

New Jersey Divorce Law

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I. DIVORCE - GENERAL

In order to file for a divorce in New Jersey, either spouse must have been a resident of the State for at least one year prior to the filing of the action. The only exception to the one year residency requirement is when the grounds for divorce are for adultery. In cases of adultery the requirement is that at least one spouse must be a New Jersey resident. In New Jersey there are eight grounds or causes to file for divorce. The three most popular grounds are extreme cruelty, no-fault separation, and adultery. Remember, the grounds of extreme cruelty are really just a “term of art” and it really does not mean that your spouse was extremely cruel.

No-Fault Divorce Cause of Action

Separation is New Jersey's only no-fault ground for divorce. To qualify under these grounds, both the husband and wife must have lived separately, in different houses (and not only different rooms) for a period of at least eighteen consecutive months. Moreover, in order to qualify for the no-fault divorce, there must not be a reasonable expectation of reconciliation. N.J.S.A. 2A:34-2A(d).

Fault Divorce Causes of Action

Extreme cruelty includes any physical or mental cruelty which makes it improper or unreasonable to expect that individual to cohabitate with their spouse. N.J.S.A. 2A:34-2(c). The courts are very liberal as to what type of conduct constitutes extreme cruelty.

Adultery

The courts have held that "adultery exists when one spouse rejects the other by entering into a personal intimate relationship with any other person, irrespective of the specific sexual acts performed; the rejection of the spouse coupled with out-of-marriage intimacy constitutes adultery." New Jersey Court Rule 5:4-2 requires that the plaintiff in an adultery divorce case, state the name of the person with whom the offending conduct was committed. This person is known as the correspondent. If the name is not known, the person who files must give as much information as possible tending to describe the adulterer.

Desertion

The willful and continuous desertion by one party for a period of twelve or more months, and satisfactory proof that the parties have ceased to cohabit as man and wife constitutes desertion under N.J.S.A. 2A:34-2(b). It is important to note that the parties may live in the same house. The crucial element here is "as man and wife." Thus, desertion may be claimed after twelve or more months of lack of absent sexual relations.

Addiction

Under N.S.J.A. 2A:34-2(e), addiction involves a dependence on a narcotic or other controlled, dangerous substance, or a habitual drunkenness for a period of twelve or more consecutive months immediately preceding the filing of the complaint. The evidence must show that the use of alcohol and drugs was persistent and substantial. This is not a common ground for divorce.

Institutionalization

When one spouse has been institutionalized for mental illness for a period of twelve or more consecutive months subsequent to the marriage and preceding the filing of the complaint, institutionalization is a ground for divorce under N.J.S.A. 2A:34-2(f). The primary issue in this ground for divorce is whether or not the spouse is able to function as a working partner in the marriage.

Imprisonment

Imprisonment as a ground for divorce occurs when a spouse has been imprisoned for eighteen or more months after the marriage. N.J.S.A. 2A:34-2(g). Moreover, the parties must not have resumed cohabitation after the imprisonment.

Deviant Sexual Conduct

Deviant Sexual Conduct occurs if the defendant engages in deviant sexual conduct without the consent of the plaintiff spouse. N.J.S.A. 2A:34-2(h).

II. FILING FOR A DIVORCE - PROCEDURE

Jurisdiction

The Superior Court of New Jersey has jurisdiction over all causes of divorce, when either person is a resident of New Jersey at the time the action is started. There is a twelve-month residency requirement. Furthermore, the jurisdiction of the court over the defendant is fully established when the defendant files an acknowledgment of service of process, enters an appearance, or files an answer to the complaint.

The Complaint Back

The filing of a divorce complaint starts the divorce case. A complaint for divorce is filed in the county in which the plaintiff lived when the cause of action arose, or if the plaintiff was not then living in New Jersey, the county in which the defendant was living when the cause of action arose. If neither party was living in New Jersey when the cause of action arose, then the complaint shall be filed in the county where plaintiff presently resides, or in the county where the defendant is living if the plaintiff no longer lives in the State.

The requirements regarding the content of the complaint are described in the New Jersey Court Rules, Rule. 5:4-2, and require a statement as to the essential facts which form the basis for the petition for divorce (see above listed causes of action), the addresses of the parties, and in cases involving a child, the address, date of birth, and information as to where and with whom the child resides.

