

New Jersey Child Support Guidelines: Effectively Arguing Appropriate Deviations to the Court and Opposing Counsel

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A parent's legal obligation to assist in the financial support of his or her unemancipated child is addressed in N.J.S.A. 2A:34-23. Specifically, the statute provides that "the court may make such order as to the . . . care, custody, education and maintenance of the children, or any of them, as the circumstances of the parties and the nature of the case shall render fit, reasonable and just[.]" Id. The statute further provides a list of factors which a court may consider in determining an appropriate amount of child support. These factors include, but are not limited to (1) the needs of the child(ren); (2) the standard of living and economic circumstances of each parent; (3) all sources of income and assets of each parent; (4) the earning ability of each parent, "including education background, training, employment skills, work experience, custodial responsibility for children including the cost of providing childcare and the length of time and cost of each parent to obtain training or experience for appropriate employment;" (5) the need and capacity of the child for education, including higher education; (6) the age and health of the child and each parent; (7) the income, assets and earning ability of the child, if any; (8) the responsibility of the parents for the court-ordered support of others; (9) the reasonable debts and liabilities of each child and parent; and (10) any other factors the court may deem relevant when determining an appropriate child support award. Id.

To accomplish this task, and in accordance with R. 5:6A, courts must utilize the New Jersey Child Support Guidelines in determining an appropriate level of support to be paid for the benefit of the minor child(ren). The New Jersey Child Support Guidelines include the child's share of expenses for "housing, food, clothing, transportation, entertainment, unreimbursed healthcare up to \$250 per child per year, and miscellaneous items." N.J.Court Rules, Appx. IX-A. Additional child-related expenses, such as car insurance for the child, are not included and are instead considered expenses that may be added to the basic child support obligation. Id. The Guidelines "may be modified or disregarded by the court only where good cause is shown." R. 5:6A. Notably, "good cause" is defined broadly to include "the presence of . . . relevant factors which may make the [G]uidelines inapplicable or subject to modification" and to avoid "injustice [that] would result from the application of the [G]uidelines." Id. Further, any deviation to the Child Support Guidelines "shall be within the sound discretion of the court." Id. The breadth of the "good cause" standard and the broad discretion afforded to judges provides family law attorneys considerable latitude in seeking child support deviations for the benefit of the client and his or her children.

This article will address the most frequently asserted legal bases for requesting a deviation from the New Jersey Child Support Guidelines. However, Appendix IX-A of the New Jersey Court rules confirms that the Child Support Guidelines are a rebuttable presumption and may be adjusted or entirely disregarded at the discretion of the court depending upon the unique facts and circumstances of the case. N.J.Court Rules, Appx. IX-A. Specifically, Paragraph 2 of Appendix IX-A provides, in pertinent part:

In accordance with Rule 5:6A, these guidelines must be used as a rebuttable presumption to establish and modify all child support orders. The guidelines must be applied in all actions, contested and uncontested, in which child support is being determined including those involving *pendente lite* (temporary) support, interstate support (Uniform Interstate Family Support Act (UIFSA)), domestic violence, foster care, divorce, non-dissolution, and public assistance (Temporary Assistance to Needy families or TANF). A rebuttable presumption means that an award based on the guidelines is assumed to be the correct amount of child support unless a party proves to the court that circumstances exist that make a guidelines-based award inappropriate in a specific case. The guidelines may be disregarded or a guidelines-based award adjusted if a party shows, and the court finds, that such action is appropriate due to conflict with one of the factors set forth in sections 4, 7, 10, 13, 14, 15 or 20 of Appendix IX-A, or due to the fact that an injustice would result due to the application of the guidelines in a specific case. The determination of whether good cause exists to disregard or adjust a guidelines-based award in a particular case shall be decided by the court. Id.

I. Extreme Income Situations. The Child Support Guidelines do not apply to extremely low or high parental income situations. N.J. Court Rules, Appx. IX-A.

- a. Obligor with Net Income Less than the United States Poverty Guideline:** The New Jersey Court Rules provide that, if an obligor's net income totals less than 105% of the United States' poverty guidelines for one (1) person (or the current equivalent of \$258 per week as of January 15, 2020) "the court shall carefully review the obligor's income and living expenses to determine the maximum amount of child support that can reasonably be ordered without denying the obligor the means of self-support at a minimum subsistence level." Id.
- b. Parents with a Combined Net Annual Income in Excess of \$187,200:** In stark contrast, and under circumstances where the parents' combined net income exceeds \$187,200 per year, courts must first apply the Child Support Guidelines and supplement the Guidelines-based award with a discretionary amount based on the remaining family income in excess of \$187,200 and those factors set forth in N.J.S.A. 2A:34-23. In this way, the maximum Guidelines award "represents the minimum award for families with net incomes of more than \$187,200 per year." Id. In addition, when parties have previously entered into an above-Guideline child support agreement, and under circumstances where there exist a subsequent change in circumstances warranting a child support review, the Guidelines must be initially applied; "however, the support analysis does not artificially end with the [G]uidelines alone, rather, the prior agreement and present status quo must serve as additional equitable factors for the court to consider in determining a new child support figure, which may remain above the [G]uidelines as equity requires." Musico v. Musico, 426 N.J.Super. 276, 43 A.3d 1274 (N.J.Super.Ct. 2012).

