

By Hadrian N. Hatfield

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Alimony Guidelines

Alimony long has been one of the least predictable aspects of divorce. Family law attorneys struggle daily with how to advise clients on this complex and uncertain issue. Clients surely struggle even more with the inability of their attorneys to advise them with any certainty whether there will be alimony, and if so how much and for how long. Now we have a new appellate case decided by the highest court in Maryland on May 11, 2010, *Boemio v. Boemio*, No. 57, September Term, 2009, which tells us the court may consider a mathematical alimony formula under certain conditions.

Before too much celebration, though, and before even getting into the finer legal dissection of this case that is sure to consume the time and energy of many fortunate divorce attorneys (and the dollars of many unfortunate clients), some words of caution are appropriate. More predictability in alimony may yield little in terms of more settlement of cases. This results because alimony, while fundamentally a financial issue, often hides strong emotional content.

Alimony laws serve many purposes. One is to ensure that someone who depended on the financial security from marriage for many years can survive without becoming a destitute dependent of the State. Another is to allow someone who sacrificed earning capacity to other pursuits that benefited the family enough time to become self-supporting. An additional purpose is to recognize that different contributions make a marriage and family successful, and that neither party should be penalized because society values and rewards various contributions differently. Yet another purpose is to encourage all citizens to be productive and to contribute towards their own economic needs. And another is to acknowledge the sacrifices, financial and other, from each party to making the marriage and family work. This list is made without even raising the specter of punishment for fault in ending the marriage. Many clients might wish to include this last purpose. Maryland case law, however, expressly provides that the purpose of alimony is not to punish. And professionals involved with divorce, including judges, routinely discount even the statutory factor of “cause of the estrangement” when considering alimony.

All these purposes for alimony contain some components that are subjective to the parties individually, and that depend on basic notions of fairness. And alimony is a transfer, and not a creation, of wealth. Thus, it always includes an element of loss or gain. Little can be more emotionally powerful than notions of recognition and acknowledgement, self-worth, sacrifice, fairness, and fear of loss or greed for gain.

The danger, and fallacy, of alimony guidelines is the perception that if only we eliminate the emotional context, and use a mathematical formula, this issue will become more predictable and easier to resolve. Even if numerical guidelines could encompass all the myriad different factual possibilities, emotions linger and persist despite the allure of logic. Often, if squelched in one domain, emotions come back magnified in another area.

This is why attorneys who regularly work with divorcing couples still will need to focus on resolving the emotional aspects long after the law gives us a mathematical alimony formula. And it is why clients will always need attorneys who understand and are comfortable working with emotions in resolving divorce issues, especially alimony.

NOTICE

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