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# Committee Studies Spousal Maintenance Awards – Legislation Expected

By *Korey C. Lundin*

Every two years, in the summer between legislative sessions, the Wisconsin Legislature’s Joint Legislative Council establishes study committees to look into potential legislation. Last year, the Joint Legislative Council established the Special Committee on Review of Spousal Maintenance Awards in Divorce Proceedings. The Committee was the first study committee dealing specifically with family law issues since 2004, when a study committee recommended the legislation that eventually became Wisconsin’s version of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).<sup>1</sup>

The origins of a study committee on maintenance date back to at least 2001, when legislation was introduced specifically to set up such a committee.<sup>2</sup> This legislation failed, and in subsequent legislative sessions, there was proposed legislation that sought to substantially revise and place limits on Wisconsin’s maintenance law.<sup>3</sup> Rep. Marlin Schneider was the primary motivator of this legislation and the Family Law Section actively opposed these proposed bills.<sup>4</sup> Legislation to severely limit or prohibit maintenance has been



introduced (and has been somewhat successful) in many other states.<sup>5</sup> There is a small, but vocal, “alimony reform movement” that has been advocating for these changes. Although a full discussion of this movement is outside the scope of this article, various groups have long advocated for placing strict limits on maintenance, removing judicial discretion from the maintenance process, or even abolishing maintenance entirely.

### New Committee Formed

In the summer of 2010, the Joint Legislative Council established the Study Committee on Maintenance. Seventeen members were appointed, including: five legislators,<sup>6</sup> three judicial officials,<sup>7</sup> five attorneys,<sup>8</sup> and four individuals who were “alimony reform” advocates (some of whom

were payers of maintenance).<sup>9</sup> There were no members of the Committee who were recipients of maintenance, no members of the Family Law Section Board, and no members of the American Academy of Matrimonial Lawyers (AAML), which resulted in some valid criticisms about the composition of the Committee.<sup>10</sup> The Committee was tasked to study five areas:

1. the purpose and goals of awarding maintenance;
2. making application of the maintenance considerations given in § 767.56, Stats., more uniform and predictable;
3. whether the statutes should provide guidance to the courts relating to amount and duration of a maintenance award;
4. whether cohabitation should be considered when revising maintenance orders under section 767.59, Stats.; and
5. whether marital fault should be considered when determining a maintenance award.

### Committee Split On Positions

The Committee held three meetings in the second half of 2010, and there was no consensus of which direction the Committee should take.<sup>11</sup> Several members were strong advocates to substantial changes to the maintenance statute such as imposing a formula for calculating maintenance, narrowing the cases in which parties would qualify for maintenance, limiting judicial discretion, or requiring an end to maintenance if the payee was cohabitating with another adult. There were also several members who were strong advocates for maintaining the status quo and not substantially revising the maintenance statute. Given this significant disagreement among Committee members, there was no clear direction for the Committee to take.

After three meetings, the Committee members ended up voting by paper ballot on 12 proposed drafts of legislation.<sup>12</sup> Seven proposals would have introduced some sort of formula or other significant revision to Wis. Stat. § 767.56 and how maintenance was calculated.<sup>13</sup> One proposal would have created a rebuttable presumption of a decreased need for maintenance if the payee was cohabitating with another adult.<sup>14</sup> Another proposal concerned post-judgment revision of maintenance and prohibited the consideration of the income of a payee's new spouse and allowed for consideration of an inheritance a payee received when determining whether to revise maintenance.<sup>15</sup> One proposal, which emerged during the Committee's discussion of pro se litigants in family court, would have required the addition of a copy of statutory factors for awarding maintenance to the divorce summons in order to place litigants on notice of the grounds for maintenance.<sup>16</sup>

One last proposal the Committee considered was one the Family Law Section has long supported.<sup>17</sup> This proposed legislation ([Wisconsin Legislative Counsel Report 0031/1](#); hereinafter referred to as WLC) would automatically provide for a termination

of maintenance upon the death of either the payee or the payer.<sup>18</sup> If maintenance does not automatically terminate upon the death of the payee, then the payer would not be able to deduct maintenance from their taxes. Although in practice many courts have automatically ended maintenance upon the payee's death, the lack of clear language to that effect in state law could result in audit problems for the payer. This proposed legislation also places the burden on the payee to notify the court if he or she remarries, another proposal the Family Law Section has long advocated for.<sup>19</sup>

### Committee Recommendation

After tallying all the votes in February of 2011, WLC was the only proposal to receive a majority of the Committee members' votes. The Committee has issued a report summarizing its work and recommending this proposed legislation to the Joint Legislative Council.<sup>20</sup> Now that this report has been issued, the Committee's work is essentially done and there will be no further meetings of the Committee. In May of 2011, this proposal was recommended to the Joint Legislative Council for introduction as a bill in this legislative session. At its May 4, 2011, meeting, the Joint Legislative Council voted 13-2 in favor of introducing the proposal as a bill this legislative session, and hopefully this long-overdue clarification to the law will pass.