In Caplan v. Caplan, 182 N.J. 250 (2005), the Supreme Court of New Jersey required the trial court to determine an amount of income to be imputed to

defendant-father under circumstances where the defendant previously earned a seven-figure income, but was subsequently terminated from his employment. In so deciding, the Caplan Court opined that this matter presented an “extreme parental income situation”, that the defendant was voluntarily unemployed, and that the trial court’s reliance on the defendant’s investment income alone for purposes of calculating child support was flawed. Id. According to the Court, “the appropriate approach is to use the [G]uidelines for the combined net income of \$150,800 and to consider the factors delineated in N.J.S.A. 2A:34-23(a) for an additional discretionary child support award. This combined approach should result in a fair award of child support that is in the best interest of the child.” Id. at 266. On remand, the trial court was required to determine an appropriate imputation of income to the defendant before determining the defendant’s child support obligation. Id. at 273.

The Appellate Division in Strahan v. Strahan, 402 N.J.Super. 298 (App. Div. 2008) similarly addressed the issue of extreme parental income. In Strahan, plaintiff-father appealed an Order entered by the trial court requiring that he pay “ninety-one percent of the total child support” as supplemental child support under circumstances where the plaintiff was a successful football player under contract with the New York Giants. Id. The Appellate Division opined that, in those situations where ability to pay is not an issue, “the dominant guideline for consideration is the reasonable needs of the children, which must be addressed in the context of the standard of living of the parties. The needs of the children must be the centerpiece of any relevant analysis . . . Judges must be vigilant in providing for ‘needs’ consistent with lifestyle without overindulgence.” Id. at 307. The matter was ultimately reversed in part and remanded based on the Appellate Division’s determination that the trial court failed to make specific findings of fact “necessary to sustain its decision regarding the amount of supplemental child support.” Id. at 310.

II. College. The New Jersey Child Support Guidelines are intended to apply to children who are “less than 18 years of age or more than 18 years of age but still attending high school or a similar secondary educational institution.” N.J. Court Rules, Appx. IX-A. A child’s enrollment and attendance at college represents yet another situation where a deviation from the Child Support Guidelines is appropriate and warranted. Per the Appellate Division in Jacoby v. Jacoby, 427 N.J.Super. 109, 120, 47 A.3d 40 (App.Div. 2012), the Child Support Guidelines “shall not be used to determine parental contributions for college or other post-secondary education expenses nor the amount of support for a child attending college. The [C]hild [S]upport [G]uidelines may be applied in the court’s discretion to support for students over 18 years of age who commute to college.” The Appellate Division further opined that, “when determining whether continued financial support for children attending college and / or parental contributions to college education are appropriate, the court shall consider relevant case law and statutes,” including those factors set forth in N.J.S.A. 2A:34-23(a). Id. These factors include: (1) the needs of the child; (2) the standard of living and economic circumstances of the parents; (3) all sources of income and assets of the parents; (4) the earning ability of each parent; (5) the need and capacity of the child for education; (6) the age and health of the child and the parents; (7) the income,

assets and earning ability of the child; (8) the parents' respective responsibility for the court-ordered support of others, if any; (9) the reasonable debts and liabilities of the child and the parents; (10) and other factor(s) the court may deem relevant. N.J.S.A. 2A:34-23(a).

Simply put, a court must weigh a variety of factors, including the parties' respective financial circumstances, the student's needs and abilities, and any parental financial flexibility or constraints. Raynor v. Raynor, 319 N.J.Super. 591, 614, 726 A.2d 280 (App.Div. 1999). Ultimately, computation of child support paid on behalf of a college student "cannot be made in a vacuum as there is a close relationship between college cost and support: the higher the child support order the less money remains available to contribute to college expenses." Jacoby, supra, 427 N.J.Super. at 122. However, a child's attendance at college does not automatically warrant a reduction in child support. To the contrary, "other necessary expenses may increase when a child goes to college." Jacoby v. Jacoby, 427 N.J.Super. 109, 121, 47 A.3d 40 (App.Div. 2012). See also Dunne v. Dunne, 209 N.J. Super. 559, 570, 508 A.2d 273 (App.Div.1986) ("Common sense dictates that a college student requires more for support than a student in high school."). In certain circumstances, it may be appropriate for a parent to provide child support directly to the student rather than to the other parent. Id. See also Kayahan v. Kayahan, 2015 N.J. Super.Unpub. LEXIS 3040, *1.¹ "The fact sensitive nature of each of these determinations explains why the Guidelines are ill-suited to make such a support calculation." Id.

The above-stated analysis unequivocally applies to those situations where the child resides away from home throughout his or her college career. According to Appendix IX-A of the New Jersey Court Rules, the Child Support Guidelines "may be applied in the court's discretion to support for students over 18 years of age who commute to college." Same is further supported by an analysis of those costs and expenses incorporated in a Child Support Guidelines award. For example, many costs associated with a child's attendance at college, including his or her room, board and transportation, are also included in routine child support awards. N.J. Court Rules, Appx. IX-A. Thus, a court may elect to utilize the Child Support Guidelines for a child who commutes to college because these expenses will continue to be incurred on his or her behalf.

III. Earning Ability of Parents. Pursuant to Appendix IX-A, "[t]he fairness of a child support award resulting from the application of [the Guidelines] is dependent on the accurate determination of a parent's net income. If the court finds that either parent is, without cause, voluntarily underemployed or unemployed, it shall impute income to that parent[.]" N.J. Court Rules, Appx. IX-A. Under circumstances where the court finds that an imputation of income is required to determine an appropriate child support award, a court must look to the earning capacity of the parent, his / her work history, occupational qualifications, educational background, and available job opportunities in an arriving at a reasonable income imputation. Strahan v. Strahan, 402 N.J.Super. 298 (App.Div. 2008). See also Caplan v. Caplan, 182 N.J. 250 (2005). The fact that a court will not order a parent to work does not preclude the court from imputing appropriate income to that parent. Bencivenga v. Bencivenga, 254 N.J.Super. 328, 331, 603 A.2d

¹ "When an unemancipated child is over eighteen years old, a court in its discretion may permit the non-custodial parent to pay part of his or her child support obligation directly to the child, under certain parameters. Such conditions may include the child's utilization of the funds only for specifically earmarked and preapproved expenses, along with an ongoing requirement that the child provide documented accountings of use of the funds to both parents."

