

TAKE-1

CHILD SUPPORT

XVIII AIRBORNE CORPS LEGAL ASSISTANCE OFFICE



CHILD SUPPORT

1. Q. HOW MUCH CHILD SUPPORT SHOULD I RECEIVE IF I'M SEPARATED FROM MY SPOUSE?

A. There is no set amount that is "enough child support" in any given case. Child support varies according to the needs of the child or children, the incomes of the parents, the parents' reasonable needs and the accustomed standard of living of the child(ren), among other things, and this is set out as the standards for determining child support under General Statutes §50-13.4(c).

2. Q. WHO DECIDES HOW MUCH IS ENOUGH? WHAT IF THE OTHER PARENT AND I CANNOT AGREE ON THE AMOUNT OF CHILD SUPPORT?

A. If the two of you are able to reach agreement on a sum, that amount should be set out in a separation agreement. If the separation agreement sets out a specific sum, that figure that will be binding. If the parties cannot agree, you may petition the court to set the amount of child support that will be required.

3. Q. WHAT COURT DECIDES CHILD SUPPORT?

A. In North Carolina, the district court hears child support cases. A child support case is usually heard in the county where the child is living. If the father lives in another state and our state lacks any contacts with him, you may need to have the case heard there instead of here.

4. Q. CAN THE CHILD SUPPORT ENFORCEMENT OFFICE HELP ME?

A. Yes -- the county Child Support Enforcement Office can help you establish or enforce child support. This can also be done with a private attorney.

5. Q. HOW DO I KNOW HOW MUCH CHILD SUPPORT I NEED?

A. There is no "right amount" of child support. Many states have adopted child support guidelines. In North Carolina, these guidelines on child support are often used by the judge in setting child support and by the parties or attorneys in settling support cases.

6. Q. WHAT IF I NEED MORE CHILD SUPPORT?

A. The Guidelines are flexible and allow for a child's special needs, extremely high or low income and other factors the court finds to be important. Make a list of all monthly expenses for your household and apportion the expenses between yourself and the child or children. Be sure to set aside a certain portion of the rent, utilities and food for each child. You should also consider whether to apportion such expenses as car payments, gasoline and medical bills for each child. *You* must support the child or children and *you* are the one who best knows the facts, needs and expenses. The judge can go outside the Guidelines, but it is up to you to prove the need for a variance from the Guidelines.

7. Q. WHEN MY CHILD IS VISITING MY EX-HUSBAND, CAN HE REDUCE THE CHILD SUPPORT PAID TO ME?

A. No. Unless the court order or separation agreement specifically provides for a reduction, the child support payment should remain the same.

8. Q. IF I CANNOT SEE MY CHILD FOR VISITATION, CAN I STOP PAYING CHILD SUPPORT?

A. Under North Carolina law, denial of visitation is not legal justification for withholding child support. Neither is lack of child support a legal excuse for refusing the other parent visitation rights. The parents do not have the right to try to link together these separate obligations. Even if a parent is not paying any child support, he may still visit his children. And even if a parent is not allowing visitation, the children are still entitled to child support.

9. Q. WHEN DOES CHILD SUPPORT STOP?

A. Child support, without an agreement or court order, usually ends at the child's eighteenth birthday, although it will continue beyond then if the child is still in high school, so long as the child is not over twenty years old. A separation agreement or court order by consent may set a higher age, such as upon graduation from college or at age twenty-one. Child support may end earlier than the above if the child is emancipated, such as by joining the military, moving away from home or getting married.

10. Q. CAN THE OTHER PARENT'S PAYCHECK BE GARNISHED FOR CHILD SUPPORT?

A. Yes. Under North Carolina law, garnishment of a paycheck for child support may be ordered for up to forty percent (40%) of the net available pay. Garnishment is a court proceeding that requires a lawyer or the help of the Child Support Enforcement Office. Garnishment is allowed only if a *court order* for child support is violated; it does not apply if there is only a separation agreement. Wage assignment is also used to take child support directly from a parent's pay if there has been a prior child support order.

11. Q. WHAT IF I NEED MORE CHILD SUPPORT IN THE FUTURE?

A. If the child support is set out in a court order, you may petition the court to increase child support if you can show that there has been a substantial change of circumstances since the date the order was signed. Such a change may consist of increased living expenses, inflation or an increase in the earnings of the other parent. Sometimes the parents can agree between themselves on a regular increase in child support. If they wish, they can enter into an agreement that adjusts child support annually on the basis of, say, the Consumer Price Index or the wage increases of the noncustodial parent. When the parents cannot agree, the court must resolve the matter and the custodial parent must prove that present child support is inadequate.

12. Q. CAN CHILD SUPPORT ALSO BE REDUCED?

A. Yes. The court has the power to modify child support upwards or downwards, so long as there has been a substantial change of circumstances since the entry of the original order. Thus, for example, a parent who just lost his job or has had a substantial pay cut could petition the court to reduce the child support payments that he is making.

13. Q. CAN CHILD SUPPORT BE PAID THROUGH THE COURT?

A. Yes. If the court order says so, the child support may be made payable through the court. Payment in this manner is the preferred method. This allows parents to be sure that payments are properly recorded and avoids problems of payments made in cash directly to the custodial parent with no receipt given. If child support is paid through the clerk's office, the clerk will also help enforce the order through contempt proceedings if the payor is in arrears. This is done at no cost to the custodial parent. When payment is made through the clerk, it must be in the form of cash, certified check or money order so that the payment can be mailed out to the custodial parent right away, instead of waiting for a personal check to clear.