In a divorce action where adultery or deviant sexual conduct is alleged, the pleading must also name the adulterer, or the correspondent. The complaint shall state the name of the person as the correspondent with whom such conduct was committed, if known, and if not known, shall state available information tending to describe the said person, including details of the time, place and circumstances under which acts or series of acts were committed.

Filing Fee

A filing fee is required at the time of filing of the complaint for divorce with the court. If there are children, then the parties also have to pay a fee to attend a parenting education seminar.

Answer, Answer and Counterclaim or Appearance

An answer is the defendant's written response to the plaintiff's complaint in the divorce case. In conjunction with the defendant's answer, the defendant may file counterclaims against the plaintiff. A defendant is required to file the answer and/or counterclaim(s) within thirty-five days of receiving the divorce Complaint. Alternatively, the defendant may file an appearance governed by R. 5:4-3(a) with the court, where the defendant is not disputing the claims in the complaint.

Answer to Counterclaim

If the defendant files a counterclaim, the plaintiff is permitted 20 days in which to file any responsive pleading.

Case Information Statement (CIS)

The Case Information Statements also known as a CIS is the most critical document in a divorce case. Rule 5:5-2 requires both parties to file and serve CIS's in all contested family actions where there is any issue as to custody, support, alimony or equitable distribution.

The primary purpose of the CIS is to identify all assets and liabilities (whether subject to division or not) of the party, like the income picture, shelter, transportation and personal expenses of that party. Each party must file their respective CIS within 20 days after the filing of the answer or appearance.

The parties' tax returns, their last three pay stubs, their pension statements, and their mutual funds, and stock statements should also be attached as exhibits to the CIS. The more

comprehensive the CIS is prepared, the easier it will for the ESP Panel and the court to assist the parties to settle the case.

Course of Litigation through the Courts

Once each party has filed his or her CIS, cases are separated into one of four categories for purposes of case management: priority, complex, expedited, or standard. Alternatively, the parties may agree upon a designated track.

Case Management Conferences

Within thirty days after the filing of the last pleading, the court will schedule a case management conference which may be held via a telephone conference. The purpose of the case management conferences is to address discovery timeliness and ultimately determine a trial date if necessary to be determined based upon the case's assigned track.

In Middlesex County, the parties and the lawyers are required to appear in person at the case management conference. If the case is not that complicated, many times the case can be settled at the case management conference, with the assistance of the judge. This can save the family thousands of dollars in legal fees. However, most other counties besides Middlesex County handle the case management conferences via a telephone conference.

Discovery

The discovery part of a divorce case is in many cases the most important part of the divorce. The purpose of discovery is to enable the parties to ascertain what assets each party has, and what constitutes the marital estate.

New Jersey Court Rule 5:5-1 allows for discovery including interrogatories, depositions, production of documents, requests for admissions, and copies of documents. The time lines for conducting discovery are held at the Case Management Conference.

Discovery can really make a divorce very expensive. It is time consuming, and it can really create a lot of billable hours. If at all possible, the parties should try to reach a reasonable agreement, to avoid all of the expense of conducting discovery. However, this is easier said than done.

Request to Enter a Divorce by Default

If the defendant fails to file an answer or an appearance in a divorce case, then the divorce is defaulted. This means that the person has "blown" his chance to respond or contest the divorce.

A request for a default against such a party is governed by R. 4:43. This rule requires the party requesting entry by default to make a formal written request for the entry of the default, supported by the attorney's affidavit. The affidavit shall explain the manner of service of the complaint upon the defendant, the date of service, and that all time periods in which the defendant may file a pleading have expired. The request to enter a default must be filed together

within six months of the actual default. The notice to request a default must also be served on the defaulting spouse.

Please keep in mind, that if there is a default, this does not mean that the case is over. If a spouse is seeking equitable distribution, alimony, child support or any other relief, then a process known and “filing a request for equitable distribution,” must be filed.

When equitable distribution, alimony, child support or any other relief is sought by the plaintiff, a notice of application for equitable distribution pursuant to R. 5:5-2 is required to be filed before the entry of default. This notice must be filed and served upon defendant twenty days prior to the hearing date and must include the following:

1. Notice of the trial date,
2. Statement of the value of each asset,
3. The amount of each debt sought to be distributed,
4. A proposal for distribution,
5. A statement whether plaintiff is seeking alimony and/or child support and, if so, the amount, and
6. A statement of any other relief sought.

