

Chicago Daily Law Bulletin®

Volume 160, No. 181

Maintenance guidelines updated to mirror child support formula

A major shift in the Illinois divorce landscape took place when Gov. Patrick J. Quinn signed into law Public Act 98-0961 last month. This law will completely change the way maintenance, formerly known as alimony, is calculated for the vast majority of Illinois residents going through a divorce.

Although not effective until Jan. 1, the new law amends the current guidelines used to determine a party's maintenance obligation to now include a formula to determine maintenance. This formula is similar to that currently used to calculate child support.

Trial courts have had wide discretion to determine whether maintenance was appropriate, as well as the amount and duration of such an award. In the past, courts would analyze the following 12 factors:

- (1) the income and property of each party;
- (2) the needs of each party;
- (3) the present and future earning capacity of each party;
- (4) any impairment of the present and future earning capacity of the party seeking maintenance;
- (5) the time necessary to enable the party seeking maintenance to acquire appropriate education, training and employment;
- (6) the standard of living established during the marriage;
- (7) the duration of the marriage;
- (8) the age and condition of both parties;
- (9) the tax consequences of the property division;
- (10) contributions and services by the party seeking maintenance to the education, training, career or career potential or license of the other spouse;
- (11) any valid agreement of the parties;
- (12) any other factor that the court expressly finds to be just and equitable.

Other than considering the 12

factors, courts were not required to make any explicit findings related to a maintenance award, often leaving couples and their attorneys in the dark as to the basis for the award.

The ISBA Family Law Section Council worked countless hours drafting this new legislation. The first major change in the law is that it imposes a new threshold requirement on a court's ultimate maintenance decision. Prior to considering a maintenance calculation, a court must first conduct an analysis of the 12 factors listed above to determine whether a maintenance award of maintenance is appropriate.

If the court determines maintenance is appropriate, Subsection (b-1) imposes a new guideline maintenance calculation which is applicable only to divorcing couples with a combined gross income of less than \$250,000.

The new calculation will be as follows: 30 percent of the payor's gross income, less 20 percent of the payee's gross income. The calculation also places a cap on the amount of maintenance

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which can be awarded. The amount calculated for maintenance, when added to the gross income of the payee, cannot result in the payee receiving an amount which exceeds 40 percent of the combined gross income of the parties.

The final component in the new calculation is duration. It is broken down into four categories of length of marriage, each of which contains its own multiplier. The categories are marriages which have lasted 0-5 years, 5-10 years, 10-15 years, and 15-20 years with multipliers of .20, .40, .60 and .80, respectively. In the

COLLABORATIVE CONCEPTS



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case of marriages lasting for 20 or more years, courts are given discretion to award permanent maintenance or for a period of time equal to the length of the marriage.

The following scenario illustrates the components of the new maintenance statute working in practice: Mark and Sue were married for 16 years and have a combined gross income of \$200,000. Mark, the payor, makes \$130,000 per year as an accountant. Sue, the payee, makes \$70,000 per year as a sales manager. Thirty percent of Mark's gross income is \$39,000, less 20 percent of Sue's gross income, \$14,000, will result in a maintenance obligation of \$25,000 per year.

This calculation, however, is not allowed as it would violate the 40 percent cap. In this illustration, 40 percent of the parties combined gross income is \$80,000. As calculated, this maintenance award would cause Sue's income to jump to \$95,000 per year; if you add the calculated maintenance to her salary. Therefore, the maintenance awarded to Sue would have to be capped at \$10,000 to prevent her "new" gross income from exceeding \$80,000.

Since the parties' were married for 16 years, Mark will owe Sue maintenance in the amount of \$10,000 per year for approximately 12 years and 8 months,

as 16 years multiplied by the .80 multiplier is 12.8.

In an effort to alleviate some of the murkiness surrounding maintenance decisions, courts are now required to make specific findings of fact in all maintenance decisions. Specifically, courts will now be required to provide reasoning for awarding or denying maintenance which must include a reference to all 12 factors.

Further, if a court deviates from the guideline amount and/or duration calculated per Subsection (b-1), the court's findings must include what the guideline amount and/or duration was calculated to be and their reasoning for deviating from either or both guidelines.

Another addition to the statute provides that courts are now permitted to order unallocated maintenance and child support on a temporary pre-decree basis only. Unless otherwise agreed to by the parties, the new statute prohibits judges from ordering an unallocated support obligation in a final judgment or in any post-decree proceeding.

The final change, which is significant, is fixed-term maintenance when a marriage is less than 10 years. If parties are divorced prior to their 10th wedding anniversary, the court may designate a "permanent termination." Maintenance would be barred at the end of the period for which it was calculated to be paid.

Like all new legislation, we have no way of knowing how this new statute will be interpreted by the appellate and Supreme Court.

What is certain for practitioners working in alternative dispute resolution, there are, at long last, some guidelines for parties who want to have a basic understanding of what might happen in court should they be unable to reach a consensus.

Thank you to the Family Law Section Council for the countless hours necessary to make this new legislation possible.