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## Alimony in Pennsylvania: A Maze of Pitfalls for Attorneys, Clients

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Alimony in Pennsylvania raises a host of issues, which unfortunately are not treated the same in every county. Calculation of amount and duration, as well as the factors to consider, provide little guidance to the practitioner and even less predictability to the client. A few issues, which should be pointed out, lead the practitioner to understand the issue of alimony even less.

The statute provides little guidance on the calculation of alimony. The alimony statute is extremely vague and gives scant direction on how much a financially dependent spouse should receive, the duration or the reasons for termination. Section 3701(a) states in part, “the court may allow alimony, if it deems reasonable, ... only if it finds it is necessary.” In determining whether it is necessary and the nature, amount and duration the court must examine the 17 factors under 3701(b). But none of the 17 factors provide any guidance as to the actual monthly amount, how the amount is calculated or the duration.

If we review the statute, the words reasonable and necessary are sub-

jective and open themselves to interpretation by a divorce master, judge or arbitrator. Each of these jurists can emphasize or minimize a factor depending on the case and how it is presented. Even in situations where the facts of two cases are virtually similar the result can be miles apart. That provides little relief to the practitioner who wants some ability to counsel their clients on the finalization of the divorce.

Pennsylvania has statewide guidelines for spousal support and alimony pendent lite. So why not just use the same number for alimony? First, the court is required to examine the 17 alimony factors in Pennsylvania including length of marriage, whether there are minor children, earning capacity, division of assets and more importantly the needs of the party. The shift from alimony pendent lite, which does not consider need in most cases, to the review of needs of a financially dependent spouse post-divorce is a conundrum with no reasonable explanation.

Needs of the financially dependent spouse always become an issue post-divorce. How should a spouse calculate his needs if the spouse does not know where they



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will be living post-divorce and the costs associated with where they will be living? This is often a dilemma, which should be carefully discussed with the client before finalizing the divorce. This often overlooked factor, by the practitioner, may result in devastating consequences to the financially dependent spouse.

Often clients will presume for a specific number of years of marriage, they will receive a set number of years of alimony. Again, this is not always true and the court must determine the duration of alimony based on all of the factors, not just length of marriage, including the

age of the parties, the age of the children and whether the financially dependent spouse needs to return to the workforce. In fact the 3701(c) of the statute states, “duration should be as definite or indefinite period of time which is reasonable under the circumstances.” What does that mean? Again, the practitioner is faced with the term “reasonable,” which is subject to interpretation and is purely discretionary by whoever is deciding the case. Lack of guidance on the issue of duration is not only frustrating to the practitioner but creates uncertainty to the payee spouse.

The amount of alimony in Pennsylvania is even more innocuous. First you tell your client, well you might not get what you are receiving in alimony pendent lite because alimony is based on need. Even if you have the need, the other party must have the ability to pay. How does the family law attorney calculate a number? The practitioner should direct the financially dependent spouse to prepare an income and expenses statement. Although not every county will review the expenses or find the expenses are reasonable, it is a necessary step in determining need. Again the practitioner returns to the first problem wherein it is difficult to calculate the expenses if the financially dependent spouse doesn't know where she will be living in the next five years. Such considerations should also include the cost of medical care after the divorce and the rent or mortgage for a new home. Sometimes figuring out these expenses is a difficult

challenge for a spouse who has never had to pay the bills. The financially independent spouse also needs to prepare an income and expense statement to show whether they have the ability to pay the alimony. Once again, more variables will come into play if the financially dependent spouse does not consider all of his future expenses.

The statute gives the practitioner some guidance on when alimony terminates. Certainly upon remarriage of the financially dependent spouse pursuant to 3701(e). Cohabitation and death of either party also trigger termination. But should the practitioner consider age for the financially independent spouse? Should the family law attorney consider disability or termination of employment of the financially independent spouse? Practically speaking, any case in which there is a responsibility to pay more than five years of alimony all of those factors should be considered in determining not only duration, but the amount paid and whether there should be a sliding payment the longer the alimony is paid.

Modifiability of an alimony payment is often considered if there is an order or agreement to pay over a lengthy time period. The family law attorney should consider income deviations of the financially independent spouse, disability and the practical concern as to whether the payor will actually pay the financially dependent spouse over a long period of time.

There has been some discussion as to whether alimony should be

revised. Discussions of a formula, similar to the calculation of alimony pendent lite have been proposed. Making alimony connected more directly to the equitable distribution award has also been considered, along with more definite terms and conditions for alimony. Guidance in the area of alimony would be welcomed by any family law attorney and would assist the practitioner in providing more definite recommendations regarding settlement negotiations.

Alimony is an important part of the divorce process. The practitioner must be more mindful of the client's needs and ability to pay during the finalization of the case. Although some guidelines may be discussed, it is clear more must be done to assist not only the family law attorney, but also the client in making decisions that impact the financial stability of a client post-divorce.

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