

GUEST COLUMN

Are Alimony Guidelines Coming to Maryland?

It is the bane of every family law attorney's existence when a client asks what to expect from a court when it comes to a claim for alimony. Unlike child support which has a guidelines matrix for the calculation of support when parents earn \$120,000 per year or less (Md. Code Ann. Fam. Law §12-204), there is no such authority in the State of Maryland for the use of guidelines in determining alimony.

The child support guidelines have helped to provide uniform and predictable awards to custodial parents. When alimony awards occur, they are anything but uniform and vary from case to case and jurisdiction to jurisdiction.

While there is no statutory authority for the use of alimony guidelines in Maryland, practitioners have availed themselves of the use of two sets of guidelines created by the American Academy of Matrimonial Lawyers (AAML) and by the Kaufman Alimony Guidelines that were developed by the Women's Law Center of Maryland.

Maryland law requires that several statutory factors be considered in determining an award of alimony. While some of the factors are considered in the previously mentioned alimony guidelines, not all of the factors can be incorporated into a formula. For a fair and equitable determination of an award of alimony, the following factors must be considered:

- (1) the ability of the party seeking alimony to be wholly or partly self-supporting;
- (2) the time necessary for the party seeking alimony to gain sufficient education or training to enable that party to find suit-

able employment;

(3) the standard of living that the parties established during their marriage;

(4) the duration of the marriage;

(5) the contributions, monetary and nonmonetary, of each party to the well-being of the family;

(6) the circumstances that contributed to the estrangement of the parties;

(7) the age of each party;

(8) the physical and mental condition of each party;

(9) the ability of the party from whom alimony is sought to meet that party's needs while meeting the needs of the party seeking alimony;

(10) any agreement between the parties;

(11) the financial needs and financial resources of each party, including:

(i) all income and assets, including property that does not produce income;

(ii) any award made under §§ 8-205 and 8-208 of this article;

(iii) the nature and amount of the financial obligations of each party, and

(iv) the right of each party to receive retirement benefits, and

(12) whether the award would cause a spouse who is a resident of a related institution as defined in § 19-301 of the Health-General Article and from whom alimony is sought to become eligible for medical assistance earlier than would otherwise occur.

Md. Code Ann. Fam. Law § 11-106 (b).

The Kaufman Alimony Guidelines consider "...the length of the marriage, age of claimant; education and earning potential of the claimant; income of the parties; and child care responsibilities." <http://www.wlcmd.org/projects.html>.

These guidelines do not consider the standard of living established during the marriage; the monetary and nonmonetary contribution of each party to the well-being of the family; circumstances contributing to the estrangement of the parties; the physical and mental condition of each party; the financial condition of each of the parties; any agreement between the parties, and a monetary award made in the case. The Maryland alimony statute contains no reference to childcare responsibilities, but is a factor considered in the

Kaufman Guidelines.

The AAML Guidelines provide a formula for the computation of the amount and length of an alimony award. The amount and/or duration may be adjusted to allow deviation for other factors such as: the claimant having forfeited a career in favor of the marriage or in support of the career of the spouse; unusual tax consequences; the claimant is the primary caretaker of a dependent minor or disabled adult child, or the claimant has unusual needs.

The above list is incomplete and does not follow the statutory factors in Maryland. See "Report of the American Academy of Matrimonial Lawyers on Considerations, when Determining Alimony, Spousal Support or Maintenance," March 9, 2007 at <http://www.aaml.org/go/library/articles/alimony-guidelines/?keywords=alimony%20guidelines>.

In January 2010, the Court of Appeals will hear the first case regarding the use of such guidelines. In an unreported decision, the Court of Special Appeals held that "...simply experimenting with the AAML guidelines, in conjunction with a fully developed and enunciated FL § 11-106(b) analysis, is not error, particularly where the court correctly recognized that alimony guidelines are not law or evidence." *Boemio v. Boemio*, No. 2607 September Term, 2007 (Md. Ct. Spec. App. unpublished February 13, 2009).

The Court of Appeals has granted *certiorari* to answer whether the trial court erroneously relied upon such guidelines that are not authorized by either statute or rule in its determination of an alimony award. *Boemio v. Boemio*, 409 Md. 44, 972 A.2d 859 (Table) (June 9, 2009).

Are alimony guidelines going to become another tool for judges to use in determining alimony awards? Will the Court of Appeals sanction their use or determine that the issue must first be decided by the legislature?

We will have to wait and see. Until then, practitioners will continue to wince when asked by their clients to opine about whether alimony will be awarded in their case.

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