

by Allan Garro and Alejandro Garro

## Alimony & Child Support Can Be Changed

**C**ontrary to popular belief, alimony and/or child support payments are not “written in stone” once a judgment has been rendered. Costa Rican law foresees the possibility of the need for change when the financial possibilities of either the obligor or beneficiary necessitate a need for an increase or reduction of those benefits.

This can be accomplished when the interested party files for a proceeding called “incidente de aumento o rebajo de pensión alimentaria” seeking a different award amount. The amount to be paid for alimony or child support can be modified by a family court at any time when the interested party can prove that there is a change in circumstances, as defined by the law. This is the way to avoid creating negative situations by such events as people going to jail, children have unmet needs, or when there is a negative perception towards the legal system.

The action may be requested by one spouse for another, for a minor or disabled child for their parents, and by parents or grandparents for adult children or grandchildren, or vice versa. The most important point is to determine who the person in need is and who should pay.

According to Costa Rican laws and jurisprudence, alimony and child support cannot be quantified with any mathematical equation, method, or algorithm. That means no “magical formula” exists, thus the authorities must analyze each case with a recognition of the basic relationship in mind; necessity vs. possibility. Based on that concept, a delicate balance must prevail in every judgment or agreement between parties; the decision is supposed to take into account all the aspects, such as the beneficiary’s needs and life conditions, plus the possibilities of the obligor. Sometimes, however, it happens that a judge decides to set the amount of the award to maintain the current life style of the beneficiary without taking into consideration the situation of the person that has to pay.

To request an increase in the amount of a benefit, it is mandatory to either demonstrate a change of circumstances which imply a need for a larger amount of support because the needs of the beneficiary have changed, or that the income and life status of the obligor has markedly improved.

To request a reduction in the amount of the benefit, it is required to demonstrate a change of the circumstances that imply a diminished possibility to give. Some of the situations allowed by law on which the decision reduce or eliminate the obligation to pay can be based are:

- a) The termination or forced loss of a job.
- b) Economic losses.
- c) The minor child reaching 18 years of age (unless they are regular students, in which case they are covered until age 25).
- d) An illness or serious injuries.

In accordance with Section 58 of the Alimony and Child Support Act, the procedure to request a modification of the amount or terms of payment is called an “Incidente” and the following process occurs:

- a) The applicant presents a petition stating the facts underlying the requested change and offering evidence to justify the change.
- b) The defendant has a minimum of five business days to reply to the claim.
- c) After reviewing the arguments of the parties and the offered proofs, the judge will rule on the case.

The biggest mistake made in submitting such a petition occurs when the request is filed but not enough evidence is provided to support the need for adjustment, or the petitioner is not able to prove any change in the circumstances. The requesting party must provide sufficient and appropriate evidence to convince the judge that there is a real need for change, and that a change is very necessary. A mere assertion providing nothing but circumstantial evidence can only result in the judge



rejecting the petition and upholding the current decision.

Of course, if such a ruling goes against either party, they have the right to file an appeal which will be decided by the corresponding Court of Appeals.

Some additional things to take into consideration are:


- a) It is only after the final ruling that the Alimony / Child Support may be modified.
- b) The plaintiff and defendant may settle for reasonable amount via alternate dispute resolution agreement.
- c) Every case is different and it should be analyzed with caution and professionalism.

For any request to be filed, it is very important to hire a qualified professional who understands the process and can provide the best advice according to the clients' needs.

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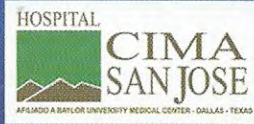
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