

INFORMATION REGARDING CHILD SUPPORT

This case involves either an initial determination of child support, or a modification of child support. This information is designed to explain issues which frequently arise in the context of such litigation. Child support is relatively straightforward, and is usually resolved in one or two hearings, unless there are complicated issues. Occasionally, significant disputes can arise regarding income (when people are self-employed), special expenses, deviations, or other discretionary matters which affect support. For the most part, however, the determination of child support is designed to be a relatively predictable and simple procedure.

Under the law, child support can be modified every two years, or sooner if there has been a "substantial change of circumstances". Child support in Washington is governed by the Washington State Support Schedule, which is based on an economic table. Child support is computed based on the parties' combined net monthly incomes, and the number and ages of the children.

I. INCOME

The most important element of the child support computation process is the determination of both parties' incomes. The law requires that each party submit copies of their last two tax returns together with W-2 statements, and any other supporting forms or schedules. In addition, the statute requires that 6 months of paystubs be provided, but if the pay data contains a year-to-date figure, it is generally acceptable to provide just a few recent paystubs. In addition, each party must submit a Financial Declaration on the approved forms. A blank form will be provided to you and it will be necessary for you to complete it accurately and return it to me. ***Please compile all the necessary financial information as soon as possible to ensure the timely handling of your matter.***

Our opponent will also be required to submit the same financial information. If you or the other parent are self-employed, be advised that tax returns alone may not answer the question of income. Many times what the IRS accepts as "income" for a self-employed person is not what the court will utilize for the purposes of calculating child support. Deductions like depreciation, entertainment, automobile expenses, and other items routinely accepted by the IRS are viewed with suspicion by our courts. It is not uncommon for a court to add back in depreciation deductions and a portion of other allotted expenses in determining a person's "true" income for the purposes of child support.

In any event, once both parties' incomes are determined, the child support calculations are processed through a computer program based on the Washington State Support Schedule. We start with gross incomes, but the child support is actually computed on the net income. The law requires that income from "all sources" is to be considered, **including salaries, wages, commissions, deferred compensation, overtime, dividends, interest, trust income, severance pay, capital gains, spousal maintenance, bonuses, and several other specific sources itemized in RCW 26.19.071(3)**. However, some income sources are specifically excluded, and these include **income of new spouses or other adults in the household; child support received from other relationships; gifts and prizes; temporary assistant for needy families (TANF); supplemental security income; general assistance; and food stamps.**

A. Overtime

Many times, controversies arise over the issue of overtime. This is very familiar territory for the court. People will come to court having gone through a period where they have worked substantial overtime. The court utilizes that income in determining child support. The fact that overtime is uncertain, or the fact that it may not occur in the future, is not persuasive to the court. Case law and practice makes this very clear. A court will utilize a person's overtime income based upon the history of that income as presented to the court. The only exception is if a party can demonstrate convincingly that the overtime income is non-recurring. Normally, this would require a statement from the employer or some other person in authority who can definitively state that the overtime will no longer occur. A generic statement that overtime is not guaranteed or cannot be certain will not be helpful. On some occasions, parties work overtime for a specific purpose, and for a specific brief period of time. There is one appellate case where a person moonlighted in a second job only for as long as it took to get the parties out of debt by paying off their student loans and other obligations. In that case, the court refused to utilize the moonlighting income, finding that it was non-recurring, and was only in place for a specific purpose and for a specific period of time. The bottom line is that with rare exceptions, overtime income must be included.

B. *Deductions from Gross Income*

Once a gross income is adduced, we have to determine the net income. The statute specifies that the following expenses are deducted from the gross income in order to arrive at a net income:

1. **Federal, state, and income taxes;**
2. **FICA contributions;**
3. **Mandatory pension plan payments;**
4. **Mandatory union or professional dues;**
5. **L&I premiums;**
6. **Court ordered spousal maintenance actually paid;**
7. **Up to \$2,000 per year in voluntary pension payments actually made if the contributions were in effect for the two tax years preceding the modification;**
8. **Normal business expenses; and**
9. **Taxes for self-employed persons.**

The court can also specifically find that a source of income is non-recurring, and then deviate from the support schedule based upon that non-recurring income. Most of the time, rather than deviate from the support schedule, the court will just exclude the non-recurring income.