As a result, the moving party must still attend court in order to obtain a divorce by entry of a default. The spouse must also bring a certificate of nonmilitary service verifying that her soon to be ex-spouse is not in the military. The courts do not want spouses to be divorcing their ex-spouse while they are in the military overseas, and they are in combat somewhere.

III. ISSUES RELATING TO THE DIVORCE

Alimony

Alimony is usually the key issue in divorces that prevent the parties from reaching a speedy settlement. To be blunt, men hate paying alimony. Alimony is defined as the allowance for support paid by one spouse to the economically dependent spouse. The amount and the duration of the alimony are based on a variety of factors, and the overall purpose of the particular alimony award. There are twelve factors for a court to assess if alimony is awarded, the length of alimony, and the amount of alimony. The following 12 factors are listed in the alimony statute - N.J.S.A. 2A:34-23(b):

1. The actual need and ability of the parties to pay;

2. The duration of the marriage;
3. The age, physical and emotional health of the parties;
4. The standard of living established in the marriage and the likelihood that each party can maintain a reasonably comparable standard of living;
5. The earning capacities, educational levels, vocational skills and employability of the parties;
6. The length of absence from the job market of the party seeking maintenance;
7. The parental responsibilities for the children;
8. The time and expense necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment, the availability of the training and employment, and the opportunity for future acquisitions of capital assets and income;
9. The history of the financial or non-financial contributions to the marriage by each party including contributions to the care and education of the children and interruption of personal careers or educational opportunities;
10. The equitable distribution of property ordered and any pay-outs on equitable distribution out of current income, to the extent this consideration is reasonable, just and fair;
11. The income available to either party through investment of any assets held by that party; and
12. The tax treatment and consequences to both parties of any alimony award, including the designation of all or a portion of the payment as a non-taxable payment.
13. Any other factors which the court may deem relevant.

As factor #13 indicates, this list is not meant to be exhaustive.

Factor 13, allows a judge to consider any other relevant factor to assist the court to fashion a fair alimony award. Moreover, even though the alimony statute identifies four types of alimony, judges may carve out alimony awards which do not necessarily fit neatly into anyone category.

Types of Alimony in New Jersey

Permanent Alimony

Permanent alimony is intended to compensate a spouse for an economic dependence created by the marriage. The purpose of permanent alimony is to allow the supported spouse, after the divorce, to continue to live in the lifestyle to which he or she had been accustomed during the marriage to the degree possible. Usually, when the marriage was of long duration, and economic need is also demonstrated, the courts will entertain an award of permanent alimony.

The courts will not consider a permanent alimony request, unless the marriage was at least ten years long. The trend is now for limited duration alimony.

Rehabilitative Alimony

The main difference between rehabilitative and permanent alimony is the temporary nature of rehabilitative alimony. Rehabilitation alimony is a short term award. This type of alimony enables the former spouse to go back to school, or obtain some type of job training that will enable him or her to re-enter the work force.

In many cases, rehabilitative alimony will consist of the husband-spouse paying for the college tuition or the job training expenses for their ex-wife.

Limited Duration Alimony

Limited duration alimony, sometimes called "term alimony" is an award of alimony of a limited duration. Limited duration alimony is often awarded when the marriage was a short one. Moreover, in a limited alimony case, a rehabilitative alimony award is inapplicable, but the circumstances of the case justify some award of financial support.

Reimbursement Alimony

A reimbursement alimony award recognizes the financial contributions a spouse has made to the professional training or career development of the other spouse. Therefore, one spouse has made financial and professional sacrifices and thereby enhancing that spouse's future earning capacity. These contributions may consist of household expenses and educational costs and the award is usually limited in nature.

Alimony Pendente Lite

During the pendency of a divorce, either party may ask the court for an award of temporary support or alimony. An award of temporary alimony will enable the parties to maintain the "status quo" between them, until a full analysis of their financial affairs may be completed. Pendente Lite alimony awards are only temporary. These awards of alimony can be increased or decreased via a settlement, or at trial if necessary.

Other

The courts in New Jersey are not limited by the statutory categories of alimony. They may, in the interest of a just result, give out of awards that combine the various categories, or are outside the statutory definition altogether.

Child Support and Child Care

This following is a brief overview child support. This overview will explain why child support exists. Who is able to receive child support? How the courts determine the amount of support to award. Finally, where does the child support come from, including what happens if the parent/obligor (the one who is required to make child support payments) fails to make payments.

