

Modification of child support orders

JULY 2009

Modification

- **Two Step Process**
 - **Substantial change in circumstances**
 - **If find substantial change, set new award**
 - × Guidelines
 - × Deviation

Changed Circumstances

- **Order over 3 years old plus 15% change in guideline amount**
- **Substantial involuntary decrease in income**
 - Either supporting or custodial parent
- **Substantial change in needs of child**
- **Substantial change in custody or visitation**

Problem 1

- **Changed Circumstances**
 - Involuntary decrease
 - 3 years and 15% change

- **New award?**
 - Case law requires modification if find changed circumstances
 - What do you do?

Agreements

- Incorporated agreements can be modified as any other court order

- Requires change in circumstances since time of incorporation – not time agreement executed

Agreements – Problem 2b

- 3 years and 15% difference
- Presume substantial change
- Guideline amount \$2500

- Consider deviation?

Agreements

- No incorporation means no modification

- Party can initiate action for initial award of support

- *Pataky v. Pataky*, 160 NC App 289 (2004)
 - Presume agreement is “reasonable”
 - If presumption rebutted – use guidelines(deviate) to set support

***Pataky* Presumption**

- Rebut presumption of reasonableness by “taking into account needs of children existing at time of hearing and considering the factors enumerated in first sentence of GS 50-13.4.”

Rebutting Presumption of Reasonableness

- GS 50-13.4
 - “reasonable needs of the child ..., having due regard to the estates, earnings, conditions, accustomed standard of living of the child and the parties, the child care and homemaker contributions of each party, and other facts of the particular case.”

Problem 3

- Change in circumstances must be substantial

- Cannot “tweak” order without finding substantial change

Problem 4

- Dad's increase is not a substantial change
- Mom's change is voluntary
- Voluntary change without change in needs of child is not changed circumstances
- What about 3 years/15% change in guideline amount?

Problem 4

- If substantial change -
- Do you impute income?
 - ***Pataky***: voluntary reduction alone is insufficient
 - ***Roberts***: Naive indifference

Problem 5



- Significant change in needs of child is changed circumstances
- “Reasonable” needs only?
- Private school expense an extraordinary expense when you deem it “appropriate”

Modification



- Effective as of date of motion filed, or any date thereafter
 - Discretionary call
- Support accruing before filing date generally cannot be modified (increased or decreased)
 - GS 50-13.10

Retroactive Modification



- Allowed if obligor could not file before payments accrued due to:
 - Physical disability
 - Mental incapacity
 - Indigency
 - Misrepresentation of another party, or
 - Other compelling reason

“Reimbursement”

- May be able to “reimburse” child care expenses if:
 - “true emergency situation required the expenditure of funds in excess of existing child support order” and
 - Obligor had ability to help pay at the time the expenses were incurred

Termination of Support

- Support order generally automatically terminates when child:
 - Becomes emancipated
 - Turns 18 and is not in school
 - Finishes school after 18
 - Turns 20

Termination

- When order covers more than one child, “aging out” of one child does not automatically reduce support

- No modification without court order

Retroactive Modification



- **Obligation vests when it accrues and cannot be modified**

- **No vesting occurs when:**
 - Child or obligor dies
 - Child lives with obligor pursuant to order or agreement changing custody, or
 - Obligor is incarcerated, not on work release, and has no resources to pay

Problem 6



- **Effective date of modification?**
 - Can go as far back as date motion filed

- **Require pay back or credit?**
 - Consideration of needs of other children?
