

Family Law Issues for NFL PLayer: (Child Support, Paternity & Prenups)

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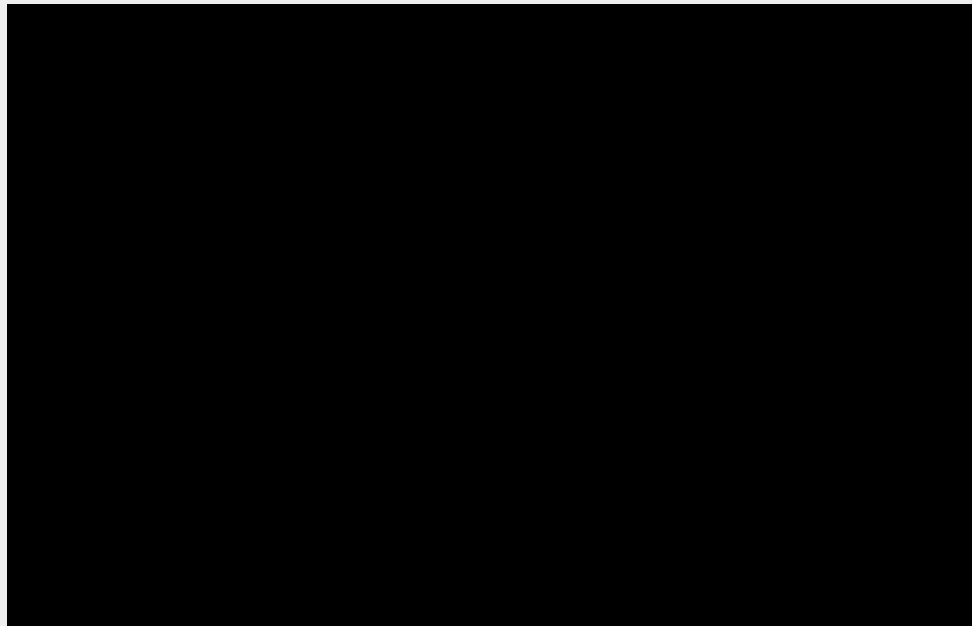
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***In Family Law, just like in your
business, you never know what's
just around the bend....***



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Child Support 101

- Fathers have duty to financially support kids.
 - Court order or not, duty exists.
 - Until court order exists, obligation is general.
 - Once court order exists, obligation is specific.
- Each state uses it's own specific guidelines.
- An example is linked to our home page:
 - www.kssfamilylaw.com
- All states statutes can be found at:
 - www.childsupportguidelines.com



Child Support 101

- Most states use “Income Shares” model.
- They consider:
 - Financial needs of the child,
 - Earning capacity/resources of BOTH parents,
 - As opposed to a simple percentage of payor’s income.
- Many other factors, such as:
 - Day care costs,
 - Travel costs for visits,
 - Special medical or educational costs.



The “cap”

- Generally, no “**cap**” on child support.
- Guidelines usually only up to \$15K to \$30K/mo.
- What happens when income is higher?
- That’s where good lawyering is vital.
- For payors we argue “need”.
- For recipients, we argue “lifestyle”.
- The real standard is “Child’s Best Interests”.



So what is “standard” child support for Pro Athletes?

- I am a lawyer, so you know my answer will be:
- It depends.
- But depends on what?
 - The state.
 - How many children?
 - What is the income?
 - Where they married?
 - Recipient's income?



But still, what is “standard” for NFL?

- \$3,000.00 per month is a good starting point.
 - Almost anyone can support a child on \$3,000.00.
 - And \$3,000.00 often meets more than just “needs”.
- But should a guy making \$100,000.00/month pay more than 3 percent of that for his child?
- It depends on the judge and the state.
- In LA or NYC, \$15,000.00 may be common.
- In TX, GA, maybe \$3,000.00.
- In NV, maybe \$900.00/month. (Location, Loc...)



What can be “ordered”?

- Periodic Support (need not be “monthly”).
- Medical/Dental/Life Insurance.
- Education costs.
- Extra curricular costs.
- Attorney’s Fees.
- Custody/Visitation.



What can be “agreed” upon?

- Just about anything:
 - Purchase of a home.
 - Purchase of a vehicle.
 - Purchase of an annuity.
 - Visitation for non-parents:
 - Step parents, uncles, cousins.
 - Grandparents.
 - College funds.
 - Trust funds.



What happens when it isn't paid?

- Enforceable in many ways (like any judgment).
 - Liens on property.
 - Foreclosure on home.
 - Garnishment.
 - Suspend licenses:
 - Driver's License,
 - Pilot's License,
 - Fishing License.
- Lawyers' favorite = Contempt.



CONTEMPT

- More powerful than “enforcing a contract”.
- Enforcing Court’s Order
 - (Even if it was based on an Agreement).
- Court may enforce it’s Order by:
 - Incarceration.
 - Assessing fees and costs.
 - Adding interest.
 - All of the above, combined.
- **Cannot get arrearage reduced in Contempt.**



When Players Fail to Pay?

- While the laws are the same for all.....