Why Is Child Support Necessary? Child support reflects the continuous duty of both parents to financially support their children. The government wants the parents to support the child. If there were no child support laws, then many children would live in poverty. Moreover, this would increase the welfare rolls dramatically.

Who Receives Child Support? Any children who are less than eighteen years of age may receive child support. In instances where a child is over the age of eighteen but he or she still attends high school or another form of secondary education, then the court must consider current case law and statutory law in determining whether that child is permitted to receive support.

How Is Child Support Collected? Children are entitled to be financially supported in accordance with the economic status of each parent. The child support guidelines in New Jersey were established after reviewing socioeconomic studies. The AOC has developed guidelines to assist the courts in determining a fair and adequate award of child support. The guidelines are based upon estimates of what intact families spend on their children and reflect that parents in different income categories spend a different percentage of their combined incomes toward raising their children. For example, two parents who earn \$50,000 together statistically spend a lesser amount on their children than do two parents who earn \$150,000.

The child support guidelines are set forth in the New Jersey Court Rules, child support guidelines. The guidelines address children whose parents' joint net annual income is below \$150,800. The guidelines also take into consideration the possibility of a parent's underemployment or unemployment.

Many times, many parents work “off the books,” or they are just lazy and don’t want to work because this will increase their child support. The courts have solved this problem by imputing income to a parent. Many times, parents who work construction, the trades, or who are self-employed, make most of their salary or income “off the books.” Therefore, many judges will impute income to a conniving parent. The court will analyze the New Jersey Occupation Wage Survey, printed by the New Jersey Department of Labor, and assess a reasonable income to the deceptive parent.

It is the rebuttable presumption that the amounts set forth in the guidelines are correct. This means that unless a party convinces the court that circumstances warrant a deviation of the guidelines-based support amount, a court will not depart from the guideline amount.

The child support guideline amounts already factor in various expenses for the child/children including the following: child's share of expenses for housing, food, clothing, transportation, entertainment, un-reimbursed health care and miscellaneous items, such as personal care products and cash contributions. Expenses that are not included in the guideline amounts are: child care, health insurance, private school, and un-reimbursed health care costs. However, the court may, in addition to basic child support, add additional obligations upon the parties to pay for these expenses. Each case is decided on an individual basis.

If the parents' joint net income picture exceeds \$150,800, the child support award is calculated up to that amount, considering that as the minimum child support award, and then evaluating certain additional factors specified in N.J.S.A. 2A:34-23a to supplement the child support amount. Those factors include:

1. Needs of the child;
2. Standard of living and economic circumstances of each parent;
3. All sources of income and assets of each parent;
4. Earning ability of each parent, including educational background, training, employment skills, work experience, custodial responsibility for children including the cost of providing child care and the length of time and cost of each parent to obtain training or experience for appropriate employment;
5. Need and capacity of the child for education, including higher education;
6. Age and health of the child and each parent;
7. Income, assets and earning ability of the child;
8. Responsibility of the parents for the court-ordered support of others;
9. Reasonable debts and liabilities of each child and parent; and
10. Any other factors the court may deem relevant.

For any New Jersey divorce, child support motion, or an FD case (The parties are not married), then the parties must complete a child support child support guideline worksheet must. The New Jersey Court Rules contains two worksheets for this purpose. One worksheet is called the "sole

parenting" worksheet. Here the non-custodial parent must have less than 28% of overnight time with the child.

The other type of child support worksheet is called a "shared parenting" worksheet. In a "shared parenting" worksheet case, the non-custodial parent must have 29% or more overnight time with the child, and the parent must prove that separate living accommodations for the child are provided. In a shared-parenting situation, the court considers three broad categories of expenses (fixed, variable and controlled) and apportions those expenses to each parent in proportion to the parents' relative incomes, not in proportion to the time spent with the children.

Each of these worksheets provides the court with information on the parents' overnight parenting schedule, income, alimony obligation, other child support obligations, child care costs, and health insurance costs for the child. This information is vital in determining the amount of child support a court shall award. Like alimony awards, child support may be awarded pendente lite, that is, temporarily, while the litigation is pending and until a final determination of the child support award is made by the court or by agreement.

Where Is Child Support Paid? Payment(s) of child support and alimony are paid through the Probation Division in the County of the obligor's residence upon. If the parties agree then there can be a "direct pay" between them. However, this is not advisable. In most cases, child support and alimony is garnished. In some other cases, the payor spouse simply sends their child support payment on a weekly or biweekly basis to their local Probation Division.

