

## **NEW YORK FAMILY LAW: MODIFICATION OF CHILD SUPPORT ORDER**

### **Introduction**

There are two standards for modifying a child support order in New York. Which standard to apply depends on whether the order is entered by a court after a hearing or whether the order is entered as a result of a stipulation or agreement between the parents.

### **What Are the Standards for Modification of Child Support?**

In order to modify a support award issued by the court, a showing of a substantial change in circumstances must be met. But when there is an existing agreement, the order may only be modified by a showing of an unanticipated and unreasonable change in circumstances, unless the needs of the children are not being met.

### **What Constitutes a “Substantial Change in Circumstances”?**

Examples of substantial change in circumstances are the increased needs of the children due to special circumstances, the additional activities of growing children, the increased cost of living insofar as it results in greater expenses for the children, the loss of income or assets by a parent or a substantial improvement in the financial condition of a parent, and the current and prior lifestyles of the children.

### **Under Which Circumstances Can an Existing Agreement Be Modified?**

When an order of child support exists pursuant to an unmerged stipulation which survives and is incorporated by reference into the order, the support may only be modified upon a showing of unanticipated and unreasonable change in circumstances. However, if a party seeking an upwards modification can show the needs of the children are not being met, this high standard need not necessarily be met. To determine whether the needs of the children are being met, the court can look to the same factors listed under examples of change of circumstances.

## **Additional Resources**

*Brescia v. Fitts*, 56 N.Y.2d 132; 436 N.E.2d 518; 451 N.Y.S.2d 68 (1982); *In re Boden v. Boden*, 42 N.Y.2d 210, 212-13 (1977); Domestic Relations Law § 236B(9)(b).