II. **PRESUMPTIVE TRANSFER PAYMENT**

Once the net incomes are determined, the child support schedule will utilize the equations built into the program to produce the designated presumptive child support payment. In establishing the support schedule, the legislature set out the following policy statement: ***The legislature intends in establishing the child support schedule to ensure that child support orders are adequate to meet a child's basic needs and to provide additional child support commensurate with the parents' income, resources, and standard of living.***

A. *Daycare and Special Expenses*

In addition, special expenses are also added to the equation. For example, if daycare is incurred at the rate of \$500 per month, both parties are obliged to pay their percentage share of that obligation. The obligor's percentage is simply added to his presumptive child support payment and included therein. Daycare expenses must be reasonable and necessary, but once again, they are routinely incorporated in the child support award.

A few additional observations about daycare expenses may be helpful. First, there is no arbitrary age where a child is officially not eligible for daycare. Whether daycare is "reasonable or necessary" depends on the circumstances of each particular child. Sometimes, children as old as 14 may require some sort of daycare. Daycare is only chargeable as part of child support if it is work related. If a party is not working, there should be no daycare, unless the parent is attending school in order to gain employment. Finally, if daycare is ordered as part of the transfer payment, but is subsequently eliminated, the paying parent might be entitled to a reimbursement if he continues to pay for daycare that is not actually being incurred. Therefore, both obligor and obligee should be proactive in adjusting support in response to changes in daycare amounts.

There are many other "special expenses" which the court may or may not order that the parties allocate between them, such as music lessons, tuition fees, or other extracurricular activities with a regular cost. These are determined on a case by case basis, but there is a pretty strong belief that the costs of reasonable enrichment activities should be apportioned, as long as they are part of some ongoing program or activity.

B. *Insurance Premiums*

Parties who pay premiums for medical insurance attributable to the children receive credit for those payments in the worksheets. It is not a dollar for dollar reduction or increase of the transfer payment. The premiums are listed on the worksheet and each party pays their proportionate share which ultimately affects the bottom line transfer payment.

III. DEVIATIONS FROM THE SUPPORT SCHEDULE

Generally, child support will then be ordered according to the presumptive amount established by the Washington State Support Schedule. A party may argue that the court should deviate from the support schedule by ordering an amount that is higher or lower than the scheduled amount. Reasons for deviation are established by law, and the burden of proof is on the party seeking the deviation. That party must present facts which convince the court of the necessity of the deviation. The most common bases for deviation are the following:

- 1. Child support received from other relationships;**
- 2. Possession of wealth;**
- 3. Extraordinary income of a child;**
- 4. Non-recurring income;**
- 5. Debts and high expenses, but the debt must be the type that is not voluntarily incurred. High balances on several credit cards will not justify a deviation in child**

- support;
- 6. **Special needs of the children;**
- 7. **Substantial visitation time by the obligor;**
- 8. **The obligation to support children from other relationships.**

All of the reasons for deviation are found in RCW 26.19.075. However, the list is not exhaustive, and the court can grant a deviation for other reasons, but specific written findings would be required.

A. *Substantial Residential Time*

The most frequent bases for deviation are the obligor's substantial residential time with the child, and children from other relationships. Many times, parties operate under parenting plans which provide the obligor parent with a substantial amount of residential time with the children. The standard visitation is basically alternate weekends, and alternate holidays with some time in the summer. Sometimes parties agree to schedules where an obligor parent may have the children two to three days a week, or sometimes they may even agree to share the children equally. In these instances, the obligor is exercising a substantial amount of residential time, and would be entitled to seek a deviation. There is no automatic formula that calculates a deviation based upon the counting of overnight visits. Many times, attorneys utilize computer programs that numerically quantify a deviation by tabulating the number of overnights. This is improper under the law. A person seeking a deviation based upon his or her substantial alternate residential time must demonstrate the increased expenses that parent is assuming by virtue of the substantial residential time, and must demonstrate the decreased expenses in the other person's household based on the substantial residential time. ***Finally, the statute specifically forbids the court to deviate on the grounds of substantial residential time if the deviation will result in "insufficient funds in the household receiving the support to meet the basic needs of the child."***