Child support arrears are a major problem in New Jersey. The possible ramifications of not paying child support are being arrested, having your bank account(s) seized, serving time in the local county jail, having child support liens placed on your home, having your credit report ruined, obtaining bad credit, having your driver's license suspended, and also having any and all professional licenses suspended or revoked.

Child Custody/Parenting Plan

It is New Jersey's public policy to assure that minor children have frequent and continuous contact with both parents after the divorce. In any custody proceeding, the court will treat the rights of both parents equally.

Child custody is comprised of legal and physical custody. Legal custody relates to a parent's authority and responsibility for making major decisions regarding the child's health, education and welfare. Physical or residential custody relates to where the children live.

The primary standard how the courts determine custody and parenting schedules is the "best interests of the child." This standard is designed to protect the safety, happiness, physical, mental and moral welfare of the child.

Generally, custody arrangements fall into one of three categories: sole custody, joint legal custody, or joint physical custody. Sole custody awards both the legal and physical custody to one spouse. Joint legal custody provides that both spouses have joint responsibility for all major decisions regarding the child's health, welfare and education. However, in a joint custody case, the court will usually designate one parent as the child's principal residence and determine a parenting plan for the other parent. Joint physical custody cases are really only feasible when the divorced spouses can reasonable cooperate with each other.

A court is required to examine the following criteria in determining the child's best interests:

1. The wishes of the parent or parents;
2. The wishes of the child;
3. The interaction of the child with parents, siblings and other influential persons;
4. Child's adjustment to home; and
5. The mental and physical health of all individuals involved.

In addition, the court must examine the factors set forth in the following N.J.S.A. 9:2-4:

1. The parents' ability to agree, communicate and cooperate in matters relating to the child;
2. The parents' willingness to accept custody and any history of unwillingness to allow visitation that is not based upon substantiated abuse;
3. The interactions and relationship of the child with its parents and siblings;
4. Any history of domestic violence;
5. The safety of the child and the safety of either parent from physical abuse by the other parent;
6. The preference of the child if the child is of sufficient age and capacity to reason so as to make an intelligent decision;
7. The needs of the child;
8. The stability of the home environment offered;
9. The quality and continuity of the child's education;

10. The fitness of the parents;
11. The geographical proximity of the parents' homes;
12. The extent and quality of the time spent with child prior to or subsequent to the separation;
13. The parents' employment responsibilities;
14. The age and number of children.

In New Jersey the most common form of custody is that joint legal custody, and the wife/spouse has residential custody. It is always advisable to work out a reasonable shared parenting plan. Having constant custody hearings and court appearances are a great way to waste money on legal fees, upset the children, and basically ruin your life. Remember, the children belong to both parents. Moreover, most counties now refer custody matters to mediation before any hearings are held. In my experience mediation is a great way to solve custody issues in a fair, inexpensive, and a speedy manner.

Equitable Distribution

Equitable distribution is the process as how the courts decide how the marital property is divided between the spouses. The main theory behind equitable distribution is that the courts and New Jersey family law recognizes the spouses as an "economic partnership." Unfortunately, as many are well aware, many partnerships don't last forever. Equitable distribution applies to all assets acquired during the marriage. Equitable distribution includes real estate, jewelry, mutual funds, stock options, bank and brokerage accounts, retirement assets, small businesses, etc. acquired during the marriage.

Generally New Jersey courts will undertake a three-step process in making an equitable distribution; (a) Identify the property that consists of the "marital estate; (b) value each asset; (c) distribute the assets in a fair and just manner. N.J.S.A. 2A:34- 23 (h) and N.J.S.A. 2A:34-23.1 are the two major statutes that govern equitable distribution. These statutes specify the factors that the court or ESP Panel considers when it determines the equitable distribution of the marital assets.