14. Q. ARE THERE ANY OTHER ASPECTS OF CHILD SUPPORT IN ADDITION TO THE MONEY PAID EVERY MONTH?

A. Yes. Such matters as medical expenses, tax exemptions and college are also important parts of child support. You should try to reach an agreement on these with the other parent if possible. If you can't agree, then the court can decide the issues of medical expenses and tax exemptions; the expenses for a child's college education are beyond the court's powers.

15. Q. HOW DOES THE COURT DECIDE MEDICAL EXPENSES?

A. If one of the parents has medical insurance, that parent is usually required to keep it in place for the minor child or children. The remaining costs -- *uncovered health care expenses* -- are divided by the judge between the parents in a way that is fair. Often this means that the parents divide these expenses equally or in proportion to their incomes.

16. Q. WHEN CHILD SUPPORT IS DETERMINED BY THE COURT, WILL BOTH PARTIES' INCOMES BE CONSIDERED?

A. Yes. North Carolina law requires that the judge takes into account both parties' incomes in setting child support.

17. Q. HOW DOES A JUDGE IN NORTH CAROLINA COMPUTE CHILD SUPPORT?

A. As of July 1, 1990, North Carolina has been using a child support guideline or formula called the *income shares model*. This approach takes the income of both parents and apportions the child support responsibility between them according to the ratio of their incomes to each other. The calculations are done on set of preprinted child support worksheets. The income used are gross, pre-tax incomes. Thus if the father earns \$3,000 per month and the mother earns \$1,000, the father's child support obligation will be three-fourths (and the mother's will be one-fourth) of the total needs of the child.

18. Q. HOW DOES THE COURT DETERMINE THE "TOTAL NEEDS" OF THE CHILD?

A. The total needs of the child will be presumed to be the Basic Child Support Obligation set out on the *child support schedules* available at the clerk's office. It is impossible to set out these figures here, but they cover the expected needs of one or more children whose parents earn up to \$12,000 per month combined income. In general, the amount of the Basic Child Support Obligation is directly determined by the combined incomes of both parents. The higher the total income, the higher the obligation.

19. Q. WHAT SPECIAL ITEMS OR EXPENSES CAN BE CONSIDERED BY THE COURT IN SETTING CHILD SUPPORT UNDER THESE GUIDELINES?

A. In addition to the Basic Child Support Obligation, the judge should consider:

- a) payments or expenses for the support of other children
- b) medical insurance premiums
- c) day-care expenses necessary to enable a parent to get or keep a job
- d) shared or split custody arrangements
- e) any other extraordinary costs or expenses related to the raising of a child

20. Q. WHAT IS SHARED CUSTODY?

A. The definition of shared custody (for child support purposes) is any arrangement where the "noncustodial parent" gets 123 or more overnight visits per year with the child. If this occurs, new rules apply for determining child support and a new worksheet must be completed for *shared custody*, as opposed to sole custody.

21. Q. WHAT IS SPLIT CUSTODY?

A. Split custody is a custody arrangement involving each parent having physical custody of at least one child. In a split custody arrangement, an adjustment to child support is made because each parent will incur direct expenses for rearing one or more of the children. In this case also, a new child support worksheet must be used. These worksheets are also available at the courthouse.

22. Q. WHAT IF I NEED MORE CHILD SUPPORT THAN THE GUIDELINES SHOW I SHOULD GET?

A. You can ask for a variance in child support so long as you provide written advance notice to the other side before the hearing. A variance could be needed because of unusually high needs of a child, extremely high or low income of a parent, or several other reasons. It is very

important to document the reasons for a variance so that they can be shown clearly to the court in testimony or written evidence.

23. Q. CAN THE COURT AWARD ATTORNEY'S FEES TO ME IN A CHILD SUPPORT CASE?

A. Under North Carolina law, if the person asking for attorney's fees is acting in good faith and is unable to afford the legal expenses of the lawsuit, she has hired a private attorney, and the other party is not paying adequate child support when the suit is filed, it is possible (but not mandatory) for the court to award reasonable attorney's fees as part of the custody order.

24. Q. CAN A CHILD SUPPORT ORDER BE CHANGED?

A. No child support order is ever "permanent". However, once a parent is ordered to pay child support, the judge can change the order only if there is substantial change of circumstances relating to the needs of the child or the ability of the payor to make child support payments.

25. Q. IF I'M ORDERED TO PAY CHILD SUPPORT, WILL I GET VISITATION RIGHTS?

A. Ordinarily the noncustodial parent is entitled to reasonable visitation rights with a minor child except in extraordinary situations, such as when the noncustodial parent has a history of abusing the child. Visitation isn't related to child support, however, and you must file a motion for visitation if you want that awarded by the court.

26. Q. CAN I REGISTER A COURT ORDER FROM ANOTHER STATE HERE IN NORTH CAROLINA SO THAT NORTH CAROLINA CAN TREAT IT AS ONE OF ITS OWN DECREES FOR PURPOSES OF CHILD SUPPORT ENFORCEMENT?

A. Yes. You may file and register the other state's decree with the Clerk of Superior Court in the county where you reside under the Uniform Reciprocal Enforcement of Support Act. You may also register a North Carolina decree in the state where the other parent lives for purposes of enforcing child support.

27. Q. WON'T CHILD SUPPORT BE SETTLED WHEN I OBTAIN A DIVORCE?

A. Divorce decrees do not necessarily settle child support matters, and a support order can be entered before or after a final decree of divorce in North Carolina.

28. Q. IF I HAVE OTHER QUESTIONS, WHAT SHOULD I DO?

A. See a legal assistance attorney or private attorney as soon as possible. Your lawyer can answer many questions and help you to make a fair and intelligent decision about your choices, options and alternatives. Our legal assistance office stands ready, willing and able to help you in these matters.