



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 6

TO: MEMBERS OF THE SPECIAL COMMITTEE ON REVIEW OF SPOUSAL MAINTENANCE AWARDS IN DIVORCE PROCEEDINGS

FROM: Margit Kelley, Staff Attorney

RE: Excerpts Regarding Studies Relating to Maintenance in Divorce Cases, Including Pro Se Divorce Cases

DATE: October 7, 2010

At the August 24, 2010 meeting of the Special Committee on Review of Spousal Maintenance Awards in Divorce Proceedings, Chair Staskunas and other members of the committee requested information on any studies: (1) regarding the awarding of maintenance in divorce cases in general or in pro se cases; or (2) comparing maintenance awards among the Wisconsin counties. There do not appear to be any studies comparing maintenance awards among the Wisconsin counties. Below are excerpted portions of articles that reviewed: (1) a study of pro se cases in Waukesha County; and (2) a study of maintenance awards in Maryland.

Waukesha County

In the 2005 study, the majority of divorce cases involved at least one pro se litigant: both spouses had counsel in only 46.4 percent of the cases. Neither spouse had counsel in a significant minority (27.7 percent) of cases. Men were somewhat more likely to self-represent, with 43.9 percent of the husbands compared to 37.7 percent of the wives proceeding pro se. In 9.7 percent of the cases, only the husband had counsel, and in 15.9 percent of the cases, only the wife had counsel....

Next, the study turned to the characteristics of parties who received spousal support awards. The data revealed that one party was awarded either family support or spousal maintenance in 11.3 percent of the cases, with maintenance being awarded in 8.6 percent of cases. Maintenance was left open in 12.5 percent of the cases, and maintenance was not awarded in 78.1 percent of the cases. The husband was the party ordered to pay maintenance or family support in all but two of the cases. There was a lot

of variation in the terms of the support awards. Only 17 percent of the support awards were permanent, and 8 percent were payable until the fulfillment of conditions such as finishing a degree, retiring, selling the family home, or obtaining full-time employment. Fifty-eight percent of the awards were limited to a set term, with the mean length of the awards being 60.69 months and the mean monthly payment being \$1,767.80.

Awards of maintenance were associated with older spouses, longer marriages, and husbands with higher incomes. Maintenance awards were not significantly associated with variations in the wives' incomes. Income disparity between spouses, however, was significantly greater in cases in which maintenance was awarded than in cases where maintenance was not awarded. Cases in which maintenance was awarded or left open took significantly longer to reach final judgment than cases in which maintenance was not awarded. Maintenance was not awarded more often in cases involving minor children, although the presence of minor children made it more likely that the maintenance decision would be left open....

The study also considered the relationship between lawyer representation and awards of spousal maintenance. The data showed that there was a statistically significant association between lawyer-representation status and maintenance-award outcomes. Maintenance was most likely to be awarded when both spouses were represented by counsel: both spouses were represented by counsel in 77.6 percent of the cases in which maintenance was awarded. Maintenance also was awarded in 12.2 percent of the cases in which only the wife had a lawyer and in 10.2 percent of cases in which both spouses were pro se, but never in cases in which only the husband was represented by counsel.

[Wisconsin Lawyer, *Pro Se Trends and Divorce in Wisconsin*, Judith G. McMullen, Vol. 83, No. 6, June 2010.]

Maryland

Without a reliable method of prediction, clients are often uncertain about whether to assume the risk of trial. This situation may present the greatest challenge for women who often do not have the financial resources to fund protracted litigation with an uncertain outcome. A study in Maryland found that courts made very few alimony awards even though a majority of the marriages studied had lasted more than ten years and at the time of the divorce the average income of the husbands was almost double that of the wives. What was striking was the number of cases in which the economically dependent spouse did not seek an award. The authors concluded that this was due in large part to the reluctance to expend money on litigation costs without the likelihood of any beneficial result.

[Article, *The AAML's Considerations for Calculating Alimony, Spousal Support or Maintenance*, Mary Kay Kisthardt, 21 J. Am. Acad. Matrimonial Law, 61 at 65, 2008.]

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