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DIVORCE RELATED ISSUES

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Alimony

Alimony is usually the key issue in divorces that prevent the parties from reaching a speedy settlement. To be blunt, men hate paying alimony. Alimony is defined as the allowance for support paid by one spouse to the economically dependent spouse. The amount and the duration of the alimony are based on a variety of factors, and the overall purpose of the particular alimony award. There are twelve factors for a court to assess if alimony is awarded, the length of alimony, and the amount of alimony. The following 12 factors are listed in the alimony statute - N.J.S.A. 2A:34-23(b):

1. The actual need and ability of the parties to pay
2. The duration of the marriage
3. The age, physical and emotional health of the parties
4. The standard of living established in the marriage and the likelihood that each party can maintain a reasonably comparable standard of living
5. The earning capacities, educational levels, vocational skills and employability of the parties
6. The length of absence from the job market of the party seeking maintenance
7. The parental responsibilities for the children
8. The time and expense necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment, the availability of the training and employment, and the opportunity for future acquisitions of capital assets and income

9. The history of the financial or non-financial contributions to the marriage by each party including contributions to the care and education of the children and interruption of personal careers or educational opportunities
10. The equitable distribution of property ordered and any pay-outs on equitable distribution out of current income, to the extent this consideration is reasonable, just and fair
11. The income available to either party through investment of any assets held by that party
12. The tax treatment and consequences to both parties of any alimony award, including the designation of all or a portion of the payment as a non-taxable payment.
13. Any other factors which the court may deem relevant

As factor #13 indicates, this list is not meant to be exhaustive.

Factor 13, allows a judge to consider any other relevant factor to assist the court to fashion a fair alimony award. Moreover, even though the alimony statute identifies four types of alimony, judges may carve out alimony awards which do not necessarily fit neatly into anyone category.

Types of Alimony in New Jersey

Permanent Alimony

Permanent alimony is intended to compensate a spouse for an economic dependence created by the marriage. The purpose of permanent alimony is to allow the supported spouse, after the divorce, to continue to live in the lifestyle to which he or she had been accustomed during the marriage to the degree possible. Usually, when the marriage was of long duration, and economic need is also demonstrated, the courts will entertain an award of permanent alimony.

The courts will not consider a permanent alimony request, unless the marriage was at least ten years long. The trend is now for limited duration alimony.

Rehabilitative Alimony

The main difference between rehabilitative and permanent alimony is the temporary nature of rehabilitative alimony. Rehabilitation alimony is a short term award. This type of alimony enables the former spouse to go back to school, or obtain some type of job training that will enable him or her to re-enter the work force.

In many cases, rehabilitative alimony will consist of the husband-spouse paying for the college tuition or the job training expenses for their ex-wife.

Limited Duration Alimony

Limited duration alimony, sometimes called "term alimony" is an award of alimony of a limited duration. Limited duration alimony is often awarded when the marriage was a short one. Moreover, in a limited alimony case, a rehabilitative alimony award is inapplicable, but the circumstances of the case justify some award of financial support.

Reimbursement Alimony

A reimbursement alimony award recognizes the financial contributions a spouse has made to the professional training or career development of the other spouse. Therefore, one spouse has made financial and professional sacrifices and thereby enhancing that spouse's future earning capacity. These contributions may consist of household expenses and educational costs and the award is usually limited in nature.

Alimony pendente lite

During the pendency of a divorce, either party may ask the court for an award of temporary support or alimony. An award of temporary alimony will enable the parties to maintain the "status quo" between them, until a full analysis of their financial affairs may be completed. Pendente lite alimony awards are only temporary. These awards of alimony can be increased or decreased via a settlement, or at trial if necessary.

Other

The courts in New Jersey are not limited by the statutory categories of alimony. They may, in the interest of a result, give out of awards that combine the various categories, or are outside the statutory definition altogether.

