

My Ex-Wife Hasn't Paid Child Support Or Alimony, What Can I Do?

November 14, 2013 | by

Dear Ask the Attorney:

I have custody of my children and my ex-wife pays me alimony and child support. My ex-wife hasn't paid alimony or child support in a couple of months. We have tried to remain civil for the children, but this is causing a financial strain on me. What can I do?

H.H.

Our guest blogger, Jennifer Fortunato is counsel at Einhorn Barbarito where she devotes her career exclusively to family law and related matters. She has broad experience in all areas of family law including divorce litigation, custody and visitation, alimony and child support, business and other asset valuation, equitable distribution, domestic violence, separation and property settlement agreements, prenuptial agreements, post-divorce issues and litigation, grandparent rights, adoptions, guardianship, palimony, appeals, and civil unions.

Dear H.H.:

Without knowing all of the facts of your case, such as the amount of alimony and child support, the facts surrounding the basis of these support payments and whether or not any circumstances have changed, your question cannot be answered directly.

However, there are a number of things you can do. At the outset, before you do anything, consulting with a family law attorney is essential. Knowing what options you have and what, if any, exposure you may have is critical before you proceed.

Usually, where an ex-spouse stops paying support, there is an Order or a Judgment (or an Agreement incorporated into an Order or a Judgment) that directs the payment of this support. In these cases, an

attorney may advise that an application with the Court should be filed to enforce this Order or Judgment. If an application is filed, often it makes sense to seek that payment be made through the Probation Department by way of wage garnishment. A wage garnishment is where one's spouse or ex-spouse's employer deducts support payments directly from that spouse's or ex-spouse's paycheck, before he or she receives his or her paycheck, and sends these payments directly to the Probation Department. As long as the Probation Department knows where one's spouse or ex-spouse is employed and that his or her income is sufficient to permit this garnishment (there are restrictions on the amount that can be garnished based on the income) this is the most reliable form of payment. If such an application is filed, one should also ask for counsel fees for having to file this enforcement application.

If an Order or Judgment (or an Agreement incorporated into an Order or Judgment) directing the payment of support does not exist, then discussing, with an attorney, the amount of support that should be sought and the best way to obtain this amount is also important. One option may include filing a motion with the Court to establish an amount of support that is different from what was already being paid. Another option is to file a motion with the Court to memorialize in an Order about what support was being paid and to have those payments resume.

Regardless of whether you seek more or the same amount, an attorney would probably suggest that payment should be paid through the Probation Department by way of wage garnishment for the reasons set forth above. Be aware that if an application is required to obtain an initial support award (i.e. there is no Order or Judgment or Agreement already in place), this application should be filed as soon as possible because it is extremely difficult to get support awarded prior to the filing date of your application. An application for counsel fees should also be requested.

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