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THE RECESSION'S EFFECT ON CHILD AND SPOUSAL SUPPORT OBLIGATIONS

By Frank W. Rogers III

The recent troubled economic times have touched all of us in one way or another. Many have lost jobs or been laid off, while small-business owners have suffered economic losses when individuals and companies reduced spending. Those making and receiving support payments have also been profoundly affected.

Spousal support obligations are designed to balance the client's needs and the ability of the other client to help meet those needs. Child support is most often formulated using a mandatory guideline calculation. When a person becomes unemployed or suffers a decrease in income, this can affect the ability to pay support. When this happens, the question arises: Is this person entitled to a reduction in the amount of support he or she pays?

SPOUSAL SUPPORT

A person paying spousal support must first look to the divorce-related documents. If spousal support is paid under a court's decision and order, the spousal support obligation is likely modifiable. If, however, support is paid pursuant to a property settlement or postnuptial agreement, spousal support is modifiable only if there is express language permitting such modification.

If spousal support is modifiable, the person seeking modification must first show that there has been a material—usually at least 15 percent—decrease in income since the existing award was established. Once a court finds the existence of a material change in circumstances, then it may proceed to modify the spousal support award.

CHILD SUPPORT

Child support is always modifiable based upon a party's showing of materially changed circumstances. Once the threshold of changed circumstances has been proven, the court will

recalculate child support using the mandatory state guidelines, which take into account the parties' respective gross monthly incomes and other relevant factors.

KEYS TO SUCCESS

The following points are keys to success when seeking to modify a support obligation:

- When requesting a decrease in support, the person must be free of fault. Any change in employment or income status must be as a result of factors outside of the person's control (i.e., job termination, wage reduction, and economic-based decreased profits). A person who is voluntarily unemployed, or a person who was fired for cause, is unlikely to get any relief.
- Gather evidence from the employer, the employer's industry, and even accountants to show that a person's loss or decrease of wages or earnings is a result of factors outside of the person's control (i.e., job elimination as a result of recessionary times).
- Gather as much information as possible about the person receiving support. A person's petition for a decrease in support might be easier to win if the party receiving support has a decreased support need. Pull together as much documentation as possible.
- Act quickly. A judge cannot make a support modification retroactive beyond the date that the motion is filed.
- If possible, stay current with the existing obligation. It is easier for a judge to give relief to a person who has a proven record of making his or her support payments in a timely fashion.
- Remember, to achieve a support modification, any change in financial circumstances must be material. So, a decrease in one's pay—regardless

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Our family legal services goal

The best lawyer-client relationship

In everything we do, for every family law client, we strive to achieve the kind of relationship that will be mutually beneficial. What are its hallmarks?

Courtesy—We should both always expect to be treated with the consideration of good manners between partners.

Faith in judgment—From working together, we must come to value the client's understanding of issues in the case and the lawyer's legal experience necessary to resolve it.

Involvement—To succeed, we must agree to cooperate to become full stakeholders in the legal process and its outcomes.

Respect—We both endeavor to do our best to appreciate each other's experience and skills, even when information or news that is shared is not what either wants to hear.

Support—The client and the attorney have a joint responsibility to make every effort to further the successful completion of the case.

Trust—Our goal is to establish and maintain a common confidence in each other's knowledge, ways of thinking, and sense of urgency about the matters at hand.

You and your family mean everything to us.

Appealing a divorce decree

When divorcing spouses feel that a judge's decision was unfair or improper, they have a limited right to appeal it. Although asking an appellate court to review a divorce decision may be lengthy and expensive, it can be done under special circumstances.

Here are some guidelines:

■ Appeals usually have time restrictions for filing. Consult an attorney as soon as it seems clear that the decision may have been wrong.

■ Appellate law, which varies by state, will rule only on the original trial's fairness. Judges will not retry a divorce case, review evidence, or rehear witnesses.

■ Courts will hear appeals only when significant cause is apparent, which may have improperly affected asset or marital property distribution. Significant grounds for appeal may include a judge's legally flawed rulings or presentation of fraudulent evidence or concealment of assets.

Should an appellant win reversal of a family court ruling, the case may be remanded to the original court and judge to retry.

REHABILITATIVE ALIMONY

Most states recognize that in many marriages, one of the marital spouses may have suffered loss of earning power or some other economic deficit because of the decision to marry. The underlying idea is that this spouse lost his or her opportunity to pursue a valuable career because of responsibilities of marriage, such as raising children.

Many state courts grant rehabilitative alimony so the separating or divorcing spouse who accepted a disadvantage can obtain education or training to recover earning capacity lost because of marriage.