531 (App.Div.1992). To the contrary, income may be imputed to a voluntarily unemployed or underemployed parent to provide for a child's needs. Tash v. Tash, 353 N.J.Super. 94, 99, 801 A.2d 436 (App.Div.2002). It is the potential earning capacity of the parent, and not his or her actual income, that is considered when determining the amount he or she must pay. Halliwell v. Halliwell, 326 N.J.Super. 442, 448, 741 A.2d 638 (App.Div.1999). The reason and intent for the parent's voluntary underemployment or unemployment and the availability of other assets that may be used to pay support are two (2) additional considerations that a court should analyze under such circumstances. Id. A court may impute income based on the parent's actual former earnings or, alternatively, the earnings for that occupation as reported by the New Jersey Department of Labor (NJDOLE).

IV. Earning Ability of Child. A child's ability to earn income may also be considered by a court in determining a parent's child support obligation. Pursuant to Appendix IX-A of the New Jersey Court Rules, extraordinarily high income of a child (i.e. actors) "may require an adjustment to a [G]uidelines-based child support award." A child's earning capacity need not be extreme, however, for a court to consider his or her earning ability. For example, in Sisto v. Sisto, No. A-2599-08T2, 2010 N.J.Super.Unpub. LEXIS 264, at *12-13 (App.Div. Feb. 8, 2010)², the Appellate Division found no basis to reverse the trial court's child support award under circumstances where the trial court found that the child "should contribute to the cost of his food, the cost of his clothing. He certainly should assist in the cost of his cell phone with the money that he makes during the summer . . . [P]ursuant to the statute, certainly he is earning[.] [W]hat he is earning, his income, his assets, certainly is one of the factors to be considered." Id. See also Sherry v. Zebe, No. A-1532-09T1, 2011 N.J. Super.Unpub. LEXIS 2557, at *4 (App. Div. Sep. 29, 2011)³: "One of the statutory factors that must be considered by the court is the income, assets and earning ability of the child. N.J.S.A. 2A:34-23(a)(7). The parties, of course, are free to waive consideration of that factor, but absent such a waiver the court must examine the elder daughter's earning capacity and her income, if any."

V. Government Benefits Paid to Child. Government benefits for children fall into three (3) general categories (1) means-tested benefits; (2) derivative benefits; and (3) supplemental benefits. The treatment of each type of benefit is related to its purpose and eligibility requirements. Means-tested benefits "have eligibility standards based on the fact that the child or parent has minimal income and requires government assistance." N.J. Court Rules, Appx. IX-A. Such benefits include but are not limited to Temporary Assistance to Needy Families (TANF), Deficit Reduction Act (DEFRA), Refugee Assistance, rent subsidies, food stamps (SNAP) and Supplemental Security Income for the Aged, Blind or Disabled (SSI). Means-tested benefits are

² Please see R. 1:36-3: No unpublished opinion shall constitute precedent or be binding upon any court. Except for appellate opinions not approved for publication that have been reported in an authorized administrative law reporter, and except to the extent required by res judicata, collateral estoppel, the single controversy doctrine or any other similar principle of law, no unpublished opinion shall be cited by any court. No unpublished opinion shall be cited to any court by counsel unless the court and all other parties are served with a copy of the opinion and of all contrary unpublished opinions known to counsel.

³ Please see Footnote 2.

excluded as income as same are meant to provide for minimal maintenance. Id. In contrast, derivative benefits are based on the contribution of a party without any regard to family income. Id. Derivative benefits include but are not limited to Social Security Disability, Social Security Retirement, Black Lung and Veteran's Administration benefits, and are either deducted from a parent's government benefit or paid in addition to same. Id. The purpose of a derivative benefit is to replace lost earnings of a parent in the event of his or her disability or retirement. Id. "The derivative child benefits are counted in the weekly net income of the parent whose contribution is the source of the benefits and applied as a credit to that parent's child support obligation. If the amount of the support obligation after deducting the benefit is zero, then the child support obligation is satisfied and no support award should be ordered while the child is receiving the benefits." Id. The third category of government benefits, supplemental benefits, are obtained without regard to means tests or contributions and include adoption subsidies and Social Security benefits based on the work history of a deceased parent. These benefits are considered income to the parent who receives same. Id.

A parent's receipt of government benefits paid for the benefit of the child may result in certain deviations from the Child Support Guidelines. For example, government benefits received by or for the child based on a parent's disability are frequently deducted from the basic child support obligation on Line 12 of the Child Support Guidelines. R. 5:6A. The deduction is permitted because the receipt of benefits "reduced the parents' contributions toward the child's living expenses." Id. See also Herd v. Herd, 307 N.J.Super. 501, 503-6, 704 A.2d 1340 (App.Div. 1998). The same analysis applies to the receipt of Social Security death benefits. Tash v. Tash, 353 N.J.Super. 94, 103-4, 801 A.2d 436 (App.Div. 2002). Notably, the Child Support Guidelines "make no distinction as to which parent's disability benefit triggers the benefit to the child." Pasternak v. Pasternak, 310 N.J.Super. 483, 488, 708 A.2d 1235 (Ch.Div. 1997).

