

## Child Support and Child Custody Issues in a Divorce: What You Don't Know Can Hurt You



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September 2009

There are five basic issues in a divorce. They are: (i) Child Custody and Child Support; (ii) Equitable Distribution (i.e., dividing the marital assets); (iii) Maintenance (alimony); (iv) Establishing the grounds for a divorce and (v) the emotional impact. This article will discuss the issues of child support and child custody.

### DISCLAIMERS

The opinions and information presented in this brochure are my own personal opinions. This brochure is not intended to give legal advice and is not intended to give legal opinions. By reading and accepting this brochure, we have not entered into or created an attorney-client relationship. If you need an attorney, I urge you to contact an attorney who can help you and answer your questions.

### Assumptions:

Unless otherwise noted, I will assume that the Father is making the child support payments and that the Mother is receiving the child support money. I will also assume that there is only one child involved. However, the information provided in this brochure is applicable for situations involving more than one child and where the Mother is making the child support payments.

### Trials are Rare: And Why This Is Important To You

In most divorces, the Mother and Father do not go to trial. They settle the case. Every settlement means that there is a settlement agreement (from now on I will call this

simply the "Agreement", note that most attorneys will refer to this as the "Stipulation of Settlement" or simply the "Stip"). With an Agreement, you get to negotiate the terms. This means that you can agree to how much you will pay in child support and when you will have custodial time with your children. There are many other items you can agree on, many of which can save you money.

### Negotiating the Agreement: The Magic Words to Use

When negotiating with the Mother, never say: "I want the child every weekend" or "you are getting every weekday". Instead use the Magic Words: They are "In The Best Interest of the Child". For example: It would be in the best interest of Little Johnny if he had lots of time with both parents. I believe we can best accomplish that if Johnny has more than every other weekend with his Dad.

### Different Types of Child Custody

There are three basic types of custody:

1. Sole Custody: This is where the Mother or Father has sole decision making about the upbringing and raising of the children. That person will make all the important decisions concerning the child's life and does not have to consult with the other parent over these decisions.
2. Joint Legal Custody, With Primary Physical Custody to One Spouse: This is where the Mother and Father share decision making about the upbringing and raising of the children. However, typically the Mother will have the right to make the final decision. Therefore, it is very important that the Father's rights be explicitly spelled out in the Agreement.
3. Joint Legal Custody, With Shared Physical Custody: This is where the Mother and Father share decision making about the upbringing and raising of the children and in addition, they have close to equal time with

the children. Sounds great, except it is extremely rare.

**How Much Will You Pay In Child Support**

You will pay a percentage of your gross income (minus some limited deductions) to your Ex in child support. From your gross income, you can deduct: (i) any New York City and Yonkers local taxes withheld; (ii) the FICA taxes you pay (i.e. Social Security and Medicare); (iii) any maintenance (alimony) paid to a prior spouse; and (iv) any child support paid for children from a prior relationship. Once your “deductions” are taken from your gross income, you will get your “Child Support Net Income”, this is much more than your actual net income (the amount you take home after income taxes are deducted). Once your “Child Support Net Income” is computed, the amount of money you pay depends on how many children you are supporting.

In New York, the Child Support Standards Act (“CSSA”) states the guidelines of how much you will pay in child support. For one child you pay 17% of your “Child Support Net Income”. For two children you pay 25%; for three children, 29%, for four children, 31%, five or more children, no less than 35%. A few examples are listed below:

| GROSS INCOME             | FICA DEDUCTION (Social Security & Medicare Taxes) | NET INCOME FOR CHILD SUPPORT PURPOSES | NUMBER OF CHILDREN | AMOUNT OF CHILD SUPPORT PAID PER YEAR |
|--------------------------|---|---------------------------------------|--------------------|---------------------------------------|
| \$50,000                 | \$3,825   | \$46,175                              | 1                  | \$7,849.75                            |
| \$50,000                 | \$3,825   | \$46,175                              | 2                  | \$11,543.75                           |
| \$50,000                 | \$3,825   | \$46,175                              | 3                  | \$13,390.75                           |
| \$75,000                 | \$5,737.50  | \$69,262.50                           | 1                  | \$11,774.62                           |
| \$75,000                 | \$5,737.50  | \$69,262.50                           | 2                  | \$17,315.62                           |
| \$75,000                 | \$5,737.50  | \$69,262.50                           | 3                  | \$20,086.12                           |
| \$100,000 <sup>1</sup>   | \$7,650.00  | \$92,350                              | 1                  | \$15,699.50                           |
| \$100,000 <sup>1</sup>   | \$7,650.00  | \$92,350                              | 2                  | \$23,087.50                           |
| \$100,000 <sup>1</sup>   | \$7,650.00  | \$92,350                              | 3                  | \$26,781.50                           |
| \$125,000 <sup>1,2</sup> | \$7,803.00  | \$117,197                             | 1                  | \$19,923.49                           |
| \$125,000 <sup>1,2</sup> | \$7,803.00  | \$117,197                             | 2                  | \$29,299.25                           |
| \$125,000 <sup>1,2</sup> | \$7,803.00  | \$117,197                             | 3                  | \$33,987.13                           |

1: The Court has the discretion not to apply the full percentage to incomes greater than \$80,000. Typically, Courts apply the full percentage, accordingly, this example assumes the Court will apply the full percentage.

2: The FICA deduction is currently applicable to your gross income up to \$102,000.00, this is subject to change each year.

**Child Support and How To Reduce It**

The amount of child support is presumed and hard to overcome. There are certain strategies that can help you to negotiate a smaller amount of child support. For example, the more time you have with your child, the better your chances of getting a reduction in child support. Once you and your Ex have agreed to how much custodial time you are receiving, you want to note that with all that extra time, you will have to have a separate bedroom for the child and you will extra expenses to feed the child.

**Parenting Time: More than Every Other Weekend**

No parent should settle for just every other weekend and one weeknight with their child. If the child is of school age, there are 42 weeks when school is in session (not counting school holidays). Your goal should be to get more than 21 weekends out of those 42 weeks of school (summer will be discussed later).

One way to do this is to be creative when talking about weekends. You should point out that if you had custody of the child, you would want your Ex to have more than every other weekend. You should demonstrate that an every other

weekend schedule means that you would only see your child for about 4 - 6 days every month. Accordingly, you could request: 3 out of 4 weekends; 7 out of 10 weekends; 2 out of 3 weekends; 5 out of 8 weekends, or 4 out of 7 weekends.

### **Just How Many Weeks Are There in a Month?**

Except for February, every month has 4 weeks (28 days) plus either 2 or 3 more days. On average there are actually about 4.3 weeks in a month. Most people when presented with an 8 week schedule will say that's equal to 2 months. However, there are almost 9 weekends every 2 months (4.3 weeks + 4.3 weeks = 8.6 weeks). If you agreed to an 8 weekend rotating schedule and you had weekends 1, 3, 4, 6, 8, and then weekend #1 again, you are getting 6 out of those 9 weekends.

### **What is a Weekend Anyway?**

If the Agreement just states that the Father is to get a "weekend", what does that exactly mean? It could mean different things to different people. To prevent any confusion, you must be very specific in your Agreement. You must give the exact date and time when your custodial time starts and when it ends. For example: On the first, third, fourth, sixth and eighth weekend of a eight-week rotation from Friday at 5:00 p.m. until Sunday at 7:30 p.m.

### **What about those Weeknight Visits?**

Most Agreements include one "weeknight" visit each week or every other week. In my opinion, these weeknight visits are a waste of time. Why? Kids are so busy today, with homework, school projects, school sports, music lessons, and after-school activities. Your weeknight visit will either be rushed or cancelled. Although, it is important to include a weeknight visit, you may want to

consider trading a weeknight visit for more time during the weekend.

