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Child Support Lawyers in New Jersey

Results achieved in prior matters are not meant to be a guarantee of success as the facts and legal circumstances vary from matter to matter.

In New Jersey, children have a fundamental, constitutional right to be financially supported by both of their parents. Child support is paid from one parent to the other for the benefit of the child. The New Jersey Child Support Guidelines are used to calculate the amount of child support, but Courts have the discretion to deviate from a guidelines-based child support award when good cause is shown. In cases where a Court determines it is appropriate to deviate from the Child Support Guidelines, the judge must consider several factors:

- The child's specific need.
- The parents' respective lifestyles and what standard of living the child is used to.
- All sources of income of the parents, including assets that are non-income producing assets.
- All sources of debt for the parents and the child, if applicable.
- The parents' respective earning capacities, educational histories, skills, and work experience.
- The roles that the respective parents have taken in the child's life thus far.
- The expenses for which each parent has historically paid for the benefit of the child;
- The need and ability of the child for higher education.
- The child's age, health income and assets, and earning ability.
- The responsibility of the respective parents for the Court-ordered support of others.

Other factors the Court considers in fashioning a child support award may include equitable distribution of property, property and income taxes, reimbursed and unreimbursed medical expenses, private school expenses, the existence of student loans or other debts in the child's name, and/or the tax advantages to paying for a child's expenses.

At the law offices of Wilentz, Goldman & Spitzer, P.A. we are committed to ensuring that children have the financial support they are due under the law.

New Jersey Child Support Guidelines

In New Jersey, child support is typically determined by the New Jersey Child Support Guidelines. These Guidelines take into account each parent's income, the number of overnights the child spends with each parent, whether a party is paying or receiving alimony, whether a parent has a child born of another relationship, the cost of work-related child care, the cost of health insurance for the child and any other expense that may be appropriate to include in the guidelines calculation. Based on a mathematical formula, the Guidelines determine the amount of money it will take to raise a child based upon several factors, including the number of children, the amount of time the children spend with each parent, the amount each parent pays for the children's health insurance, the parents' tax filing status, and other factors. The Guidelines then allocate that cost between the parents based on their respective incomes.

Child support laws in New Jersey

Irrespective of the custody arrangement, under New Jersey law, both parents have the obligation to provide financial support for their child until the child is emancipated. The law in New Jersey further provides that children are entitled to share in the current income of both parents. Thus, child support laws attempt to allocate the cost of raising a child fairly between the child's parents. The Parent of Alternate Residence pays child

support to the Parent of Primary Residence to help support the child. However, the right to child support belongs to the child, not to the parent receiving it. Accordingly, unlike other financial aspects of family actions such as alimony or equitable distribution, parents cannot negotiate child support, which is calculated using the New Jersey Child Support Guidelines.

However, not all child support cases fall under the Child Support Guidelines. For instance, the Guidelines do not apply when the parents' combined net income exceeds $187,200 per year. In addition, the Guidelines are intended to apply to children who are younger than 18 years old or to those who are over 18 but still in high school. In addition, the Guidelines are not intended to apply to children attending college.

Even in cases where the Child Support Guidelines do apply, there may be good reason to deviate upward or downward from the child support amount calculated using the Guidelines. Reasons justifying a deviation would be based on the discretionary factors previously mentioned (see overview section). For example, it would be appropriate to calculate child support under the Guidelines for a family with one child who is 7 years old, where the parents combined net income was $100,000 per year ($50,000 each). However, if the parent paying child support had the ability to earn $600,000 per year but voluntarily chose to earn only $50,000 per year, then the Court would likely credit that parent with a higher income and order a higher amount of child support than was calculated under the Child Support Guidelines.

Needs of the child

Different children have different needs. Any consideration of a child's needs must account for the age and health of the child, along with the lifestyle of the respective parents. As for age, the needs of an infant are much different than the needs of a teenager. There is a higher outlay for a teenager's clothing, for example. As for health, the Court may award more child support for a child suffering from a particular medical condition that involves a lot of medical expenses than it would for a completely healthy child. Each child's "needs" is a reflection of the lifestyle of his or her parents. This means that a child is entitled to share in the good fortune of his or her parents.

