

Overview of Spousal Maintenance Awards in Divorce and Legal Separation

By Scott David Stewart

In a divorce or legal separation, spousal maintenance may be ordered by the court to provide important financial support for one party or the other. Maintenance is paid by one spouse (or former spouse) to the other spouse (or former spouse). Some states refer to such support as alimony, others as spousal support. In any case, the purpose and result is the same, as we'll discuss in this article.

Historical Basis for Alimony -- *Times Have Changed*

There was a time when traditional marriages were entered into with the understanding and agreement that only death could terminate the bond. A divorce was only possible when there was evidence of marital misconduct, or fault. Once fault was established, the court looked to punish the party responsible for destroying the marriage.

Need for Alimony. Alimony was a solution to a very real economic problem. A divorced woman's chances of finding work sufficient to support herself, even marginally so, were not promising. Knowing this, the courts were unwilling to let a husband impoverish his wife if he was guilty of marital misconduct. Receiving alimony sustained the wife who had kept her marriage vows, and paying alimony punished the husband who had not.

Punishing the Wife -- No Alimony. A wife who caused the marital breakdown often found herself in immediate, serious financial trouble. Alimony was not generally available to her. The court reasoned that her post-divorce financial woes were the direct consequence of her guilty acts, and the punishment was deemed appropriate.

Punishing the Husband -- Pay Alimony. As the family wage-earner, when the husband caused the marital breakdown the court granted the divorce and ordered him to continue supporting his ex-wife -- support in the form of alimony. The guilty husband could not escape his obligation to support his wife, even after the divorce. The support was paid weekly or monthly, and could keep the ex-wife in the standard of living to which she had become accustomed during the marriage.

If the parties were unhappily married and both were without fault, then there were no grounds for divorce. Some couples colluded to achieve their desired result -- ending a marriage they both wanted out of. When both husband and wife were at fault, the court was still unwilling to dissolve the marriage as they deserved each other and, consequently, were stuck in the marriage.

Uniform Marriage and Divorce Act.

By the middle of the 20th Century, sensibilities about the traditional marriage had changed significantly. Wives increasingly became wage-earners alongside their husbands, and the stigma of divorce was fading. In a sweeping legislative reform, Arizona adopted the Uniform Marriage and Divorce Act (UMDA), as did Colorado, Illinois, Kentucky, Minnesota, Missouri, Montana, and Washington.

The UMDA (1970) allowed for the *irretrievable breakdown* of a marriage, which could occur without any fault. Today, our Arizona courts cannot consider acts of marital misconduct in deciding whether to award spousal maintenance.

Eligibility for Spousal Maintenance -- How It Works Today

In general, when determining the appropriateness of a maintenance award the court must conduct a two-part analysis.

First, A.R.S. § 25-319(A):

As a threshold question, a spouse must establish eligibility for alimony. In this first step, be prepared to answer questions like the following:

What property does the spouse have? Is the spouse already self-sufficient? Does the spouse need to stay home to care for a child? Could this spouse earn enough money to be reasonably self-sufficient? Did the marriage last many years, maybe a decade? Was the couple only married for a short time, maybe a year or two? Is the spouse at an age that would make self-sufficiency through employment impossible?

Second, A.R.S. § 25-319(B):

Second, the court considers all relevant factors in the family law case. Although the court has broad discretion, the 13 factors presented in the statute provide a framework for the judge's analysis. Here are some questions that should be asked, and answered, in this second step:

1. Standard of Living...

Did the parties live well? Were they affluent? Did they maintain a high standard of living? Did they live modestly? Did they get by with limited resources?

2. Marriage Duration...

How many years were they married to each other? Did the couple invest years in their marriage?

3. Age, Employment, Earning Ability of Supported Spouse...

Did the spouse seeking support quit working outside the home to raise their children? What jobs did that spouse have in the past? How much could he or she reasonably earn? What education does that spouse have? Would training or an education improve that spouse's employment options?

