

# Family Focus

## TIPS TO KEEP IN MIND WHEN CHILD SUPPORT NEEDS TO CHANGE

Posted by **Stuart Scott** | Jun 21, 2019

A common misperception arises as to when child support amounts change. As a general rule, parents are required to exchange tax returns each year during the period of time that child support is owed. Doing so and keeping an eye on the gross income of both parents can be important in determining whether any action should be taken regarding child support. If there has been a substantial change in circumstances in finances, a change in support may be required.

Keep in mind that simply because something changes and a different amount of child support may be warranted, it does not mean that a different amount of child support will be paid. Rather, there must be a court order to change support. I have seen a number of situations over the years where a spouse comes to me telling me that he or she is aware the child support should be changed and it should have been changed quite a while back. The spouse tried to work out something with the other spouse and it did not work or communication is not what it should be, so the spouse would come to me and say "I want child support changed back to date more was owed!"

The child support cannot be changed retroactively absent fraud. In addition, in order for there to be a basis for child support to be changed, the amount of child support owed must be a difference of 15% or more (upwards or downwards) between the child support that is in effect and new child support that is supported by the most current figures.

The date the new child support amount can go into effect, however, is on the date of filing a valid request for a change in the amount of child support, *not* the date that the incomes changed or other change took place that is a valid basis for changing the child support amount. This means it is *critical* to file something with the court and make a request that child support be changed as soon as

possible once there is a reasonable basis to believe that there is a valid ground to change the child support amount owed.

The child support amount also may be changed based upon the number of days a child is actually spending in parenting time with both parents, compared to what was ordered. The parties must either agree about the amount of time the child is now spending with the parents or it must be proven and the difference in days, must result in at least a 15% change in the amount of child support owed. For example, if the Child Support Worksheet and the accompanying divorce documents have the child staying with one parent 70% of the time and the other parent 30% of the time, and, subsequently, the child begins to stay at both houses 50% of the time, it may be worthwhile to determine the correct number of days the child spends with each parent, even if the gross incomes of the parents have not changed, as that may *under certain circumstances*, result in a significant change in the amount of child support owed.

In addition, while the number the Child Support Worksheet calculates as appropriate for child support is presumed correct, there can be circumstances where that amount is not what is paid. Sometimes, for example, a financially advantaged spouse will agree to pay for things such as private school tuition or other expensive obligations. In this event, child support may be modified downwards below the amount the Child Support Worksheet generates. In addition, an upward deviation from the Child Support Worksheet figure *may be utilized where under the facts of a particular case it is warranted*.

Simply because the divorce is complete and the documents filed does not mean that the child support issue is finalized. Child support obligations can change, sometimes dramatically, after a divorce, particularly where the children are young at the time of the divorce.

Keeping a close eye on the relevant factors that are used to determine child support, therefore, is critical in order to ensure protection of one's rights. Sleeping on one's rights can result in paying much more than one should or receiving much less than one is entitled to.

#### **About the Author:**

Stuart Scott is a litigation attorney with over 25 years of experience. He has tried hundreds of cases in both state and federal court. Some of his noteworthy victories have been featured in local, state and national publications. Stuart is also listed as a Tennessee Supreme Court Rule 31 Family Law Mediator. Stuart focuses his primary area of practice on family law. He represents people going through divorce and focuses his efforts on providing his legal services and advice to his clients in this area. Mr. Scott may be reached in our Nashville office at 615-620-1710.



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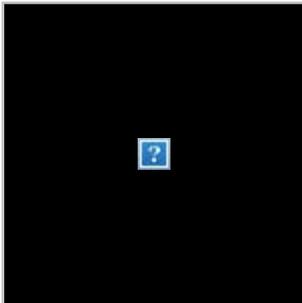


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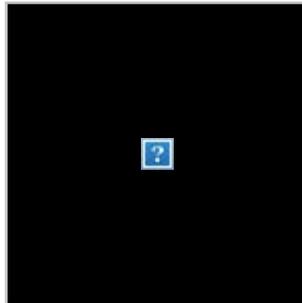
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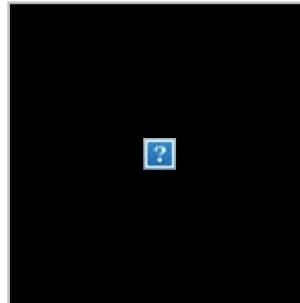
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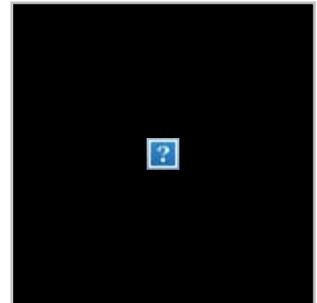
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