However, that does not mean that a child is entitled to overindulgences. For instance, a child of driving age is not entitled to an amount of child support that will allow him or her to drive a luxury car just because his or her parent always drove a luxury car. However, the Court may find that a parent paying child support, who drives a luxury car, has the financial means to pay for a car suitable for a teenage driver sufficient to meet the child's transportation needs. Other specific needs of a child might include the cost of religious education or special dietary restrictions.

Standard of living and economic circumstances of each parent

All child support determinations center around the needs of the child, which must be addressed in the context of the parents' respective standards of living/lifestyle. The standard of living might include the cost of housing, utilities, household furnishings, groceries, restaurants, clothing, school or work uniforms, shoes, dry cleaning, transportation, car payments, car maintenance, tolls, public transportation, education, tutoring, summer camps, music or art lessons, sports leagues and gear, vacations, entertainment, personal care products, child care, medical treatment, pets, hobbies, equipment or gear, books, school supplies, video games, and other miscellaneous expenses. A parent's standard of living also accounts for the higher or lower cost of living in different states. The economic circumstances of each parent are also relevant. If the Parent of Alternate Residence (that is, the parent paying child support) earns $1,000,000 per year, a Court will be inclined to order that he or she pay more child support than a parent earning $40,000 per year. However, if the Parent of Alternate Residence is impoverished, there may be a chance that he or she will not be ordered to pay child support at all is the Parent of Primary Residence (that is, the parent receiving child support on behalf of the child) already has enough money to support the child without the impoverished parent's assistance.

All sources of income and assets of each parent

Earned income is not the only source to which a Court looks in assessing child support. When determining whether an income source or asset should be included in the child support determination, the Court will consider if it would have been available to pay expenses related to the child if the family would have remained intact or would have formed, and how long that sources would have been available to pay those expenses. The Court may consider, among other things, all of the following sources of earned and unearned income of both parents': regular wages; bonuses; commissions; royalties; business income; profits from the sale of property or other investments; interest and dividends; lottery winnings; rental income; alimony income; distributions from an annuity or trust; life insurance and endowment contracts; public assistance; income from Social Security or the Veteran's Administration; distributions from private retirement plans like IRAs; settlement awards from civil lawsuits or worker's compensation awards; unemployment compensation benefits; severance pay; income from an inheritance; gambling winnings; income tax credits or rebates; unreported cash distributions; and/or the value of in-kind benefits.

Furthermore, there may be instances in which a Court ascribes to a parent an income higher than his or her actual income. This is called the "imputation of income." A Court will typically impute income to a parent if a Court finds that that parent is earning less income than what he or she is capable of earning, especially if that parent is voluntarily earning less money in order to evade a higher child support obligation. A Court may also impute a higher income to a parent based on his or her mere access to more money, even if he or she has not yet received that money. For instance, if a parent has the ability to receive distributions from a trust, but does not exercise that power, the Court may still attribute those trust proceeds to that parent.

Earning ability of each parent includes educational background, training, employment skills, work experience and the length of time and cost of each parent to obtain training or experience for appropriate employment. If a Court finds that either parent is voluntarily underemployed or unemployed, without a compelling excuse, the Court may impute a higher income to that parent. That means that, although someone may only be earning $30,000 per year, it makes sense to attribute an annual income of $100,000 per year to that person if he or she earned $100,000 or more in the past, has demonstrated the ability to earn that amount or more in the past, or has the educational background and wherewithal to earn that much. Crediting a parent with an income higher than his or her actual income may also be based on wage statistics from the New Jersey Department of Labor.

Need and capacity of the child for education, including higher education

Child support in New Jersey includes the responsibility of parents to provide their children a proper education. Typically, neither parent will be required to send their child to private school because of the existence of public schools. However, a Court may in appropriate circumstances order that the parents share the cost of private school, taking into consideration the ability of the parents to pay, past attendance of the child or of either parent at private school and/or special educational needs of the child. In addition, parents may have a duty to financially support their child throughout his or her college career, even after the child reaches the age of majority, provided the child is diligently pursuing that education full-time. As such, it is unlikely a Court would require parents to pay child support for an adult child who has failed several of his college classes, has taken various breaks in his or her college attendance, or is otherwise showing a non-commitment to his or her college education.

