**Modification of a Final Parenting Plan**

***The recent changes to RSA 461-A:11***

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One important discussion I have with clients who are going through divorce or a parenting case concerns the parts of their Decrees which are permanent versus the parts of their Decrees which are modifiable. A Final Parenting Plan falls into the category of modifiable—however, it is only modifiable under certain circumstances which are set out in the statute. Until August 13, 2011, if a parent wanted to modify a Final Parenting Plan, he or she had to prove one of five scenarios had occurred:

1. The parties agreed to a modification;
2. The court finds repeated, intentional, and unwarranted interference by a parent with the residential responsibilities of the other parent, then the court can order a change if it was in the best interests of the child;
3. The court finds the child’s environment was detrimental to the child’s physical, mental, or emotional health;
4. Where the parties have equal or approximately equal parenting time, and either asserts or the court finds that the original allocation is not working, the court can order a change if it’s in the best interests of the child; or
5. If the court finds by clear and convincing evidence that a minor child is of sufficient maturity to make a sound judgment, the court may give substantial weight to the preference of the mature minor child as to the parent with whom he or she wants to live, giving due consideration to any other possible factors which may have affected a child’s preference.

Although this may seem like an exhaustive list of all of the potential reasons why

a parent may need to change a Final Parenting Plan, many family law practioners have found that there were some crucial holes in the statute that left clients with some less urgent but still important reasons to change a plan unable to do so.

For example, under the old statute, the following situations would not result in modification of a final parenting plan absent agreement from the other parent:

* Mom’s work schedule changes from 9-5 to 8-4. It would be more convenient now for Mom to pick up the child at 4PM at Dad’s instead of 5PM (as the Court had ordered in their parenting plan). Dad refuses to let the small child go to Mom until 5PM, because it’s “Dad’s time.”
* Dad got a new job, and instead of picking the child up from Mom’s house (as the parties had agreed in their parenting plan), it’s now more convenient for him to pick the child up from his school on his days. Mom refuses, as she feels it’s a Mom’s job to pick up the child from school.
* Mom works every other weekend, all weekend long. The weekends she has off are her weekends with her children. Her employer decides to switch her shift without her consent, and she now works all weekend on the weekend when she has her kids. Dad won’t agree to swap weekends because it interferes with his fantasy football parties.

You get the picture—these are minor changes, and for one reason or another, the

parents were unable to work out what should be a simple solution.

Thankfully, the state legislature, with some guidance from some experienced New Hampshire family law practitioners added a section (f) to the statute (effective August 13, 2011), providing that the Court can now issue an order modifying a permanent order on parental rights and responsibilities if the modification makes either a minimal change or no change in the allocation of parenting time between the parents, and the court determines that such change would be in the best interests of the child. That means that the parents in the above hypothetical scenarios have a means to ask the court make a relatively small change to a parenting plan if the other parent does not agree, where before the court would not be permitted to modify the order in those circumstances, according to statute.

Since the change made to the statute on August 13, 2011, modification of a parenting plan has become possible in certain circumstances where it was not before. If you have any questions about this article, or about any family law matter, please contact Attorney Jessica Ecker to set up a consultation.