Child Support and Child Care

This following is a brief overview child support. This overview will explain why child support exists. Who is able to receive child support. How the courts determine the amount of support to awarded. Finally, where does the child support come from, including what happens if the parent/obligor (the one who is required to make child support payments) fails to make payments.

- **Why Is Child Support Necessary?:** Child support reflects the continuous duty of both parents to financially support their children. The government wants the parents to support the child. If there were no child support laws, then many children would live in poverty. Moreover, this would increase the welfare rolls dramatically.
- **Who Receives Child Support?:** Any children who are less than eighteen years of age may receive child support. In instances where a child is over the age of eighteen but he or she still attends high school or another form of secondary education, then the court must consider current case law and statutory law in determining whether that child is permitted to receive support.
- **How Is Child Support Collected?:** Children are entitled to be financially supported in accordance with the economic status of each parent. The child support guidelines in New Jersey, were established after reviewing socioeconomic studies. The AOC has developed guidelines to assist the courts in determining a fair and adequate award of child support. The guidelines are based upon estimates of what intact families spend on their children and reflect that parents in different income categories spend a different percentage of their combined incomes toward raising their children. For example, two parents who earn \$50,000 together

statistically spend a lesser amount on their children than do two parents who earn \$150,000.

The child support guidelines are set forth in the New Jersey Court Rules, child support guidelines. The guidelines address children whose parents' joint net annual income is below \$150,800. The guidelines also take into consideration the possibility of a parent's underemployment or unemployment.

Many times, many parents work “off the books,” or they are just lazy and they don't want to work because this will increase their child support. The courts have solved this problem by imputing income to a parent. Many times, parents who work construction, the trades, or who are self-employed, make most of their salary or income “off the books.” Therefore, many judges will impute income to a conniving parent. The court will analyze the New Jersey Occupation Wage Survey, printed by the New Jersey Department of Labor, and assess a reasonable income to the deceptive parent.

It is the rebuttable presumption that the amounts set forth in the guidelines are correct. This means that unless a party convinces the court that circumstances warrant a deviation of the guidelines-based support amount, a court will not depart from the guideline amount.

The child support guideline amounts already factor in various expenses for the child/children including the following: child's share of expenses for housing, food, clothing, transportation, entertainment, unreimbursed health care and miscellaneous items, such as personal care products and cash contributions. Expenses that are not included in the guideline amounts are: child care, health insurance, private school, and unreimbursed health care costs. However, the court may, in addition to basic child support, add additional obligations upon the parties to pay for these expenses. Each case is decided on an individual basis.

If the parents' joint net income picture exceeds \$150,800, the child support award is calculated up to that amount, considering that as the minimum child support award, and then evaluating certain additional factors specified in N.J.S.A. 2A:34-23a to supplement the child support amount. Those factors include:

1. Needs of the child
2. Standard of living and economic circumstances of each parent
3. All sources of income and assets of each parent
4. Earning ability of each parent, including educational background, training, employment skills, work experience, custodial responsibility for children including the cost of providing child care and the length of time and cost of each parent to obtain training or experience for appropriate employment
5. Need and capacity of the child for education, including higher education
6. Age and health of the child and each parent
7. Income, assets and earning ability of the child
8. Responsibility of the parents for the court-ordered support of others
9. Reasonable debts and liabilities of each child and parent
10. Any other factors the court may deem relevant

For any New Jersey divorce, child support motion, or a FD case (The parties are not married), then the parties must complete a child support guideline worksheet. The New Jersey Court Rules contains two worksheets for this purpose. One worksheet is called the "sole parenting" worksheet. Here the non-custodial parent must have less than 28% of overnight time with the child.

The other type of child support worksheet is called a "shared parenting" worksheet. In a "shared parenting" worksheet case, the non-custodial parent must have 29% or more overnight time with the child, and the parent must prove that separate living accommodations for the child are provided. In a shared-parenting situation, the court considers three broad categories of expenses (fixed, variable and controlled) and apportions those expenses to each parent in proportion to the parents' relative incomes, not in proportion to the time spent with the children.

