

The Court's Ability to Modify Arrears

Arrears (also known as arrearages) are child support or spousal support payments that a supporting parent or spouse has failed to pay when due. For instance, if a parent has been court ordered to pay \$500 each month in child support, but only paid \$300 per month for the last six months, the supporting parent would owe \$1,200 in arrears. While some types of obligations can be modified, there are not many ways for arrears to be modified. Once they are accrued, arrears are typically not modifiable by the court.

There are two circumstances in which the court can change the amount owed:

- When arrears are accrued after the filing of a support modification request.
- By equitable power of the court.

Arrears Accrued After the Filing of a Request for Modification of Support

The court does not have the authority to change the amount of arrearages accrued before a request for modification of support has been submitted. If the supporting party owes \$4,000 in arrears, for example, prior to requesting support modification, the arrearage amount would still be \$4,000. However, any arrears accrued after the modification request can be eliminated retroactively.

For example, if a supporting parent owes \$800 a month in support payments and then files a request to modify his or her obligation to \$600 and pays that amount for the next three months, they will find themselves in arrears for \$600. But if the court later grants the modification request the court has the power to erase the arrears accrued since the filing of the request. It must be remembered that the court is not obligated to modify those arrears even if the support request is granted. If the supporting party doesn't meet their payment obligation they will risk being in arrears.

The Equitable Power of the Court in Enforcement Actions

Although the court doesn't have the power to change the actual amount of arrearages before a modification request, it does have the equitable power in enforcement actions to determine what portion of that amount must actually be paid. For instance, if the supporting party owes \$4,000 in arrears and the party on the receiving end of the support brings an enforcement action, the court has the authority to determine how much of that \$4,000, if any, should be payable to the supported party. It is important to note that the court does not have this equitable power in modification proceedings.