As another alternative, you may want to be creative and include, what I call, "special" time. You would request 1-4 special visits each month, where you could take your child to any event you like (or no event at all, you could spend it together at your house). For example, you could take your child to a movie, out for ice cream, or to a sporting event. Your Agreement would specify how you would arrange this special time.

### **Summer Time Should Be More Time**

Even if you only get 2 weeks of summer vacation, you want to request at least 5 weeks of summer with your child.

Note that the summer is not just 2 months or 8 weeks. July and August have 62 days, that's one day shy of 9 weeks. If you add in the days before Labor Day and the days after school ends and you have just about 10 weeks.

### **Holidays**

Look at a calendar, one that has all the holidays listed. If you celebrate a holiday include it in your Agreement. If your child is in school, then a good calendar to look at is the school calendar. You can usually find your school's calendar on the Internet. Once again, with holidays you have to be specific. Don't just agree to "every other Memorial Day." Instead, agree to: Memorial Day holiday on every odd year from 9:00 a.m. until 7:30 p.m.

### **They Say It's Your Birthday**

I always include the Father's Birthday and the Child's Birthday in custodial times. Of course, the Mother will want her Birthday as well -- but the likelihood is that she will get her birthday anyway if it falls on a weeknight.

### **Best Interest to be with Both Parents**

You want the other side to acknowledge that is in the best interest of the Child to have "consistent and continuous custodial times with" you.

### **Tax Deduction**

Although, you will be paying child support, it is the Ex who has custody (and getting your child support payments) who gets the tax deduction for the child. You must put in the Agreement, that you will get the tax deduction for the child every year or at least every other year. You will need the Agreement to state that the Mother has to sign Form 8332 every year you want the deduction.

### **College Expenses**

You may be stuck with paying both for college and child support at the same time. Your agreement must state that if the child lives at college, that the child support gets reduced by a one to one credit for the amount you pay for the child's room and board.

### **Who Does the Driving**

Since it is likely that gasoline prices will rise in the future, you want to make sure that both parties share the cost of driving the child to and from each other's house. This also helps in preventing both sides from being late or playing games with the time.

### **What if Mom Moves**

If the Mother moves out of the area, you want to make sure that she pays for any additional transportation costs for your custodial times.

### **Summer Camp**

If your child goes to summer camp, you do not want to pay for both summer camp and child support payments. Instead of pointing out that you will not pay for summer camp, agree to pay for camp in exchange for a reduction in your child support. If you do

agree to pay for camp, make sure the amount you have to pay is capped. And if you pay -- you pay -- that is you get to decide which summer camp the child goes to.

### **Medical, Dental and Life Insurance**

Make sure that the Agreement states that you do not pay for cosmetic procedures and that you do not pay for over-the-counter medicine. Even if the Mother does not currently have medical or dental insurance, the Agreement should state that if at any time she obtains medical or dental insurance, that she has to provide secondary medical and dental insurance.

The Agreement should state that both Mother and Father are to provide Life Insurance.

### **The Financial Disclosure Forms**

The Court will ask you to complete a form called the Financial Disclosure Affidavit (for Family Court) or the Net Worth Statement (for Supreme Court). These forms ask for detailed income, assets, and expense information. Completing these forms can be worse than doing your Income Taxes. The amount of income, assets, and expenses will be used by the Court to help determine how much you should pay in Child Support and how much you will pay in maintenance. You must fill out the forms accurately and truthfully.

The first thing to do is to get all your bank statements and financial statements for at least the last three months. Use these statements to help you fill out the forms. When filling out the expenses, you want to link your expenses with your child's needs. For example, if you have a credit card balance of \$1,000, write "\$1,000.00 balance used for child's furniture".

Courts expect you to have housing, utility, food, insurance, gas, automobile expenses. However, expenses that are

considered as discretionary or optional are not looked upon so kindly.

**Conclusion**

Going through a divorce is complicated and difficult. If you require help, please contact David Badanes of the Badanes Law Office.

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