The statute lists fifteen factors but allows the court to consider any other additional factors it may deem relevant:

1. The duration of the marriage;
2. The age and physical and emotional health of the parties;
3. The income or property brought to the marriage by each party;

4. The standard of living established during the marriage;
5. Any written agreement made by the parties before or during the marriage concerning an arrangement of property distribution;
6. The economic circumstances of each party at the time the division of property becomes effective;
7. The income and earning capacity of each party, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children, and the time and expense necessary to acquire sufficient education or training to enable the party to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage;
8. The contribution by each party to the education, training or earning power of the other;
9. The contribution of each party to the acquisition, dissipation, preservation, depreciation or appreciation in the amount or value of the marital property, as well as the contribution of a party as a homemaker;
10. The tax consequences of the proposed distribution to each party;
11. The present value of the property;
12. The need of a parent who has physical custody of a child to own or occupy the marital residence and to use or own the household effects;
13. The debts and liabilities of the parties;
14. The need for creation, now or in the future, of a trust fund to secure reasonably foreseeable medical or educational costs for a spouse or children;
15. The extent to which a party deferred achieving their career goals.

When a court makes a ruling on equitable distribution, the court must make specific findings of fact based on the three step process mentioned above, i.e., (a) What assets are part of the marital estate; (b) what is the value of each asset; (c) the manner in which it should be distributed.

Generally, property is considered part of the marital estate if it was obtained during the marriage. Moreover, it will qualify for distribution when it is the result of an effort or activity by either spouse during the marriage. The assets to be distributed are usually identified, for valuation purposes, as of the date that the complaint of divorce is filed.

Settlement Agreements

In the New Jersey family court system there is a tremendous pressure to settle divorce cases. The plain truth of the matter is that there are too many divorce cases, and not enough judges to have a trial for all of the divorce cases. Ninety eight percent of divorce cases are settled before a trial.

Moreover, going to trial is very expensive. Legal fees can be high. Moreover, the parties will have to spend a significant amount of monies on expert witnesses to testify at trial. The parties will have to produce real estate appraisers, pension experts, stock market experts, business appraisers, and or accountants. These experts are not cheap, and they charge thousands of dollars to come to trial and testify. Therefore, in most cases it is a “WIN WIN” situation if a reasonable settlement can be achieved.

Settlement agreements are agreements where divorcing couples determine their rights and responsibilities after the divorce. A settlement agreement, or a PSA (Property Settlement Agreement) is a contract between the spouses, and it determines of the issues in the divorce case. The issues addressed in the PSA include alimony and child support, custody, parenting time, debts, and distribution of property subject to division. By negotiating a settlement, the parties can make their own legally enforceable contract, and avoid years of litigation, expensive legal fees, and years of stress

A fair property settlement agreement can be achieved by having meetings between the parties' attorneys, through mediation, or court-sponsored early settlement programs. When the parties enter into a settlement agreement, that agreement is then made a part of the final judgment of divorce and has the same effect as a judgment entered by the court as long as the settlement agreements is not unconscionable.

In most cases, the parties reach an agreement at the Early Settlement Panel. Once a settlement is reached, the lawyers will tell the court clerk. Thereafter, the parties will go before the judge, and the terms of the settlement will be placed on the record, or explained to the court. Thereafter, the lawyers will prepare a more formal divorce judgment than contains all of the terms of the agreement.

IV. POST DIVORCE ISSUES

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, than they did in the divorce cans.

Most post divorce issues that require court intervention to resolve issues 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 review these documents, and make a determination if any child support or alimony should be terminated, reduced or increased.

Modifying or Terminating Alimony

A person can only modify or terminate alimony if they prove that there is a change in financial circumstances. A typical change of circumstance is a change of employer, 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; and
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, and
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, and
12. Any other factor bearing on the child's interest.

V. PREMARITAL & COHABITATION AGREEMENTS

A premarital agreement or antenuptial agreement may be used by a couple to determine, prior to marriage, what each party's rights and obligations will be in the event of divorce.

Premarital Agreements are governed by the Uniform Premarital Agreement Act, N.J.S.A. 37:2-31 et seq. The agreement must be in writing and have a statement of assets attached to it. It becomes effective upon the marriage of the parties.

The parties to a premarital agreement may enter into agreements about the following:

1. The rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located;
2. The right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property;
3. The disposition of property upon separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event;
4. The modification or elimination of spousal support;
5. The making of a will, trust, or other arrangement to carry out the provisions of the agreement;
6. The ownership rights in and disposition of the death benefit from a life insurance policy;
7. The choice of law governing the construction of the agreement; and
8. Any other matter, including their personal rights and obligations, not in violation of public policy.

However, a premarital agreement cannot predetermine issues relating to children including child support, custody or parenting time. As to enforcement of premarital agreements, there is a three-pronged test that must be addressed by a court if the agreement is challenged:

1. Was the agreement entered into voluntarily?
2. Did the parties have the opportunity to have the agreement reviewed by counsel of his/her own choosing? and
3. Was there full disclosure as all assets, liabilities and income?