Judges know:

- Players have more access to funds than most litigants.
- Players have more ego than most litigants.
- Players are used to getting away with things.
- Players better show a “good faith effort” to pay.
- How they treat Players will set an example for regular folks.



Example

- Pro Bowl Receiver
 - 2 children
 - Child Support owed = \$3500/month



- What happens when he doesn't pay?



Payment History:

<i>Month</i>	<i>Owed</i>	<i>Received</i>
• April 2000	\$3,500.00	\$0
• May 2000	\$7,000.00	\$0
• June 2000	\$10,500.00	\$0
• July 2000	\$14,000.00	\$0
• August 2000	\$17,500.00	\$0
• Sept. 2000	\$21,000.00	\$0
• Oct. 2000	\$24,500.00	\$0
• Nov. 2000	\$28,000.00	\$0
• Dec. 2000	\$31,500.00	\$0
• Jan. 2001	\$35,000.00	\$0
• Feb. 2001	\$38,500.00	\$0
• March 2001	\$42,000.00	\$0
• April 2001	\$45,500.00	\$0
• May 2001	\$49,000.00	\$0
• June 2001	\$52,500.00	\$0



- **Gets sent to jail.**
- *Guess what happens next?*
- *Yep, payment!*
- *But then he stops again:*

<i>Month</i>	<i>Owed</i>	<i>Received</i>
May 2003	\$35,000.00	\$0
June 2003	\$38,500.00	\$0
July 2003	\$42,000.00	\$0
August 2003	\$45,500.00	\$0
September 2003	\$49,000.00	\$0
October 2003	\$52,500.00	\$0
November 2003	\$56,500.00	\$0
December 2003	\$59,500.00	\$0
January 2004	\$63,000.00	\$0
February 2004	\$66,500.00	\$0
March 2004	\$70,000.00	\$0
April 2004	\$73,500.00	\$0
May 2004	\$77,000.00	\$0
June 2004	\$80,500.00	\$0
July 2004	\$84,000.00	\$0
August 2004	\$87,500.00	\$0



So here we are again.

*Does the judge really have
any choice?*

No, back to jail!

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In an alternative world:

<i>Month</i>	<i>Owed</i>	<i>Received</i>
• April 2000	\$ 3,500.00	\$1,500.00
• May 2000	\$ 5,000.00	\$1,300.00
• June 2000	\$ 9,200.00	\$ 800.00
• July 2000	\$14,000.00	\$1,100.00
• August 2000	\$17,500.00	\$ 600.00
• Sept. 2000	\$21,000.00	\$ 400.00
• Oct. 2000	\$24,500.00	\$2,000.00
• Nov. 2000	\$28,000.00	\$ 350.00
• Dec. 2000	\$31,500.00	\$1,900.00



Is this any different?

- Now we have something we can argue:
- He is paying something
- If he goes to jail, no support will be paid.
- He is trying.
- Now what does the judge do?????????????
- Maybe gives him a break.
- Gives him time to resolve it.
- And time to sue for a reduction.



What is the Lesson?

Judges do not prefer incarceration, they prefer the
THREAT of incarceration?



Paying **Something** is better than paying **Nothing!**

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What's the Lesson?

- Pay something!
- Pay regularly (consistency is key).
- Be nice to her and her lawyer.
 - (often people sue because they are angry!)
- Seek reduction early, before arrearage grows.
- Maybe buy a house (and let kids live there).
- Consider using a trust.



Practice Pointers

- If you're out of money, give her something else (car, tix to game)
- Be a good parent! (Women mostly complain when fathers are not involved).
- Face the news— don't let players hide their heads in the sand.
- Be tough with them!
- And it doesn't really matter if it was only a one night stand.



***Which mother is likely to get more support?
The one he dated for years or the one night stand?***



Or



Answer: Neither.

It does not matter if it was a one night stand. The child is innocent and will not receive less support because your client thinks she “did it on purpose”.

What if there is a “Lock Out”?

- 2 answers: Legal Answer v. Practical Answer.
- Legal Answer: Have a lawyer ready to file for reduction.
- Practical Answer: Save Money to be able to keep paying.
- Law permits reduction, but will a judge care?
- No. “Counsel, everyone has been locked out”.



New Topic: What to do when they say: “uh-oh, got a kid on the way”

- Option A:

- File for Legitimation.
- Establish rights and amount of support.
- Do this agreeably.
 - (While they get along).
- Locks in good result.

- Option B:

- Do it “out of court”
- Be nice.
- Pay voluntarily.
- Avoid lawyers/court.

- Problem:

- When she gets mad,
and she will, it will be
ugly and costly.



“LEGITIMATION” v. “PATERNITY”

for “Out of wedlock” children

- Legitimation:

- Filed by Father
- Father has no rights until he legitimates,
- Once Legitimation is done, Father can seek custody/visitation.

- Paternity:

- Filed by Mother
- To get child support.
- Visitation can be addressed,
- But not custody.
- Related topic:

- **Paternity Fraud**



What to do if you're NOT the father?



