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Shepherding you safely through difficult family transitions!

DIVORCE IN NEW YORK – CHILD SUPPORT

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After studies revealed that the standard of living increased significantly for men after divorce and decreased precipitously for women and children, the federal government tied federal benefits to each state's enactment of some form of the child support standards. Each state, therefore, enacted some form of the federal child support standards. In New York, the "child support standards act" ("CSSA") appears in section 240 of the Domestic Relations Law ("DRL") and almost verbatim in section 413 of the Family Court Act ("FCA").

Calculating child support, therefore, begins with applying the statutory formula of the CSSA. In general the process then is that: (i) each parent's income is determined; (ii) what each parent's percent of the total income is determined; (iii) the child support is determined by multiplying the factor for the number of children by the parents' combined total; and then (iv) each parent is obligated to contribute their *pro rata* share of the combined child support total. To add to the complexity, there are then mandatory child support add-ons, discretionary child support add-ons, and the discretion of the court to award child support on income above the "cap." Child support in New York goes until the child is emancipated or reaches 21 years of age, in the belief that a college education is necessary.

Based on studies of how much the average parent contributes to their child's needs in intact families, the formula developed for child support is the following percentage of the parent's gross income, less FICA and local (city) taxes (but, importantly, not deducting federal or state income taxes):

| <u>No. of Children</u> | <u>CSSA Percentage</u> |
|------------------------|------------------------|
| 1 | 17% |
| 2 | 25% |

NOTE: *This monograph is intended as an educational guide and not as legal advice. Legal advice should only be obtained from a qualified lawyer who is familiar with all of the facts and circumstances of your matter.*

| | |
|-----|-------|
| 3 | 29% |
| 4 | 31% |
| > 4 | >=35% |

Lawyers and courts sometimes mistakenly tack on charges for items the costs of which are already encompassed by the basic child support award. Private schools are a discretionary add on item and, by case law, should not be added on unless there is a particular reason that justifies the need for it. That could be the parties' prior practice or that the child has a particular aptitude or need that requires private or other particularized schooling. If the parties have a disagreement about religion, however, the court should not determine which religious belief is the correct or better one for the child.

Here in New York (or at least downstate), college is believed to be necessary for all children so that they can have a productive future. Whether the college should be a public (one in the State University) or a more expensive private one, however, depends on the circumstances of the parties and the child. If both parents went to expensive private colleges and they have the money, a court may conclude that the only reason a parent is not willing to contribute to the child's college is because of the divorce and an anger towards the ex-spouse. In that case, a court may require the parent to contribute in a fair amount, to the child's private college costs. Sometimes parties agree, or the court requires, that a parent contribute to a child's private education but only to the same amount a SUNY education would have cost.

To explain and deal with all these issues you need a skilled, experienced lawyer to guide you and protect you through this process so that your children receive what they are entitled to and so that you are not taken advantage of.

If the non-custodial parent is supporting other children, the matter becomes more complicated and there is some inconsistency in the case law. You should call us to discuss your situation.

The court can direct a father to take a paternity test if paternity is questioned. If a father has admitted paternity (on the birth certificate or elsewhere), the issue is more complicated and you should call us to discuss your particular situation.

Even if both parents and the child move out of New York State, the duration of the child support is, by most legal opinions, a non-modifiable aspect of the child support order. That means that though courts can, as circumstances change, modify the child support amount, it cannot modify the duration of the order. We have successfully represented parents who, after they moved to New York, were then sued for support to go beyond the age of the original support order and until the child attained the age of 21, as per New York law. We were able to challenge those claims and get them successfully dismissed.

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While the income of a new spouse, or live-in *paramour*, of the non-custodial parent cannot be claimed for child support, it might be used to reduce the living expenses of the non-custodial parent thereby making more of the non-custodial parent's income available for the payment of support. Like with these other issues, you will have to call us to discuss the particulars of your individual case and to find the best strategy that works for you.

Foreign support orders can be enforced against a non-custodial parent who lives in New York State. We are experienced using the mechanisms of the Uniform Interstate Family Support Act to enforce orders from other states and territories of the United States, and often of other countries that are entitled to comity.

Modification of prior Child Support orders: Child support orders can be changed whenever circumstances change. Moreover the law now allows the courts to entertain a modification petition every three years or whenever a party's income has changed by 15% or more, unless the parties specifically opted out of this regime. FCA § (3)(b). In addition, a party whose child support is being collected by the Support Collection Unit ("SCU"), may request a "cost of living adjustment" ("COLA") every two years. FCA § 413-a.

The effective date of any modified order relates back to the date the petition was filed. Like a taxi-meter-flag from decades ago, that dropped when you entered the cab and continued to click through all the while the cab was running and, when you got out, you had to pay the fare that accrued throughout, when a petition is filed in the court the flag drops. While it may take months and even sometimes years for a case to be adjudicated or resolved, when it is, the obligation starts retroactively to when the petition was filed and accrues during all the time the case was pending.

This why it is extremely important that if you are obligated to pay child support and you lose your job, the first stop on the morning after you lose your job, should be to the county family court to file a petition to suspend and/or modify your child support obligation. People are usually too depressed to do that when they lose their jobs; they are also hopeful that they will quickly find other work that pays as well or better than the old job. However, sometimes it takes weeks or months to find new employment. All the while child support continues to accrue, sometimes sinking the person into a hole so deep, that they have a hard time climbing out of. Moreover, the statute typically precludes a judge from waiving child support arrears that have accrued. So file a child support modification petition first. It will likely take months for it to work its way through the courts. If you get a new job, terrific. You might not need the brief respite. But if your job search takes you longer, at least the court will have the authority to grant you relief from the support order you could not afford while you were unemployed.

Of course you will need a skilled lawyer to protect and defend you and your rights. Call our offices for a free telephone consultation and to learn how we can help you.

The official Child Support Standards Act Guidelines are available for download [here](#).

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You can access the court's worksheets and calculators (Adobe Acrobat and Excel) [here](#).

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