

ALIMONY/SPOUSAL SUPPORT

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The BIG THREE Questions when analyzing a case for alimony:

1. Can both spouses support themselves in the marital lifestyle?
2. Can one spouse afford to pay the other spouse?
3. Is this a long term marriage?

Basic Alimony Analysis – Begin with the primary factors, and move to the secondary factors

Primary Factors

Can both Spouses support themselves in the marital lifestyle?
Can one spouse afford to support the needier spouse?
Is this a long term marriage?
Is this a short term marriage?
How much time, if ever, will it take for the needy spouse to be able to support themselves in the marital lifestyle standard?
What constitutes the marital standard of living?
What was the plan of the parties for the marriage?

Secondary Factors:

Ages
Health Problems
Minor Children still in the home
What was the agreed plan of the parties
What were the parties contributions to the marriage?
What are the parties relative resources?
Has there been misconduct financially impacting the marriage?
Has there been a financial impact on the needy spouse from the marriage?

Historical Alimony Cases:

- A. *Canakaris v. Canakaris*, 382 So.2d 1197 (Fla. 1980) – Important Alimony Case
- B. *Acker v. Acker*, 904 So.2d 384 (Fla. 2005) – Double Dipping
- C. *Belcher v. Belcher*, 271 So.2d 7 (Fla. 1972) – Temporary Relief Standard
- D. *Mallard v. Mallard*, 771 So.2d 1138 (Fla. 2000) – No savings component to alimony
- E. *Hamlet v. Hamlet*, 583 So.2d 654 (Fla. 1991) – All awards should be considered together
- F. *Noah v. Noah*, 491 So.2d 1124 (Fla. 1986) – Impact of misconduct on alimony
- G. *Walter v. Walter*, 464 So.2d 538 (Fla. 1985) – Rehab not preferred over permanent
- H. *Zold v. Zold*, 911 So. 2d 1222 (Fla. 2005) - Undistributed "pass-through" income was not automatically attributable to a shareholder-spouse as income for purposes of determining child support, alimony, or attorney fees, however shareholder-spouse has burden of proving that the "pass-through" income was properly retained for corporate purposes.
- I. *Gray v. Gray*, (2d DCA 1995) – Great deference should be given to wife's employment status and role as primary care giver to children
- J. *Hill v. Hooten*, (5th DCA 2001) – Court should generally look to standard of living enjoyed by the parties at time of separation or filing dissolution petition rather than at earlier time in marriage when parties had lower lifestyle

FLORIDA ALIMONY STATUTES

§ 61.08. Alimony

(1) In a proceeding for dissolution of marriage, the court may grant alimony to either party, which alimony may be rehabilitative or permanent in nature. In any award of alimony, the court may order periodic payments or payments in lump sum or both. The court may consider the adultery of either spouse and the circumstances thereof in determining the amount of alimony, if any, to be awarded. In all dissolution actions, the court shall include findings of fact relative to the factors enumerated in subsection (2) supporting an award or denial of alimony.

(2) In determining a proper award of alimony or maintenance, the court shall consider all relevant economic factors, including but not limited to:

- (a) The standard of living established during the marriage.
- (b) The duration of the marriage.
- (c) The age and the physical and emotional condition of each party.
- (d) The financial resources of each party, the nonmarital and the marital assets and liabilities distributed to each.
- (e) When applicable, the time necessary for either party to acquire sufficient education or training to enable such party to find appropriate employment.

(f) The contribution of each party to the marriage, including, but not limited to, services rendered in homemaking, child care, education, and career building of the other party.

(g) All sources of income available to either party.

The court may consider any other factor necessary to do equity and justice between the parties.

(3) To the extent necessary to protect an award of alimony, the court may order any party who is ordered to pay alimony to purchase or maintain a life insurance policy or a bond, or to otherwise secure such alimony award with any other assets which may be suitable for that purpose.

(4) (a) With respect to any order requiring the payment of alimony entered on or after January 1, 1985, unless the provisions of paragraph (c) or paragraph (d) apply, the court shall direct in the order that the payments of alimony be made through the appropriate depository as provided in [s. 61.181](#).

(b) With respect to any order requiring the payment of alimony entered before January 1, 1985, upon the subsequent appearance, on or after that date, of one or both parties before the court having jurisdiction for the purpose of modifying or enforcing the order or in any other proceeding related to the order, or upon the application of either party, unless the provisions of paragraph (c) or paragraph (d) apply, the court shall modify the terms of the order as necessary to direct that payments of alimony be made through the appropriate depository as provided in [s. 61.181](#).

(c) If there is no minor child, alimony payments need not be directed through the depository.

