

Child Support Standards Act (“CSSA”)

Drafting the Agreement:

Compliance with the CSSA requires that the parties acknowledge that they have been advised as to the provisions of the CSSA; that they acknowledge that they have been advised that the application of the provision of the CSSA results in the presumptively correct amount of child support to be awarded; the gross income (as defined by the CSSA) for the payor is “X” and the gross income of the payee is “Y”; and the combined parental income (CPI) is “X + Y.” The agreement must set for the presumptive child support obligation based on the CPI, the presumptive “pro-rata sharing” or relative obligations for CSSA, “add-ons” (uninsured health related expenses and childcare); and a statement as to the overall presumptive obligations. Additionally, the agreement must specify the reasons for deviation (not providing for the presumptive obligation) or that the obligation complies with the CSSA.

What might be some reasons for deviation from the CSSA: current financial circumstances of the parties; other financial provisions and obligations of the parties as set forth within the agreement; specific contributions and obligations of each of the parties to each other or the child(ren); and unique or unusual custodial arrangements.

** No longer relevant that child is born out-of-wedlock. Look at what child would have had had the parents been together. Can look at standard of living of half siblings.

Sample Provisions regarding Modification:

Nothing contained in this Agreement shall be construed to prevent either party from exercising their rights pursuant to the Domestic Relations Law of the State of New York and/or the Family Court Act to seek future modifications of the child support provisions of this Agreement as incorporated in any subsequent Decree of Divorce upon the ground that a change in circumstances has occurred since the date of this Agreement. It is the intention of the parties that they shall not be required to show an unforeseen or unanticipated change in circumstances or an inability to meet the needs of the child.

If the parties are unable to agree on the amount of child support, either party may apply to the Family Court to have that court modify the amount of child support set forth herein without the need for alleging or demonstrating any change of circumstances.

The amount of child support shall be subject to modification at _____ year intervals to consider the circumstances of the child and the parties. It is the intention of the parties that the payor’s obligation shall be in compliance with the presumptive obligation calculated pursuant to the CSSA.

Child Support Agreement Cases:

Cassano v. Cassano, 85 N.Y.2d 649 (1995): The amount of child support based on the parties' first \$80,000.00 of combined parental income is generally only subject to discretionary review when the award is "unjust or inappropriate."

Bast v. Rossoff, 91 NY2d 723 (1998): Established a method to deal with shared custody arrangements. The court can still identify the primary custodial parent and apply CSSA.

Barrett v. Barrett, 722 N.Y.S.2d 270 (A.D.3d 2001): A "blind" application of the percentages to the combined parental income over \$80,000.00 would be unjust. The court must articulate a basis for application of the percentage to income in excess of \$80,000.00.

Schaller v. Schaller, 279 A.D.2d 525 (AD2d 2001): Failure to set forth correct income for payor results in setting aside of agreement.

Lepore v. Lepore, 276 A.D.2d 677 (AD2d 2000): Proof of actual awareness of provisions of the CSSA by the parties is insufficient to validate agreement. The formalities must be followed in writing for a valid agreement.

Mitchell v. Mitchell, 264 A.D.2d 535 (A.D.3d 1999): Failure to calculate and set forth presumptive child support obligation results in invalidation of agreement.

Awards greatly exceeding the child's actual needs are inappropriate, as child support is not intended to operate as a windfall for the custodial parent.

Clark v. Liska, 263 A.D.2d 640 (A.D.3d 1999): Child support arrears may be collected by the recipient even if the arrears had accumulated under an agreement which is subsequently invalidated for failure to comply with CSSA.

Harmon v. Harmon, 173 A.D.2d 98 (A.D.1st 1992): Children are not partners in the marriage relationship and thus are not entitled to "a piece of the action" of parental success.

When there is agreement or special circumstances for college expenses:

Youssef v. Cantelmo, 278 AD2d 489 (AD 2d 2000): Generally, the obligation for college expenses ends at age 21 unless otherwise agreed to.

Houck v. Houck, 246 A.D.2d 05 (AD 3d 1997): A court can reduce court ordered child support when the parent is paying substantial college expenses which include room and board.

Kurzon v. Kurzon, 246 A.D.2d 693 (AD3d 1997): Child support is a distinct and different aspect than college contributions which can be awarded over and above the regular CSSA child support.