Age and health of the child and each parent

As a general matter, older children are more expensive than younger children. Accordingly, in calculating child support for children aged 12-17, the amount should be adjusted upward when compared to younger children. The ages of the parents are relevant to the hidden costs of caring for children, such as decreased career opportunities, loss of time to shop frugally, and/or loss of savings. The health of the child is relevant to whether the child has any unique medical expenses that would not typically be included in a garden variety child support award. The health of the parents is relevant to, among other things, whether they are earning an amount of income consistent with their earning capacity, or are, on the other hand, voluntarily underemployed and should therefore be imputed a higher income for purposes of determining an appropriate amount of child support.

Income, assets and earning ability of the child

Because child support is a right that belongs to the child, a child's financial situation may also play a critical role in a child support determination. For example, if a child is a celebrity, he or she may have an extraordinarily high income, in which case it may become inappropriate to expect a financial support payment from either parent whose incomes might pale in comparison. By way of another example, a child may be a "trust fund baby," and have access to touch the principal of a large asset such as a trust, which may warrant an adjustment or elimination of child support.

Responsibility of the parents for the court-ordered support of others

A parent paying child support on behalf of one child who also pays child support on behalf of another child of another family (e.g., child from a past relationship) may pay less child support to each child than he or she would had he or she only had one child support obligation. If a child support payor's multiple child support obligations reduce his or her income too low, then the Court might consider adjusting the multiple child support orders to distribute the payor's available income equitably among all children involved.

Reasonable debts and liabilities of each child and parent

A Court may adjust a child support award upward for a child who is saddled with student loans. In addition, a Court might adjust child support for a parent who has a lot of debt that was incurred to provide for the child – for example, high mortgage payments to pay for adequate housing for the child; high credit card debt incurred to provide other necessaries for the child; or a business line of credit taken out to start a business and generate income for the household of the child.

Emancipation

Emancipation is the point at which a child is released from the control of his or her parents and is no longer entitled to child support from them. By statue, child support stops when a child turns 19 years old, unless the child or a parent asks the Court to extend it. Otherwise, a child becomes emancipated when he or she moves beyond "the sphere of influence of his/her parents." Basically, that means that child support payments should cease when the child becomes financially independent from his or her parents, or, if not, when the child should be financially independent from his or her parents. For example, the law would likely require that a 19-year-old child who is not pursuing his or her full time college education be emancipated. The theory is that, if the child is not in school full time, he or she should be working full time and, thus, supporting him or herself. The parents should be relieved of the duty to support such a child.

The issue of emancipation usually comes up in the context of a motion filed by the parent paying child support, requesting that child support payments be terminated. When faced with this request, a Court must consider all of the facts and circumstances to determine whether the child has achieved independent status from his or her parents. The Court will consider, among other things, whether the child has reached adulthood; the child's educational pursuits and whether he or she has or should have graduated; whether the child is in the military; whether the child has married someone or is being supported by another individual other than his or her parents; whether the child has special needs that might prevent him or her from having the ability to support him or herself; and the income and assets, as well as the debts, of the child.

Child support modification

Child support can be modified upon a showing of "changed circumstances." By virtue of the passage of time, children's needs change. If a child's needs have increased to an extent for which the original child support amount no longer provides, then the parent receiving child support may request an increase. In addition, because the Child Support Guidelines allocate the cost of raising a child on the parents based on their respective incomes, a change of one parent's income may constitute changed circumstances warranting a recalculation of child support. However, the request to modify child support based upon reduced earnings should be approached with caution, as a Court will closely scrutinize whether the requesting party is voluntarily

underemployed, or voluntarily reduced his or her earnings in some other deliberate fashion, in order to evade child support. In that case, the Court will likely impute a higher income onto that parent.

Every request to modify child support requires the completion of a Case Information Statement. A Case Information Statement is a document designed to provide the Court, parties and attorneys with a complete economic picture of a party's life, accounting for his or her income, expenses, assets and liabilities. The quality of every Court decision, including child support determinations, depends heavily on the information presented to the Court. Accordingly, for example, if a party seeks an increase in child support based on an increase in the child's needs, then the party should emphasize in his or her Case Information Statement which expenses have increased.

To speak with an attorney about your legal options, please call: 732-352-9871.