(d) 1. If there is a minor child of the parties and both parties so request, the court may order that alimony payments need not be directed through the depository. In this case, the order of support shall provide, or be deemed to provide, that either party may subsequently apply to the depository to require that payments be made through the depository. The court shall provide a copy of the order to the depository.

2. If the provisions of subparagraph 1. apply, either party may subsequently file with the depository an affidavit alleging default or arrearages in payment and stating that the party wishes to initiate participation in the depository program. The party shall provide copies of the affidavit to the court and the other party or parties. Fifteen days after receipt of the affidavit, the depository shall notify all parties that future payments shall be directed to the depository.

3. In IV-D cases, the IV-D agency shall have the same rights as the obligee in requesting that payments be made through the depository.

§ 61.09. Alimony and child support unconnected with dissolution

If a person having the ability to contribute to the maintenance of his or her spouse and support of his or her minor child fails to do so, the spouse who is not receiving support or who has custody of the child or with whom the child has primary residence may apply to the court for

alimony and for support for the child without seeking dissolution of marriage, and the court shall enter an order as it deems just and proper.

§ 61.10. Adjudication of obligation to support spouse or minor child unconnected with dissolution; child custody, child's primary residence, and visitation

Except when relief is afforded by some other pending civil action or proceeding, a spouse residing in this state apart from his or her spouse and minor child, whether or not such separation is through his or her fault, may obtain an adjudication of obligation to maintain the spouse and minor child, if any. The court shall adjudicate his or her financial obligations to the spouse and child, shall establish the child's primary residence, and shall determine the custody and visitation rights of the parties. Such an action does not preclude either party from maintaining any other proceeding under this chapter for other or additional relief at any time.

General Guidelines and Factors:

Each type of alimony has several basic elements. If you are able to prove these elements, then that type of alimony is appropriate for your case. For each alimony type, all of the elements must be proven.

Types of Alimony:

1. Permanent
2. Lump Sum
3. Temporary
4. Rehabilitative
5. Bridge the Gap (Not recognized in the 5th DCA)

The Factors are delineated in F.S. § 61.08:

- (a) The **standard of living** established during the marriage.
- (b) The **duration** of the marriage.
- (c) The **age and the physical and emotional condition** of each party.
- (d) The **financial resources** of each party, the nonmarital and the marital assets and liabilities distributed to each.
- (e) When applicable, the time necessary for either party to acquire sufficient education or training to enable such party to find appropriate employment.
- (f) The **contribution of each party to the marriage**, including, but not limited to, services rendered in homemaking, child care, education, and career building of the other party.
- (g) All **sources of income** available to either party.

Elements of each form of alimony:

A. Permanent Alimony

1. **Ability to Pay:** The payor spouse must have the ability to pay the support. *Canakaris v. Canakaris*, 382 So.2d 1197 (Fla. 1980). To determine ability to pay, the Court should look at the payor spouse's income and available assets, marital or non-marital. *White v. White*, 617 So.2d 732 (Fla. 2d DCA 1993).
2. **Permanent Need:** The recipient spouse must have a need, based on the standard of living established during the marriage. *Canakaris*, 382 So.2d 1197; *Mallard v. Mallard*, 771 So.2d 113 (Fla. 2000). To have a need, the recipient spouse must be unable to gain (or regain) the means to earn enough income by themselves to meet the standard of living set by the marriage. *Castillo v. Castillo*, 626 So.2d 1035 (Fla. 3d DCA 1993) (No permanent alimony in marriage of less than 5 years where the wife was self-supporting and did not sacrifice her education or career for the marriage).
3. **Note that the length of the marriage is a statutory factor, but not an element** Permanent alimony is presumed to be where the parties were in equal financial circumstances appropriate in long-term marriages, (over approximately 12 years) but a time element is not necessary for an award of permanent alimony.
4. **Grey Area Marriages:** This is a range, which varies slightly from District to District. There is no presumption of permanent alimony in marriages of this length.

DCA Time periods:

1st – 12+ years, *Grimes v. Grimes* 770 So.2d 293 (Fla. 1st DCA 2000); *Ziegler v. Ziegler*, 635 So.2d 50 (Fla. 1st DCA 1994)

2nd – 12-14 years, *Knoff v. Knoff*, 751 So.2d 167 (Fla. 2d DCA 2000); *Cardillo v. Cardillo*, 707 So.2d 350 (Fla. 2d DCA 1998).

3d – 14 years, *Levy v. Levy*, 862 So.2d 48 (Fla. 3d DCA 2003).

