



## The North Carolina State Bar

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## THE LEGAL EAGLE

### SETTING CHILD SUPPORT

*INTRODUCTION: As a service to our legal assistance clients, we have prepared this handout with frequently asked questions on issues involving child support, medical expenses, college costs, tax exemptions and other issues involving the support of minor children. It is, of course, very general in nature since no handout can answer your specific questions. We do ask, however, that you read over these questions and answers carefully in connection with your visit to our legal assistance attorneys so that you may have the fullest information available to help you with your family law problem. Comments, corrections and suggestions regarding this pamphlet should be sent to the address at the end of the last page.*

#### 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 (or children), among other things. When one parent is in the Army, there are some rules for setting child support, however. The Army usually requires a soldier to provide support for family members. In the absence of a court order or an agreement between the parties, AR 608-99 establishes interim support guidelines. These are defined in terms of a soldier's Basic Allowance for Housing, Table 2 (BAH). As a general rule, the soldier must provide support in an amount equal to the full BAH at the with-dependent rate (BAH-WITH). If the soldier is required to provide support to more than one group of dependents, the interim guidelines provide for a pro rata distribution. If the family is residing in government furnished quarters, the interim support will be the difference between the BAH at the with-dependent rate and the BAH at the without-dependent rate. This is referred to as BAH-DIFF. If both parents are in the military, the interim support for any children will be BAH-DIFF. Soldiers are required to provide support regardless of whether or not they receive any BAH.

#### 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 an amount of child support, then that amount should be set out in a

separation agreement. If the separation agreement sets out a specific sum, that figure is what should be paid as child support. If you and the other parent cannot agree, then it will be up to the courts to decide the amount of child support that will be required.

## **AMERICAN COURTS**

### **3. Q. WHAT COURT DECIDES CHILD SUPPORT?**

**A.** Most of the time it is a court in the United States that decides the amount of child support due if one of the parents lives there or has moved back to the U.S. A child support case is usually heard in the county where the child is living. If, on the other hand, the child remains overseas, then the lawsuit for a determination of support may be brought over there, in the country where the child lives at present. Here's a simple rule to remember: if you want to be able to enforce the child support decision "Stateside," then you should bring the lawsuit in the U.S.. If (on the other hand) you want to enforce the lawsuit in Germany (Italy, Korea, etc.), then you should consider filing the action overseas.

### **4. Q. CAN A LEGAL ASSISTANCE ATTORNEY HELP ME FILE A LAWSUIT FOR CHILD SUPPORT?**

**A.** No – our legal assistance attorneys can help you contact a soldier' s commander about nonsupport, but they cannot start court action for you. You will have to hire a civilian attorney, but we can help you to find a lawyer to help you obtain child support.

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

**A.** There is no "right amount" of child support. Many courts have adopted child support guidelines to give some general guidance on the "usual" amount of child support in most cases, and these on support are often used by the judge in setting child support and by the parties or attorneys in settling support cases. There is no single guideline for child support. In many cases both of the parents' incomes are considered, along with day care expenses and medical costs. In other cases, a percentage of the noncustodial parent's income is the basis for the guidelines.

### **6. Q. WHAT IF I NEED MORE CHILD SUPPORT THAN SHOWN IN THE GUIDELINES?**

**A.** The guidelines of most courts are flexible and allow for a child' s special needs, extremely high or low income and other factor 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. Also consider whether to apportion such expenses as car payments, gasoline and medical bills for each child. You are responsible for support of 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 HE'S REQUIRED TO SEND TO ME?**

**A.** No – this is not allowed unless the court order or separation agreement specifically provides for a reduction. If it doesn't, then the child support payment should remain the same. Similarly, he cannot reduce the child support by other amounts, such as the cost of a plane ticket for visitation, or the cost of gifts, food, travel or clothing for the child, unless the court order specifies that he can do so.

**8. Q. MY SON'S IN CALIFORNIA AND I'M STATIONED IN GERMANY. HIS MOM REFUSES TO LET ME SEE HIM. IF I CANNOT GET MY VISITATION RIGHTS, CAN I STOP PAYING SUPPORT?**

**A.** Denial of visitation is not a legal excuse or 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. That is the general rule.

