

You're Earning HOW Much? Income Imputation In Divorce Cases

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The issue of “imputation of income” has come up in several cases on which I have been working lately. What does imputing income mean? Merriam-Webster’s dictionary defines “impute” as: “to credit to a person.” Basically, it means that, while someone may not actually be earning a certain amount, it makes sense to attribute a certain level of income to them because they may have earned that much in the past or may have the demonstrated ability to earn that amount. Imputing income to one party can be a significant issue in a matrimonial case, especially if there is a disparity in incomes and support is at issue, whether it is child support, spousal support, or both.

Support, both child and spousal is calculated by looking at the incomes of both parties. When determining child support, there is a computer program that incorporates factors set out in the New Jersey Court Rules. Various numbers, like income and expenses and number of overnight visits, are plugged in, and a weekly dollar amount is the result. When parties either earn above a certain high amount, or can agree, child support can be “set off-guidelines,” which will be noted in any Order or Agreement by which they are bound.

Spousal support is calculated differently, and there is no set formula nor is there a computer program. But the income of both parties is examined, and sometimes one party will ask that the other – usually the recipient of the support – be imputed income or “earning potential” for purposes of this calculation.

This attributed earning potential can be based on education, special licensing or certification, statistics from the Department of Labor, or just plain common sense. For example, if a party in a case has a PhD in Chemistry, spent the last 25 years as a commercial research chemist earning around \$150,000 annually working for the same employer, but for the last six months has been driving a cab and claims that they can only earn \$20,000 annually, then it may be appropriate to ask that they be imputed income commensurate with what they earned previously. They have demonstrated that they can

consistently earn that much, and chances are they are only driving a cab in order to artificially reduce their earnings for support calculation purposes. (I strongly advise my clients against taking that approach, as it does not work, and annoys Judges.)

If a party is currently not working, but has an expired cosmetology license and, until three years ago, earned \$40,000 as a hairdresser, under those circumstances the imputation level might not immediately be the full \$40,000 they earned in past years, but it will likely come close. Arguably, all that person needs to do is re-up their license and find a job at a salon, or open their own business. Either way, the barrier to that person beginning to earn something close to their previous income level is not too high. Similarly, if they had a job as an administrative assistant but voluntarily quit a year before, it would also be reasonable to impute their previous income when calculating support. While times are challenging, economically, there is no good reason why they cannot find a comparable job, if they try hard. Perhaps being imputed income will serve as an incentive! If the Court has decided a party should be treated as if they are earning a certain amount, maybe they should just try to earn it. (In these situations, I always advise clients to get a job, especially if they are being imputed income. Income is good, both financially and psychologically.)

However, If the primary income earner was working as a mortgage broker, making six figures, but the bottom has fallen out of the mortgage market and they are now earning much less, perhaps in a different field, well, it does not make sense to impute a high level of income to them when the economic realities of the time do not support that position. Similarly, if one party has never worked at anything more than a part-time, minimum-wage job, or not worked at all for the past few decades, it is not reasonable to attribute more than a few thousand dollars a year of income to them, if that.

I recently heard of a case where, despite the fact that one party was a W-2 wage-earning employee with a fixed salary, the other party wanted them to be imputed a higher income for purposes of calculating support, based on figures from the Department of Labor. This argument failed, and the Judge refused to impute more than the person was actually earning, which was a solid and documented five-figure salary, in a highly competitive industry with fewer jobs than in previous years. In order to impute income based on statistics, there has to be a significant disparity between what the party IS earning and what they COULD be earning. If they are making \$50,000 and “the statistics” say

they could be making \$60,000, that is probably not an imputation argument worth having. The chemist/cab driver scenario, above, is different, though, as it is more extreme.

How a Court determines what income can or should be imputed is a complex process, which involves considering multiple facts and factors. Historical information for the party, statistics, the New Jersey Court Rules, and case law all come into play. There is no easy answer on how to impute income or how much to impute. I once had a professor who described a complex analytical process thus: “It’s like sausage – you like the end result, but you don’t want to know how it’s made.” (He sounded sort of like Foghorn Leghorn, the cartoon rooster, which made it more amusing.) Suffice to say, when a Court is imputing income, it takes multiple factors into account.

The takeaway is this: If one party thinks they can quit their corner-office six-figure job to avoid paying as much support after their divorce, they are in for a reality check. If one party thinks that they can spend the remainder of their natural life sitting on the couch eating bon-bons and receiving support while not earning a dime, they, too, are in for a rude awakening. While income inequities are taken into consideration, rarely will a party get a totally free ride. There is accountability in a divorce, and income imputation is one method by which it is achieved.