4th – Less than 17 years – *Moorhead v. Moorhead*, 745 So.2d 549 (Fla. 4th DCA 1999).

5th – 12-15 years – *young v. Young*, 677 So.2d 1301 (Fla. 5th DCA 1996).

B. Lump Sum

1. **Ability to Pay:** The payor must have an ability to pay the lump sum amount without endangering the payor's financial status. *Canakaris*, 382 S.2d 1197; *Combee v. Combee*, 452 So.2d 1043 (Fla. 2d DCA 1984); *Robinson v. Robinson*, 403 So.2d 1306 (Fla.

19800. The court may look to the payor spouse's assets, marital and non-marital, in deciding ability to pay. *Pollack v. Pollack*, 517 So.2d 708 (allowing lump sum payment from the husband's nonmarital assets).
2. **Need:** The lump sum award must be necessary for either support OR to aid in equitable distribution. However the court must clearly delineate which of these two purposes the lump sum award is being utilized. *Glazner v. Glazner*, 693 So.2d 650 (Fla. 5th DCA 1997).
 3. **Special Circumstance:** A special circumstance must exist to warrant a lump sum award, rather than permanent or rehabilitative alimony. *Canakaris*, 382 So.2d 1197; *Morgan v. Morgan*, 813 So. 2d 139 (Fla 1st DCA 2002). This element is necessary whether the lump sum award is being made for support or to effect the equitable distribution of marital property. *Troconi v. Troconi*, 46 So.2d 203 (Fla. 1985). There must be justification to use this type of alimony. See also *Robinson*, 403 So.2d 1306.
 4. **No Double Dipping:** There cannot be a "double-dip." The court cannot use the same "special circumstance" to justify alimony and to justify an unequal distribution of marital assets. *Jessee v. Jessee*, 839 So. 2d 842 (Fla. 3d DCA 2003).
 5. Specific Criteria that has been developed in the case law for awarding lump sum alimony (see *Yandell v. Yandell*, 39 So. 2d 554 (Fla. 1949) and *Cundall v. Cundall*, 426 So. 2d 1189 (Fla. 1980):
 - a. Lump sum alimony would accomplish putting a definite end to the relationship.
 - b. The needy spouse brought assets to the marriage, or helped the parties acquire property. *Thompson v. Thompson*, 546 So.2d 99 (Fla. 4th DCA 1989)
 - c. The payor spouse is in a position to respond to a grow allowance of alimony without jeopardy to his business, profession or employment, or that he is unable to make periodic payments.
 - d. A lump sum is necessary to provide the wife with vested security against her ex-husband's possible early demise or disability.
 - e. The wife can demonstrate a special need for a lump sum award, either to make required expenditures or to get her out of debt.
 6. *The Courts may look to a spouse's non-marital assets when awarding lump sum alimony only in cases of special need, and the above listed criteria must be met.*

C. Rehabilitative Alimony

1. **Rehabilitation Plan:** The recipient spouse must have a specific plan for rehabilitation. *Kunzweiler v. Kunzweiler*, 698 So.2d 1251 (5th DCA 1997); *Rowl v. Rowl*, 864 So.2d 1236 (Fla. 5th DCA 2004). Rehabilitative alimony is appropriate when the recipient spouse has a specific plan for education or re-training that will allow that spouse to become self-supporting in a manner reasonably commensurate with the standard of living established during the marriage. *Ghen v. Ghen*, 575 So.2d 1342 (Fla. 4th DCA 1991). For the plan to be sufficient there must be evidence of the skills which the recipient will be developing. Plan can be written or orally presented to the Court. *Layeni v. Layeni*, ___ So.2d ___, (Fla. 5th DCA 2004).
2. **Ability to Pay:** The payor spouse must have an ability to pay the support. *Gibson v. Gibson*, 596 So.2d 1223 (Fla. 2d DCA 1992).
3. **Need that can be satisfied:** The recipient spouse must have a need that will be satisfied by the rehabilitative plan. *Westberry v. Westberry*, 777 So.2d 1087 (Fla. 2d DCA 2001). Rehabilitative alimony is inappropriate when the requesting spouse will never be capable of self-support. *Lanier v. Lanier*, 594 So.2d 809 (Fla. 1st DCA 1992). Meeting the standard of living created during the marriage is not essential in rehabilitative alimony. *Kuvin v. Kuvin*, 442 So.2d 203 (Fla. 1983). Rehabilitative alimony is awarded for the purpose of establishing or reestablishing a capacity for self-support in the receiving spouse, and is generally appropriate following short-term marriage and where the spouse is relatively young, healthy, and educated.
4. **Factors to Consider** (*see Ghen v. Ghen*, 575 So.2d 1342 (Fla. 4th DCA 1991):
 - a. Earning ability of the paying spouse;
 - b. Capacity for self-support, either through redevelopment of skills or new training;
 - c. Whether or not the spouse can support themselves after rehabilitation in a manner reasonably commensurate with the with the standard enjoyed during the marriage, if it is a relatively long-term marriage;
 - d. Whether the spouse is being compensated for lost career opportunities and the transfer of earning power to the supporting spouse during the marriage.
5. If the requesting spouse will never be capable of self-support, rehabilitative alimony is inappropriate. *Lanier v. Lanier*, 594 So.2d 809 (Fla. 1st DCA 1992); *Grant v. Grant*, 603 So.2d 68 (Fla. 1st DCA 1992).
6. If no evidence that the recipient is seeking to redevelop previous job skills or train for new ones, or in situations where the capacity for self-support was not lost during the

