

THE ABC'S OF PARENTING RESTRICTIONS AND CONDITIONS

In Illinois, courts award parenting time based on the best interest of the child and generally assume that parenting time with both parents is in a child's best interest. Accordingly, a parenting schedule will generally afford both parents liberal time with their children without restriction, except in very limited circumstances.

Currently, liberal parenting time does not necessarily entitle a parent to equal time. However, the trend in Illinois may be moving towards equal parenting time and a presumption that this is in a child's best interest. Regardless, practitioners and courts know that it may not be appropriate for every parent to have long blocks of time with a child due to the child's age, historical parental involvement, the child's needs or other factors. Notwithstanding, even "bad" parents will generally have meaningful time alone with their children, which sometimes includes parents who have been absent from a child's life, parents who exercise poor judgment, parents who have been incarcerated, and parents who have perpetrated domestic violence against the child's other parent. In doing so, a court cannot consider conduct of a parent that does not impact that parent's relationship to the child in awarding parenting time. For a parent who is seeking a divorce because of the other parent's poor conduct, this reality can be hard to accept.



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An Illinois court can only impose restrictions on parenting time if it finds by a preponderance of the evidence that that parent engaged in conduct that seriously endangered the child's mental, moral, or physical health, or that significantly impaired the child's emotional development. If this sounds like a tough burden to meet, it is. The "serious endangerment" standard is subjective, and the burden to prove it falls on the parent requesting the restriction. While Judges have different standards for imposing restrictions,

certain conduct is almost always considered a danger to a child, such as drinking and driving with children in the car or threatening harm to the children.

Restrictions vary in both form and degree, and are tailored to the conduct. They are not necessarily meant to be punitive to the parent, and are implemented to protect the child. Judges generally closely monitor cases with parenting time restrictions so that unrestricted parenting time can resume at the appropriate time. Some of the most common restrictions imposed are: supervised parenting time; substance abuse restrictions and other conditions such as monitoring a parent's use of drugs and/or alcohol; prohibitions on certain activities, like driving; and limiting overnight parenting time.

Supervised Parenting Time

Supervised parenting time requires the presence of a third party as a condition of a party's parenting time.

The third party might be a relative, childcare provider, family friend or a paid professional supervisor. The goal of supervised parenting time is to allow parent-child interaction to occur in a monitored setting. The degree to which the time is monitored obviously depends on who supervises. Where there is a concern about a party abusing alcohol while caring for young children, an adult relative or friend may be an appropriate supervisor. Where a party has perpetrated domestic violence, a professional supervisor may be more appropriate.

"In certain cases, parenting time will be under the supervision of a professional supervisor with mental health training."

For example, if a parent has been accused of sexual abuse, a court might order that parent's time to be supervised by a trained clinical social worker to ensure that the accused parent does not do or say anything

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inappropriate; in this case, the professional supervisor may also be asked to provide a report about the interactions between the parent and child and to provide other observations relevant to the allegations.

While supervised parenting time may sound extreme, in a situation where a spouse is accusing the other parent of misconduct, or alleges that the children are fearful of the other parent, a third-party supervisor may actually prove beneficial and expedite the normalization of parenting time if there is no report of misconduct and the children enjoy being with the other parent.

Substance Abuse

Parenting Time Restrictions

There are a variety of restrictions imposed on parents who abuse alcohol or drugs. The nature of the restriction depends on the severity and type of abuse, and the age of the children. For example, if a parent of older teenagers abuses alcohol, a court might simply prohibit consumption of alcohol during parenting time and/or prohibit overnight parenting time and driving.



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For younger children, a court might prohibit parenting time altogether, or impose real-time monitoring at pre-determined intervals to verify sobriety. One common example is the use of Soberlink, a breathalyzer which transmits results to third parties (e.g., the other parent or the children's legal representative) in real time. Courts can also order random drug and alcohol testing administered by an outside company.

Other Restrictions and Conditions

Courts can impose other restrictions and conditions on parenting time, such as exchange of the child for parenting time in a secure setting like a police department.



Courts can also restrict the presence of a third party or parties during parenting time, or require completion of drug or alcohol treatment as a condition of parenting time. A court can even require posting of a bond to secure the return of a child after parenting time.

In reviewing all of the options described above, remember that restrictions on parenting time are the rare exception rather than the rule and even when restrictions are imposed, they are generally designed to facilitate and encourage the parent-child relationship, as well as maximize meaningful time together for parents and their children.

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CRYPTOCURRENCY AND COMPLICATIONS IN DIVORCE

In Illinois, one of the most important stages of a divorce is the equitable division of marital assets. This process requires the full disclosure, identification, and valuation of all assets and liabilities between the parties. Cryptocurrencies are a new asset class that is becoming an increasingly more common asset held by the parties going through divorce. With the rise of the cyberspace landscape and cryptocurrencies such as BitCoin, Ethereum, Ripple, as well as Facebook's new Libra, the process of identification and valuation of these assets has become increasingly complicated and therefore is making the equitable division of marital assets more challenging.