B. *Children From Other Relationships*

The issue of children from other relationships is similarly complicated. First of all, if a person pays child support for another child, and wants to seek a deviation in another case, the parent must be current in their support obligation, or the court will not grant the deviation. ***Case law makes it clear that deviating on this basis is also disfavored.*** See **Marriage of Burch, 81 Wn.App 756 (1996)**. The obligor must genuinely demonstrate the equity of reducing his support obligation in one case based upon his obligations to children in another case. Usually this is done by demonstrating through his financial declaration that he is incapable of paying the scheduled amount without creating hardship. Bear in mind that the deviation for other children may include children who the obligor has custody of, not just children for whom he pays support. It is unclear whether stepchildren can be a basis for deviation. A formulaic approach to this deviation is found in the "Whole Family Method" of computing support. The Division of Child Support in its administrative capacity has adopted this method and has enacted a rule which governs its use when support is adjudicated in that forum. It is a popular method and computer programs are frequently utilized based on this formula. However, our courts have disfavored the "Whole Family Method". **In Re Marriage of Choate, 143 Wn.App 235 (2008)** held that it is error to use that approach and reaffirmed that deviations based on other children must be based on written findings after considering the situation of both households, including the income of other adults.

C. *Income of New Spouse or Partner*

There is much confusion regarding the income of new spouses or significant others. This confusion is not necessary because the statute is quite clear. ***Income from new spouses or partners is not to be included in the child support calculation.*** This has always been the law, and in my experience has been regularly followed. Furthermore, the income of new spouses or partners, while subject to disclosure, is not in and of itself a basis for deviation. In other words, the income of spouses or partners can only have an effect on a case in the realm of deviations, and only if a deviation is being sought for some other reason. In sum, the impact of the income of new spouses or significant others is secondary and rarely of consequence.

IV. LIMITS OF SCHEDULE

There are some limits to the support schedule which you should be aware of. First, the schedule tops out at a combined net monthly income of \$12,000. Therefore, once that plateau is reached, additional income earned by either party is not going to effect the support amount. In the not-too-distant past, the computer programs developed an extrapolation from the worksheets which could be utilized when incomes exceeded the \$12,000 ceiling. The Supreme Court has held that such extrapolation is improper and cannot be utilized by trial courts. **Marriage of McCausland, 159 Wn.2d 607 (2007)**. Now, we are left with a situation where the court can deviate from the support schedule in situations where the parties' income exceeds the \$12,000 ceiling. The reason for the deviation must be in writing, and based upon findings of fact which support the amount of support established by the court. This process is very discretionary, and many times the court will simply adhere to the \$12,000 ceiling. One case, **Marriage of Krieger, 147 Wn.App 952 (2008)** established a very liberal and generous approach to deviations in the case of wealthy parents, but most of the others apply a more cautious approach.

There are two other limits which shield the paying parent: ***The law will not allow a child support award which exceeds 45% of an obligor's net monthly income, and the net child support amount cannot bring an obligor's net income below the poverty level established by DSHS (presently around \$1000 per month).***

There is also a lower limit on the support schedule. If the combined net monthly incomes of the parties is less than \$600 per month, the court shall set support at not less than \$25 per month, per child.

Finally, RCW 26.09.170(8)(c) allows the court to incrementally phase in modifications of more than 30% if the party seeking the phase in can demonstrate that an immediate modification would cause significant hardship. Under this provision, half of the change would go into effect immediately, and the other half would go into effect six months later.

V. POST-SECONDARY SUPPORT

A statute, RCW 26.19.090 establishes the legal duty of parents to provide post-secondary support to their children, and sets forth criteria for courts to apply. For the most part, however, courts ignore

the criteria and assume rather easily that each parent should be contributing towards a child's post-secondary education. For the sake of academic discussion the statutory criteria includes "*the age of the child; the child's needs; the expectations of the parties for their children when the parents were together; the child's prospects, desires, aptitudes, abilities or disabilities; the nature of the postsecondary education sought; and the parents' level of education, standard of living, and current and future resources. Also to be considered are the amount and type of support that the child would have been afforded if the parents had stayed together.*"

The statute is substantive but it just seems that the courts rather readily default to a position of ordering postsecondary support in virtually any set of circumstances. There may be some relief for parents on the economic margins who have dependent minors to support. In that situation it is possible that the postsecondary award will deprive the parent of enough resources to meet the needs of the dependent child or children in his or her care and case law suggests that no postsecondary support should be ordered in those circumstances. ***In Re Shellenburger, 80 Wn. App. 71 (1995).***

At this time it is pretty clear that the court in postsecondary support cases must allocate the costs of tuition and other expenses in the same proportions as called for by the child support schedule. ***In Re Marriage of Newell, 117 Wn. App. 711 (2003) In Re Marriage of Daubert, 124 Wn. App. 483 (2004).*** In other words, post secondary expenses will generally not be divided equally but meted out to the parents in proportion to their respective incomes. If a parent earns 60% of the total combined income of the parties that parent can expect to pay about 60 % of the child's college expenses, including room and board, travel back and forth, and miscellaneous expenses.