If these three items can be shown, then the burden to set aside the agreement shifts to the other side (with a higher burden of proof) and the primary focus will be on whether the agreement was "unconscionable" at time of enforcement, which shall be determined by the court as a matter of law.

VI. DOMESTIC VIOLENCE

In 1982, the Prevention of Domestic Violence Act, codified at N.J.S.A. 2C:25-17, et seq. was enacted to address domestic abuse and provide civil remedies for victims in the form of a restraining order. The Domestic Violence Act addresses what constitutes domestic violence, who is a protected party, meaning who can receive a restraining order, how to obtain a restraining order, including the relief a court may grant in a restraining order, and the consequences should a party fail to abide by the restraining order.

What Constitutes Domestic Violence? The Act specifies that domestic violence is the occurrence of one or more of the following:

1. Homicide
2. Assault
3. Terrorist Threats
4. Kidnapping
5. Criminal Restraint
6. False Imprisonment
7. Sexual Assault
8. Criminal Sexual Contact
9. Lewdness
10. Criminal Mischief
11. Burglary
12. Criminal Trespass
13. Harassment
14. Stalking

Who Can File A Complaint For Domestic Violence? In order to file for a restraining order, the plaintiff has to have a certain relationship with the defendant. A protected person under the Domestic Violence Act is someone who is at least eighteen years old or who is an emancipated

minor. The protected person must have been subjected to domestic abuse by a spouse, former spouse or any present or former household member. A protected party can be of any age if that person has a child in common with the abuser or anticipates having a child in common if one of the parties is pregnant. A victim of domestic violence in a dating relationship may also seek a restraining order.

How Can A Person Obtain A Restraining Order? There are two steps in obtaining a restraining order.

Complaint - First, victims may file a complaint with the Family Part of the Chancery Division of the Superior Court during weekdays and normal courthouse hours. On the weekends, holidays, evenings or other times that the courthouse is not open, a victim may seek protection through a Municipal Court Judge. At this stage, the court may enter an ex parte Temporary Restraining Order (TRO) in favor of the victim if the judge determines that an imminent danger of domestic violence exists. Ex parte means that the court may enter an order based upon the victim's sworn testimony alone. The complainant may provide testimony via telephone or other means of electronic communication pursuant to R. 5:7A. This type of order may provide the following relief:

1. Forbidding the defendant from returning to the scene of the domestic violence;
2. Forbidding the defendant from possessing firearms or other weapons, including an order to search and seize any weapons at any location where the judge has reasonable cause to believe the weapon is located;
3. And any other additional relief.

The TRO will immediately be sent to the law enforcement agency for service upon the defendant and to the police in the municipality where the defendant lives. According to N.J.S.A. 2C:25-28(i), the defendant may immediately appeal the order for a plenary hearing de novo (anew) not on the record before any family part judge in the County which the Plaintiff resides or is sheltered, provided that judge issued the temporary or can access the reasons for the temporary issuance of the temporary order and the defendant sets forth in the record those reasons for the modification or dissolution. This Order will remain in effect until a judge of the Family Part issues a further order.

Domestic Violence Hearing - Within ten days of filing the Complaint, the court shall conduct a domestic violence hearing in which both plaintiff and defendant are permitted to testify and provide witnesses to determine whether a final order shall be entered. According to N.J.S.A. 2C:25- 29(b) the final order may include the following relief:

1. Restraining the defendant from subjecting the victim to domestic violence.

2. Granting exclusive possession of the residence or household regardless of ownership, including payment or rent.
3. Parenting time.
4. Monetary compensation for losses suffered as a direct result of the act of domestic violence, including punitive damages.
5. Counseling and/or anger management.
6. Restraints from entering the residence, property, school, place of employment of the victim.
7. Restraining any contact with the plaintiff directly or through third persons.
8. Payment of rent or mortgage payments.
9. Temporary possession of personal property, including vehicles.
10. Emergency monetary relief, such as child support.
11. Temporary custody of a child.
12. Supervision of the removal of personal belongings.
13. Any other appropriate relief for the plaintiff and dependent children
14. Requiring that the Family Part In-Take Unit monitor the final order
15. Preventing the defendant from possessing firearms or weapons and/or ordering the search and seizure of any weapons.
16. Restraint the defendant against stalking, following, or threatening to harm the protected party.
17. Psychiatric evaluation of the defendant.

