



# crossroads

PRACTICAL INSIGHTS TO SHARE WITH CLIENTS  
CONTEMPLATING DIVORCE

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## INSIDE FOR MAY

How Child Support is Calculated  
Changes to Alimony Statute Can Impact  
Finalized Divorces

The Effect Divorce  
has on Social Security Benefits  
Financial Considerations Divorcing Couples  
Need to Know

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James McGlew II

Panelist/Mediator  
Matrimonial Early  
Settlement Panel  
Union County Bar  
Association (President,  
2004) (Past-President  
Trustee, 2016)



## child support

### HOW NJ COURTS CALCULATE & MODIFY SUPPORT OBLIGATIONS

In New Jersey, child-support is defined as a financial payment from one parent to the other to provide for the needs of their children. Child support is the right of every child and neither spouse can waive this responsibility.

#### How is Child Support Calculated?

In most instances, the amount of child support to be paid is calculated by using New Jersey's Child Support Guidelines. Income information is exchanged between the parents and this data is used in combination with factors such as the number of children, percentage of non-custodial parenting time and other prior child support obligations, to determine the amount of child support that is to be paid weekly. The Guidelines take into account the amount of funds necessary between the two parents to cover the basic needs of the children including, but not limited to, their food, shelter, healthcare and clothing expenses.

#### Cost-of-Living Adjustment

Child support obligations will remain in place for many years and is not terminated automatically. As such, a common aspect of many divorce agreements is an agreement between the parties for the use of a "COLA" which is an acronym for Cost-of-Living Adjustment. This procedure automatically raises child-support awards every two or three years, the specific details of which are negotiated and agreed to before any final divorce judgment is entered. The purpose of a COLA is to keep the child support award's value current due to inflation.

#### Changes to Child Support

Changes to child support obligations can be made and support orders in New Jersey are subject to modification based upon what the Court may define as a change in circumstances. While there are numerous situations that can be defined as a change in circumstances, some of the more common situations that would qualify include:

- an increase in the cost of living
- the emancipation (as defined under law) of one or more of the children
- a demonstrable increase or decrease in the paying parents income
- a parent or child suffering a disability or serious illness
- in some instances, the maturation of the child or children

If a modification in the amount of child support is appropriate, the party seeking to modify the amount paid is obligated to file an application with the Court. These written applications can sometimes be extremely fact sensitive and require extensive documented proof of the change in circumstances. This is particularly relevant if the reason for seeking a modification is employment or health related on the part of the paying parent.

following a decades-long trend,  
just 1/2 of U.S. adults were married in 2015, down from 70% in 1950

## step by step guide to divorce

Whether you have been served with notice that your spouse has filed for divorce, or if you are contemplating filing for divorce yourself, there are important steps anyone facing this scenario should undertake.

- 1 The first is to stay calm.** This is obviously easier said than done but it is important as many people do or say things while processing this major life change that they later come to regret.
- 2 If you have children, take whatever steps necessary to distance them from the proceedings you or your spouse are considering.** At this early stage of the process there is no benefit to advise them of the situation and they should not be involved in any discussions between you and your spouse. Children should never be compelled to "choose sides" regardless of their age.
- 3 Do not post or share any form of information regarding the situation on social media!** While venting about your feelings may make you feel better in the present, any negative and inflammatory comments about your spouse will have a detrimental long-term effect on the disposition your case. Once comments are posted online, even if they are deleted, they are never completely gone.
- 4 Do not allow your spouse to intimidate you with threats or claims of withholding access to children or financial support.** The Courts are available to you and can resolve these immediate issues before your divorce is finalized.
- 5 Organize and secure any and all financial or other legal or family documents in your possession.** These would include prior tax returns, bank statements, credit card statements and retirement account statements. If any person or child suffers from a serious medical condition, secure copies of medical records. The more information you can collect and which does not need to be obtained from a third party such as the IRS, an employer or a bank or credit card company, can save significant costs over the duration of your case. If you and your spouse signed a Prenuptial Agreement, be sure to maintain a copy and provide it to your attorney.
- 6 Do not transfer any significant amount of financial assets or property, nor should you incur any major debt.** Do not change beneficiaries on any insurance policies or modify your existing health and life insurance coverages. You should also confirm that your spouse has not taken any of these actions.

# alimony statute amendments from 2014 can now be applied to divorces finalized years earlier

## Petition/Case:

In *Mills v. Mills* the Court reviewed a petition made by the supporting spouse (the payor of alimony) to reduce their alimony obligation due to the loss of long-term employment and the acceptance of a new position at a considerably lower salary.