A family court judge usually decides the standard of living the rehabilitative alimony should provide the petitioner. Based on a variety of factors, this standard may range anywhere from basic subsistence to the lifestyle enjoyed during the marriage.

How long rehabilitative alimony lasts varies among states and family courts. Judges require spouses who receive such alimony to complete their new education, training, or vocational programs to increase their capacity to earn.

Judges may award rehabilitative alimony for several years, a fraction of the years of the marriage, or the length of the marriage. Courts terminate rehabilitative alimony when either spouse cohabits, remarries, or dies.





Car-truck ACCIDENTS

In early 2010, the U.S. Department of Transportation (DOT) banned drivers of large commercial trucks from texting while driving. DOT fines could reach up to \$2,750 per incident.

But Americans continue to suffer injuries and deaths about every 15 minutes in commercial truck accidents on major thoroughfares.

Large commercial truck accidents may result from driver fatigue or negligence, employee-hiring negligence, equipment failure, inadequate maintenance, vehicle-design problems, and bad weather. Other accident contributors are hazardous, overweight, and shifting loads.

An overloaded truck

Two vehicle occupants were killed and another sustained life-threatening trauma to her face, neck, and back when an overloaded tractor-trailer careened into their car after striking an overpass. The family's attorney won them a verdict of more than \$28 million in damages, including \$1 million for emotional suffering.

If you are a victim of an auto accident with a commercial truck or tractor-trailer, contact an experienced attorney to protect your rights.

Have you been the victim of an impaired driver?

Vehicle accidents caused by drivers who are impaired by alcohol or drugs are criminal acts. Our firm has represented victims who have been injured in accidents caused by impaired drivers.

Accident victims usually have wide-ranging and specific rights concerning the recovery of lost wages, medical expense payments, and compensation for related damages.

We can represent bicyclists, motorcyclists, pedestrians, and vehicle operators and their passengers who have been injured in crashes caused by drug- or alcohol-impaired drivers.

Our firm can sue on behalf of family members and estates of victims killed by drivers who were under the influence of alcohol or drugs through wrongful-death lawsuits.

We can hold negligent companies that employ impaired drivers responsible for their employees' careless behavior.

If you or a loved one has been a victim of a drug- or alcohol-impaired driver, please contact our firm.



Pharmacy errors

Pharmacies make more errors than most people think. About 1.5 million patients each year suffer from medication-dispensing mistakes due to human error and poor manufacturer labeling.

Four common errors include pharmacists filling prescriptions with the wrong medications, supplying incorrect dosages, applying incorrect medication-taking instructions, or failing to take into account drug interactions.

Prescription mix-up

A pharmacy dispensed Matulane®, a chemotherapy medication that obstructs cell growth, instead of Materna®, a prenatal vitamin. The pregnant woman who took the incorrect medication suffered nausea and neurologic symptoms and then miscarried two months later. Her attorney sued for damages, but the pharmacy chain settled prior to the case coming to trial, a common practice.

If you or a loved one has experienced a pharmacy error, you have important legal rights. An experienced personal injury attorney can obtain an appropriate legal outcome for you.

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The information included in this newsletter is not intended as a substitute for professional legal advice. For your specific situation, please consult the appropriate legal professional.

Child-custody criteria

Our practice can help referral clients resolve family-law disputes.

Courts may consider many factors in determining child custody in divorces:

Abuse—From court and medical records.

Alienation—Parents turning a child against the other.

Children's wishes—Who does the child prefer?

Consideration—Which parent seems less selfish about custody?

Domestic violence—From police or court orders.

Duration of parental contact—Who spends more time with the children?

Employment—Promotes stability.

Home ownership and children's quarters—For a safe and secure home.

Nurturance—Who provides the best environment for a child?

Parental cooperation—Do parents agree about the child's welfare?

Parental health—Serious physical or mental issues can play a role.

Relocation of parents—Judges try to keep families close geographically.

Romantic relationships—Can complicate custody.

Statutory guidelines—In some cases, state law guides judges' actions.

Where child is lodged—Moving children can be traumatic.



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of the reason—of 15 percent or less is not likely to be considered a material change in circumstance.

This is a tricky area of the law, and one that is getting more play in the recent financial hard times. While judges understand that times are tough, they still require clients to make appropriate cases for relief. A person

should not assume that just because he or she has been a victim of the recessionary times that he or she is necessarily entitled to a modification of his or her spousal or child support obligation. Please call our offices at **540-982-2900** if you have any questions about a possible change in your spousal or child support obligations.