

NJ Family Law Coronavirus Special Series

Divorce and the Financial Crisis of COVID-19

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This is the second article in our continuing series of Family Law Issues and the Coronavirus Crisis. You may be in the midst of a divorce or separation during this crisis. This article will address the financial issues that are particularly highlighted during times of crisis while going through a divorce or separation.

The financial impact of this pandemic does not distinguish among socioeconomic classes. There is an impact felt by virtually every family, whether it be a loss or furlough from a job, a reduction in compensation, or loss of value in savings and retirement. The financial landscape will be constantly shifting during this COVID-19 crisis. It will require creativity and flexibility to preserve the financial benefits your family has worked hard to achieve. Therefore, it is even more important, if possible, for both parties to work together, with their legal and financial advisors during this most difficult time of divorce/separation when confronting the financial impact of this crisis. To achieve this goal, there must be: **Transparency about family finances**; an **Equal understanding about family finances**; and if necessary **Modifications of support or other financial arrangements**.

Transparency About Family Finances

Since an economic crisis raises tensions and highlights financial disputes between separating or divorcing spouses, it is crucial that the parties be completely transparent with each other concerning the family finances. There are many tools, some formal and some informal, to obtain or require financial transparency.

The first step is to get and review the financial documents that represent your assets, liabilities, income, and expenses. The more information provided, the better. It is better both for the spouse who is in control of this documentation because this disclosure will be required

sooner if not later, and for the spouse not in control of the financial documents because he/she needs to have this information to have a sufficient comfort level to move forward with and understand a fair settlement. This transparency concerning family finances is required in mediation, arbitration, and in divorce proceedings filed in Court.

Fortunately, the divorce process in New Jersey provides several mechanisms for obtaining the financial documents and information you will need to face a financial crisis and the financial decisions in your divorce or separation. After filing a Complaint for Divorce, one of the first steps is to prepare and file a Case Information Statement ("CIS") with the Court. New Jersey Court Rule 5:5-2 requires that a CIS be filed in all contested family actions within 20 days of the opposing party's Answer and/or Counterclaim for Divorce. So, what is a CIS? In family actions, a CIS requires each party to provide information concerning his/her income, assets, liabilities, and monthly expenses. Parties are required to attach their three most recent paystubs and most recent year's tax returns to the CIS. The CIS is critical to an accurate understanding of your marital standard of living, and in turn, your marital standard of living is the foundation for a discussion about alimony, child support, and equitable distribution. For this reason, it is important that you (and your spouse) draft your CIS with due consideration and attempt to be as accurate as possible, bearing in mind that you must sign and swear to the truth of the document. For more information on the importance of a CIS, and the best ways to strategically complete this document, see our article "[Preparing a Persuasive Case Information Statement in Alimony, Child Support and Equitable Distribution Cases – The Tips You Should Know.](#)"

A bit further into the divorce or mediation process, you and your spouse will engage in and exchange discovery. Discovery is the process of obtaining necessary documents and information to be fully educated allowing you to make the best financial decisions for you and your family. The New Jersey Court Rules provide for numerous discovery mechanisms. In Family Law cases, some of the most prevalent discovery tools include:

1. Interrogatories, which are written questions you serve on the other party that he/she must answer fully and completely. The other party must also certify to the truth and accuracy of his/her responses;
2. Document Demands (also called Notice to Produce) which are served on the other party, and which, as the name suggests, require him/her to provide documents in response.

Document demands can be used to obtain bank, credit card, brokerage, and retirement account statements and similar documents, among many other things. Document demands, therefore, can be a very useful tool in assessing not only your assets and liabilities, but also to get a true picture of income versus expenditures;

3. Subpoenas, which are document demands served on a third party. Typically, you only resort to serving a Subpoena if your spouse is not being forthcoming with your document demands; and
4. Depositions, which is a device whereby your attorney takes the oral testimony of your spouse. Usually, you would not seek to take a deposition until you and your attorney have all the relevant financial documents at your disposal, but it is possible that the deposition could be the only way to obtain crucial financial information.

Even in mediations, these kinds of tools can and are used on a voluntary basis to ensure full and complete financial transparency.

Equal understanding about family finances

While discovery is very useful to a full disclosure of the economic circumstances of your marriage, it can sometimes be a cumbersome and time-consuming process to digest and understand it all. Each spouse should be on an equal footing when it comes to an understanding of the family finances. But, do not feel like you need to do this difficult task alone. Your attorney will help to create a financial team for you. Working with your family money manager, or a financial planner or tax expert will help you assess family budgets, the marital standard of living, your long-term and short-term debts, and especially now, the impact of the economic crisis on your assets. It is especially important at times of great volatility in the stock market and significant economic downturn to craft a smart approach to alimony, child support, and equitable distribution. This approach should take into consideration taxes and potential short-term or long-term losses in value. Having an equal understanding about your monthly expenses, marital standard of living, assets and liabilities is absolutely critical so as not to make a dramatic mistake in settlement or trial from which there may be no later remedy.

Transparency and understanding your family finances is especially important if you need or may be ordered to pay temporary support while your divorce is pending. You, your attorney, and your financial expert will be able to use the discovery you received, or at a minimum, the

CIS discussed above to help you calculate an appropriate amount of pendente lite (temporary) support to seek or to pay.