marriage, than rehabilitative alimony may not be awarded. *Echols v. Elswick*, 638 So.2d 581 (Fla. 1st DCA 1994)

D. Bridge the Gap Alimony (Not recognized in 5th DCA)

1. **Specific Short-Term Need:** There must exist a **specific and identifiable** short-term need for the support. *Hunt v. Hunt*, 842 So.2d 1073 (Fla. 2d DCA 2003).
2. **Ability to Pay:** The payor spouse must have an ability to pay.
3. **Harm Caused by Marriage:** This is harm caused by the marriage to the requesting spouse's earning capacity.
 - a. Time out of the work force due to frequent moves by the earning spouse;
 - b. An agreement that the requesting spouse stay at home to raise the children;
 - c. Mental or physical illnesses that arose during the marriage;
 - d. Physical abuse during the marriage that cause a diminution of earning capacity by the requesting spouse;

E. Temporary Alimony

1. **Ability to Pay:** The payor spouse must have an ability to pay the temporary support. *Herr v. Herr*, 463 So.2d 447 (Fla. 4th DCA 1985)
2. **Need:** The recipient spouse must have a need for temporary support, based on the standard of living established by the marriage.

Insurance Issues

A. Life insurance

1. To the extent necessary to protect an award of alimony, the court may order any party who is ordered to pay alimony to purchase or maintain a life insurance policy. Fla. Stat. 61.08(3)
2. The court must make a determination of need prior to including a provision for security in a dissolution judgment. *Privett v. Privett*, 535 So.2d 663 (Fla. 4th DCA 1988)

B. Medical Insurance

1. As part of a support award, the court may order one spouse to purchase or maintain health insurance for the benefit of the other spouse. The obligation to maintain health insurance should not be open-ended. *Notarianni v. Notarianni*, 622 So.2d 1144 (Fla. 2d DCA 1993).
2. The Court should set a limit to the cost of such insurance or it should be modifiable if the obligation becomes cost prohibitive. *Blythe v. Blythe*, 592 So.2d 353 (Fla. 4th DCA 1992).

Important 2006 Cases

Lopez v. Lopez, 920 So. 2d 1165 (3d DCA 2006)

- 1) The trial court terminated appellee husband's alimony obligations to appellant wife by entering a default judgment against the wife.
- 2) The trial court granted the husband's motion for default, without taking any evidence except for the husband's financial affidavit, and granted his supplemental motion to modify alimony.
- 3) The trial court also cited the wife's failure and refusal to comply with discovery to support the default
- 4) Trial Court found that the husband did not have the present ability to make alimony payments, and terminated his alimony obligation.
- 5) W appealed judgment.
- 6) Although the wife defaulted, and should be precluded from presenting any evidence, the husband still had to meet his burden of establishing a substantial change in circumstances, and the wife was entitled to cross-examine and challenge that evidence.
- 7) The husband's alimony obligation should not have been terminated where he did not request termination and where the wife was not on notice of the same.
- 8) Judgment reversed, and the case was remanded for a determination of the proper amount of modification of the husband's alimony obligation to the wife, if any.
- 9) However, in light of the trial court's entry of default, the wife should be precluded from presenting evidence at an evidentiary hearing.