Before diving into the problems associated with identifying and valuing cryptocurrency, it is important to understand how cryptocurrency transfers work. The most commonly recognized cryptocurrency is bitcoin, which has redefined the traditional sense of "currency" because there is little regulation or central authority controlling it. When cryptocurrencies are transferred, there is a digital entry into a type of decentralized ledger known as a blockchain.



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The Wall Street Journal defines this blockchain as:

“A blockchain is a data structure that makes it possible to create a digital ledger of transactions and share it among a distributed network of computers. It uses cryptography to allow each participant on the network to manipulate the ledger in a secure way without the need for a central authority.”

Essentially, a blockchain is a ledger of transactions. Each page of transactions is known as a block, these blocks are connected, or "chained" together on a ledger with other transactions. This allows for a completely public and decentralized system. Currently anyone is able to

participate and contribute to the ledger.

Unfortunately, this decentralized network and blockchains have made it easier for people to hide assets coming from BitCoin or other cryptocurrencies, which poses serious problems in the identification stage of the division of marital assets when a cryptocurrency is involved. While there is little to no precedent on how to divide BitCoin and other cryptocurrencies in divorce cases, courts in Tennessee have held that spouses are entitled to all information regarding financial holdings and interests, including any information dealing with BitCoin. *Gallimore v. Gallimore*, 2017 Tenn. 4th Cir. Thus, Bitcoin and other digital currencies are still considered property, similar to a stock, divisible by the parties.

However, because Bitcoin's value is readily known, valuation should not be an issue but for volatility in its price.



In order to ensure that all assets are disclosed, it is crucial that attorneys identify the existence of any cryptocurrencies through well-crafted 214 document requests. Governmental regulators such as the SEC and OFAC currently regulate and require all digital wallet vendors such as Coinbase to maintain various records including client identity. These requests can be sent to individuals or third parties, with suggested language requesting "a complete record of all digital wallets containing any and all crypto currencies and transaction history". While the use of this language does not guarantee the production of the requested material, it is an important step in ensuring that attorneys have covered their bases.

Conversely, Facebook's new cryptocurrency, known as Libra, operates much differently than BitCoin. While Bitcoin is largely decentralized and unregulated, Libra will be subject to heavy regulatory pressure across the globe since it will be operated by a consortium of large corporations. In fact, Facebook and Libra are already facing heavy pushback on the company's attempt to make a global

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digital currency. If rolled out, Libra will have actual identifiable parties and companies behind the network who may be targeted with regulation. As a result, Libra is significantly different than BitCoin because there is regulation and a central authority controlling it. However, this is also the reason it is easier to determine the Facebook cryptocurrency Libra's market volatility. The fact that Libra is more centralized than BitCoin allows the currency to operate as a bank, where the exchange for Libra will operate the same way as exchanging one national currency to another.

The Atlantic describes this process:

"While Facebook advertises Libra as a cryptocurrency, and Libra uses some of the same technology as bitcoin, Libra is actually quite different from bitcoin. There is no bitcoin reserve. If you want to exchange your bitcoin for dollars, you need to find someone willing to buy it. This is the source of bitcoin's volatility: If people decide bitcoins are worth nothing, then no one will buy your bitcoin, and it is worth nothing. If people decide that Libras are worth nothing, they can trade them in for cash from the reserve. And because of this, people won't decide Libras are worth nothing. The problem of volatility is solved."

Accordingly, this would seemingly solve the BitCoin challenge of determining the value during the division of marital assets.

Additionally, the fact that there is a reserve acting like a middle man in the transfer of Libra means that Libra will operate more like actual money. Unlike BitCoin and other cryptocurrencies, this creates a paper trail allowing for easier identification of the cryptocurrency in divorce cases. Nevertheless, Libra might not be as welcoming as it appears. While on its face the more centralized system Libra uses might seem beneficial, this centralized system will be controlled by a governance body that will certainly make major policy decisions that, much like a bank, could use currency from its reserve to take greater risks, and potentially face greater loss.

With BitCoin and other cryptocurrencies on the rise, it is crucial that attorneys stay on top of the new systems and have an understanding of just what type of asset clients are dealing with. As division of marital assets continues to become a more sophisticated topic with additional challenges and obstacles at every turn, divorce attorneys must ensure both that clients are fully disclosing their assets and liabilities and must also be doing the necessary research and discovery to help their client's fully identify, quantify and value all of their assets and liabilities.

**Acknowledgement and appreciation is given to Joshua Rogers of Arete Wealth Management for sharing his Cryptocurrency expertise.*

REMEMBERING TWO BELOVED COLLEAGUES



Schiller DuCanto & Fleck remembers the passing of David Hopkins, our beloved colleague who was an extraordinarily passionate advocate for his clients, especially those who had been affected by domestic violence.

"David was always very determined and protective of our clients' rights," said Founding Partner Donald Schiller. "Clients would always complimented David's loyalty and determination to help them."



We also remember the passing of Leslie Arenson Auslander, who was known for her deep compassion for people, her commitment to always doing the right thing and her sense of humor.

In September, attorneys and staff ran in Race Judicata in honor of Leslie, who was an avid runner.

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