

ARE YOU ELIGIBLE FOR A REDUCTION IN ALIMONY?

If so, you should act NOW!

Are you required to pay alimony to a former spouse? Are you having difficulty maintaining your monthly alimony obligation and your living expenses? Many who owe alimony have indeed seen their income reduced significantly, particularly if the amount you pay was established based on the income you were earning in the early 2000's. In these cases, it is often fiscally beneficial to retain counsel to evaluate your current obligation, your present income, and the financial viability of seeking to reduce your obligation.

A change of financial circumstances permits the Court to modify your obligation, if you have experienced a decrease in income of at least twenty percent since your alimony obligation was established, the chances are higher that you could obtain a reduction or even eliminate your current alimony obligation based upon changed financial circumstances. Moreover, if your ex-spouse has experienced any positive change to his or her financial position, your chances of obtaining a reduction or termination would be even greater. In either case, you should consult a family law attorney to review your divorce decree, evaluate the current obligation and changed financial circumstances, and to advise you as to whether you qualify to seek a reduction.



You should consult a family law attorney immediately to conduct this analysis as the court cannot retroactively modify alimony and will only modify back to the date you file a motion to modify or terminate the obligation. So if you are presently paying more than you can afford, or if you can't afford to pay at all, the time to act is now to preserve the right to downward modification. Time is of the essence. The Court can lower or eliminate your obligation as of the date you file a properly supported motion to modify, even if the motion is not heard by the judge for several months.

Generally, an alimony obligation is modifiable unless it has been established pursuant to a marital settlement contract, which specifically prohibits modification. The first step in determining whether to seek modification is to check your decree of divorce and any accompanying marital settlement agreement to ensure the contract does not contain restrictions on your statutory right to seek modification.

You should also evaluate the remaining duration of your payment obligation to determine the total amount owed. If the remaining term is relatively brief, the cost of seeking to modify or eliminate the obligation may exceed the total amount you owe. In this case, you should seek to informally negotiate a reduction in your monthly obligation with your ex-spouse to avoid the expense of filing a formal motion with the court. If your ex-spouse agrees, the

terms of any such agreement should be set forth in a formal stipulation and order prepared by your attorney and filed with the court to ensure enforceability of the agreement.

Assuming your alimony obligation is modifiable and significant enough to warrant proceeding to formally seek reduction or elimination, you must next determine the appropriate degree of modification. Your attorney will need to understand your present financial position and income and will ask you to complete a current financial disclosure form. You will therefore need to educate your attorney not only as to your present financial circumstances, but also about your income and financial position at the time your alimony obligation was established and any changes thereafter. Also knowing of any changes in your ex-spouse's financial picture (positive or negative) will help your attorney assess the viability of succeeding with a motion to modify. Nevada law specifically requires the court to consider your income tax returns for the year preceding the filing of the motion to determine whether your income "has been reduced to such a level" that you are "financially unable to pay the amount of alimony" you have been ordered to pay. NRS 125.150(7). However, the statute also allows the court to consider "any other factors the court considers relevant" in determining whether modification is appropriate.



As such, you should review your tax returns dating back to the year your obligation was established and possibly annual returns for each year since. Providing your attorney with a copy of the financial affidavit on file with the Court at the time your divorce was granted will likely suffice to prove your past financial circumstances. However, each case is unique and your particular circumstances will dictate what evidence your attorney will want to present to support your request.

The court can also consider your assets and net worth so you may be required to disclose this information. A thorough analysis of the financial likelihood of alimony reduction must include this consideration. Obviously, the court will be more likely to grant a request for reduction or elimination of alimony where income has been reduced and the obligor lacks the assets to supplement income. Many obligors have experienced a dramatic decrease in their net worth and liquidity over the past two years. This fact will further support a request for reduction in alimony.

In any event, so long as you can demonstrate a decrease in income of twenty percent, the court will, in most cases, schedule an evidentiary hearing to receive financial evidence and consider a reduction or elimination of the obligation.

In evaluating your request to modify alimony, the court will also consider your ex-spouse's financial position including any changes in his or her financial position and income since the divorce. If this information is not available to you, your attorney can seek to discover it informally from your ex-spouse. Whether or not your ex-spouse is willing to cooperate in

informal discovery, it is imperative that your attorney file the motion to modify or eliminate the obligation sooner than later. After the motion is filed, your attorney should continue to attempt to work with your ex-spouse and his or her attorney to obtain a complete financial picture for both parties.

Once the financial analysis is complete, your attorney will recommend the specific modification terms you should pursue. Again, if you are armed with proof of the requisite diminished financial position; your attorney should attempt to informally negotiate a reduction on the obligation to avoid the expense to both parties of participating in a full evidentiary hearing to adjudicate your request for reduction. The cost-benefit analysis should be the paramount consideration since your goal is to avoid spending more pursuing modification than the amount of your remaining obligation.

If you are already delinquent in support payments, you must consider current arrearages and factor this figure into any proposal to the court or to your ex-spouse for a global settlement. Accrued alimony obligations are not modifiable, so if you proceed to court to reduce the monthly payment amount, your ex-spouse will almost surely countermove seeking a judgment against you in the amount of the total unpaid obligation. You must evaluate how such a judgment will impact your financial position. Again, you should act and file the motion to reduce the alimony immediately to minimize the total amount you will owe if you are not maintaining the total owed each month. At all stages, your attorney must be mindful that creative resolution through informal negotiation is likely the best solution. Consider formulating an alternative payment plan which you can afford and your ex-spouse can live with, or you may consider a lump sum payment if this option is available.



In evaluating whether to pursue modification, you must consider your judge. This is where the experience of your attorney will be critical. Nevada law mandates no formula for establishing the amount or duration of alimony, and the same is true for considerations of modification. Since the decision of whether to reduce your obligation lies within the sole discretion of the judge, any analysis of whether to seek modification and the amount of reduction must include consideration of your judge's historical tendencies in making alimony decisions. Some judges are far more generous in awarding alimony than others. The family law practitioners at Black & LoBello have over 30 combined years of experience practicing in the local family court. We have made hundreds of appearances and are well able to evaluate your case based upon not only this State's laws but also your assigned judge.

Finally, proceeding to court is always risky and almost always costly, as preparing for and attending hearings, especially evidentiary hearings, can be time-consuming. Again, you will want an experienced family law attorney in your corner to ensure careful but efficient analysis of your particular financial circumstances and your judge. You do not want to spend thousands

of dollars seeking modification unless the facts of your case truly warrant seeking relief and only if your attorney is able to properly and efficiently present your case.

The same financial analysis can be effective when defending requests (formal or informal) to reduce or modify alimony. As such, if you are the beneficiary of a court order that requires your ex-spouse to pay you alimony, and that ex-spouse has requested you voluntarily reduce the alimony you receive, or has filed a motion, you should immediately contact your attorney to prepare a detailed analysis of the likelihood of your success in defending the motion to modify either alimony or child support.