## Outcome:

The Court granted the petition to reduce the alimony obligation and held that under the 2014 amendments to the alimony statute, even though the *Mills* were divorced in 2013—one year before the alimony revisions were signed into law.

## Law Reformation:

The Court in *Mills* found that judges have the authority

to apply both the spirit and terms of the 2014 amendments to the alimony statute, even when the individuals had a final divorce order entered before 2014, so long as there is no written agreement applying a different standard in place, and the issue has not been litigated and already adjudicated by the Court. The Judge in *Mills* acknowledged that changes often occur in the employment status of individuals after they are divorced. This has become a more common occurrence over the past several years with the economic downturn and static recovery which has affected tens of thousands of individuals. The Judge specifically referred to the “harsh present day reality” which exists for many people who have lost their jobs and may never regain their former earning level.



## FINANCIAL CONSIDERATIONS DIVORCING COUPLES NEED TO UNDERSTAND

For individuals of high net worth, the divorce process can present a complex maze of responsibilities and decisions which need to be addressed. The prospect of valuing marital assets, including properties, business interests, investments and the like, along with the task of distributing their value between the parties, has the ability to make an already tense situation worse.

There are specific issues that high net worth individuals must consider in anticipation of divorce. Thorough preparation and investigation are always required to truly understand the parties' incomes, assets, debts, property and budgetary needs.

- **Highly Compensated Employees:** required to produce proof of current income, tax returns for several years, a schedule of any other perks received through employment including travel and expense accounts and a schedule of any benefits from the employer including pension benefits, 401(k) accounts, stock options, deferred compensation, restricted stock, life insurance and other related benefits.
- **Business Owners:** required to produce business tax returns for a minimum of five years, as well as other related business financial records. This will be in addition to the disclosure of income and benefits received from the business.
- **One or both of parties has ownership interests in a business or partnership:** a formal valuation by a qualified forensic accountant will generally be required to determine the business' value and the amount of interest each spouse has in the business. In high net worth cases, each asset must be carefully examined to determine which assets are subject to equitable distribution (and to what extent) and which are considered separate property. Negotiations to obtain a fair settlement can be complex and may involve considerations such as whether to sell or liquidate an asset and divide the proceeds, or retain and allocate the asset to one spouse in exchange for an asset of comparative value.

# social security & divorce



## DIVORCE EFFECT ON CURRENT & FUTURE SOCIAL SECURITY BENEFITS

One of the questions often asked by divorced individuals, particularly at the time of their retirement or the retirement of their former spouse, is whether or not they are entitled to receive Social Security benefits based on their prior marriage. The Social Security Administration interprets the law with the philosophy that a divorced person may deserve a personal benefit themselves if they were a long-term spouse of a member of the country's workforce.

### The Basic 2 Rules

Generally, there are two sets of rules which the Social Security Administration applies to determine whether or not an individual will qualify. The first applies if your former spouse is living; the second applies if they are deceased. The interpretation of these rules can sometimes be complicated and is often necessary to have an experienced family law attorney review not only the rules applied by Social Security but the settlement agreement signed at the time of the divorce.

- In the first scenario, where the former spouse is still living, the preliminary criteria which need to be met are: (1) your prior marriage lasted for 10 years or more; (2) you are not currently married; and (3) you are 62 years of age or older. Just as important is whether you are entitled to receive Social Security benefits based on your own prior work history. If you are, the amount which you are entitled to receive for your efforts must be less than what you are entitled to receive based on your prior marriage.

- A second set of rules apply if an individual's former spouse has already died. Under these circumstances, you would have to be 60 years of age or older, have to have been married to your former spouse for more than 10 years, and cannot be entitled to a retirement benefit which would be higher than what could be claimed based upon your former spouses work record. Finally if you have remarried before the age of 60, you may not be able to receive this benefit.

### Additional Considerations

It is important to note that ex-wives and ex-husbands are treated the same under the Social Security statutes. It does not matter if your former spouse is now remarried. If you subsequently remarry, you generally are prohibited from receiving benefits based on your former spouse's work history unless your later marriage ends (whether by death, divorce or annulment). If your former spouse has not applied for retirement benefits, but has met the qualifications to receive them, you can receive benefits on his or her record if you have been divorced for at least two years. Differing rules apply for those who have been married multiple times.

Bear in mind that if you should elect to receive your benefits before your full Social Security retirement age (which you can determine at [www.ssa.gov](http://www.ssa.gov)) you will permanently reduce the amount you are entitled to receive.



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