All of the other proposals received eight or less votes from the 17 committee members and will therefore not be submitted to the Joint Legislative Council for consideration.<sup>21</sup> Of the bills which would have substantially revised Wis. Stat. section 767.56, only one – which was modeled on Texas' maintenance law – received more than three votes.<sup>22</sup> It is worth noting the judicial officials and attorneys on the committee opposed these substantial and drastic proposals. The only votes in favor of these drastic changes came from the "alimony reform" members of the Committee and some members of the legislature. Even though the

more drastic proposals failed to make it out of the Study Committee and will not be introduced as Joint Legislative Council bills this session, it is entirely possible for individual members of the legislature to introduce one or more of these drastic proposals. I expect the Family Law Section will be monitoring any potential future maintenance legislation and hope the Section will maintain its opposition to these drastic changes.

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### Endnotes

- 1 2005 SB 112.
- 2 2001 AB 75.
- 3 2003 AB 823, 2005 AB 529, 2007 AB 9, and 2009 AB 54. See Jason Westphal, *Legislative Update*, 26 *Wisconsin Journal of Family Law* 1, 21-22 (January, 2006).
- 4 After serving 40 years in the assembly, Rep. Schneider (D-72nd), lost his seat in the November, 2010 election.
- 5 Florida recently significantly revised and codified its alimony laws. In Massachusetts there is very active "alimony reform" movement and proposed legislation that would place "term limits" on maintenance.
- 6 Rep. Tony Staskunas (Chair, D-15th), Rep. Amy Sue Vruwink (Co-Chair, D-70th), Rep. Joel Kleefisch (R-38th), Sen. Luther Olson (R-14th), and former Sen. Jeff Plale (D-7th).
- 7 Milwaukee County Family Court Commissioner Michael Bruch, retired Waukesha County Judge Robert Mawdsley, and Milwaukee County Judge William Pocan.
- 8 Judith Budny (Poulos, Sengstock, Budny & Ludwig SC), Tom Grogan (solo practitioner), Marsha Mansfield (UW-Law School), Jared Potter (Stafford Rosenbaum LLP), and this author.
- 9 Dr. Malcom Keith Hatfield, Andrew Matznick, Dan Pence, and Kenneth Seubert.
- 10 See Tom Walsh, *Editor's Note*, 30 *Wisconsin*

*Journal of Family Law* 3, 40 (Summer, 2010); Gregg Herman, *Spousal Maintenance an Ongoing Concern*, *Wisconsin Law Journal*, Jan. 4, 2011.

- 11 Minutes, agendas, and audio recordings of the Committee's meetings can be found at the [Wisconsin State Legislature Legislative Council](#) web page. This link also has all the documents, memos, and proposed legislation the Joint Legislative Council staff prepared for the Committee. Video of the meetings can be found at [Wisconsin Eye](#).
- 12 At the third and last meeting, the Committee unanimously decided not to pursue two other proposed drafts that had been discussed: one which would have eliminated the court's authority to award any maintenance at all ([WLC: 0030/1](#))

and another that would have prohibited a maintenance award to someone who had abused the person ordered to pay maintenance ([WLC:0016/1](#)).

- 13 [WLC: 0006/2](#), [WLC: 0007/2](#), [WLC: 0015/2](#), [WLC: 0083/1](#), [WLC: 0084/1](#), [WLC: 0085/1](#), and [WLC: 0086/1](#).
- 14 [WLC: 0093/1](#).
- 15 [WLC: 0041/1](#).
- 16 [WLC: 0040/1](#).
- 17 See Anthony Menting, *Legislative Update*, 29 *Wisconsin Journal of Family Law* 4, 16 (Winter, 2009); Anthony Menting, *Legislative Update*, 30 *Wisconsin Journal of Family Law* 1, 14 (Winter, 2010); Michele Perreault, *Family Law Section Legislative Update*,

30 *Wisconsin Journal of Family Law* 1, 7 (Winter, 2011).

- 18 [WLC: 0031/1](#).
- 19 Currently the burden is on the payer of maintenance to notify the court of the payee's remarriage. Wis. Stat. § 767.59(3).
- 20 The draft report can be found at: [http://legis.wisconsin.gov/lc/publications/prl/PRL\\_2011\\_06.pdf](http://legis.wisconsin.gov/lc/publications/prl/PRL_2011_06.pdf).
- 21 Full results of the ballot are found at: [http://legis.wisconsin.gov/lc/committees/study/2010/AWARD/files/mailballot\\_results.pdf](http://legis.wisconsin.gov/lc/committees/study/2010/AWARD/files/mailballot_results.pdf). Two members of the committee did not vote.
- 22 [WLC: 0085/1](#), which received six votes.