In Pasternak, benefits paid as a result of the death of a child's natural father reduced the adoptive father's child support obligation. Id. Similarly, the court in Tash reduced a father's child support obligation to the child's grandparents under circumstances where benefits were received as a result of the natural mother's death. Tash, supra. 353 N.J.Super. at 103, 801 A.2d 436. Notwithstanding the above, a court must be vigilant in its analysis of same so as to avoid injustice to the child: "Deviation from the [G]uidelines may be required to prevent a financial hardship in the child's primary household due to the substantial reduction, or possible elimination, of child support caused by the application of the deduction allowed for government benefits against the basic child support amount." N.J. Court Rules, Appx. IX-A.

VI. Children's Assets. New Jersey courts may consider the assets of a child when determining an appropriate child support award. However, courts generally do not consider a child's assets under circumstances where his or her parents have the financial ability to pay child support and related expenses. For example, the court in Cohen v. Cohen, 258 N.J.Super. 24, 609 A.2d 57 (App.Div.) declined to consider a child's assets held under the Uniform Transfer of Minors Act (UTMA) and Uniform Gifts to Minors Act (UGMA) for purposes of determining the parents' respective obligations toward the child's tuition costs and expenses holding that "such assets may not be used to fulfill a financially able parent's support obligation." See also Colca v.

Anson, 413 N.J.Super. 405, 416, 995 A.2d 855 (App.Div. 2010). The Cohen court further held that, “despite the broad language of the statute to confer wide discretion on the custodian, a custodian who is also a parent cannot properly use assets of a UGMA account to defray the parent’s legal obligations to a child if the parent is financially able to support the child.” Id. at 30-31, 609 A.2d 57.

The Appellate Division in Moehring v. Maute, 268 N.J.Super. 477, 479 (Super.Ct. 1993) similarly denied plaintiff-father’s appeal of a trial court Order denying his request to cease contributing to his daughter’s college expenses, asserting that the child’s receipt of a personal injury settlement absolved him of his obligation to do so. The Appellate Division ultimately denied the plaintiff’s request that defendant-mother be compelled to produce all documents relating to the personal injury settlement, as well as his request to terminate his support obligation, holding that “[in] New Jersey, the estate of a minor child may not be used for his support and maintenance if those who are legally responsible for the minor have sufficient funds to enable them to fulfill their responsibilities.” Id. at 481. In so deciding, the Appellate Division further opined that

among the Newburgh factors, the parents’ ability to pay is clearly the most significant . . . Obviously, even if all of the other factors weighed in favor of the parental contribution, the parent cannot be compelled to contribute if the financial resources are lacking. The question here is whether the child’s personal injury settlement should be disclosed and considered when the parent is able to pay the college expenses. This Court finds it should not. Id.

The Appellate Division explored this issue further in Proft v. Proft, No. A-2655-04T5, 2005 N.J.Super.Unpub. LEXIS 139, at *11-12 (App.Div. Dec. 15, 2005).⁴ Similar to those circumstances presented in Moehring, defendant-father sought to terminate his obligation to assist in the support of the parties’ son, who had sustained a severe brain injury in an automobile accident and who remained physically and cognitively impaired, asserting that the child’s receipt of Social Security Disability benefits and a personal injury lawsuit settlement absolved him of his obligation to do so. Although the trial court granted the relief sought by the defendant, the Appellate Division ultimately reversed and remanded this matter, holding that

[t]he parties in this case appear to have significantly limited means. Thus, it may not be appropriate to exempt [the child’s] settlement from a calculus of any remaining support obligation on the part of [defendant], as occurred in Moehring v. Maute, 268 N.J.Super. 477, 481, 633 A.2d 1055 (Ch.Div. 1993) when the parents remained financially able to otherwise meet their child’s economic needs. Nonetheless, we are mindful that [defendant’s] support obligation as set forth in May 2002 was established by consent. It was not calculated in accordance with the Child Support Guidelines, and may well have been measured by his ability to pay, rather than by the needs of either [child]. As a consequence, even if the settlement were found upon remand to be properly allocated to support, an additional support obligation could remain, depending on the nature and extent

⁴ See Footnote 2.

of [the child's] disability, its anticipated duration, and [the child's] short- and long-term needs. These are issues that must be explored on remand, and because factual disputes appear to exist, a hearing must be held that affords the parties an opportunity for cross-examination and presentation of opposing evidence. Id.

Though the issue addressed by the Appellate Division in Cohen and Moehring involved the parents' respective obligations to contribute to the child's private school tuition and college costs and expenses, the broad language utilized by the court, as well as its holding in Proft, confirms that these principles similarly apply to the payment of child support and associated expenses.

VII. Families with Six (6) or More Children. The Child Support Guidelines do not apply to single family units having more than six (6) children. Under such circumstances, the court, in its discretion, may require a deviation from the Guidelines-based child support award. N.J. Court Rules, Appx. IX-A. Among other relevant factors, courts must look to N.J.S.A. 2A:34-23 when determining an appropriate child support award for family units with more than six (6) children. Notably, "all deviations from the [G]uidelines shall be based on the best interests of the child[ren]." Id.

VIII. Multi-Parent Families. It is not uncommon for a child to have both biological and psychological parents. In D.G. v. K.S., 444 N.J. Super. 423, 429 (N.J.Super.Ct. 2015), the court ultimately refrained from requiring the child's three (3) parents to pay direct child support to one another under circumstances where the three (3) parties agreed to conceive and jointly raise the minor child as joint legal and residential custodians. In so deciding, the court opined that the New Jersey Child Support Guidelines "did not support this intricate 'tri-parenting model' and, [] as a psychological parent, [he/she] cannot be compelled under New Jersey law to contribute child support." The D.G. court further opined that it would be inequitable for the psychological parent to pay direct child support because the child's other parents had a "considerable income advantage" over the psychological parent. Id. at 468, 133 A.3d 703. Notwithstanding the foregoing, the court required the three (3) parties to share equally in the child's medical, educational and extracurricular expenses as previously agreed between the parties, with each parent responsible for one-third of these costs and expenses. Id.

