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## Modifying Support Orders

by Milinda J. Reed, Esq.

Child support and spousal maintenance payment orders can be modified if the financial circumstances on which they are based change. Sometimes the order will specifically set forth what types of things constitute a change in circumstances. The payor parent may get fired — a possible basis for a temporary reduction in child support. However, if the payor got fired for cause, this may not be a basis for reduction. One of the children may run off with the circus — another reason to reduce child support. Maybe the person receiving spousal maintenance finishes a college refresher course and gets a good job, which may be a basis for reducing or reserving her spousal maintenance. The person paying spousal maintenance may retire and seek a reduction or termination of the support obligation.

*It is of critical importance to be sure that your judgment contains very specific information about the financial basis for child support and spousal maintenance provisions so that changes in circumstances are clear. If many years pass between entry of the decree and a motion for modification, everyone could forget the basis for the original order.*

Keep in mind that retirement benefits may be treated differently depending on the specific facts of a case. If a couple in their forties is getting divorced, retirement benefits will probably be treated as property — marital assets to be divided. If the parties are in their late sixties, they may be receiving pension benefits, which are then treated as income. The law is clear: Pension benefits are either assets or income, not both.

It is important to remember that even where a pension benefit is divided, your spouse may still be making more money than you. Say that your spouse worked the same job for forty years. The two of you were only married for twenty-five years. You are entitled to collect a pension benefit based on only the number of years you were married. Just because you are both collecting on his pension doesn't mean he won't have to pay spousal maintenance.