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## Courts sees influx of child support modification requests

With the current COVID-19 pandemic, mundane issues such as support modifications have gained greater attention in our new world. Fear pushed many support payors to file for support modifications as the uncertainty of our economic climate will have an everlasting unknown economic effect.

As of June 5, the Department of Labor announced that the unemployment rate currently sits at 13.3 percent for May. However, as of June 3, Mayor Lori E. Lightfoot allowed Chicago to move into Phase 3 as the rest of the state had already done. Even though restrictions continue during Phase 3, it allows for an increased amount of non-essential businesses to open with specific safety guidelines. As Illinois continues to reopen and allow for a sense of normalcy back into everyday lives, the question becomes, should unemployed or furloughed payors nevertheless file for child support modifications?

As expected, there has been an increase in support modifications filed as people have either lost their jobs or were furloughed without an end in sight. A support modification may provide relief in the short-term or long-term depending on the circumstances; those surrounding the requesting party's as well as the non-requesting party's circumstances.

Support modification as

defined by Section 510 of the Illinois Marriage and Dissolution of Marriage Act allows for modification of support orders upon showing of a substantial change in circumstances. 750 ILCS 5/510. A substantial change in circumstance may range from an economic change to a situational change.

For example, the loss of permanent employment, reduction in pay, furlough, or reduction in hours may qualify as a substantial change in circumstance. In fact, economic reversals as a result of change in employment or bad investments, if made in good faith, may constitute a material change in circumstances sufficient to warrant a modification of a support order. *In re Marriage of Gosney*, 394 Ill. App.3d 1073 (3d Dist. 2009). However, courts have also found significant business losses may not constitute a substantial change in circumstances warranting a change in support. *In re Marriage of Deike*, 381 Ill.App.3d 620.

As of now, we do not know the lasting effect that the COVID-19 pandemic will have on our economy and whether courts will view this as a temporary situation that has a definitive end or if it is a circumstance that will have permanent and lasting effects on a payor's ability to pay support without sacrificing their ability to also support themselves. Remedies, if any, may



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run the gamut.

When determining the best route for a client, one must look at the entire picture and long-term effect this may have. As the economy begins to reopen, one must be aware of the reopening guidelines as dictated by the state, the client's area of business, their total economic circumstances including any unemployment benefits they may have received, mortgage and loan payment deferrals. As one examines the circumstances of their own client, one must look at the same circumstances surrounding the non-payor spouse as they could also have become unem-

ployed due to COVID-19 or benefit from the same relief as the payor spouse.

The next phase is Phase 4 which would allow gatherings of 50 people; bars and restaurants will be allowed to have indoor seating; theaters and performing arts spaces will be allowed to open, with limits; retailers will be allowed to open with capacity limited; and schools, summer programs and child care are allowed for in-person instruction; and all outdoor recreation is allowed. Once we are able to move into Phase 4 later this week, there may be a higher likelihood of jobs emerging and sustained employment for the future.

Once it is determined to file for a support modification, then one should request for temporary as well as permanent relief such as abatement of support or downward modification. A court may order abatement of support for certain period of time. An abatement occurs when the court orders for child support be set to \$0 or not be collected for a certain period of time. Prior to 2010, Supreme Court Rule 296 allowed for child support to accrue during the period of abatement. However, Supreme Court Rule 296 has been repealed, and no new rule has replaced the prior rule regarding abatement. As such, during the period of abatement, child support will not accrue nor interest be applied.

However, the court will order for child support to be set once the period of time is up by looking at the circumstances that surround both the payor and the non-payor.

However, if the court decides to order permanent relief in the form of downward modification, the client

must be aware of the potential risks that also coincide with this order. If the client becomes employed again at the similar or substantially higher rate of pay, then this allows for the non-payor to request another modification for an increase in support. In the end, there may be a volley of pleadings filed until

the COVID-19 situation and effect resolve themselves.

In conclusion, even though the world is unaware of the lasting impact COVID-19 will have, one must look to all possible outcomes when determining the best route for their clients. All attorneys must stay continuously informed of the state and city

of Chicago regulations when it comes to opening as well as keep a pulse on how the economy overall may be opening. By staying informed, attorneys will be able to give proper advice for clients to make the best decision when determining whether or not to file for modification of support.