IX. Parenting Time Schedule. The parenting time schedule, and specifically, the number of overnights the child spends with each parent, represents one (1) of many factors that ultimately impacts a child support award. Just as parents may craft a creative parenting time schedule that accommodates the unique facts and circumstances of the family unit, courts have broad discretionary authority in determining an appropriate child support award.

Under circumstances where parents share an equal number of overnights with the child, some courts may utilize a three (3) step procedure to adjust the paying parent's child support obligation. Doing so accounts for the fact that "both parties are responsible for paying the child's controlled expenses during their parenting time." Wunsch-Deffler v. Deffler, 406 N.J.Super. 505, 968 A.2d 713, 2009 N.J.Super. LEXIS 96 (Ch.Div. 2009). Specifically, a court may (1) multiply the Basic Child Support Amount (Line 9 of the Guidelines) by the payor's income share; (2) multiply the result by 25% (controlled expenses assumed by the Guidelines); and (3) subtract the sum from

steps (1) and (2) from the payor's Adjusted Basic Child Support Amount (Line 15). Id. Wunsch-Deffler is a trial court decision and, as such, is not binding upon any court. However, Paragraph 21(r) of Appendix IX-A specifically provides that an equal (50/50) parenting time schedule is a basis to deviate from the Child Support Guidelines.

Deviations to the Child Support Guidelines are similarly appropriate in split-parenting arrangements. Split-parenting situations are “those in which there are multiple children of the relationship and each parent has physical custody of at least one child.” N.J. Court Rules, Appx. IX-A. To determine child support in a split-parenting situation, a separate, sole-parenting child support award must be calculated, with each parent as the non-custodial parent for the number of children in the other parent's custody. The two (2) calculations are subtracted, and the difference of the two (2) child support awards is paid by the parent with the higher sole-parenting award. Further, if “both parents serve as a PPR for at least one child of the relationship and the children share time with the other parent, the court should adjust each parent's award to accommodate shared-parenting costs[.]” Id.

X. Children with Special Needs. Expenses encompassed within the Child Support Guidelines include housing, food, clothing, transportation, unreimbursed healthcare (up to and including \$250 per year) and entertainment. N.J. Court Rules, Appx. IX-A. For these reasons, utilizing the Child Support Guidelines to determine support for a child with special needs may be inappropriate should that child require additional educational, extracurricular, medical or therapeutic assistance above and beyond that contemplated within the Guidelines themselves. Thus, Appendix IX-A provides that a child support award may be supplemented via court-approved extraordinary expenses which are “predictable and recurring expenses for children that may not be incurred by average or intact families such as . . . special needs of gifted or disabled children[.]” N.J. Court Rules, Appx. IX-A. For example, the trial court in L.S. v. M.S., No. A-1639-16T1, 2019 N.J. Super. Unpub. LEXIS 896 (App. Div. Apr. 17, 2019)⁵ determined that a 7.3% adjustment to the Child Support Guidelines was appropriate in light of the minor child's special needs. Specifically, the child was diagnosed as autistic and suffered from “certain behavioral issues.” Id. at *1. On appeal, defendant-father argues that the trial court erred in failing to make an adjustment in support to account for the minor child's special needs. Id. The Appellate Division opined that “the record does not support this contention. The child support worksheets show that the court added 7.3% to the award to account for [the child's] special needs.” Id.

Depending on the specific facts and circumstances of any given case, a parent's responsibility to support a child with special needs may continue beyond the child's 18th birthday. As set forth above, the New Jersey Child Support Guidelines are intended to apply to children who are “less than 18 years of age or more than 18 years of age but still attending high school or a similar

⁵ Please see Footnote 2. Note that the Appellate Division affirmed the trial court's award of child support, but remanded the matter for reconsideration of the amount paid because the trial court erred in failing to utilize a Shared Child Support Worksheet, nor did the trial court make any adjustment to the child support award based on the parties' combined annual income in excess of \$187,200.

secondary educational institution.” N.J. Court Rules, Appx. IX-A. To that end, N.J.S.A. 2A:34-23 provides in pertinent part:

The obligation to pay support for a child who has not been emancipated by the court shall not terminate solely on the basis of the child’s age if the child suffers from a severe mental or physical incapacity that causes the child to be financially dependent on a parent. The obligation to pay support for that child shall continue until the court finds that the child is relieved of the incapacity or is no longer financially dependent on the parent. However, in assessing the financial obligation of the parent, the court shall consider, in addition to the factors enumerated in this section, the child’s eligibility for public benefits and services for people with disabilities and may make such orders, including an order involving the creation of a trust, as are necessary to promote the well-being of the child . . . As used in this section ‘severe mental or physical incapacity’ shall not include a child’s abuse of, or addiction to, alcohol or controlled substances. N.J.S.A. 2A:34-23.

