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## **FAMILY LAW ISSUES AFTER THE DIVORCE**

Many people make the mistake that once their divorce is over, that their family court problems are over. This is a very big misconception. In many cases, the parties spend more time in court on post-judgment issues, then they did in the divorce case.

Most post divorce issues that require court intervention are matters that involve "changes in circumstances" of either party or their children. The common post-judgment motions are to request a reduction or increase in child support, or to request a termination or a decrease in alimony.

In post-judgment applications, the parties have to submit revised CIS's, their last three pay stubs, and their recent tax returns. The court will then review these documents, and make a determination if any child support or alimony should be terminated, reduced or increased.

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### **Modifying or Terminating Alimony**

A person can only modify or terminate alimony if they can prove that there is a change financial circumstances. A typical change of circumstance is a change of employment, reduced salary, termination of employment, health conditions and retirement. An alimony award may be either increased or decreased, based on the requisite showing of changed circumstances. Thus, when changed circumstances affect the dependent's ability to continue to maintain the standard of living as provided for in the original divorce decree or agreement, an increase may be warranted. Conversely, circumstances may render all or a portion of the alimony received inappropriately.

The party seeking the modification must prove "changed circumstances" to the court. Generally, courts have held that changed circumstances such as a reduction in a party's income, the recipient spouse cohabitation with a member of the opposite sex in a relationship akin to a marriage, increased earnings by the recipient of the alimony, and receipt of a substantial inheritance by the recipient, are sufficient to re-examine alimony obligations.

The remarriage of a recipient spouse will automatically terminate alimony by statute, N.J.S.A. 2A:34-25, where permanent alimony was awarded.

### **Modifying or Terminating Child Support**

Child support may also be modified, either upwards or downwards. Either parent can make a motion to increase or decrease child support if they can demonstrate a change in

financial circumstances. What constitutes a sufficient “change in circumstances” will vary from case to case, and judge from judge.

Some examples of changed circumstances are: a change in the child's age resulting in an increased need for child support; a change in one parent's employment situation; one parent's receipt of a large inheritance; the emancipation of a child or changes in parenting time. Emancipation can occur upon the child's marriage, by court order or by attainment of an appropriate age. N.J.S.A. 9:17B-3.

### **College or Post-Secondary Education Expenses**

In most circumstances, the privilege of parenthood carries with it the duty to assure that the child receives a good college education. Our courts have held that, in general, financially capable parents should contribute to the higher education of children who are qualified students.

In evaluating a party's obligation for contribution toward the cost of higher education, courts will consider the following 12 factors:

1. Whether the parent, if still living with the child, would have contributed toward the costs of the requested higher education
2. The effect of the background values and goals of the parent on the reasonableness of the expectation of the child for higher education
3. The amount of the contribution sought by the child for the cost of higher education;
4. The ability of the parent to pay that cost
5. The relationship of the requested contribution to the kind of school or course of study sought by the child
6. The financial resources of both parents
7. The commitment to and aptitude of the child for the requested education
8. The financial resources of the child, including assets owned individually or held in custodianship or trust
9. The ability of the child to earn income during the school year or on vacation
10. The availability of financial aid in the form of college grants and loans
11. The child's relationship to the paying parent, including mutual affection and shared goals as well as responsiveness to parental advice and guidance
12. The relationship of the education requested to any prior training and to the overall long-range goals of the child

### **Relocation**

A custodial parent(s) may only relocate if he/she has the consent of the former spouse. Alternatively, the relocating spouse must obtain a court order to permit the move. The purpose of the statute is to preserve the rights of the non-custodial parent and the child to maintain and develop their familial relationship.

This mutual right of the child and the non-custodial parent is usually achieved by means of a parenting plan. Because the removal of the child from the state may seriously affect

the parenting schedule of the non-custodial parent, the courts require the custodial parent to show why the move should be permitted.

The custodial parent must show both good faith in making the move and that the relocation will not be contrary to the child's interest. Our Supreme Court has delineated twelve factors which must be considered to determine whether the necessary determination whether the custodial parent has proven good faith and that the move will not adversely affect the child's interest:

1. The reasons given for the move
2. The reasons given for the opposition
3. The past history of dealings between the parties insofar as it bears on the reasons advanced by both parties for supporting and opposing the move
4. Whether the child will receive educational, health and leisure opportunities at least equal to what is available here
5. Any special needs or talents of the child that require accommodation and whether such accommodation or its equivalent is available in the new location
6. Whether a visitation and communication schedule can be developed that will allow the non-custodial parent to maintain a full and continuous relationship with the child
7. The likelihood that the custodial parent will continue to foster the child's relationship with the non-custodial parent if the move is allowed
8. The effect of the move on extended family relationships here and in the new location;
9. If the child is of age, his or her preference
10. Whether the child is entering his or her senior year in high school at which point he or she should generally not be moved until graduation without his or her consent
11. Whether the non-custodial parent has the ability to relocate
12. Any other factor bearing on the child's interest