4. Supporting Spouse's Financial Ability...

How much does the supporting spouse earn? Can the supporting spouse take care of his or her own reasonable needs, as well as provide support for the other spouse?

5. Comparative Financial Resources and Earning Ability of Both Spouses...

Will one spouse substantially out-earn the other under most circumstances? Does one spouse's property interests greatly exceed the other's? Is there a significant financial imbalance between the spouses?

6. Contributions from Supported Spouse...

Did one spouse maintain the household and care for the children, freeing the other spouse to concentrate his or her efforts on career employment?

7. Extent Supported Spouse's Lost Career Opportunities...

Did one spouse set aside his or her career, education, or employment goals so the other spouse could get ahead?

8. Ability of Both Spouses to Contribute to Children's Educational Costs...

Will each spouse have sufficient funds to help with the children's educational costs? Will a spouse only be able to help with the children's educational expenses if he or she receives help in the form of spousal support?

9. Financial Resources of Supported Spouse...

Does the spouse have sufficient property to take care of all his or her needs without financial help? What makes up that spouse's community assets?

10. Time Needed for Training or Educational Program...

Is it possible for the spouse seeking maintenance to get vocational, college, or university training to improve overall employability? With an education, will that spouse be able to build a sustainable career? How much money would be required to get the necessary education or training? How long will it take to get through that training or educational program?

11. Excessive or Abnormal Expenditures and Concealment...

Did the spouse hide property and assets or commit other destructive or wasteful acts?

12. Health Care Insurance Costs...

What will be the cost of health care insurance coverage for the spouse seeking support after the divorce?

13. Damages and Judgments from Criminal Conduct...

Was there a conviction of domestic violence committed against the other spouse or their child? Were there any other convictions in which the other spouse or child was a victim?

Maricopa County Spousal Maintenance Guidelines.

In an attempt to improve predictability and consistency in awards, the *Maricopa Spousal Maintenance Guidelines* were developed. The guidelines provide a formula from which a monthly support amount and support duration can be calculated with greater certainty. The formula allows for predictability and uniformity from one case to the next.

Guidelines Are Discretionary. As useful as Maricopa's guidelines are, their application is purely discretionary with the court. There is no mandate, or requirement, that a judge use any guidelines at all in his or her maintenance analysis. In the case of *Ramsay v. Ramsay*, 224 Ariz. 467, 232 P3d 1249 (Ariz.App. 2010), the Court of Appeals stated once again that:

"There are no legally authoritative 'guidelines' governing spousal maintenance in Maricopa County or any other Arizona county. A.R.S. § 25-319(B) vests the trial court with broad discretion to determine the amount and duration of spousal maintenance awards after due consideration of the factors that the Legislature articulated. The statute does not direct the court to refer to any set of guidelines, and the court's disregard of any such informal reference materials cannot give rise to a finding of abuse of discretion."

The best approach to resolving spousal maintenance issues is by thorough preparation. Substantiating a spouse's position on maintenance, with strong supporting evidence on each of the 13 factors, may be pivotal in achieving a favorable outcome in the case.

#

Scott David Stewart, a Martindale-Hubbell AV-rated attorney, is the founder and principal of the Law Offices of Scott David Stewart, pllc.

The [Law Offices of Scott David Stewart, pllc](http://www.SDSFamilyLaw.com), an Arizona divorce and family law firm with offices in Phoenix and Chandler, represents clients in Phoenix, Chandler, Scottsdale, Mesa, Gilbert, Glendale, Peoria, Tempe and Surprise. Areas of practice include divorce, child custody, parenting time and visitation, child support, spousal support (alimony), property and asset division. Every case accepted by the Law Offices of Scott David Stewart, pllc, receives personal attention, careful meticulous preparation, skilled negotiation, and aggressive litigation. The firm's website is www.SDSFamilyLaw.com.

The firm will continue focusing on family law, including divorce, [child custody](#), parenting time and visitation, child support, spousal support (alimony), and domestic violence.