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Rural Law Center of New York, Inc.

CHILD SUPPORT IN NEW YORK STATE

The impact of separation or divorce on children can be economically severe, as well as emotionally. For children living in single-parent households, there is a much greater risk of poverty than children living with two parents. In spite of steady incomes, it is much more costly to maintain two separate households.

To ensure that children of separated parents receive adequate financial support, New York, like all states, has developed Child Support Guidelines. The goal of these guidelines is to make sure that children receive financial support in proportion to the incomes of both parents.

SOME FREQUENTLY ASKED QUESTIONS

Q. How is child support calculated?

A. Domestic Relations Law, s. 240(1-b) and Family Court Act s. 413(1)(b), known as the Child Support Standards Act ("CSSA") provide that the court shall calculate the "basic child support obligation", and the non-custodial parent's pro rata share of the "basic child support obligation". Unless the court finds that the non-custodial parent's pro rata share of the "basic child support obligation" is unjust or inappropriate, after considering ten enumerated factors, it must order the non-custodial parent to pay his or her pro rata share of the "basic child support obligation". In arriving at the "basic child support obligation" the Court must calculate the "combined parental income" and multiply it by the appropriate "child support percentage." "Income" is defined as "gross income as was or should have been reported on the most recent federal income tax return". There are required deductions from gross income for social security and New York City and Yonkers income taxes. The law contains provisions for additions to income" and deductions from "income".

The "child support percentage" is:

- 17% of the combined parental income for one child;
- 25% of the combined parental income for two children;
- 29% of the combined parental income for three children;
- 31% of the combined parental income for four children; and
- no less than 35% of the combined parental income for five or more children.

Where there are five or more children, the court must exercise its discretion in fixing the amount of the child support percentage. Where the combined parental income exceeds \$80,000 per year, after the court determines the non-custodial parent's share of the "basic child support obligation", it must next determine the amount of child support for the amount of combined parental income in excess of \$80,000. It may do so, in the exercise of its discretion, through consideration of ten discretionary factors and/or the child support percentage.

There are two additional items of support which are part of and which the court must consider in determining the "basic child support obligation" and two items it may consider in determining the non-custodial parent's share of the "basic child support obligation":

- When a custodial parent is working or receiving education leading to employment, reasonable child care expenses must be apportioned pro rata, in the same proportion as each parent's income is to the combined parental income.

- In addition, the Court must fix the non custodial parent's pro rata share of the child's future reasonable health care expenses not covered by insurance, prorated in the same proportion that each parent's income is to the combined parental income and the non custodial parent's pro rata share must be paid in the manner determined by the Court.

- The Court may also make an award directing the non custodial parent to pay the costs of present or future post secondary, private, special or enriched education for the child. The non custodial parent will pay these expenses in the manner determined by the Court. This provision is discretionary. When the Court determines that the custodial parent is "seeking work" and incurs child care expenses as a result, it may determine reasonable child care expenses and apportion them between the custodial and the non custodial parent. The Court can direct the manner of such payment. This provision is also discretionary.

- The law requires that a minimum of \$25.00 per month be fixed as child support even if the non custodial parent is unemployed and has no income or assets.

Q. Can my ex-spouse and I agree to amounts that vary from the amount of child support required by the "CSSA" guidelines?

A. Yes. You and you spouse can waive the provisions of The Child Support Standards Act as long as the waiver is in writing. However, your agreement must recite that you have been advised that the "basic child support obligation" provided in Domestic Relations Law s. 240 (1-b) and Family Court Act s. 413(1)(b) would presumptively result in the correct amount of child support to be awarded. In the event that your Agreement or Stipulation deviates from the "basic child support obligation," it must specify the amount that the "basic child support obligation" would have been and the reason or reasons that it does not provide for payment of that amount. The reason for this is to assure that the parties are aware of their rights and obligations under the Child Support Standards Act and knowingly waive such rights. This provision may not be waived by either party or counsel. If this provision is not complied with to the letter the waiver will be invalid.

Q. When will the court allow a deviation from the guidelines?

A. Deviations are allowed if the parties agree to deviate, or if a court finds that it would be unjust or inappropriate to apply the formula guidelines. The courts then use of the factors set forth in Family Court Act section 413(1)(f) and Domestic Relations Law section 240 (1-b)(f), which factors are merely an expansion of the pre-CSSA factors. The factors are:

1. The financial resources of the parents and the child.
2. The physical and emotional health of the child and his/her special needs.
3. The standard of living the child would have enjoyed if the marriage or household was not dissolved.
4. The tax consequences to the parents.
5. The non-monetary contributions the parents will make toward the care and well-being of the child.
6. The educational needs of the parents.
7. The fact that the gross income of one parent is substantially less than the gross income of the other parent.
8. The needs of the other children of the non- custodial parent for whom the non-custodial parent is providing support, but only after considering the financial resources of any other person obligated to support the other children. This factor only applies if the resources available to support the other children are less then the resources available to support the children involved in this matter.
9. Any other factor the court decides is relevant. In fixing child support above the CSSA guidelines, the court may consider the parties' financial

resources, the higher standard the children would have enjoyed had the marriage not been dissolved, and the fact that the one parent's income is substantially greater than the other's.

THIS IS AN EXAMPLE OF HOW YOU WOULD EXPLAIN IN AN AGREEMENT TO DIFFER WITH THE CHILD SUPPORT GUIDELINES

Remember, it's up to the hearing officer or judge to approve this.

4. BOTH PARTIES AGREE AND ACKNOWLEDGE that they have been advised that child support obligations in New York State are determined by the provisions of the Child Support Standards Act (CSSA) and that they have received copies of the child support standards charts prior to the execution of this agreement. The parties agree that the basic child support obligation pursuant to the CSSA would be a presumptively correct amount. The father's annual income is \$34,000. The mother's annual income is \$18,000. The parents' combined annual income is \$52,000. The CSSA Child Support percentage for three children is 29%. The father's pro-rata share is 65%. The mother's pro-rata share is 35%. For the combined income, the total annual support obligation, according to the Child Support Standards Chart, is \$15,080. The father's annual obligation is \$9802. The mother's annual obligation is \$5530.

But the parties wish to make an arrangement which deviates from the basic child support obligation. The parties have agreed that the father will make a monthly child support payment to the mother of \$_____. Also, the parties have agreed that the father will provide health insurance and dental insurance for the children through his employment, and that the mother will provide vision insurance for the children through her employment. In addition, the parties have agreed that the additional uncovered expenses of child care, medical expenses and education will be shared at a rate of two-thirds by the father and one-third by the mother. The reasons for this deviation in the CSSA presumptive amount are:

1) The extremely limited financial resources of the primary custodial parent (mother) and the proportionately greater financial resources of the non-custodial parent (father). More specifically, even though the mother is the primary custodial parent, if her child support obligation of \$5530 is subtracted from her annual income of \$18,000, her remaining income of \$12,470 falls below the current self-support reserve allowed for a non-custodial parent.

2) The need to maintain the children's standard of living previous to the parties' separation.

3) The substantial costs of “making a home” for the children, since the primary custodial parent (mother) has agreed to be solely responsible for the mortgage, taxes, insurance and upkeep of the family home for the children.

4) In consideration of the ongoing non-monetary contributions of the primary custodial parent (mother) to insure the comfort, care and security of the children.

Q. After the judge ordered Child Support, my ex-husband quit his job so he wouldn't have to pay. What can I do?

A. If a parent decides to stop working or to work for a smaller salary, the court may calculate child support based on the parents past income, since that amount reflects the earning capability. You should immediately contact your local Child Support Collection Agency for assistance.