

How is Spousal Maintenance Determined?

By: [Mitchell Reichman](#)

Nothing is more difficult than predicting what a judge will decide is the appropriate spousal maintenance award on any given set of facts. This uncertainty can be traced to the statutory factors that a judge is compelled to consider to decide if a person is entitled to receive spousal maintenance and if so, the amount and duration of the award. The factors, as set forth in A.R.S. §25-319(B) and its subparts, are very subjective and allow the judge significant latitude. They include such things as the standard of living during the marriage, the emotional condition of the spouse seeking maintenance, the contribution of the spouse seeking maintenance to the earning ability of the other spouse, any reduction of income or career opportunities for the benefit of the other spouse, the ability to contribute to future educational costs of their mutual children and whether there have been excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of property during the marriage. Over the years, the general dissatisfaction with this uncertainty has prompted the promulgation of "guidelines" to assist litigants and judges seeking to fashion or agree upon appropriate awards of spousal maintenance. However, the guidelines that have been in place from time to time were all ultimately thought to be flawed in one respect or another and presently there are no spousal maintenance guidelines at all in the State of Arizona. Reliance on the recently disavowed "spousal maintenance guidelines" is therefore misplaced and anyone relying on those guidelines to argue for any given amount or duration of spousal maintenance is misguided.

The spousal maintenance analysis is a balancing test. For the person seeking spousal maintenance, it is a question of his or her reasonable needs given the standard of living during the marriage and his or her ability to meet those needs independently from earnings and/or income from property being awarded to them in the dissolution of the marriage. For the spouse who is being asked to pay spousal maintenance, it is a question of that person's earning ability, his or her capacity to meet their own needs while also contributing to the expenses of the spouse seeking maintenance. While this balance may be simple to express, its application is often difficult. In many marriages the community, while intact, tends to spend all or almost all of the income being generated in the household. When that household is divided and another layer of living expenses is added due to the separation of the parties, that same stream of income which once supported an intact household cannot support the two separate households in the same manner. There simply isn't enough money to meet these additional expenses. If this is the case, resisting the inevitable reduction in the lifestyle that both spouses will typically experience leads to conflict. Consequently, the parties' inability to agree on an appropriate amount and duration of spousal maintenance is often the primary reason for parties to "go to trial" and seek resolution of this conflict by asking the judge to decide these issues. Whether you are the spouse seeking maintenance or the one defending against such a claim, it is critically important to be prepared to make the most persuasive presentation possible given your particular facts and circumstances. This is one area where the assistance of an experienced and skillful lawyer can make a significant difference for you.

About the author: [Mitchell Reichman](#) is an attorney with the Phoenix law firm of [Jaburg Wilk](#). He is a Certified Specialist in Family Law/Divorce by the State Bar of Arizona Board of Certification and a Super Lawyer in family law. Mitch is experienced lawyer in representing clients in high conflict divorces with substantial assets. He can be reached at 602.248.1000 or mxr@jaburgwilk.com.

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