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Interim Division of Income and Expense in New Mexico Divorce Cases

Depending on the circumstances of a divorce, there can often be months or years that elapse between the time the parties separate and the finalization of the divorce. This delay can be caused by a variety of reasons from the legitimate to the malicious.

No matter the reason, the parties' debts still need to get paid while the divorce is pending and both parties are entitled to a portion of the community income. New Mexico Rule 1-122 accordingly allows the court to issue interim orders allocating income and expenses. The payments awarded in these orders is often referred to as interim support.

The premise underlying interim division of income and expense or interim support is that even though the parties may be separated, they are still technically married, which means that all of their income and debts are still community and must be allocated equally between the parties.

In order to calculate interim support, the court, or more often the parties themselves and their attorneys, creates a table that starts with the parties' gross monthly income. The court then allows each party to subtract their regular monthly payroll deductions to reach each party's net monthly income. Each party is then allowed to deduct their regular and necessary monthly expenses from the net income, which include among other things rent, mortgage payments, utilities, car payments, insurance, phone bills and the minimal monthly payment on credit card bills.

The money left between the parties after the subtraction of monthly expenses from net monthly income is referred to as the parties' spendable income. If the number for the parties' net spendable income is positive, then an equalization payment must be made so that each party gets half of the community's total monthly spendable income. If the parties have children, then an extra percentage may be added to the equalization payment to compensate the party with whom the children are primarily living. This equalization payment is called interim support.

What expenses can be included in an interim support calculation is often the subject of great conflict between the parties due to the allocation of the remaining net monthly income after deduction of these expenses. Both parties will often fight very hard to create an income and expense sheet most favorable to them in the end equalization of income.

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Interim division of income and expense can be critical to the interests of the parties while the divorce is pending. However, this division is often both complex and contentious making it important to consult with an experienced New Mexico divorce and family law attorney in addressing these issues.

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