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FREQUENTLY ASKED QUESTIONS ABOUT SPOUSAL SUPPORT MODIFICATION

WE WEREN'T MARRIED VERY LONG. DOES THAT AFFECT MY SPOUSAL SUPPORT OBLIGATION?

Yes. The length of the marriage does affect the duration of a spousal support obligation. If you were married for just a few years, then chances are that your spousal support obligation will be relatively short. There is an exception if you have a prenuptial agreement or a postnuptial agreement that states otherwise.

PEOPLE HAVE TOLD ME THAT I AM OBLIGATED TO PAY SPOUSAL SUPPORT FOR AN AMOUNT OF TIME EQUAL TO HALF THE LENGTH OF THE MARRIAGE. IS THAT CORRECT?

That is not necessarily true. There are many factors that go into this analysis, including but not limited to, the parties' earning capacities and their financial needs. Half the length of the marriage is not necessarily the yardstick to measure the amount of spousal support that you will be required to pay or whether you can modify spousal support.

MY FORMER SPOUSE HAS REMARRIED. DOES THAT END MY SPOUSAL SUPPORT OBLIGATION?

For some people, their former spouse's wedding day is a big deal to them too. It usually means the end of any spousal support obligation by the supporting spouse. There is an exception, however. Sometimes, the parties will contract around this rule. That is, the parties contract in their marital settlement agreement that the spousal support obligation only terminates upon death. If that is the case, then the supporting spouse's obligation ends upon either spouse's death, not upon remarriage, but that is a rare exception.

MY FORMER SPOUSE IS COHABITATING WITH ANOTHER PERSON WHO IS PAYING HIS OR HER BILLS. DO I STILL HAVE TO PAY THEM?

Generally speaking, when your former spouse starts living with another person, there is a diminished need for spousal support. That amount depends on the extent to which your former spouse is being supported by a third party. For example, if your former spouse is having all their bills paid, has no living expenses, and is in a stable relationship with a third party, it is likely that you will be successful in modifying spousal support. If your former spouse has been living with another person for just a few months, the chances of your prevailing are less. If your spouse is sharing expenses while living with a third party, it is likely that you will receive a reduction in spousal support, since it is usually less expensive to live in a two-person household. You are not expected to support your former spouse's new partner.

MY FORMER SPOUSE QUIT HIS OR HER JOB DURING THE MARRIAGE, WHICH WAS SOMETHING THAT WE NEVER PLANNED AND I DID NOT AGREE TO IT. DOES THAT AFFECT A SPOUSAL SUPPORT ORDER?

It could, but chances are not much. Realistically, from a court's perspective, if you married the person, then you are agreeing to support them no matter what. If your spouse does not work during the marriage and loafers around all day, you could have something of an argument for reduced support. This could also be taken into consideration when

you ask for a modification. If you remind the court that your former spouse made no effort to work and there was no agreement to that effect, the court might be more inclined to modify or terminate your support obligation.

MY FORMER SPOUSE WAS SUPPOSED TO FIND A JOB AND HAS NOT DONE IT. DO I STILL HAVE TO KEEP PAYING SPOUSAL SUPPORT?

When a court orders spousal support, or the parties come to an agreement, it is wise to set out the expectations as to when the supported spouse will become reasonably self-supporting. If years have gone by and your former spouse is making no real effort to find gainful employment, a motion to modify spousal support might be in order. If you are successful, the court may either end your spousal support obligation or impute an income to your former spouse based on what her or she could be earning or are reasonably expected to be earning if they made an effort to get a paying job. There will be a limit to your spouse's imputed income based upon his or her earning capacity. Exceptions could be situations in which the supported spouse is experiencing mental illness, has suffered a physical illness, has a disability, or if there is a change in market conditions, such as a recession or the elimination of jobs for which the supported spouse is trained.

I WAS WORKING TWO JOBS DURING THE MARRIAGE. DO I STILL HAVE TO DO THAT TO PAY MY SPOUSAL SUPPORT OBLIGATIONS?

Generally speaking, no. Just because a spouse worked two jobs during the marriage does not mean that they are required to continue to do so after the parties separate and divorce.

I WAS LAID OFF. CAN I MODIFY MY SUPPORT OBLIGATION?

Yes. If you are laid off, then you can get a modification of spousal support until you find another job. You should notify the supported spouse right away and file a motion to modify support so that you can preserve retroactivity. Each day that you wait could result in a longer spousal support obligation.

I QUIT MY JOB AND DO NOT HAVE ANOTHER JOB LINED UP. CAN I MODIFY MY SPOUSAL SUPPORT OBLIGATION?

Not necessarily. The law contemplates that a supporting party may change jobs or get laid off. It does not usually reward a party who simply quits their job unless there are extenuating circumstances, such as work place harassment. Your best option in these circumstances is to notify the supported spouse and see if you can work out a written agreement modifying support until you find another job.

I AM PLANNING ON RETIRING IN A FEW YEARS. DO I STILL HAVE TO PAY THE SAME AMOUNT OF SUPPORT?

No. The law contemplates that neither spouse is going to work forever nor are they required to do so. If you plan on retiring, you should compute the amount of income that you will have and the amount of income that your spouse has. A month or a few weeks before you retire, you should file your motion to modify spousal support. You can also open up negotiations with your former spouse based upon your ability to pay. It is recommended that you do this several months before you actually plan on retiring so that the supported spouse can do some financial planning and make arrangements.

MY FORMER SPOUSE'S SPENDING IS OUT OF CONTROL. DO I STILL HAVE TO SUPPORT HIM OR HER?

Yes and no. A party's spending habits are relevant. Generally speaking, the supported spouse does have a right to maintain the marital standard of living, if possible, but that there is a limit. You are not required to support a person indefinitely who cannot control his or her spending. Part of the answer and analysis that a Court will make is what your earnings are and the marital standard of living. For example, if you have a high-wage earning job, such as a physician, high paid actor, athlete, or a successful tech person, out-of-control spending might just be how life is and was during your marriage, and you may be on the hook for a longer period of time. Circumstances are different, in the court's eyes, if you were in a working class marriage (i.e., both or one of the parties worked, earned a modest living, and had a few investments). On the other hand, the supported spouse does have a duty to handle their finances responsibly and to invest prudently, regardless of the circumstances. If your former spouse spends all their support money on shopping or extras that do not really add value to their life and are not for the ordinary necessities of life, the court is more likely to grant your request to modify support even if your former spouse states that he or she is broke. Evidence in situations such as these run the gamut from lifestyle audits to an analysis of the supported spouse's spending or efforts to curb their spending.