**ALIMONY IS CHANGING**

**BY: WILLIAM G. MORRIS, ESQ.**

Divorce can be expensive. Judges frequently tell a divorcing couple that two apart cannot live as cheaply as two together. That is not usually said to encourage reconciliation but to emphasize that both may be unhappy with their financial situation after divorce.

In many cases, the judge will ultimately award alimony from one party to another. Alimony is a concept inherited from England. Until King Henry VIII created the Church of England to separate from the Catholic Church, divorce was not available in England. Instead, English courts of equity issued orders allowing husband and wife to live separately but not ending the husband’s obligation to support his wife and family.

The obligation of support was carried into Florida when Florida became a state in large part based on the concept that the State has an obligation to take care of women and children that are not otherwise supported. Bear in mind that when Florida became a state, few women worked. Men were the family breadwinners and the source of income and therefore, the men had responsibility of support.

The issue in those early alimony cases has essentially been the same issue courts address today. Does one spouse have a need for support and does the other spouse have the ability to pay. Because women historically were not in the workplace until later in the 20th Century, the early cases focused on a wife’s need for support to live in the manner comparable to that enjoyed during marriage as long as the husband had ability to pay. As women entered the work force, the tables were sometimes turned with the husband asking for alimony on the same basis.

Florida’s legislature couldn’t resist this area as a fertile ground for legislative cures. Even before Florida became a State, its Legislative Counsel passed laws under the authority of Congress addressing divorce and alimony, shortly after its creation in 1822. The interest continues.

A spouse can seek alimony during a marriage in the form of separate maintenance without a divorce or on a temporary basis during divorce. A spouse can also seek alimony to be effective on and after the divorce is final. Alimony extending after the marriage is often the subject of great debate during a divorce case.

Section 61.08 of Florida Statutes is Florida’s alimony statute. The statute authorizes the award of alimony and support during marriage and to provide for a divorced spouse after marriage. Judges are directed to determine need of a requesting spouse and the ability to pay of the other. Judges do that after determining who gets what marital assets, as those assets can be the source of income for each party.

Judges are required to make written findings of fact regarding the basis for any alimony award. That is a big help to appellate courts. The statute even mandates 8 factors a judge must consider: ( 1 ) duration of the marriage, (2 ) standard of living during the marriage, (3 ) age, physical and mental condition (4 ) resources and income (5) earning capacity, education, skills and employability (6) contribution of each party to the marriage (7) responsibilities each party will have for minor children the parties have in common and (8) any other factor necessary for equity and justice.

The statute divides marriages into short term (less than 10 years), moderate term (between 10 and 20 years) and long-term (greater than 20 years). Length of the marriage is determined from date of marriage until filing for divorce. Term of the marriage is important as the statute links durational alimony to duration of marriage. Alimony can be ordered in periodic payments or as a lump-sum.

Bridge the gap alimony can be awarded to help with transition from being married to being single meeting identifiable short-term needs. Bridge the gap alimony may not exceed 2 years. It is not modifiable.

Rehabilitative alimony is to assist a party in establishing capacity for self-support and requires a plan of how that will be done. A plan usually includes school or training. Rehabilitative alimony may not exceed 5 years and can be modified or terminated.

Permanent alimony was abolished in 2023. Florida judges are now allowed to award durational alimony to provide a party with assistance for a set period of time. Durational alimony terminates upon death of either party or remarriage of the recipient. Durational alimony may be modified or terminated based on substantial change in circumstances.

Durational alimony may not be awarded in a marriage lasting less than 3 years. Length of durational alimony may not be modified except under exceptional circumstances. Durational alimony may not exceed 50% of the length of a short-term marriage, 60% of the length of a moderate term marriage, or 75% of the length of a long-term marriage. Under exceptional circumstances, a judge may extend the term of durational alimony if the recipient meets statutory criteria by clear and convincing evidence that the extension is necessary.

Durational alimony is based on the need of one spouse and ability to pay of the other. It may not exceed the lesser of 35% of the difference between the parties’ net incomes or the recipient’s reasonable need. An award of alimony may not leave the payee with significantly less net income of the recipient unless there are written findings of exceptional circumstances.

Replacing permanent alimony with durational alimony is consistent with the national trend. As time passes, the legislature will undoubtedly address this issue again.

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