

TRIAL & ERROR

More Than Your Share

By Stacy D. Phillips



When it comes to child custody disputes, a huge issue facing custodial parents beyond when visitations will actually take place is: who pays for the children when the other parent doesn't take his/her scheduled visitation time?

If you share joint legal custody and have physical custody, the burden is on you when your ex doesn't exercise visitation. Over time, this can cost you both financially and emotionally.

If your child support is based on your ex having the children one-third of the time, then the support you receive covers only enough for two-thirds of the children's expenses. If your ex is a chronic no show, your two-thirds physical custody can become 100% and result in costs you hadn't counted on. Food, transportation and entertainment for children on the days your ex misses, visitation can be expensive.

If your ex cancels occasionally, for most custodial parents, this is no big deal. You may even have an understanding where either of you trade weekends or weeknights and courts encourage this flexibility.

If this is not the case, what are your options? You can return to court and ask for child support modification or at least "extra funds," in case your ex continues not to exercise visitation. The goal is to not have you picking up the tab your ex is responsible for. The court may set an amount above what you are currently getting, based on proof that you have the children more than your two-thirds of the time. But this is not easy to accomplish due to statute (s.3082): "**Compensation for**

Failure to Assume Caretaker Responsibility or for Thwarting Other Parent's Custody or Visitation Rights." The drawback: the decision is left to the court's interpretation and can go either way. But there are other remedies, to make certain you get treated fairly in court:

1. Keep a factual log: List the dates and times that your ex was scheduled, but cancelled. Your notes are not sufficient, so have your ex put things in writing. Lack of visits must be documented for a judge to make a correct ruling.

2. Let at least six months lapse before taking action: It's important to prove a pattern, while showing your "out of pocket" expenses, in

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order to substantiate your going back to court. If you decide to go before six months, your ex may say to the court that all of his missed visitations were a fluke and then, simply promise to be more diligent in the future.

3. If you think your ex might be irresponsible where visitation is concerned, detail all of the custody arrangements when you first begin divorce proceedings: You may not get it, but ask for a clear stipulation giving you a certain amount per day for each missed visit.

4. Negotiate: Suggest that if your ex misses weekends (costing you more in expenses) in return, he pick up the tab for child care, school supplies, shoes, clothes etc. Show

him what it costs per day and how paying some extra costs would even the score.

5. Keep receipts and paperwork of what extra days cost you: If your electric bill jumps an additional \$40 for the month (perhaps the children watched more television, kept the lights on, or were on the computer day and night) have documentation to compare last month's bill with a current bill. This paper trail will bolster your case.

6. Have an attorney help with this type of dispute: Most often your ex won't agree to pay extra child support simply because you have assumed more financial burden. Your attorney will be able to arrange a conference between you, your ex and his attorney and can also represent you if you take the issue to court.

7. Stay calm and businesslike: Don't let the "it's not fair" feeling send you over the edge, making you react in a way that diminishes you in front of your ex or the children. A good lawyer should do your bidding because he/she knows how to handle your case.

What you and your ex agree to concerning terms of child support, should be honored. But if you are picking up the tab for more than you are legally responsible for, speak up and take action—you have every right to protect yourself. **W**

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