Each of these worksheets provides the court with information on the parents' overnight parenting schedule, income, alimony obligation, other child support obligations, child care costs, and health insurance costs for the child. This information is vital in determining the amount of child support a court shall award. Like alimony awards, child support may be awarded pendente lite, that is, temporarily, while the litigation is pending and until a final determination of the child support award is made by the court or by agreement.

Where Is Child Support Paid?: Payment(s) of child support and alimony are paid through the Probation Division in the County of the obligor's residence upon. If the parties agree then there can be a "direct pay" between them. However, this is not advisable. In most cases, child support and alimony is garnished. In some other cases, the payor spouse simply sends their child support payment on a weekly or biweekly basis to their local Probation Division.

Child support arrears are a major problem in New Jersey. The possible ramifications of not paying child support are being arrested, having your bank account(s) seized, serving time in the local county jail, having child support liens placed on your home, having your credit report ruined, obtaining bad credit, having your driver's license suspended, and also having any and all professional licenses suspended or revoked.

Child Custody/Parenting Plan

It is New Jersey's public policy to assure that minor children have frequent and continuous contact with both parents after the divorce. In any custody proceeding, the court will treat the rights of both parents equally.

Child custody is comprised of legal and physical custody. Legal custody relates to a parent's authority and responsibility for making major decisions regarding the child's health, education and welfare. Physical or residential custody relates to where the children live.

The primary standard how the courts determine custody and parenting schedules is the "best interests of the child." This standard is designed to protect the safety, happiness, physical, mental and moral welfare of the child.

Generally, custody arrangements fall into one of three categories: sole custody, joint legal custody, or joint physical custody. Sole custody awards both the legal and physical custody to one spouse. Joint legal custody provides that both spouses have joint responsibility for all major decisions regarding the child's health, welfare and education. However, in a joint custody case, the court will usually designate one parent as the child's principal residence and determine a parenting plan for the other parent. Joint physical custody cases are really only feasible when the divorced spouses can reasonable cooperate with each other.

A court is required to examine the following criteria in determining the child's best interests:

1. The wishes of the parent or parents
2. The wishes of the child
3. The interaction of the child with parents, siblings and other influential persons
4. Child's adjustment to home
5. The mental and physical health of all individuals involved

In addition, the court must examine the factors set forth in the following N.J.S.A. 9:2-4:

1. The parents' ability to agree, communicate and cooperate in matters relating to the child
2. The parents' willingness to accept custody and any history of unwillingness to allow visitation that is not based upon substantiated abuse
3. The interactions and relationship of the child with its parents and siblings
4. Any history of domestic violence
5. The safety of the child and the safety of either parent from physical abuse by the other parent
6. The preference of the child if the child is of sufficient age and capacity to reason so as to make an intelligent decision
7. The needs of the child
8. The stability of the home environment offered
9. The quality and continuity of the child's education
10. The fitness of the parents
11. The geographical proximity of the parents' homes
12. The extent and quality of the time spent with child prior to or subsequent to the separation
13. The parents' employment responsibilities
14. The age and number of children

In New Jersey the most common form of custody is joint legal custody, and the wife/spouse normally has residential custody. It is always advisable to work out a reasonable shared parenting plan. Having constant custody hearings and court appearances is a great way to waste money on legal fees, upset the children, and basically ruin your life. Remember, the children belong to both parents. Moreover, most counties now refer custody matters to mediation before any hearings are held. In my experience

mediation is a great way to solve custody issues in a fair, inexpensive, and a speedy manner.

Equitable Distribution

Equitable distribution is the process as how the courts decide how the marital property is divided between the spouses. The main theory behind equitable distribution is that the courts and New Jersey family law recognizes the spouses as an "economic partnership." Unfortunately, as many people are well aware, many partnerships don't last forever. Equitable distribution applies to all assets acquired during the marriage. Equitable distribution includes real estate, jewelry, mutual funds, stock options, bank and brokerage accounts, retirement assets, small businesses, etc. acquired during the marriage.