The Court will use the information in your CIS and other financial documents to determine how much temporary support is appropriate. In particular, the Court will analyze your Schedule A, B, and C monthly expenses on your CIS to preliminary determine your marital standard of living and the ability to continue to pay for same. A pendente lite (pending the litigation) support Order will be entered by the Court if the parties cannot otherwise agree. Often both parties and attorneys will work toward a temporary agreement to maintain the family financial status quo, which is the guiding principle if a Court were to have to enter an Order for temporary support. These Orders can be modified at any time during the pending of your divorce. These modifications of support may become necessary due to a variety of circumstances ... yes including a pandemic. For this reason, it is very important for each spouse to have an equal understanding of the family finances.

Modifications of Support

In this time of economic uncertainty, with the rapid rise in layoffs and unemployment claims, a series of changes in your financial circumstances could create the need to modify support agreements/orders. You or your spouse could lose your job, be furloughed or suffer reduction in compensation. One spouse may need to significantly increase parenting time with the children and require more child support. Could these changes impact alimony or child support? The answer is yes, but how to get a modification varies depending on whether you are currently going through a divorce or are already divorced.

If you are going through a divorce now but financial circumstances have changed due to the crisis...

If you or your spouse have filed for divorce but a Final Judgment of Divorce has not yet been entered, your case is considered "prejudgment". This distinction is important because New Jersey statutory law gives Family Courts broad equitable powers to change temporary support during the pendency of a divorce matter. Specifically, our Family Courts have the power to "make such order as to the alimony or maintenance of the parties, and also as to the . . . maintenance of the children, or any of them, as the circumstances of the parties and the nature of the case shall render fit, reasonable and just". N.J.S.A. 2A:34-23.

So, if one spouse is laid off or furloughed until the pandemic subsides, it is possible that the Court will grant a temporary reduction or suspension in support. The Court may be even more inclined to grant a reduction if you can demonstrate that the financial need of the other spouse, which is the basis of a pendente lite support award, is reduced due to current circumstances. Increases in support may also be appropriate. For example, If you have significantly more parenting time, you may be entitled to an increase in child support.

Seeking a modification from the Court requires that you file a Motion, or application, with the Family Court. Again, you and your spouse could enter into a Consent Order, or an agreement that the Court signs, modifying the payment of support temporarily for a fixed period of time, or until a certain condition occurs. Mediation could help you and your spouse reach an agreement. At times, direct communications between your lawyers can resolve a temporary problem.

If you are divorced, and your financial circumstances have changed due to the crisis...

If you are already divorced, the threshold for modifying alimony or child support is higher. For both alimony and child support, the party seeking a modification must prove a substantial and permanent change in circumstances. Thus, temporary unemployment is not a basis for a modification. With respect to alimony, or anyone divorced after September 2014, there is a 90-day waiting period before an application can even be filed with the Court. Specifically, statutory law provides that you must be unemployed or unable to attain employment at your prior income levels for 90 days before an application will even be considered by the Court. Of course, if your former spouse acknowledges that a meritorious change has occurred, he/she can agree to a reduction in alimony, even if temporary. Then, you may file a Consent Order and avoid the statutory hurdle. Having said this, these are extraordinary times, and the Family Court is a Court of equity. This means that Family Court judges have discretion to do justice. So, extraordinary temporary circumstances may permit you to seek emergent relief from the Court which ordinarily might not be considered.

There is more leeway with respect to child support because the overarching purposes of such support is furthering the best interests of the children. That said, as is the case with alimony, temporary circumstances typically are not a basis to modify child support. A Court may be particularly hesitant to reduce (as opposed to increase) child support due to temporary

circumstances. Due to the Court's responsibility to protect the best interests of children, inadequate financial support for the children for any period of time is to be avoided whenever possible.

On the other hand, since child support awards are determined considering, among other things, the amount of time the children spend with each parent, a Court may consider a temporary increase in child support if one parent has the children significantly more time due to the current coronavirus crisis. This may be especially true if the child support award based on the regular parenting time schedule is inadequate for the parent with increased responsibility to support the children. For example, suppose a family typically had a 50/50 shared custody arrangement, or something close to it. In such situations, direct child support to the other spouse may be limited depending on the other financial arrangements made in your divorce Agreement or Judgment. Now suppose that due to the pandemic, the children remain at one of your residence for the majority or all of the time, and will continue to do so for the foreseeable future. The parenting time schedule and related obligations may have materially changed, but the same child support is being paid. Although this situation may not be permanent, at least for now, there is no way to know when it will end. Therefore, a Court may consider a temporary upward or downward adjustment of child support.

Addressing financial questions and issues especially during this coronavirus crisis is complicated. The financial uncertainty of these unprecedented times has exacerbated these types of financial issues for those who are about to be, or are already divorced. If you have questions about how to address these and other financial issues during your divorce or need to seek a modification of alimony or support, contact Jan L. Bernstein, jbernstein@phillipsnizer.com, or Lindsey de Stefan, ldestefan@phillipsnizer.com, at Phillips Nizer, LLP, 433 Hackensack Avenue, Suite 803, Hackensack, New Jersey 07601, (201) 487-3700.