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“Paternity Fraud”

- Big issue these days: “Can I get off the hook?”
 - Years ago, DNA testing was unavailable or pricey.
 - Most fathers did not seek DNA testing at birth.
 - Now, people simply don’t test for obvious reasons:
 - Asking for a DNA test says:
 - I don’t trust you.
 - I am calling you a “cheater”.
 - I don’t want to pay.
 - None of these are good thoughts to express during the bliss of the entry into the world of a beautiful new baby.



Make them take a test!

- There are no needles.
- Mother does not even need to know!
 - It is possible to determine it is NOT his kid with a simple swab of saliva from only dad and child.
- Better safe than sorry.
- If nothing else, it will confirm it IS their child.
 - That alone is worth the \$350.00 for the test.
 - And you can even buy a test at a Pharmacy.



Yes, they can “get off the hook”

- Many states make it easy to “Deligitimate”.
- And in others it may be a harder fight.
 - “Extraordinary motion based on fraud”.
- There are websites for DNA services.
- But **GET A TEST**. Even if it is years later.



Example

Defendant, HEIDI ANNE COHEN shall reimburse Plaintiff all amounts he has paid her as support for said child. Therefore, Plaintiff is granted a judgment against Defendant, HEIDI ANNE COHEN in the amount of \$ 55,260.00. Defendant acquired these funds by fraud. Therefore, this judgment is not dischargeable through bankruptcy.



Final Lessons on “Paternity Fraud”

- Always get tested (early).
- Can even test during pregnancy.
- There is no “right” time to get a DNA test.
 - Mothers will NOT admit the need for test.
- How can you ask the question?
 - “I have a friend....”
 - “Say it is for medical insurance”.
 - Don’t ask, just get the test.



Prenups/Post Nups

- They are allowed.
- They will reduce lawyers' fees.
- They will encourage settlement.
- They will weed out “gold-diggers”.
- The ultimate leverage, is the player's resolve.
- If one side is willing to not get married, they win.



Example 1

- Husband makes \$765,000.00/year.
- No children.
- Wife makes \$30,000.00/year.
- House worth \$950,000.00/year.
- Husband paid \$120,000 down with premarital money.
- Husband's retirement worth \$600,000.00
 - (1/2 earned during marriage).
- 1/2 of retirement earned during marriage.
- Husband cheated 3 times with 3 women.
- Wife wants the house and \$5,000.00/month alimony?
- What does the judge do?



Example 2

- Husband makes 765,000.00/year.
- No children.
- Wife makes \$30,000.00/year.
- House worth \$950,000.00/year.
- Husband paid \$120,000 down with premarital money.
- Husband's retirement worth \$600,000.00
 - (1/2 earned during marriage).
- 1/2 of retirement earned during marriage.
- Husband cheated 3 times with 3 women.
- Wife wants the house and \$5,000.00/month alimony?
- What does the judge do?
- Oh yeah, one more fact- see next slide...



There was a prenup!

- PRENUP SAYS:
 - Conduct is irrelevant.
 - 50/50 Division of anything earned in marriage;
 - \$1,000/mo alimony for 10 years.
 - Each side pays their own attorney's fees.
- Now what does the judge do?
- Much easier decision, right?
- AND..... Postnups are also allowed!



What happens when they are out of the league?

- Example 1:
 - Father pays \$4,500.00/mo.
 - He gets cut in Sept, 2009.
 - He decides to start paying only \$1,000/mo.
 - 4 years later he owes \$168,000.00.
 - She has to pay a lawyer to go to court.
 - He asks the judge not to make him pay?
 - What will the judge do?
 - At best give him time to pay it off?
 - At worst send him to jail.



Example 2:

- Father pays \$4,500.00/mo.
- He gets cut in Sept., 2010.
- **He files a request for reduction.**
- He stays current for a bit, then starts paying only \$1,000/mo.
- It takes 12 mos. before the court reduces it (to \$1,000.00/mo.).
- What about the money due up until then? (it is only \$42,500).
- What will the judge do? Maybe say:
 - “At least you asked permission to reduce”.
 - Pay it back as best you can.
 - Very little chance of jail.



The Lesson?

- File for Reduction, ASAP.
- As soon as they retire/get cut.
- Do not let them say:
 - “I trust her”, or “She won’t take me to court”.
- The arrearages are permanent.
- Not dischargeable in bankruptcy.
- Usually no statute of limitations.
- It is worth the attorney’s fees to do this.



Don't let your client's assets end up like this:



Questions before I conclude?

- Prenup questions?
- DNA questions?
- Paternity Fraud questions?
- Modification questions?
- How to find a lawyer questions?
- A version of this powerpoint presentation is at:

www.kssfamilylaw.com/presentations

Or text “NFLPA” to 99699



Family Law is really common sense.



- You might ask your players:
 - “How much would you spend to have the night of your wildest fantasy come true?”
 - \$1,000.00
 - \$10,000.00?
 - How about \$5,000.00/month for 18 years?
 - **\$1,080,000.00!**
- **It is really just common sense, ask the old farmer.**



Thank you for listening and thanks to Dana Hammonds and the entire NFLPA staff for all they do for you and our mutual clients, the players.



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