

HELFAND HIGHLIGHTS

INFORMING OUR CLIENTS, FRIENDS AND COLLEAGUES EVERY STEP OF THE WAY



Tracy Ann Luciano, Tanya N. Helfand & Jacqueline F. Pivawer (Left to Right)

SPECIAL POINTS OF INTEREST AND/OR CALL-OUTS

Our offices have consolidated and moved to Whippany, New Jersey.

HOW THE ECONOMIC CRISIS IMPACTS DIVORCE, CHILD SUPPORT, ALIMONY, EQUITABLE DISTRIBUTION OF PROPERTY AND DEBT

The main obligation of the Courts and for attorneys is to obtain a fair result. As the economic downturn continues, the Courts have to make rulings to accommodate job losses, losses of assets, such as stocks, bonds, IRAs, and other financial instruments as well as the devaluation of the marital home and increase of marital debt. A recent issue is responsibility for the shortfall if the house is worth less than the outstanding mortgage. If one party wants to keep the house, a refinance may not be possible. The issue arises as to how to get a spouse off the mortgage.

The standard for modification of alimony and support has been “permanent substantial change of circumstances.” The question is how long does one have to be unemployed for it to be considered permanent? A loss of a job is a substantial change in circumstance. However, temporary unemployment is not a basis for modification of support. The Court will look at the needs of the supported party and balance it against the effort of the supporting spouse to get another job.

The amount of support can be changed by consent or by going into Court on an application. Consent is ordinarily difficult to obtain because the supported spouse likely does not want the support reduced and will oppose it. However, if it is a viable case then there is likelihood of modification. Mediation is an excellent alternative at this time to work towards consent. Frequently, even if one makes an application for modification or enforcement, the Court will initially order an Early Settlement Panel or mediation. Why spend on counsel fees on an application which will result in mediation, if you can go there directly? Tanya Helfand is an experienced mediator.

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If one goes to Court, it is very important that the obligor show proof of a very active, long and intense job search in order to convince the Court that support should be modified because of inability to find a job. Just a job loss due to recession is not enough. You must prove what you are doing to get back to the same earning level.

It is important for the unemployed person to have a current resume. It is necessary to keep detailed records of conversations with employers' interviews, records of outcomes of interviews, offers, reasons why an offer was not accepted. Just sending dozens of cold mailings to lists of employers on the Internet is not enough. The obligor should check and document local papers with want ads, document job leads, interviews and outcomes.

The Courts, at this time, are not granting modification motions easily. The payer must first establish many months of diligent efforts to find work at comparable pay. The Courts will also look to see if there are other assets from which support can be paid temporarily. The Court may also impute income to a payer if he/she finds a job at pay much lower than before. The Court may also impute income based on prior earnings, education, and special skills even if the payer is not working

Thus, it is certainly not easy to get support lowered but it can be done under the appropriate circumstances. The more information the client can give the lawyer to prove a diligent job search, the greater the chance that a temporary modification may be granted.

DEBT & BANKRUPTCY RELATED MATTERS

Approximately 25 % of our practice is bankruptcy related matters. Our office is up-to-date on bankruptcy law. For many of our clients, we do Chapter 7 and 13 bankruptcies; help negotiate and settle debt as well as assist during foreclosure or for mortgage modifications. Matrimonial clients may need bankruptcy services as well and we suggest that if parties have accumulated debt, call our office to review the potential to eliminate the debt in bankruptcy. It may be wise before the divorce is started to do this.

COSTS OF DIVORCE

Parties in a divorce should evaluate their earnings, assets and debts when considering divorce. It is also extremely important to investigate what it will cost to live after the divorce: apartments, new home, etc. A Case Information Statement, which is required in a divorce case will assist the parties if it is prepared accurately. The Case Information Statement is a comprehensive financial statement addressing the parties' incomes, budget during the marriage, and after separation, assets and debt. It is based on your actual budget. We ask our clients to review their checkbooks and credit card statements to see the actual costs of items, such as food, dry cleaning, gas, cable and child care, etc. This analysis will help to identify what you will need. Simple, but important. You can save significant money in the divorce case by knowing what you have and what you need so that negotiations can be based on real numbers.

If either party is hiding money or demanding unfair amounts of money because of anger or spite, the divorce costs will go up. Why? Because your lawyer then must go to Court to compel production of information and obtain appropriate relief.

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"We make a living by what we get, we make a life by what we give."

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In custody matters, it is best for the parents to work out the arrangements. It is important to set aside anger and fear. Both parents love the children. You must remember their best interest is at stake, not your ego. Unless there truly is a problem of alcoholism, drug addiction or abuse, both parents are fit and have the right to legal and physical custody. If you both fight for custody, it will truly be a long and expensive battle. After this battle, even if you believe you have “won”, it is likely that your children have been hurt and you may face years of resentment and be back in Court in the future.

HELFAND’S HINT

Cell Phone Do-Not Call List

All cell phone numbers are being released to telemarketing companies, and you may start to receive sales calls. You will be charged for these calls if you listen to them.

To prevent this, you can call the National Do Not Call List at 1-888-382-1222. You must call from your cell phone. This will block your number for five years.

CONCLUSION

The economy has had an impact on almost everyone. In a divorce, it is more important than ever to control costs and act wisely. This certainly is possible when the parties have made a careful assessment of their expenses, assets and debts. If you are already divorced and have lost a job, you can get a modification of support, but you must prove that you have made a diligent effort to get equivalent employment. The Court will look to the needs of the supported spouse as well as your job loss and will try to reach a fair decision. Relief may also be temporary with requirements for periodic review.

If you are just starting the divorce process, you both can save costs by making accurate assessments of what you will need and what is in the best interest of the children.

It is a difficult period emotionally. Whatever steps you take to resolve issues with your spouse will save you both money. Each issue that the attorneys have to fight over is costly. It was your marriage, your children and your money. We believe it is best for you to both come to mutually agreeable decisions about your future. We can help you accomplish this through negotiation or mediation. If an agreement cannot be reached, we, of course, are prepared and experienced to litigate your matter.

You can control costs by knowing your facts, knowing what you need and making clear decisions whether you negotiate or litigate, and by reducing anger and fear. Decisions should be made based on rational facts as well as positive emotions.

Remember also, a bad spouse is not a bad parent. A caring parent with a different parenting style is not a bad parent.

“Life’s under no obligation to give us what we expect.”

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“People will forget what you said, people will forget what you did, but people will never forget how you made them feel.”

- Maya Angelou



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“It is not in the stars to hold our destiny, but in ourselves..”