

## CHILD SUPPORT/ALIMONY

### HOW IS CHILD SUPPORT DETERMINED?

Once the determination is made that a divorce should be granted, the primary concern of the court becomes the well-being of the minor children of the parties. It is the responsibility of the court to determine the amount that the non-custodial parent is responsible to contribute for support of the minor children.

The court must use the Child Support Guidelines adopted by the Alabama Supreme Court in setting the amount of child support, unless the court specifically finds that following the Guidelines would be unjust and inappropriate. The court combines the income of the divorcing parents, determines from the Guidelines the applicable amount of child support for the number of children of the marriage based upon that income, adjusts this amount for work-related child care expenses and health insurance premiums, and then assigns a portion of that support amount to the non-custodial parent based on his/her percentage share of the combined income.

The most important factors to be considered by the court in making an award of child support are the needs of the children and the parent's ability to earn and pay his/her portion of the support. A parent's obligation to pay child support may be based on his or her demonstrated ability to earn a certain amount of money, not what that parent is choosing to earn.

Child support is paid until the child reaches the age of majority, but can be extended beyond that time under certain circumstances, such as during post majority education (college), or where the child is mentally or physically disabled.

### WHAT ABOUT ATTORNEY FEES?

You should discuss the amount of the attorney's fees and who will pay them in your first discussion with your attorney. Attorney's fees differ greatly within the state. Non-contested divorces generally cost less and the attorney's fees increase with the complexity of any contested divorce. Factors which affect the attorney's fee in a divorce include child custody, the size and complexity of any property settlement, tax advice, alimony settlement, fault of the parties, et cetera.

It should be noted that an attorney cannot ethically represent both the husband and wife in a divorce proceeding. Further, an attorney cannot ethically handle a domestic relations matter for a fee that is contingent upon securing a divorce or upon the amount of alimony, support or property settlement awarded.

### WHAT SHOULD I KNOW ABOUT ALIMONY?

Alimony is based historically on the common-law right of a wife to be supported by her husband even after a divorce unless she forfeits it by her misconduct. But today, either a husband or a wife may be entitled to alimony if the court determines he or she needs support and the other party is able to pay. There are two types of alimony: temporary and permanent. Temporary alimony is awarded the needy party during the time after a divorce suit is filed while awaiting trial or final court decision. Permanent alimony is that which is awarded by the court in its final decree. Permanent alimony can either be "in gross," which is a fixed total amount and cannot be changed, or "periodic," which is an amount payable

on a regular basis without a fixed total and which can be modified under some circumstances.

The award of alimony and its amount is completely discretionary with the court which considers such factors as age, earning capacity, health, conduct, fault, education, and length of marriage and income. There is no set mathematical formula in setting the amount. Alimony is separate and apart from any property division between the parties. However, as a practical matter, there is often a relationship between the two issues, inasmuch as some of the same factors are used as guides to property settlements.

*NOTE: The Alabama State Bar publishes a series of free brochures on legal topics of interest to the public. For information on the series and/or to receive copies, call 1-800-354-6154, extension 134.*

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