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## WISCONSIN LEGISLATIVE COUNCIL

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### REVIEW OF SPOUSAL MAINTENANCE AWARDS IN DIVORCE PROCEEDINGS

Legislative Council  
Large Conference Room

October 14, 2010  
9:30 a.m. – 1:20 p.m.

[The following is a summary of the October 14, 2010 meeting of the Special Committee on Review of Spousal Maintenance Awards in Divorce Proceedings. The file copy of this summary has appended to it a copy of each document prepared for or submitted to the committee during the meeting. A digital recording of the meeting is available on our Web site at <http://www.legis.state.wi.us/lc>.]

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#### Call to Order and Roll Call

Chair Staskunas called the committee to order. The roll was called and it was determined that a quorum was present.

COMMITTEE MEMBERS PRESENT: Representative Tony Staskunas, Chair; Representative Amy Sue Vruwink, Vice-Chair; Representative Joel Kleefisch; Sen. Luther Olsen; and Public Members Michael Bruch, Judith Budny, Tom Grogan, Malcolm Keith Hatfield, Korey Lundin, Marsha Mansfield, Andrew Matznick, Robert Mawdsley, Dan Pence, William Pocan, Jared Potter, and Kenneth Seubert.

COMMITTEE MEMBER EXCUSED: Sen. Jeff Plale.

COUNCIL STAFF PRESENT: Don Salm, Senior Staff Attorney; and Chadwick Brown and Margit Kelley, Staff Attorneys.

APPEARANCES: Public Member Robert Mawdsley.

## **Approval of the Minutes of the Committee's August 24, 2010 Meeting**

*Chair Staskunas moved that the minutes of the committee's August 24, 2010 meeting be approved by unanimous consent. The motion passed without objection.*

### **Presentation by Invited Speaker**

***Hon. Robert Mawdsley, Circuit Court, Waukesha County (Retired)***

Judge Mawdsley demonstrated the process through which spousal maintenance is taught at the Wisconsin Judicial College. He distributed a fact pattern with which to demonstrate the "Mac Davis software" (a computer worksheet developed by Judge Mac Davis of Waukesha County) and described how the facts of a particular situation are used in conjunction with the software. Judge Mawdsley then showed how this information is applied to the statutory maintenance factors to determine what, if any, level of maintenance is appropriate.

Mr. Pence noted that the recipient in the fact pattern presented had the option of working and earning more. Judge Mawdsley responded by explaining how courts in some circumstances impute income to someone who is underemployed.

Mr. Seubert inquired as to the significance of the length of marriage. Judge Mawdsley explained that, in general, it is considered as it relates to the recipient's absence from the job market.

Representative Vruwink commented on the difficulty involved in applying the "length of marriage" factor with reference to agreements made during the marriage.

Senator Olsen commented that the Judge Mawdsley fact situation did not include the parties' budget data, and inquired as to the role of expenses in calculation of maintenance. He further commented that more guidance was needed to improve consistency of awards, and perhaps definitions were needed for "short-term marriage" and "long-term marriage."

Judge Mawdsley added some limited budget data to the calculation for purposes of committee discussion. Chair Staskunas requested members to anonymously submit their opinion as to the appropriate award of maintenance. After Chair Staskunas reported the tallied opinions, Judge Mawdsley commented that the majority of the responses were in a close range.

### **Description of Materials Distributed**

Legislative Council staff briefly described the following materials distributed to the committee for this meeting:

- Memo No. 3, *Suggested Options, to Date, for Revising Wisconsin's Spousal Maintenance Laws* (October 7, 2010).
- Memo No. 4, *Brief Review of Wisconsin's Laws Regarding Modification of Maintenance Awards and Calculating Child Support* (October 7, 2010).

- Memo No. 5, *Background on History of No-Fault Divorce Law in Wisconsin* (October 7, 2010).
- Memo No. 6, *Excerpts Regarding Studies Relating to Maintenance in Divorce Cases, Including Pro Se Divorce Cases* (October 7, 2010).

### **Discussion of Committee Assignment**

Margit Kelley, Legislative Council staff, reviewed Memo No. 3, including the American Academy of Matrimonial Lawyers' (AAML) recommended formula set forth in an Enclosure to that Memo. Senator Olsen commented on the unlikelihood of maintaining the marital standard of living after dissolution of the marriage. Judge Mawdsley agreed that couples generally cannot support that standard. Senator Olsen suggested that the issue should be sustaining the recipient, and not maintaining the past standard of living at a given income.

Chair Staskunas commented on the consideration of the property division in the maintenance. Mr. Bruch noted the distinction between the property division and the support decision, and commented that property division may become an income factor for purposes of determining a maintenance award.

Legislative Council staff described options used in selected other states. Chair Staskunas requested the committee to consider options for draft legislation to be prepared for the next meeting.

Representative Kleefisch suggested drafting (as set forth in Memo No. 3): (1) the New Mexico maintenance guidelines; and (2) the Texas maintenance guidelines, modified to change \$2,500.00 to \$1,000.00 and 25% to 10%. He also requested draft legislation to eliminate spousal maintenance entirely.

Mr. Grogan suggested adding a public notice to pro se litigants that clearly outlines spousal maintenance law, similar to the current child support disclosure, which is included with the divorce summons.

Mr. Pence suggested: (1) the elimination of permanent maintenance; (2) the reduction or elimination of maintenance upon cohabitation of the recipient and in instances of abuse by the recipient; (3) an award of maintenance of 1% of income per year of marriage for a duration of 1.5 years for every 10 years of marriage; and (4) graduated payments ordered by level of income so that at very low incomes no maintenance payments could be ordered.

Senator Olsen suggested a definition for "cohabitation" and requested a draft on the duration for maintenance awards as set forth in the AAML formula outlined in Memo No. 3. He further suggested that this guideline for duration be subject to deviation factors, using both the factors in the existing statute and those set forth in the AAML formula.

Mr. Seubert suggested maintenance only if the recipient lacks sufficient property and is unable to support himself or herself, citing language on page 2 of Memo No. 3.

After a general discussion, the committee suggested that the recipient have an obligation to report remarriage to the court, and that in cases where this was not done and maintenance was received, the recipient should be liable to the payor for these amounts plus reasonable attorney fees, costs, and interest.

Representative Vruwink suggested a draft specifying that the income of a payor's new spouse not be considered when modifying maintenance.

Mr. Matznick suggested that if the recipient received an inheritance that it be considered a substantial change of circumstance sufficient to allow review for modification.

Senator Olsen suggested that maintenance end upon the death of the payor.

Chair Staskunas directed the staff to prepare drafts in accordance with committee members' suggestions for the next meeting.

### **Other Business**

The next meeting of the Special Committee will be held at the call of the Chair.

### **Adjournment**

The meeting was adjourned at 1:20 p.m.

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