid.

Another logical model would be to define a threshold of extracurricular activities that are part of child support and then anything above that amount is defined as an "extraordinary expenses" and subject to division.

Should private school be treated similarly? While it is hypothetically possible that the child support (based on a large sampling of families) included some small component for families with the children in private schools, the number of children in the sampling would be so minimal that it would be unreasonable to assume that it makes up any meaningful part of our child support being paid. Private schools it seems must be first agreed upon and then shared as the parents can agree, if they can agree.

III. Helping Children of Divorce Cope

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Divorce is a very difficult and confusing time for families. It is often a time of turmoil, transition and adjustment for children, which brings about a plethora of conflicting emotions. Some kiddos experience anger, sadness, worry, grief, shock, guilt and even relief. There are many things that parents can do (and not do), to help their child adjust to this difficult time in their lives. This article will focus primarily on what can be done, to help children navigate through this difficult time.

When children are told that their parents will be getting divorced, many questions run through their minds. The initial goal is to make the child feel loved, safe, secure and stable. The best way to do this is to try to normalize their lives. Even though divorce pulls at your heartstrings, and you may feel like spoiling your child, resist that urge. Children need routine and consistency during this time. If one parent can stay in the family home, that is beneficial. Children are going through a tremendous amount of change and therefore, any way to stabilize their environment is helpful. Remaining in the same school, attending the same church/synagogue, continuing play dates with friends, and engaging in activities with extended family are advantageous. The children need to feel a sense of stability and belonging. **Note to parents:** Both parents (if possible) should be together, when they tell their kiddos about the divorce. This should be done in a calm manner, with no blaming of one another. Address changes, answer questions and reassure them that both parents will be in their lives. The child needs to know that you both love them and it is in no way their fault.

Parents can help their children adapt to their new (normal) family situation in many ways. First and foremost, they need to have an open line of communication. Although parents will be going through their own process and emotions, they need to be open to listening to their kiddo's feelings and fears. Doing things like taking a walk, spending time in the park and riding bikes are all calming activities that will give the child the space to open up without feeling pressured. Validate your child's feelings, including feelings of anger. Giving the child a journal to write or color in, is also a good idea. There are many wonderful books about Divorce geared towards children. Reading them together in a safe place, will help the child understand that they are not alone. Setting up weekly "family meetings" to discuss fears, concerns and questions is also recommended. Although it sounds simplistic, "playing" (board games, baseball, dolls, imaginary play) with your child is also valuable. It will help them relax and maybe even laugh... laughter is a wonderful coping skill. **A note to parents:** Do not talk about adult issues with your children. They do not need to know about money, what the other parent did/did not do nor do they need to be your sounding board.

Children going through this difficult time need to learn healthy coping skills to deal with their overwhelming emotions. Exercise, eating healthy and getting enough sleep are all important aspects of their well-being. Honoring past traditions and creating new ones in each home, can also be helpful. Sometimes younger children have a hard time transitioning from one home to the other. Allowing them to take a special object (a picture, stuffed animal, blanket) with them, will soothe this process. **A note to parents:** Although parents may feel like co-sleeping at this time, it is not advised. A parent who allows a child to sleep with them during this transition is passing on the idea that things are "not okay". It also places the child in the role to take care of their parent and makes them feel that their parent is lonely. In addition, once you start co-sleeping after a divorce, it is very difficult to get the child to go back into their own bed. Cuddling, reading stories at night and having a set bedtime routine are more helpful.

Depending on their age and personality, children deal with divorce in many different ways. If you notice prolonged sleep issues, excessive crying, problem behaviors (and lack of attention) at home/school, withdrawal and self-harming behaviors, please seek the assistance of a qualified therapist.