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Deviating from Guidelines

by Milinda J. Reed, Esq.

Most judges treat child support guidelines as if they were carved in stone, but there are circumstances that warrant a deviation. Many states have established certain factors to be considered by the court in deciding whether a deviation from the guidelines is necessary. Judges are reluctant to deviate from the guidelines because they have to make written findings in support of any deviation. Making findings is a lot of work.

Going Up

If you want the court to issue a support order that is higher than the guidelines, you will have to give a reason. Perhaps you have a special needs child who requires twenty-four-hour care. Maybe throughout the marriage you and your spouse were able to send the children to private schools and summer camps. Circumstances should not change for the children unless there isn't enough money to maintain past benefits.

Coming Down

If you need to ask a court to deviate downward from the guidelines, you must show a very good reason why it is necessary. You may be supporting a child from a prior marriage. Ordinarily that support obligation would be subtracted from your income before applying the guidelines. However, this is only going to be true if your obligation is set forth in a court order. Perhaps you have a new child with another person, born during your separation from your spouse. Courts take the position that your first family comes first, that you took on this new obligation with knowledge of your existing one. Rarely will the court reduce your support to enable you to take care of a new child. Another good reason to request a deviation is if you are unemployed through no fault of your own, for example, if you were laid off. During the time you are looking for a job, the court may reduce your obligation. Once you find work, your obligation will usually be reinstated to the proper amount under the guidelines.