

REPORT
OF THE
COMMISSION
TO STUDY THE LAW OF DIVORCE

April 18, 1995

RECOMMENDATION 13

Legislation authorizing the award of limited duration alimony.

The Commission recommends that the types of alimony which may be awarded by the court be expanded to include limited duration alimony.

The purpose of permanent alimony, in contrast to rehabilitative alimony, is to address any economic dependency created by the marriage and to permit the dependent spouse to share in the economic success created by the marital partnership and reflected by the supporting spouse's income level. See Gughotta v. Gughotta 160 N.J. Super. 160, 164 (Ch. Div. 1987) aff'd 164 N.J. Super. 139 (App. Div. 1978).

The earning capacity of a full-time homemaker in a long-term marriage decreases proportionately with the length of the marriage as the homemaker's education, skills and job experience become outmoded. The longer the marriage, the more likely it is that the homemaker's earning capacity will become permanently diminished. Meanwhile, the homemaker's spouse has reaped the benefits of having a family and yet devoting all of his (or her) productive hours to an increase in earning capacity.¹⁰

After studying the topic, the Commission concluded that the statutes should recognize a third type of alimony, in addition to rehabilitative alimony (short duration; specific educational or training purpose) and permanent alimony (lifetime duration, unless the recipient remarries; general purpose of compensating the recipient's economic dependency). This third type, limited duration alimony, would address the factual circumstances that are presented in some of the

¹⁰ See Krauskopf, "Rehabilitative Alimony: Uses and Abuses of Limited Duration Alimony," 21 Family Law Quarterly 573 (Winter 1988).

cases that are heard in the Family Part. These cases generally involve a marriage of short duration where permanent or rehabilitative alimony would be inappropriate or inapplicable but where, nonetheless, economic assistance for a limited period of time would be just.

The Commission recognizes that, during the settlement process, when an objective such as limited duration alimony can only be obtained through settlement, the party desiring the objective is at a clear disadvantage in negotiations. A statute specifically authorizing limited duration alimony would fill a void that cannot otherwise be filled currently, except in the settlement process. It would offer a benefit to spouses deserving of alimony for a limited time but who would be unlikely to receive any alimony under our present statutory scheme.

With the added option of limited duration alimony, the courts will not have to use the fiction of requiring one spouse to pay "rehabilitative" alimony to a spouse who has a career and is in no need of "rehabilitation."

The recommended legislation in this regard would provide that, in any case where a party requests an award of permanent alimony, the court would first be required to consider and make specific findings on a number of factors, including the need and ability of the parties to pay, the duration of the marriage, the health of the parties, their standard of living and their earning capacities. After this threshold determination, if the court determines that an award of permanent alimony is not warranted in the case, it would then consider whether limited duration alimony is warranted.

The court would also be required to consider why, in lieu of such an award, equitable distribution of the marital property could not be used to compensate the potential alimony recipient for the recipient's financial or non-financial contributions to the marriage.

Specifically, the statutory factors that the court would use to determine whether limited duration alimony is warranted are as follows:

1. The duration of the marriage.
2. The payor's ability to pay.

3. The age, physical health and emotional health of the parties.
4. The standard of living enjoyed during the marriage.
5. The contribution of the spouse seeking support to the development and maintenance of the parties' marital standard of living.
6. The financial and non-financial contributions of the parties to the marriage.
7. The educational levels, vocational skills and earning capacities of the parties and how they were affected by the marriage.
8. The economic impact on the parties of the child-rearing responsibilities for children of the marriage.
9. The distribution of property acquired during the marriage and the ability of either spouse to have acquired such assets without the marriage.
10. The fairness of either spouse enjoying a standard of living comparable to that enjoyed during the marriage, given the parties' financial and non-financial contributions to the development, maintenance and acquisition of income or assets which supported the marital lifestyle.
11. Whether the parties were economically advantaged or disadvantaged by the marriage.
12. The income or property brought to the marriage by the parties.
13. The use and dissipation during the marriage of the parties' pre-marital assets.
14. The income generated by assets equitably distributed, except for income generated by a share of a retirement benefit treated as an asset and equitably distributed. [Current law, in N.J.S.A.2A:34-

23, specifically excludes income generated by retirement benefits from being included in determining alimony. The proposed legislation would not affect this provision.]

15. The sale of the marital assets and the availability of the proceeds for the parties' use.

16. The time in which the spouse seeking support can reasonably be expected to improve earning capacity to a level where alimony of limited duration is no longer appropriate.

17. Such other factors as the court deems appropriate.

Providing the power to award limited duration alimony, subject to safeguards and only after an analysis of carefully crafted statutory factors, will permit the courts to mold their decision making to the facts presented without the artificial constraints now presented by only having the options of awarding rehabilitative alimony, permanent alimony or no alimony at all.

In developing the statutory factors, the Commission's intent is to direct the court to focus upon the economic impact of the marriage on the parties by examining whether employment opportunities were lost or career opportunities delayed. In addition the court would inquire into any advantages obtained by either spouse by the equitable distribution award. All these must be inter-related with all relevant economic factors in determining whether any economic dependency that might exist between the parties was created by the marriage or was the product of the parties' disparate skills and educational opportunities, unrelated to anything that happened during the marriage. The court's inquiry would focus not on the fact that the parties were married but upon the impact of the marriage and child-rearing responsibilities on the parties.

The proposed legislation would also require the court to inquire whether either of the parties were economically disadvantaged by child-rearing responsibilities for children of the marriage.

The legislation would also require the court to consider, in determining the length of time that the limited duration award would last, the length of time it would reasonably take for the spouse seeking support to improve his or her earning capacity to a level where limited duration alimony is no longer appropriate.

The legislation would provide that the amount of an award of limited duration alimony might be modified by the court based on "changed circumstances" pursuant to the case law governing modification of permanent alimony awards, but that the length of the term during which the payments would be made could not be changed.

The legislation would provide that the obligation to pay limited duration alimony would terminate upon the death of either party or the remarriage of the recipient.

Under the legislation, if as a result of the marriage, the dependent spouse was economically disadvantaged to such a significant degree that economic assistance for a limited period of time would be inadequate, then limited duration alimony would not be considered.

Limited duration alimony is not intended to be a replacement for permanent alimony where the length of the marriage and the contributions made by the dependent spouse are significant. In particular, it is singularly inappropriate in long marriages. It is, therefore, the clear and unequivocal view of the Commission that such term alimony should be limited to shorter marriages and not be ordered in long-term marriages.