Generally New Jersey Courts will undertake a three-step process in making an equitable distribution; (a) Identify the property that consists of the "marital estate; (b) value each asset; (c) distribute the assets in a fair and just manner. N.J.S.A. 2A:34-23 (h) and N.J.S.A. 2A:34-23.1 are the two major statutes that govern equitable distribution. These statutes specify the factors that the court or ESP Panel considers when it determines the equitable distribution of the marital assets.

The statute lists fifteen factors but allows the court to consider any other additional factors it may deem relevant:

1. The duration of the marriage
2. The age and physical and emotional health of the parties
3. The income or property brought to the marriage by each party
4. The standard of living established during the marriage
5. Any written agreement made by the parties before or during the marriage concerning an arrangement of property distribution
6. The economic circumstances of each party at the time the division of property becomes effective
7. The income and earning capacity of each party, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children, and the time and expense necessary to acquire sufficient education or training to enable the party to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage
8. The contribution by each party to the education, training or earning power of the other
9. The contribution of each party to the acquisition, dissipation, preservation, depreciation or appreciation in the amount or value of the marital property, as well as the contribution of a party as a homemaker
10. The tax consequences of the proposed distribution to each party
11. The present value of the property
12. The need of a parent who has physical custody of a child to own or occupy the marital residence and to use or own the household effects

13. The debts and liabilities of the parties

14. The need for creation, now or in the future, of a trust fund to secure reasonably foreseeable medical or educational costs for a spouse or children

15. The extent to which a party deferred achieving their career goals

When a court makes a ruling on equitable distribution, the court must make specific findings of fact based on the three step process mentioned above, i.e., (a) What assets are part of the marital estate; (b) what is the value of each asset; (c) the manner in which it should be distributed.

Generally, property be considered part of the marital estate if it was obtained during the marriage. Moreover, it will qualify for distribution when it is the result of an effort or activity by either spouse during the marriage. The assets to be distributed are usually identified, for valuation purposes, as of the date that the complaint of divorce is filed.

Settlement Agreements

In the New Jersey family court system there is a tremendous pressure to settle divorce cases. The plain truth of the matter is that there are too many cases, and not enough judges to have a trial for all of the divorce cases. Ninety eight percent of divorce cases are settled before a trial.

Moreover, going to trial is very expensive. Legal fees can be high. Moreover, the parties will have to spend a significant amount of monies on expert witnesses to testify at trial. The parties will have to produce real estate appraisers, pension experts, stock market experts, business appraisers, and or accountants. These experts are not cheap, and they charge thousands of dollars to come to trial and testify. Therefore, in most cases it is a “WIN-WIN” situation if a reasonable settlement can be achieved.

Settlement agreements are agreements where in the divorcing couples determine their rights and responsibilities. A settlement agreement, or a PSA (Property Settlement Agreement) is a contract between the spouses, and it determines of the issues in the divorce case. The issues addressed in the PSA include alimony, child support, custody, parenting time, debts, and distribution of property subject to division. By negotiating a fair settlement, the parties can make their own legally enforceable contract, and avoid years of litigation, expensive legal fees, and years of stress.

A fair property settlement agreement can be achieved by having meetings between the parties' attorneys, through mediation, or court-sponsored early settlement programs. When the parties enter into a settlement agreement, then the agreement is then made a part of the final judgment of divorce, and it has the same effect as a judgment entered by the court as long as the settlement agreement is not unconscionable.

In most cases, the parties reach an agreement at the Early Settlement Panel. Once a settlement is reached, the lawyers will tell the court clerk. Thereafter, the parties will go before the judge, and the terms of the settlement will be placed on the record, or explained to the court. Thereafter, the lawyers will prepare a more formal divorce judgment than contains all of the terms of the agreement.