

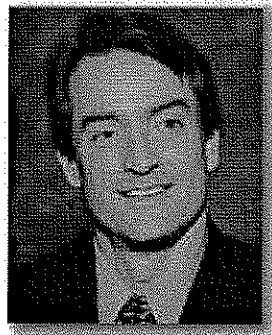
Editor's Message: Legislative Committee Studies Maintenance Awards

By Tom Walsh

As most divorce practitioners are aware, the issue of spousal support, or maintenance, in a divorce action can be one of the most difficult issues to resolve. It is not an easy task to convince a divorcing spouse that paying a regular stipend of money to his or her ex-spouse over the next months and years is the "right" thing to do. The earning spouse often feels as if he or she has "paid enough" over the term of the marriage or anticipates being dragged down for years to come by the financial responsibility of this marriage just at a time when the marriage is ending. Those feelings, whether valid or simply misperceptions, are genuinely difficult to work with in many cases.

Unlike child support, maintenance awards in Wisconsin are not determined by a formula that uses readily obtainable inputs. The Mac Davis program and other similar software programs may offer some assistance, but in the end the maintenance award is left to the sound discretion of the court.

Recently, our state legislature has formed a committee called the



Special Committee on Review of Spousal Maintenance Awards in Divorce Proceedings. The task of this committee is to study the purpose and goals of awarding maintenance and to suggest improvements, including suggestions for making application of maintenance considerations more uniform and predictable; making recommendations on whether statutes should give courts guidance on the amount and duration of maintenance; making recommendations on whether cohabitation should be considered when revising maintenance orders; and recommending whether marital fault should be considered when determining maintenance awards. Such a committee, and any legislative changes that may result from its recommendations, would have a dramatic impact on the way attorneys deal with this issue in settlement discussions as well as in trial preparation. More significantly, however, this committee's output could have substantial impact on the financial situation for many divorcing couples.

The assignment to review the question of whether Wisconsin courts should utilize fault when assessing maintenance awards seems to be an attempt to direct our vision to the past rather than to the future. Assessing fault in a maintenance case would

allow high-conflict spouses to continue striking at one another to the bitter end rather than using the waiting period for the final divorce as a time to "cool off" and start adjusting to new and separate lives. As there are already too many opportunities to continue the fight, this result would be an unfortunate turn of events for Wisconsin's divorcing couples.

This committee and the recommendations it makes should be followed closely by all family law attorneys in this state. There is currently no member of the Family Law Section Board of Directors on this committee, which in and of itself is distressing. As the Family Law Section is affiliated with the State Bar of Wisconsin Bar and deals on a regular basis with family law related issues for our members, it seems a peculiar oversight. The chair of this committee is Representative Tony Staskunas, and the first meeting was held on Aug. 24, 2010. I would urge all members of the Family Law Section to follow this discussion as it progresses.

Message from the Chair

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technology in order to stay mentally and physically healthy.

The job of the Section is to assist you in managing these and other challenges. A goal I have for the year is to keep the Section healthy and the information flowing, whether by way of this publication or through email, seminars, or workshops. This line of communication is a two-way street, so I encourage you to contact me or any other board member with your concerns and ideas.

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