Donoff v. Donoff, 940 So. 2d 1221 (4th DCA 2006)

- 1) Ex Husband appealed the order of the Trial Court granting his request to modify alimony.
- 2) Wife sought attorneys' fees.
- 3) The trial court found that modification was warranted based on the wife's 10-year relationship with another man who provided her with economic support.
- 4) In determining the modified amount of alimony, the trial court held that it was not required to apply the criteria of [§ 61.08\(2\) Fla. Stat.](#) (2005).
- 5) Two factors were, in fact, relevant: the parties' financial resources and the sources of income available to each party, § 61.08(2)(d), (g).
- 6) Trial court erred in failing to consider these factors in determining the amount of any continued alimony under the wife's new circumstances.
- 7) Trial court refused to consider the wife's entire investment portfolio and IRA income, but considered the annual sums she spent on behalf of the parties' adult daughter.
- 8) Trial court also placed undue emphasis on the standard of living during the marriage, § 61.08(2)(a), which had little relevance in the instant case.
- 9) With her own assets of nearly \$2 million, plus the additional support afforded by her cohabiting partner, the wife required at best only nominal support to protect her future.
- 10) The trial court's finding that modification was warranted was affirmed, but the modified alimony was reversed.
- 11) The wife's request for attorneys' fees on appeal was denied.

Rosario v. Rosario, 32 Fla. L. Weekly D 114 (Fla. 4th DCA 2006) (Released for Publication January 12, 2007)

- 1) FJ awarded wife the entire share of equity in the marital home of husband as a lump-sum alimony award.
- 2) Trial court also made a special equity award in the marital home to the wife.
- 3) H appealed FJ.
- 4) The husband sought reversal of the lump-sum award to the wife of the husband's share of equity in the marital home.
- 5) H argued that there were no circumstances which justified the award and that the award substantially endangered his economic status.
- 6) H also requested reversal of the special equity award in the marital home to the wife.
- 7) Trial court made general findings sufficient to justify periodic alimony under [§ 61.08, Fla. Stat](#) (2006), but did not make any special findings as to why a lump-sum award was appropriate.
- 8) Appellate Court found that this alone constituted an independent **ground** for reversal.
- 9) Additionally, there was an unequal distribution of the parties' marital assets and no showing of necessity or legal justification by the circumstances.
- 10) Special equity award to the wife was not in error because it was based on the trial court's finding that the wife's family members gave her a gift in the amount of the award for the down payment on the marital home.
- 11) The lump-sum alimony award of the marital home to the wife was reversed.
- 12) Matter was remanded for the TC to consider entering an order granting the former wife exclusive use and occupancy of the marital home until the youngest child reached the age of majority, at which time the house could be sold and the proceeds equitably divided between the parties.
- 13) The special equity award to the wife was affirmed.

Chambliss v. Chambliss, 921 So. 2d 822 (Fla. 2d DCA 2006)

- 1) W appealed judgment granting modification of FJ
- 2) Parties entered into a marital settlement agreement which was ratified in the trial court's final judgment of dissolution of marriage.
- 3) The agreement included provisions requiring the husband to pay the wife permanent periodic alimony with a specified yearly increase, as well as maintenance of hospital and medical insurance, payment of medical and dental expenses, and maintenance of life insurance as security for the alimony.
- 4) Husband petitioned for a modification of his obligations, based on his allegations of a substantial change in circumstances (SCC) arising from the wife's having obtained a master's degree in nursing, a substantial increase in her salary, and her ability to obtain health and medical insurance through her employment.
- 5) Trial court found that a SCC had been shown, and it granted various modifications to the husband's obligation.
- 6) Appellate court found that the change in Wife's circumstances was contemplated at the time of final judgment.
- 7) Accordingly, it did not constitute an SCC for purposes of granting modification.

- 8) The agreement was not a property settlement agreement for which modification was precluded.

Kelley v. Kelley, 31 Fla. L. Weekly D 3034 (Fla. 2d DCA 2006)

- 1) W appealed FJ.
- 2) Court awarded \$1585 per month.
- 3) The parties were married 29 years.
- 4) Wife was 56 years old, unemployed at the time of the hearing, and had not been employed for over 23 years.
- 5) The wife's financial affidavit listed total monthly expenses of \$ 5821 per month.
- 6) The wife calculated that she needed \$ 3883 per month in permanent periodic alimony to meet the remainder of her expenses.
- 7) The trial court indicated that it felt some of the wife's expenses were inflated.
- 8) However, the appellate court found that the wife had unchallenged needs in excess of \$4500 per month.
- 9) Trial court awarded an amount of money that left the wife, under the best of circumstances, with a gross income of about \$4000.
- 10) Trial court erred in awarding an amount of alimony that left the wife substantially unable to meet her basic needs, let alone enjoy the standard of living she enjoyed during the marriage.
- 11) The trial court also erred in failing to award the wife all of the attorneys' fees she reasonably incurred based upon the substantial financial disparity that remained under the provisions of the final judgment.
- 12) The judgment was reversed and the case was remanded for further proceedings, at which time the wife's request for attorneys' fees should also have been reconsidered.

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