When a child lives at home and attends community college the general approach is to calculate child support per the support schedule and then further allocate tuition and books to the parties based on the percentages. ***In Re Parentage of Goude, 152 Wn. App. 784 (2009).*** Living at home and attending community college is a different template than a student going away to school and living in a dorm. That doesn't mean it will be much cheaper for the non-residential parent. The straight child support calculation will basically be used to reimburse the other parent for room and board and then there is the tuition, books, and fees on top of that which will also be apportioned. By the time it is all rung up it can be pretty costly.

Our courts have also taken a very expansive approach to which types of expenses are included as part of "post-secondary support." The expenses a parent can be ordered to pay a portion of include transportation, health fees, insurance premiums, hall dues, copy costs, lobby fees, and laundry costs. ***Marriage of Kelly, 85 Wn. App. 785 (1997)***

There are some protections in the statute which the courts are very willing to enforce, such as a requirement that the child be "pursuing a legitimate course of study". Although this phrase is not defined in the statute or by case law it seems to suggest that the student pursue an actual educational goal such as a bachelors degree or associates degree. Some parents want to engraft a requirement of "fulltime" status on this part of the statute which is certainly a valid argument, but one which courts accept or reject at their discretion. In addition, the student must make his or her grades and course information available to each parent as a condition of receiving support, but the parent must actually request the information. ***In Re Marriage of Jess, 136 Wn. App. 922***

(2007). No post secondary support shall be ordered after the age of 23. Payments should go to the school or the student as opposed to the other parent, and support is generally not ordered during the summer in post secondary scenarios.

VI. MISCELLANEOUS CONSIDERATIONS

A. Retroactive Child Support

If your case involves a modification of child support, you can expect it to take anywhere from 30 to 90 days to complete. When the court has made its decision regarding the modified child support amount, it can set support effective with the date of the hearing, the date the petition was filed, or some date in between. This is purely discretionary on the part of the court, but in the vast majority of cases the court will start support effective with the date the petition was filed. This means that if support increases, there will be an arrearage for the obligor, and a judgment in favor of the obligee, as soon as the case is done. You should be aware of this and plan for it. If you are looking at an increase in child support and the case takes six months to resolve, you should be setting aside money to take care of the arrearage.

B. Tax Exemptions

The court has the authority to allocate to the parents the right to claim the children as tax exemptions. Generally, the court will try to share this benefit. Tax exemptions are routinely reviewed when support is modified.

C. Procedure For Support Modification

After you meet with me and provide all the requisite information, we file a Summons and Petition for Modification of Child Support. That is filed with the court and a copy is served on the opposing party by certified mail. After he responds, a hearing is established unless the matter can be resolved by agreement. At the hearing, the court considers the pleadings on file and the arguments of counsel, and makes a ruling on all disputed issues. Shortly thereafter, an Order of Child Support is entered and the case is done. ***Since the case is decided on the documentary evidence filed, it is important that the information we supply is clear and persuasive.*** In rare cases, the court will establish an evidentiary hearing based on sworn testimony, but that is done only where there are unique factors or issues of credibility.

D. Attorney Fees

Abe Lincoln is credited with saying "A lawyer's time and advice are his stock and trade.@ Lawyers are compensated for the time they spend on a case. It's that simple. We will discuss the issue of attorney's fees and costs in our initial conference. If at any time you have questions about my fees or your billing, you may inquire without charge. At the conclusion of our initial conference, we will review and sign a Fee Agreement which sets forth your financial obligations to this office. You will be provided with a copy of the Fee Agreement.

I charge \$350 per hour, and the initial payment to retain my services for a support modification will

be discussed, but will range from \$2,500 to \$3,500 depending on the circumstances.