XI. Other Dependent Deductions. A parent’s obligation to support multiple children born of different relationships represents another basis to deviate from the New Jersey Child Support Guidelines. This situation is commonly referred to as an “Other Dependent Deduction” and is addressed at great length in the matter of Harte v. Hand, 438 N.J.Super. 545, 105 A.3d 1171, 2014 N.J.Super. LEXIS 170 (Ch.Div. Aug. 1, 2014). The Harte court was tasked with determining a father’s child support obligation to two (2) mothers, each of whom maintained primary residential custody of one (1) of his children, without being unfair to his child by a third mother with whom he resided. In determining the father’s two (2) child support obligations, the Harte court employed a multi-step test:

1. For each custodial parent, calculate two (2) New Jersey Child Support Guidelines worksheets.
2. Calculate one (1) worksheet that includes no prior child support order (i.e. leave Line 2b of the Child Support Guidelines blank).
3. Calculate a second worksheet for the custodial parent, including the child support number produced from the first calculation of the other custodial parent.
4. For each custodial parent, average their two (2) worksheets together. The average will be the child support amount for that custodial parent.

Self-Support Reserve

5. Determine the federal poverty guideline amount for the current year.
6. Combine the child support amount ordered for each custodial parent.
7. Calculate the net income of the non-custodial parent.
 - a. Take the Adjusted Gross Taxable Income (Line 2).
 - b. Deduct the figures on Lines 2a (taxes), 2b (combined child support orders, as determined in Step 1, above), 2c (mandatory union dues), and 2d (Other Dependent Deduction).
 - c. Add any non-taxable income. The result is the party’s net income.
 8. Subtract the poverty guideline amount from the obligor’s net income. If this sum is negative, the obligor is under the self-support reserve.

9. For the custodial parent, take the self-support reserve amount (Line 25) of each of the two (2) worksheets.

10. For each custodial parent, average the self-support reserve amount. The average becomes the self-support reserve amount for that custodial parent.

11. If both the non-custodial and the custodial parent are above the self-support reserve, no further action is required.

12. If both the non-custodial and the custodial parent are above the self-support reserve, no further action is required and the child support award should not be modified.

13. If the non-custodial parent is below the self-support reserve, and the custodial parent is above the self-support reserve, the order should be modified.

14. In its discretion, the court should order a fixed dollar amount between \$5 per week and ‘the support amount at \$180 combined net weekly income for the appropriate number of children.’ This amount is found in the chart in Appendix IX-F of Pressler & Verniero.

**Equitably Distributing Awards if the Court Modifies a Child Support Order
because of the Self-Support Reserve**

15. Determine the new total child support amount. Combine the child support awards again, and take into account any modifications.

16. The court may either distribute the child support awards based upon the proportional income of the custodial parents, average them, or determine another equitable method to distribute the awards fairly among the children.

**Distributing the Awards based on the Proportional Incomes of the Custodial
Parents**

17. To find the proportional relationship between the custodial parents’ incomes, divide the net income of the higher-earning custodial parent into the net income of the lower-earning custodial parent. This will produce a percentage. Find the other percentage by subtracting the number from 100.

18. The lower-earning custodial parent will receive the higher percentage of the total child support award. The higher-earning custodial parent will receive the lower percentage.

19. Take the total child support amount and apply the percentages above to each custodial parent’s award. This will determine the child support orders.

Id. at 559-61, 105 A.3d 1171.

In utilizing this multi-step process, the Harte court opined that “equality in treatment for the mothers should not be obtained by requiring the father to pay an inappropriately high level of support for both children.” Id. at 551, 105 A.3d 1171. The court similarly noted that “a later born child should likewise not be penalized by having a child support award lower than that of his older siblings . . . One goal of calculating child support for multiple families is to ensure parity among the children of the obligor.” Id.

XII. Private School Tuition. The New Jersey Child Support Guidelines consider a child’s private school tuition an extraordinary expense and one which is outside the scope of the

Guidelines themselves. N.J. Court Rules, Appx. IX-A. Notwithstanding same, a court may, in its discretion, approve this expense and require the child's parents to contribute to same. Roberts v. Roberts, 388 N.J.Super. 442, 449 (Super.Ct. 2006). In issuing its determination as to the parents' respective contributions to a child's private school tuition, if any, a court must consider several factors, including (1) the parents' ability to pay; (2) the parents' own past attendance at private or parochial school; (3) whether or not the parents previously agreed to send the child to private or parochial school; (4) the religious background of the parties and the child (relates to parochial school cases); (5) the special educational, psychological, or additional needs of the child and whether the private school meets those needs; (6) whether it is in the child's best interests to attend or continue to attend private school; (7) whether one parent has already been given the right to select the child's school; (8) whether the enrollment by the residential parent was reasonable under the circumstances of the case; (9) whether private school is authorized by the Child Support Guidelines; (10) the child's abilities; (11) the parents' past or present involvement in the child's education; and (12) whether the custodial parent's current views on private education are consistent with his or her past views. Hoefers v. Jones, 288 N.J.Super. 590, 611-12, 672 A.2d 1299 (Ch.Div. 1994).

As is illustrated at great length above, the New Jersey Child Support Guidelines are used as a rebuttable presumption to establish or modify child support orders. Other factors that may require deviating from the Child Support Guidelines include equitable distribution of property; income taxes; fixed direct payments (e.g., mortgage payments); unreimbursed medical/dental expenses for either parent; educational expenses for either parent; cases involving the voluntary placement of children in foster care or a child in the custody of a third party; substantiated financial obligations for elder care or a disabled family member; the age of the child; hidden costs of caring for the child (e.g. reduced income, decreased career opportunities, loss of time to shop economically, or loss of savings); the tax advantages of paying for a child's health insurance; and the purchase of a motor vehicle for the intended primary use of a child. N.J. Court Rules, Appx. IX-A. This is certainly not an exhaustive list of acceptable deviations, however, and the court in its discretion may consider any other factors that may cause the Child Support Guidelines to be inapplicable or may otherwise require an adjustment to the child support award. Id.

