

# Do You Think Enough Time Has Passed And You Want To Review Your Custody Agreement? It May Not Be So Easy To Do

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Chris Robinson (formerly of The Black Crowes) has filed an application asking the court to review and possibly change the custody agreement he entered into 10 years ago with his ex-wife, actress Kate Hudson. At that time, they agreed to split the custody of their son who was then age 2, but is now almost 13.

Hudson and Robinson have voluntarily agreed to re-evaluate their parenting time arrangement to “develop a parenting plan (including where their son will live) which is based on the parents’ and child’s needs.” They have agreed to undergo alcohol and drug testing as well as a psychological evaluation in which the psychologist will make recommendations regarding a future custody and parenting time arrangement for their son.

The motive behind this request is not readily ascertainable from the filings in the California court. However, reading between the lines, either a precipitating event brought about Robinson’s application (note the drug and alcohol testing protocol for both parties), or a change has occurred in his schedule that makes him more available than when he was touring with his band. Or, simply due to the passage of time, perhaps Robinson wants full custody.

This type of application is not unusual and, at first blush, it might appear reasonable that a father might want a 10-year-old agreement reviewed, but there’s more to it than that.

A parent who wants more time with his or her children may argue that the prior schedule should be changed because his new job gives him more time to spend with his child than he had before. Or, a parent may argue, my child is older and needs me more than he needs his mother at this time in his life.

In New Jersey, a change in circumstances, including the passage of time, is a legitimate basis to modify child support. For example, as children get older, their needs may change, and their parents' ability to meet those needs may also have changed. A parent's increased earnings qualify as a basis to increase child support because a child is supposed to benefit from a parent's good fortune, just as he or she would have if the family had stayed intact. If the custodial parent receives a benefit from that increase in support, such as having the ability to buy a new car or obtain better housing, courts are "not offended."

As it pertains to custody and parenting time, for the court to consider changing such an agreement, the petitioning parent must demonstrate that a substantial change has occurred that has affected the best interest of the child and compels the court to step in and review the agreement.

The change in one's work schedule or the passage of time are likely not adequately persuasive arguments for a change in a parenting time schedule because neither of these conditions affects the best interest of the child. In the first example, the change is in the parent's interest but it does not affect the child. In the second example, the passage of time may or may not affect the child.

What could qualify as a substantial change of circumstances that affects the best interest of the child and compels a court to change the parenting time schedule? Here are some examples: a downturn in a child's grades; a child's substantial increase or decrease in weight, which might reflect stress or lack of attention to parental obligations in the custodial parent's household; a child who is acting out in school and at home and the custodial parent is unable to address the issues or control the child; a parent who has become addicted to alcohol or drugs; a household where the parent or a new partner is abusive to the child; or living conditions that are not in a child's best interest (living in a shelter or living in substandard facilities). Some of those examples deal with the economic fortunes of a parent. However, if the other parent is able to provide and protect a child from the adversity of some circumstances, the court could be persuaded to change the parenting time allocation—if not permanently, then temporarily.

In general, however, if a child is doing well in school and is involved in activities, unless the custodial parent voluntarily agrees to change the schedule, a court most likely will not change it either because the present schedule is "working" for that child.