

New Family / Second Divorce

Child support orders from a prior marriage can wreak havoc on your second marriage. Worse, support orders accumulate, they're not combined, or averaged. So, a second divorce can mean real trouble for a doubly-obligated child support payor. If you're thinking of remarrying, or are already remarried and facing a second divorce, call our attorneys to get the sound advice and planning you'll need to protect yourself while taking care of your kids.

Expenses for a New Family: A modification of child support may be warranted when there's been a substantial change in circumstances. Sometimes, a divorced parent paying child support encounters financial setbacks or expenses. The birth of a child in a second marriage, for example, may warrant a reduction (or cessation) in work hours resulting in a lower "net income" – meaning a possible reduction in the child support obligation. This rationale doesn't always apply, however, to the situation where a person paying child support starts a new family. Why, after all, should a child of a first marriage receive less financial support just because the non-custodial parent starts a new family years later and may have new children to support? Consider the plight of one father with four kids from his first marriage AND a new baby in his second marriage:¹ he paid over \$20,000 a year in child support to his former wife and had never been late on a payment. They agreed to share college expenses based on "the financial ability of [each] party at the time." His former wife earned a comparable salary and had substantial savings at her disposal. His one-year-old son in his second marriage had a respiratory ailment (a recurring benign tumor that obstructed the airway and impaired normal voice development) that required several surgeries and monthly care – costing about \$500 a month. The son's medical expenses prevented the father from paying to his former wife the full amount (\$3,800) of college expenses for their daughter that resulted from the application of a formula. The court said it was too bad and unless he handed over the money – even if it meant that his new son would have to forego the surgeries – he'd go to jail; and that would mean he'd lose his job and then his current wife would have to pay those medical bills all by herself.

Judge's have a saying for this: "the first family comes first."

Illinois law,² however, may provide a way out for parents who owe child support and are also starting a new family – be sure to check with a knowledgeable attorney to see if your situation qualifies.

Child Support in a Second Divorce: In the event a payor suffers a second divorce, the children of the first marriage will continue to receive the same amount for support and the children of the second marriage will receive less. For example, assume a divorced parent pays 28% of his or her net income to his former spouse as support for the two children of the first marriage. After a divorce in a second marriage with, say, one child, that payor would continue to pay 28% of net income to the former spouse of the first marriage and would then have to pay an additional 20% of whatever is left over to the former spouse of the second marriage. Remember: "the first family comes first."