In fact, some would argue that the support amount provided for by the Child Support Guidelines is inadequate, particularly in cases involving two (2) or more children. By way of example, the Child Support Guidelines provide for a \$225 per week obligation to one (1) child based on a custodial parent's gross annual income of \$50,000, a non-custodial parent's gross annual income of \$100,000, and a credit for zero (0) overnights to the non-custodial parent. This sum increases to a \$246 weekly child support award for two (2) children, with all other facts remaining identical. This paltry \$21 increase in child support may neglect to adequately consider the needs of the minor children involved and may call for an appropriate deviation to the child support award.⁶

As is illustrated herein, there exists no limit to one's ability to seek a deviation to the Child Support Guidelines. Same provides attorneys a wide degree of latitude in representing his or her clients and their request for reasonable and appropriate child support obligations or awards. The

⁶ Please reference the attached Child Support Guidelines.

broad language employed by relevant statutes, rules and case-law precedent allow attorneys to advocate zealously for the benefit of the client and, most importantly, the children.

New Jersey Child Support Guidelines

Worksheet 1

CHILD SUPPORT GUIDELINES - SOLE PARENTING WORKSHEET

Case Name:	vs.	County:
<i>Plaintiff</i>		Docket #:
<i>Defendant</i>		Number of Children: 1
Custodial Parent is the: <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant		

<i>All amounts must be weekly</i>	CUSTODIAL	NON-CUSTODIAL	COMBINED
1. Gross Taxable Income	\$962	\$1,923	
1a. Mandatory Retirement Contributions (non-taxable)	-		
1b. Tax-Deductible Alimony Paid (Current and/or Past Relationships)	-		
1c. Taxable Alimony Received (Current and/or Past Relationships)	+		
2. Adjusted Gross Taxable Income ((L1-L1a-L1b)+L1c)	\$962	\$1,923	
2a. Federal, State and Local Income Tax Withholding	-\$139	-\$528	
2b. Mandatory Union Dues	-		
2c. Child Support Orders for Other Dependents	-		
2d. Other Dependent Deduction (from L14 of a separate worksheet)	-		
3. Net Taxable Income (L2-L2a-L2b-L2c-L2d)	\$823	\$1,395	
4. Non-Taxable Income (source:)	+		
4a. Non-Tax-Deductible Alimony Paid (Current and/or Past Relationships)	-		
4b. Non-Taxable Alimony Received (Current and/or Past Relationships)	+		
5. Government (Non-Means Tested) Benefits for the Child	+		
6. Net Income (L3+L4-L4a+L4b+L5)	\$823	\$1,395	\$2,218
7. Each Parent's Share of Income (L6 Each Parent ÷ L6 Combined)	0.3711	0.6289	1.00
8. Basic Child Support Amount (from Appendix IX-F Schedules)			\$357
9. Net Work Related Child Care (from Appendix IX-E Worksheet)	+		
10. Child's Share of Health Insurance Premium	+		
11. Unreimbursed Health Care Expenses over \$250 per child per yr.	+		
12. Court-Approved Extraordinary Expenses	+		
13. Total Child Support Amount (L8+L9+L10+L11+L12)			\$357
14. Each Parent's Share of Support Obligation (L7 x L13)	\$132	\$225	
15. Government Benefits for the Child Based on Contribution of NCP	-		
16. Net Work-Related Child Care Paid	-		
17. Health Insurance Premium for the Child Paid	-		
18. Unreimbursed Health Care Expenses Paid (>\$250/child/year)	-		
19. Court-Approved Extraordinary Expenses Paid	-		
20. Adjustment for Parenting Time Expenses (L8 x L20b for Non-Custodial Parent x 0.37) <i>Note: Not presumptive in some low income situations</i>	-		
20a. Number of Annual Overnights with Each Parent	365	0	365
20b. Each Parent's Share of Overnights with the Child (L20a for Parent ÷ L20a Combined)	1.0000		1.00
21. Net Child Support Obligation (L14-L15-L16-L17-L18-L19-L20)		\$225	

Continued on Page 2

CHILD SUPPORT GUIDELINES – SOLE PARENTING WORKSHEET – PAGE 2

<i>All amounts must be weekly</i>	CUSTODIAL	NON-CUSTODIAL	COMBINED
<i>If neither parent is requesting the other-dependent deduction, go to line 25</i>			
22. Child Support Order WITH Other Dependent Deduction			
23. Child Support Order WITHOUT Other Dependent Deduction			
24. Adjusted Child Support Order ((L22 + L23) ÷ 2)			
25. Self-Support Reserve Test (L6 – L21 or L24 for NCP; L6 - L14 for CP). If L25 for NCP is greater than 105% of the federal poverty guideline for one person (105% value defined as <i>pg</i>) or L25 for CP is less than <i>pg</i> , enter L21 or L24 amount on L27. If NCP L25 is less than the <i>pg</i> and CP L25 is greater than the <i>pg</i> , go to L26. (The <i>pg</i> for tax year 2019 is 252)			
	\$691	\$1,170	
26. Obligor Parent's Maximum Child Support Obligation. (L6 NCP income – 105% of federal poverty guideline for one person). Enter result here and on Line 27.			
27. Child Support Order		\$225	
COMMENTS, REBUTTALS, AND JUSTIFICATION FOR DEVIATIONS			
1. This child support order for this case <input type="checkbox"/> was <input type="checkbox"/> was not based on the child support guidelines award.			
2. If different from the child support guidelines award (Line 27), enter amount ordered:			
3. The child support guidelines were not used or the guidelines award was adjusted because:			
4. The following court-approved extraordinary expenses were added to the basic support obligation:			
5. Custodial Taxes:	<input checked="" type="checkbox"/> App IX-H	<input type="checkbox"/> Circ E	<input type="checkbox"/> Other
Non-Custodial Taxes:	<input checked="" type="checkbox"/> App IX-H	<input type="checkbox"/> Circ E	<input type="checkbox"/> Other
	#Allowances: 6		Marital: S
	#Allowances: 2		Marital: S
Prepared By:	Title:	Date:	

