

UNPACKING SPOUSAL SUPPORT DEFINING, DECODING, AND DEMYSTIFYING DIVORCE'S FINANCIAL MAZE

BY RYAN P. NOWLIN

Divorce can be a tumultuous journey, filled with heartache, confusion, and an avalanche of questions. What may initially seem like a straightforward situation can transform into a whirlwind of emotions due to a crumbling family dynamic. At an initial client meeting, a good family law attorney is prepared to dive headfirst into the ocean of legal considerations as their potential client anxiously sits across the table. Amidst the chaos, one series of burning questions is at the top of that potential client's mind: What is spousal support, really? How much am I going to have to pay (or how much am I going to receive)? And just how long will it last? As an attorney, you are tasked with guiding your clients through an intricate web of financial implications — offering practical advice, honest answers, and tailored wisdom.

Beyond providing legal expertise, family law attorneys must lead clients through one of the most stressful experiences of their lives with compassionate guidance. A good attorney can explain the law, but a great attorney will anticipate the questions clients have at that initial meeting and throughout the representation. In order to empower and support our clients, we need a deep understanding of family relations law and anticipate their inquiries. With that in mind, let's unravel the mysteries of spousal support in Ohio, shedding light on its intricacies, addressing common questions, and offering practical tips to equip you with the knowledge you need to navigate your clients through this aspect of their divorce.

What Does the Court Consider When Determining a Support Award?

Clients wonder how their financially entwined lives will become untangled and how they will fare economically in the divorce process. The discussion about spousal support should begin at the outset of the representation. Attorneys should take a proactive approach,

dedicating ample time early on to helping clients navigate their available options and determine the best course of action suiting their unique circumstances.

Spousal support, also known as alimony, is a form of financial assistance one spouse provides to the other following a divorce or legal separation. It is designed to address the potential economic disparities between the spouses which can arise when a marriage ends. Spousal support plays an important role in ensuring that both parties maintain a reasonable standard of living post-divorce, especially when there is a significant difference in their respective incomes or earning capacities.

In Ohio, the concept of spousal support is governed by the Ohio Revised Code Section 3105.18, which outlines the factors a court considers in determining the duration and amount of support, including:

- The duration of the marriage,
- The standard of living established during the marriage,
- The income and earning capacity of each spouse,
- The age and physical/emotional health of the parties,
- The educational background of each spouse, and
- The contributions made by each spouse to the marriage.

Depending on the specific situation, the court has the discretion to consider additional factors.

One question often asked is whether support can still be ordered if both spouses worked full-time. Spousal support is still an option under these circumstances if there is a significant gap between the spouses' incomes.

Bridging the Gap in the Short Term

Clients often wonder about their immediate financial needs as they consider moving forward with the divorce process, both while a contested divorce is pending and after the divorce is finalized. In many cases, the fear of how bills might get paid in the aftermath of a physical

separation of households may keep a party from moving forward with the termination of their marriage. In Ohio, courts are empowered to exercise discretion and determine whether support should be granted on a temporary basis, based on the unique circumstances of each case.

Temporary spousal support acts as a crucial lifeline during the divorce process, ensuring that the spouse facing financial disadvantage can address their immediate needs until a final settlement is reached. Once a motion for temporary support is filed, the court can allocate responsibility for paying monthly household expenses and can require one party to pay a regular cash allotment to the other for expenses like groceries or gasoline. However, a temporary support award is not automatic, nor does it happen immediately after a motion is filed. A party seeking temporary support needs to understand that there will likely be a lag of time between the filing of a motion and when that additional money will be available.

Support is Not Automatic: Speak Now or Forever Hold Your Peace

A court will not automatically grant spousal support in every divorce or legal separation case in Ohio. A party must proactively ask for it; if not, the matter may be finalized without a spousal support award and without the court retaining the ability to revisit the issue in the future. As a result, failing to request spousal support can hinder your client from accessing the potential financial relief that may be available to them.

Temporary vs. Permanent Spousal Support

Clients want to know what type of support is available to them and how long it will last. Ohio recognizes the following types of spousal support, all serving a unique purpose:

- **Temporary Spousal Support:** As referenced above, this form of support is awarded during the pendency of the divorce proceedings and is designed to maintain the financial status quo until the final settlement is reached.

- **Permanent Spousal Support:** After the termination of the marriage, “permanent” spousal support helps to assist the receiving spouse in acquiring necessary skills or education to become self-supporting within a reasonable period of time. The court may consider factors such as the receiving spouse’s career prospects, education, and job training opportunities when determining the duration of this support. Such spousal support is not necessarily permanent, as the duration is determined by the court on a case-by-case basis: for instance, some courts may award spousal support for a length of time equal to one-third of the length of the marriage.
- **Indefinite Spousal Support:** Indefinite support is typically awarded in long-term marriages where one spouse may be unable to become self-supporting due to age, disability, or other circumstances. This type of support may also be considered when the payor spouse is reaching retirement age, and it allows the court to terminate or modify the support based on certain circumstances (for instance, the death of either party, the remarriage or cohabitation of the recipient, or another substantial change in circumstances). Spousal support extends beyond just direct monetary assistance. Recipients may also receive financial contributions on their behalf (like a mortgage or car payment). With this perspective, clients might better appreciate the comprehensive nature of spousal support, including all options available to them as they seek a stable post-marital transition.

Best Practices for Navigating Your Client Through the Spousal Support Process

Equipping oneself with both substantive knowledge and compassion for emotional tumult is paramount to excellent representation of a domestic relations client in these matters.

Here are some best practices that every lawyer must use to set those clients up for success in the area of spousal support:

- 1. Gather comprehensive financial information.** Having a full understanding of both parties’ financial situations is of the utmost importance to ensure a fair spousal support award. Encourage your clients to gather all relevant financial documents, including tax returns, bank statements, investment portfolios, and documentation of income and expenses. Make sure that your clients are gathering income information from all sources, including things like investments and rental properties. This information will help determine the appropriate amount and duration of spousal support.
- 2. Consider tax implications.** There have been some recent changes regarding the tax implications of spousal support. Previously, spousal support was tax deductible for the paying party and taxable income for the receiving party. However, as of January 1, 2019, spousal support is no longer tax deductible for the paying party or taxable income for the receiving party, and it now provides the same tax impact as child support. When modifying a support order issued before January 1, 2019, it’s important to be mindful of the tax effects when determining the new support amount. In many cases, the paying party can still benefit from tax savings, while the receiving party may have tax obligations on the support received. Understanding these tax consequences (or lack thereof) can aid in negotiating fair and equitable spousal support agreements.
- 3. Address modifiability and termination.** A major factor pertaining to spousal support is whether a court retains jurisdiction over the issue after the termination of the marriage. If the court retains jurisdiction, spousal support orders may be subject to modification or termination based on

significant changes in circumstances, such as job loss or medical issues affecting earning capacity. It is critical to educate clients on the potential for modification and the circumstances under which it can be sought. Temporary orders may also be modified or terminated in similar circumstances. If there is a permanent support order without the retention of jurisdiction and a set end date, the payments will only terminate upon the death of either party.

- 4. Explore alternative dispute resolution.** In contentious spousal support cases, consider alternative dispute resolution methods such as mediation or arbitration. These approaches might provide a different avenue for reaching mutually beneficial agreements, reducing the emotional and financial toll of litigation.

Divorces can be draining, distressing, and delicate. As legal counselors, our primary responsibility is to ensure that our clients emerge from this journey as whole as possible. Providing appropriate guidance about spousal support is a vital part of that process and will certainly help your clients better navigate the uncertainty surrounding the end of their marriage.



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