

Children's Extracurricular Activities Before and After a Divorce

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Although children's extracurricular activities may seem like an afterthought or a small issue in a divorce case, it is an issue that often can result in significant disagreements and ongoing litigation both during and after a divorce. In a sole legal custody situation, decision-making regarding a child's extracurricular activities rests solely with one parent. However, those situations are rare. Most divorce cases where children are unemancipated involve shared legal custody. With a shared legal custody situation, both parents are involved in deciding the children's extracurricular activities.

Typically, a parent may object to an activity for one of three reasons: 1) the parent believes the activity is dangerous for the child; 2) the parent believes the activity infringes on his/her parenting time; or 3) the parent does not want to pay the cost or cannot afford the cost of the activity.

For those activities to which a parent objects due to perceived danger, this may be because the activity itself is perceived as dangerous, or because the child has a health issue and is at a greater risk if involved in the activity. An obvious example is football, which some parents believe is inherently dangerous. In addition, a child may have some type of health issue that puts the child at a higher risk of injury in playing a contact sport such as football. Activities such as horseback riding or even gymnastics may also be considered dangerous by some parents. Certain other activities, such as scuba diving, are not recommended for younger children, but may be appropriate for a teenager.

In certain situations, a parent may object to a child's extracurricular activities because it impacts parenting time with the child. This is less of an issue in a situation where there is an equal parenting time schedule and an activity takes place during both parents' time. It becomes more of an issue when one parent has limited parenting time. If the parent has limited parenting time and during that limited time, he/she is transporting a child to and from an activity, the parent may have a basis to object. This is a fact-sensitive issue that is dependent on the parenting schedule, the level of activity, how many children the parties have, and whether the children are involved in multiple or different activities. A parent may object to transporting a child on a frequent basis or for a long distance for certain activities because it significantly reduces quality parenting time.

A parent may also object to an activity based upon cost. While arguably certain activities are included in child support, some activities can be considered extraordinary expenses that may be beyond basic child support. There is certainly a difference between the cost of recreational basketball, at \$200 for the winter season, and dance, which can total \$5,000 to \$10,000 per year for the lessons, costumes, shows, transportation, hotel rooms, etc. Travel/club sports may be a year-round activity at a cost of several thousand dollars, and may require both in- and out-of-state travel for tournaments. By way of example, my daughter's club soccer team (based in north/central New Jersey) played its regular/league away games in New York, Connecticut, Rhode Island, and Pennsylvania, and also played in tournaments in Florida, New York, North Carolina, Virginia and

California, all within the course of one year. The club fees and uniform costs are significant by themselves, but adding in airfare, hotel accommodations, rental cars, meals, etc. for certain sports with tournaments greatly increases the cost of the activity. Some children are involved in multiple activities, which can also increase the total costs. A parent who has multiple children must also consider the amount he/she is able to spend on each child's activities.

Hot Tip #1: Determine the importance of children's activities before settling the divorce.

Because children's extracurricular activities can become a highly contested issue, especially after a divorce, it is essential to find out the importance of the children's activities before a divorce settlement. This process should begin during initial meetings with a client. In what activities is a child involved, and how long has the child been involved in each activity? How important is the activity to the child (and the parent), and what is the cost of such activity? Is it an activity the child is likely to continue all the way through high school? Will the child increase his/her level of participation in an activity in the future (e.g., from one time per week to three times per week)? Are there other activities a child may start in the near future? While many children are over-scheduled in terms of their level of activities, arguably they may be better off being over-scheduled with activities than wasting free time watching Netflix, TikTok, YouTube, etc. Although there are significant benefits to a child being involved in activities, including social interaction, teamwork, discipline, accountability, perseverance, sportsmanship, etc., some children are involved in an activity because it gives them something to do. Others may take the activity much more seriously and plan on participating through college. Certain parents also may view an activity as being important for their child, regardless of what the child may believe. These are some of the questions to answer before settling a case.

Hot Tip #2: Include specific language in your marital settlement agreement regarding the children's activities.

When settling a case, it is important to include specific language regarding the children's current activities. If possible, include details as to the specific activities in which the children are involved at that point in time, and whether the parents agree to the children continuing in those specific activities. Also include how the parties will financially contribute to such activities. Whenever possible, language should also be included regarding transporting the children to their activities, separate and apart from whether the child can participate in a given activity. Specific language can and should be included to address possible future activities.

Hot Tip #3: Include a process for determining future extracurricular activities in the event of a disagreement.

In addition to addressing current activities in a marital settlement agreement, future activities should also be addressed. Future activities that are anticipated, or an increase in the level of a certain activity, should be addressed. For example, a child may be taking taekwondo, gymnastics or dance one time per week but it may increase to two or three times per week as the child advances. Although typically language is included in agreements that generally sets forth "the parties will discuss and attempt to agree upon any future extracurricular activities and consent for such activities will not be unreasonably withheld," the better course of action is to also include specific language addressing potential future activities and a process for handling disagreements.

Alternative dispute resolutions should be considered. Mediation clauses are common in marital settlement agreements, and a process for resolving extracurricular activity disputes certainly could include mediation as an option. (See NJ Court Rule 1:40). Language should be included that addresses timing of mediation and how the cost for mediation will be shared. Parties can address the children's activities during the court mediation process, specifically during custody and parenting time mediation, during early settlement panel (if the panelists agree to address the issue), and during post early settlement panel financial mediation (the cost of activities). Private mediation can also be utilized. Rather than having a judge determine whether or not consent has been "unreasonably withheld," which is somewhat subjective, it is better to use alternate dispute resolution techniques to reach an agreement or resolve a dispute relating to extracurricular activities.

In addition to mediation, a parenting coordinator can also be designated to address the children's activities along with other issues. The new court rule 5:8D (copy of Rule and guidelines attached) specifically notes that parenting coordinators can address a dispute involving the children's extracurricular activities. The parties can also use an arbitrator to make a binding decision on a dispute involving extracurricular activities. All of these alternate dispute resolution options are likely to be less expensive and result in a quicker resolution/decision than filing a motion with the court. In addition to the time and expense for a motion, a motion ultimately may require a hearing for the judge to decide the issue, which would take even longer and cost even more in terms of attorneys' fees.

Hot Tip #4: Use alternative dispute resolution techniques to resolve disputes relating to the children's extracurricular activities.

As is noted above, when settling a case, a process can be put in place to resolve/decide any disputes relating to extracurricular activities. However, even in situations where there is no process in place, and you are dealing with a post-judgment dispute over extracurricular activities, alternative dispute resolution techniques should be used. Mediation, parenting coordination, and arbitration can all be used to resolve/decide these types of disputes. In addition, prior to filing a motion, there are certain counties that have a motion mediation program. This provides for two free hours of the mediator's time (no more than one hour to review documents plus at least one hour of free mediation time) to address this type of dispute before filing a motion. Take advantage of these options to not only settle/decide extracurricular activity issues, but also to put in place a process to address potential future disputes.

Conclusion

Do not gloss over or overlook the children's extracurricular activities in your divorce cases. Find out about important activities and their level of importance. Address the specifics of activities in settlement agreements. Also address a process for resolving disputes involving extracurricular activities when drafting marital settlement agreements. Finally, use alternative dispute resolution techniques both during a divorce and after to help resolve/decide disputes as to extracurricular activities.