**9. Q. WHEN DOES CHILD SUPPORT STOP?**

**A.** When you are overseas, this will depend on the law of the country where you are living. On the other hand, American law generally provides that child support, without an agreement or court order, ordinarily ends at the child's eighteenth birthday (or twenty-first) according to state law, although it can be extended in some states through high school graduation (if that is later than age eighteen) or even through college, depending on state law. Regardless of what state law says, a separation agreement may set a specific date for the end of child support, 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. Child support doesn't automatically end if a child goes to live with the other parent; the parent who has been paying support must petition the court for an order to terminate the current payments of child support and to start the other parent paying child support. In some states the judge can decide whether to extend child support to a later date, such as when the child is incapable of self-support due to a mental or physical disability. The issue of college expenses is covered below.

**10. Q. THE COST OF LIVING'S SO HIGH OVER HERE. CAN I ASK THE COURT FOR MORE CHILD SUPPORT?**

**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 filed. Such a change may consist of increased living expenses, inflation or an increase in the earnings of the other parent. When the parents cannot agree, the court must resolve the matter and the parent who has custody (the "custodial parent") must prove that present child support is inadequate.

11. **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.

12. **Q. CAN I PAY MY CHILD SUPPORT THROUGH THE COURT?**

**A.** Yes. If the court order says so, the child support may be made payable through the court. Payment to the court is the preferred method (for both fathers and mothers, regardless of who's paying) because:

- This allows the parents to be sure that payments are properly recorded or credited; and
- It also avoids problems over whether the money was paid (as when child support payments are made in cash directly to the custodial parent and there is no receipt or other document to show proof of payment).

In no event should you pay the other parent in cash; this may be impossible to prove without a receipt. Also do not pay the minor child or children directly. Be sure you make your payments according to the agreement or the court order.

13 **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 you can ask the court for help.

14 **Q. HOW DO THE COURTS DECIDE MEDICAL EXPENSES?**

**A.** In the case of a military parent, usually the courts require the custodial parent to use TRICARE and military medical facilities to the maximum extent possible. If one of the parents has medical insurance, that parent may be required to maintain this as well, in order to keep down the costs for the child's medical needs. The judge will usually divide the remaining costs – the uncovered health care expenses which TRICARE and private medical insurance don't cover - 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.

15. **Q. WHAT ABOUT COLLEGE?**

**A.** College expenses may be an important financial consideration if you think your child will go on to college. You should

try to get the other parent to agree in writing -- in a separation agreement or court order -- to pay for a specified portion of these expenses for each child who attends college. Many states do not allow the court to impose a requirement on separated or divorced parents to pay for college, so this is extremely important for any agreement you negotiate with the other side.

**16. Q. WHAT POINTS SHOULD WE REMEMBER IN DECIDING ABOUT COLLEGE EXPENSES?**

**A.** Here are some of the items and issues that a good separation agreement will address:

- How long should the obligation last? 4 years? 8 semesters? Until the child attains age 23? Some ending point should be set.
- What costs will be covered? The usual ones are room and board, books, tuition and fees. Some parents also agree on a monthly allowance for spending money for the child, or for travel to and from home, or for summer expenses.
- What are the spending limits? Few parents want to agree to finance a college education for a child at **any** college or university. The cost of some private colleges would bankrupt the average parent. Consider putting a ceiling or "cap" on the college costs, such as by specifying that the maximum shall be "the then-prevailing rate for in-state tuition at XYZ State University" or some other nearby public institution. This is fair to everyone and does not force either parent to go broke financing a college education.
- What other limits should be set? For example, some agreements state that the child must attend an accredited institution, in pursuit of a generally recognized undergraduate degree, on a full-time basis, while maintaining at least a "C" average.
- What part of the college costs will each parent pay? Be sure to set some specific percent or amount so that it will be enforceable in court if you need help in the future. Clauses that provide for the other side to pay "a reasonable share of the child's college expenses" are **worthless** since they don't say exactly what the other parent has to pay and a judge is not going to guess what the parents meant by this language. When in doubt, **spell it out!** Even if you just divide the college costs 50-50 between both parents, it's still better than a vague and unenforceable clause.