New Jersey Child Support Guidelines

Worksheet 2

CHILD SUPPORT GUIDELINES - SOLE PARENTING WORKSHEET

Case Name:	vs.	County:
<i>Plaintiff</i>		Docket #:
<i>Defendant</i>		Number of Children: 2
Custodial Parent is the: <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant		

<i>All amounts must be weekly</i>	CUSTODIAL	NON-CUSTODIAL	COMBINED
1. Gross Taxable Income	\$962	\$1,923	
1a. Mandatory Retirement Contributions (non-taxable)	-		
1b. Tax-Deductible Alimony Paid (Current and/or Past Relationships)	-		
1c. Taxable Alimony Received (Current and/or Past Relationships)	+		
2. Adjusted Gross Taxable Income ((L1-L1a-L1b)+L1c)	\$962	\$1,923	
2a. Federal, State and Local Income Tax Withholding	-	\$117	\$528
2b. Mandatory Union Dues	-		
2c. Child Support Orders for Other Dependents	-		
2d. Other Dependent Deduction (from L14 of a separate worksheet)	-		
3. Net Taxable Income (L2-L2a-L2b-L2c-L2d)	\$845	\$1,395	
4. Non-Taxable Income (source:)	+		
4a. Non-Tax-Deductible Alimony Paid (Current and/or Past Relationships)	-		
4b. Non-Taxable Alimony Received (Current and/or Past Relationships)	+		
5. Government (Non-Means Tested) Benefits for the Child	+		
6. Net Income (L3+L4-L4a+L4b+L5)	\$845	\$1,395	\$2,240
7. Each Parent's Share of Income (L6 Each Parent ÷ L6 Combined)	0.3772	0.6228	1.00
8. Basic Child Support Amount (from Appendix IX-F Schedules)			\$395
9. Net Work Related Child Care (from Appendix IX-E Worksheet)	+		
10. Child's Share of Health Insurance Premium	+		
11. Unreimbursed Health Care Expenses over \$250 per child per yr.	+		
12. Court-Approved Extraordinary Expenses	+		
13. Total Child Support Amount (L8+L9+L10+L11+L12)			\$395
14. Each Parent's Share of Support Obligation (L7 x L13)	\$149	\$246	
15. Government Benefits for the Child Based on Contribution of NCP	-		
16. Net Work-Related Child Care Paid	-		
17. Health Insurance Premium for the Child Paid	-		
18. Unreimbursed Health Care Expenses Paid (>\$250/child/year)	-		
19. Court-Approved Extraordinary Expenses Paid	-		
20. Adjustment for Parenting Time Expenses (L8 x L20b for Non-Custodial Parent x 0.37) <i>Note: Not presumptive in some low income situations</i>	-		
20a. Number of Annual Overnights with Each Parent	365	0	365
20b. Each Parent's Share of Overnights with the Child (L20a for Parent ÷ L20a Combined)	1.0000		1.00
21. Net Child Support Obligation (L14-L15-L16-L17-L18-L19-L20)		\$246	

Continued on Page 2

CHILD SUPPORT GUIDELINES – SOLE PARENTING WORKSHEET – PAGE 2

<i>All amounts must be weekly</i>	CUSTODIAL	NON-CUSTODIAL	COMBINED
<i>If neither parent is requesting the other-dependent deduction, go to line 25</i>			
22. Child Support Order WITH Other Dependent Deduction			
23. Child Support Order WITHOUT Other Dependent Deduction			
24. Adjusted Child Support Order ((L22 + L23) ÷ 2)			
25. Self-Support Reserve Test (L6 – L21 or L24 for NCP; L6 - L14 for CP). If L25 for NCP is greater than 105% of the federal poverty guideline for one person (105% value defined as <i>pg</i>) or L25 for CP is less than <i>pg</i> , enter L21 or L24 amount on L27. If NCP L25 is less than the <i>pg</i> and CP L25 is greater than the <i>pg</i> , go to L26. (The <i>pg</i> for tax year 2019 is 252)			
	\$696	\$1,149	
26. Obligor Parent's Maximum Child Support Obligation. (L6 NCP income – 105% of federal poverty guideline for one person). Enter result here and on Line 27.			
27. Child Support Order		\$246	
COMMENTS, REBUTTALS, AND JUSTIFICATION FOR DEVIATIONS			
1. This child support order for this case <input type="checkbox"/> was <input type="checkbox"/> was not based on the child support guidelines award.			
2. If different from the child support guidelines award (Line 27), enter amount ordered:			
3. The child support guidelines were not used or the guidelines award was adjusted because:			
4. The following court-approved extraordinary expenses were added to the basic support obligation:			
5. Custodial Taxes:	<input checked="" type="checkbox"/> App IX-H	<input type="checkbox"/> Circ E	<input type="checkbox"/> Other
Non-Custodial Taxes:	<input checked="" type="checkbox"/> App IX-H	<input type="checkbox"/> Circ E	<input type="checkbox"/> Other
	#Allowances: 10	Marital: S	
	#Allowances: 2	Marital: S	
Prepared By:	Title:	Date:	