A fee structure called the "flat fee" method is also offered for support modifications. This is where the client pays a sum certain for specifically delineated legal services. My flat fee schedule is \$2,000 and covers the following services:

1. Preparation of summons and petition, along with any related documents or a response to petition, along with any related documents;
2. Two office conferences with the client – the initial intake consultation and a second consultation, neither of which shall exceed 1.5 hours;
3. Preparation of final documents or orders to complete the case, together with court appearance to present order to the court;

This Flat Fee Agreement does not cover expenses, nor does it cover telephone calls, additional office conferences with client, contested hearing, trial, the preparation therefore, or correspondence unrelated to the services covered by the Flat Fee Agreement. Services not covered by the Flat Fee Agreement shall be performed by the attorney and the attorney shall bill the client at the attorney's hourly rate for these services.

Under the flat fee option, the money received becomes the property of the attorney and the funds shall not be placed in trust. The fact that the client has paid his fees in advance does not affect the client's right to terminate the attorney/client relationship at any time, nor does it affect the attorney's right to do the same. If the attorney/client relationship is terminated before the agreed-upon legal services have been completed, the client may have a right to a refund or partial refund of the fee, less what the client might owe, if anything, for uncovered services that were provided.

If there is any dispute relating to fees, the attorney promises to take prompt and reasonable action to resolve the same. ***This flat fee option should really only be selected in a simple case with no children, where there is an agreement or likely will be an agreement.***

You will be incurring expenses which fall generally into two categories. The first of these is actual attorney's fees. These are the fees charged for my services. The second is referred to as Acosts@. Costs are expenses related to the case, other than attorney's fees. Costs may include filing fees, the cost of serving legal papers, photocopies, facsimiles, and long distance phone calls. Some cases require the services of appraisers, actuaries, or psychologists. The fees charged by these individuals are the client's responsibility. All cases will result in the filing fee and service fee. The filing fee for a modification is \$56. A typical service fee, if a process server is necessary, will run from \$30 to \$80, depending upon the distance traveled by the process server and the difficulties involved in effectuating the service.

Attorney's fees will comprise the bulk of your expenses in your case. Attorney's fees are the firm's charges for the services rendered. Generally, time is the most important component in determining the attorney fees. However, other factors are also included in setting fees. These factors include the difficulty of the issues involved, and the time limitations imposed by the client or the circumstances.

My fee agreement form lists the charges for some commonly performed legal services. My representation does not commence until the retainer is paid in full and the Fee Agreement is signed.

You will receive a monthly billing statement which lists the services rendered and provides a statement of the balance due. It is absolutely imperative that you make monthly payments on your bill in the amount we agree on at your initial conference. A client who pays his monthly installments is taking responsibility for the costs of his litigation. A client who does not make his payments is requiring this office to finance his litigation, and that cannot be tolerated. If you do not make your monthly installments, I will promptly withdraw from your case unless you contact me and make other arrangements. I try to do this with the first missed payment. I'm not good at babysitting clients on this issue. If payments are not made, the client is expressing that he or she cannot afford or does not want my ongoing services. The minimum monthly payment is \$500-\$300 depending on monthly balance owed for my services. I do require that the client keep his account balance at \$2,500 or less and may require more aggressive payments.

Frequently, we will file an attorney's claim of lien at the end of a case. This shows up on your credit history and provides some security when the client subsequently applies for a loan or other financing.

I encourage clients to pay off their balances as soon as possible. This law firm is not a bank, and it is not beneficial for either of us to have this office finance your case. Banks are in the business of loaning money, but attorneys are not. My clients may need to consider other sources to finance their cases, such as tax refunds, cash advances on credit cards, loans from family members or friends, or even bank loans.

I hope this brazen discussion of money does not offend you. Experience has taught me that fees need to be disclosed clearly and fully. If attorney's fees are beyond your means, you should consider other alternatives. With the help of mandatory forms, the courthouse facilitator, or local paralegals, it is possible for people to represent themselves.

Finally, you probably want to know what the total cost of your case will be. That is impossible to predict until I evaluate the issues involved and get to know the dynamics of your case. Generally, support modifications are going to result in fees ranging from \$2,500 to \$3,500 or more in extraordinary cases. This estimate does not constitute a promise or warranty; it is merely an intelligent guess.

You can mitigate fees by limiting phone calls, attempting to resolve simple issues directly with your spouse, requesting only those legal steps that are necessary, and avoiding costly drop in conferences with me.

Thank you,

LAW OFFICE OF FORREST L. WAGNER, P.S.

Forrest L. Wagner
Attorney at Law