**17. Q. WHO GETS TO CLAIM THE CHILD ON HIS (OR HER) TAX RETURN?**

**A.** If you're divorced or legally separated under a decree of divorce or separate maintenance, then the parent who had custody of the child for more than half of the years can claim the tax exemption (and the new child tax credit). For all other situations, the one who provided more than half of the child's support during the tax year can claim the exemption and the credit. These rules can be waived and the exemption can be transferred if the parents agree to do so in writing, either in a separation agreement or on Treasury Form 8332. The tax exemption amount is \$2650 for 1997 and it is indexed to go up

with inflation. The tax credit is worth \$400 in 1998 and \$500 in 1999 and future years. The credit is only available to the parent who can claim the dependency exemption.

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

**A.** Yes, so long as there is a court order for child support; a separation agreement alone is not sufficient for garnishment or wage assignment. Once again, garnishment is a court proceeding that requires a lawyer. For more about this and other remedies for the enforcement of child support, see our LEGAL EAGLE handouts on garnishment and on child support enforcement.

**19. Q. CAN THE COURT AWARD ATTORNEY' S FEES TO MI IN A CHILD SUPPORT CASE?**

**A.** Once again, this depends on the law where the case is being tried. If you have to hire an attorney to take the other parent to court because he or she won' t pay you any child support, most court will allow you to request attorney's fees.

**20. Q. IF I' M ORDERED TO PAY CHILD SUPPORT, WILL I GE' VISITATION RIGHTS?**

**A.** Ordinarily the noncustodial parent is entitled to reasonable visitation rights with a minor child except in extraordinary situation, such as when the noncustodial parent has a history of abusing the child. Visitation isn' t related to child support, however, and must be requested separately from the petition or motion for child support; you must file a motion for visitation if you want that awarded by the court. Once again, you' ll need a private attorney for this, and we can help you locate one.

**21. Q. WON' T CHILD SUPPORT BE SETTLED WHEN OBTAIN A DIVORCE?**

**A.** Not necessarily. In some states, this may be the case, but elsewhere the courts treat divorce or dissolution decrees separately from child support, custody and the like. In those states, a support order can be entered before or after a final decree of divorce. In any event, you should remember that you must file a request with the court (sometimes called a complaint, petition or motion) in order to get the court to consider the issue of child support regardless of whether it' s at the time of divorce or at another time.

### **COURTS OVERSEAS**

[here insert information on local courts and determination of child support. Example follows.]**Q. HOW IS CHILD SUPPORT SET IN JAPANESE COURTS?**

**22. A.** Unless the parties are in agreement, child support will be set by the court after investigation of the financial circumstances of the husband and the wife and consideration of the needs of the minor children. Child support is usually set by the court at \$200-\$500 per

month. There are no child support guidelines, so it is left to the discretion of the judge. It is important to remember that the courts strive for consensus, or agreement between the parties, not on contested court fights. If the parties disagree, the court assigns conciliation or mediation counselors to "assist" the parties with an agreement. If no agreement is reached in a divorce case, then no divorce is granted at the Family Court – the parties then go on to the District Court for a contested proceeding. Very few Japanese cases involving child support or divorce are actually decided by a judge, since the parties usually can come to an agreement.

**23. Q. ARE THERE ANY OTHER DO'S AND DON'TS FOR PEOPLE PAYING OR RECEIVING CHILD SUPPORT?**

**A. Yes. First the DO'S--**

>DO separate parenting issues from money issues -- they're just not related!

>DO talk to your children about their fears of not being adequately cared for if they express a concern about this.

>DO be concerned, sensitive and caring as to your children's loyalty to BOTH parents.

There are some **DON'TS** as well--

>DON'T put your children in the position of asking for child support payments; and

>DON'T burden your children with problems they cannot control or solve.

**24. 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. Be sure to bring along with you to the interview a copy of any documents or court papers that might be helpful to your attorney.

**Location and hours of your Legal Assistance Office:**

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**Information on local agencies, offices and resources:**

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THE LEGAL EAGLE SERIES OF CLIENT HANDOUTS IS PREPARED BY THE OFFICE OF THE JUDGE ADVOCATE,

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