If the court, after hearing, finds that the defendant committed an act of domestic violence, a civil penalty shall be ordered against the defendant between \$50 and \$500 and submitted to the Domestic Violence Victims' Fund. Unlike a criminal trial, plaintiff needs to prove the case by preponderance by the evidence, a lesser standard than beyond a reasonable doubt.

If a law enforcement officer finds probable cause that a defendant has violated a restraining order, the defendant shall be arrested without a warrant. Alternatively, a protected party may file a complaint alleging that the defendant has violated the order. The court shall conduct a hearing to determine whether the defendant has violated the order. According to N.J.S.A. 2C:44-1(b), the Court may impose jail time for a first contempt offense if aggravating circumstances outweigh mitigating circumstances. If a person is convicted of a second or subsequent non-indictable domestic violence contempt offense, the defendant shall serve a minimum term of not less than 30 days.

VII. PATERNITY

Pursuant to N.J.S.A. 2A:17-56.7(b), the early establishment of paternity and child support orders creates a basis for individual security and family stability. As a result, the Parentage Act codified at N.J.S.A. 9:17-41 et seq. was enacted to address paternity cases. Paternity issues usually arise when child support is sought and the father contests that he is in fact the father of the child. Jurisdiction upon a person to a paternity action is based upon his having sexual intercourse in this State with respect to a child who may have been conceived by that act of intercourse. In addition, personal jurisdiction may be acquired by service of the defendant in accordance with the rules of the court.

Several parties can bring about or defend a paternity action at any time: a child, a legal representative of the child, the natural mother, the estate or legal representative of the mother, if the mother has died or is a minor, a man alleged or alleging himself to be the father, the estate or legal representative of the alleged father, if the alleged father has died or is a minor, the Division of Family Development in the Department of Human Services, or the county welfare agency, or any person with an interest recognized as justifiable by the court. However, if the issue is raised more than five years after the child attains the age of majority, no such action shall be permitted.

New Jersey family law requires the child and other parties in a contested paternity case shall submit to a genetic test upon the request of one of the parties, unless that person has good cause for refusal, if the request is supported by a sworn statement by the requesting party: (1) alleging paternity and setting forth the facts establishing a reasonable possibility of the requisite sexual contact between the parties; or (2) denying paternity and setting forth the facts establishing a reasonable possibility of the nonexistence of sexual contact between the parties;

There are several instances when a man is presumed to be a child's father. According to N.J.S.A. 9:17-43 a man is presumed to be the biological father of a child if:

- (1) He and the child's biological mother are or have been married to each other and the child is born during the marriage, or within 300 days after the marriage is terminated by death, annulment or divorce;
- (2) Before the child's birth, he and the child's biological mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, AND

- (A) if the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within 300 days after its termination by death, annulment or divorce; OR
 - (B) if the attempted marriage is invalid without a court order, the child is born within 300 days after the termination of cohabitation;
- (3) After the child's birth, he and the child's biological mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, AND:
- (A) he has acknowledged his paternity of the child in writing filed with the local registrar of vital statistics;
 - (B) he has sought to have his name placed on the child's birth certificate as the child's father, pursuant to R.S. 26:8-40; OR
 - (C) he openly holds out the child as his natural child; OR
 - (D) he is obligated to support the child under a written voluntary agreement or court order;
- (4) While the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child;
- (5) While the child is under the age of majority, he provides support for the child and openly holds out the child as his natural child; OR
- (6) He acknowledges his paternity of the child in a writing filed with the local registrar of vital statistics, which shall promptly inform the mother of the filing of the acknowledgment, and she does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing filed with the local registrar.

A presumption under this section may be rebutted in a paternity case only by clear and convincing evidence. The presumption is rebutted by a court order terminating the presumed father's paternal rights or by establishing that another man is the child's biological or adoptive father.

In contested matters, a consent conference shall be held by the Superior Court, Chancery Division, Family Part intake service, the Probation Division or the county welfare agency to determine if the matter may be resolved prior to trial. A trial shall take place in which witnesses and experts may testify and which blood tests may be introduced.

This Summary of New Jersey Divorce Law is provided courtesy of the Law Offices of Theodore Sliwinski. Call for your free consultation now: **(732) 257-0708** Call 7 days a week, 24 hours a day.

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