Duplicative Awards Are Improper Under NY Temporary Maintenance Formula

The issue of temporary maintenance for a spouse pending the conclusion of a divorce is often a challenging and divisive aspect of the divorce or separation process, and clarity in how awards should be granted is a key aspect of promoting equity. Kudos to the First Department for providing clarity to the new temporary maintenance guidelines that were signed into law in 2010. In what is the first Appellate Division case to date interpreting this legislation, in *Khaira v. Khaira*, the Appellate Division First Department ruled that it was an error of a motion court to duplicate an award of temporary maintenance by directing the husband to pay in accordance with the formula set forth in the guidelines and then adding an obligation that he pay the wife's housing expenses as well.

By way of background, the legislature's approach to temporary maintenance awards experienced a seismic change in 2010 when Domestic Relations Law § 236(B)(5-a) was signed into law, bringing with it a formula that must be used to determine the amount of support. Before it was passed, judges had much more leeway in ordering temporary maintenance. The statute, which is designed to create greater consistency, requires the court to explain any deviation that it makes from the result which is calculated using a specific formula. Rather than aiming merely to "tide over" the non-monied spouse, the new provision creates a substantial presumptive entitlement based upon a formula using a percentage of each spouse's income.

Initially, many divorce lawyers were not happy about the new law, as they considered it to be both rigid and potentially inequitable.

In the Khaira opinion, Hon. David B. Saxe, an Associate Judge at the Appellate Division, First Department wrote:

"No language in either the new temporary maintenance provision or the [Child Support Standards Act] specifically addresses whether the statutory formulas are intended to include the portion of the carrying costs of their residence attributable to the non-monied spouse and the children. As one commentator has pointed out, the new law 'does not factor in child support issues or payment of household expenses. Is the recipient supposed to pay for everything in the house from this money? Is the payor supposed to stop paying those bills? What about all the double counting of housing, child care, and medical insurance between this law and the child support law?" (Referring to an article by Lee Rosenberg, in the February 25, 2011 issue of the New York Law Journal entitled "Multiple Flaws Abound in New Interim Spousal Support Statute").

Judge Saxe went on to say that "....in the absence of a specific reference to the carrying charges for the marital residence, we consider it reasonable and logical to view the formula adopted by the new maintenance provision as covering all the spouse's basic living expenses, including housing costs as well as the costs of food and clothing and other usual expenses."

This clarification from the Appellate Division was sorely needed as it helps to limit the issues that divorcing couples need to resolve whether they are mediating, collaborating or litigating.