



ALIMONY

General Magistrate Allana
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4 prongs in the court's decision making

- a party's need for support
- the other party's ability to pay
- the **type** of **alimony** appropriate in the case
- the amount of **alimony** to award

Need and Ability

- Actual Need
- Ability to Pay
- In determining actual income for purposes of awarding **alimony**, the trial court must set forth factual findings regarding a spouse's probable and potential level of earnings, the source of actual and imputed income, and any adjustments to income.

Need and Ability

- BARRETT v. BARRETT, 313 So. 3d. 224 (Fla. 5th DCA 2021)

The trial court must determine the Wife's need for Alimony. The court's finding that the Husband does not have the ability to pay the amount of that need DOES NOT Excuse the court's requirement to Determine the Wife's need for alimony

Retroactive Alimony must be based on the same analysis of a prospective alimony award, need and ability to pay

- HAMPSON v. HAMPSON 310 So. 3d 161 (Fla. 2d DCA 2021)

Basing an alimony award on gross income rather than net income is reversible error. Hanson v. Hanson, 217 So. 3d 1165, 1166 (Fla. 2d DCA 2017) ("An award of alimony must be based on the income that is available to the party, i.e., the party's net monthly income." (quoting Moore v. Moore, 157 So. 3d 435, 436 (Fla. 2d DCA 2015)))

F.S. 61.08 (2)

- The Court has to consider all of the following in awarding/denying alimony:
- The standard of living established during the marriage;
- The duration of the marriage;
- The age and the physical and emotional condition of each party;
- The financial resources of each party, including, the nonmarital and the marital assets and liabilities distributed to each;
- The earning capacities, educational levels, vocational skills, and employability of the parties and, when applicable, the time necessary for either party to acquire sufficient education or training to enable such party to find appropriate employment;
- The contribution of each party to the marriage, including, but not limited to, services rendered in homemaking, child care, education, and career building of the other party;
- The tax treatment and consequences to both parties of any alimony award, including the designation of all or a portion of the payment as a nontaxable, nondeductible payment;
- All sources of income available to either party, including income available to either party through investments of any asset held by the party; and
- Any other factor necessary to do equity and justice between the parties: See findings set forth above.

DURATION OF MARRIAGE

For purposes of determining alimony, there is a rebuttable presumption that

- a short-term marriage is a marriage having a duration of less than 7 years
- a moderate-term marriage is a marriage having a duration of greater than 7 years but less than 17 years, and
- long-term marriage is a marriage having a duration of 17 years or greater.
- The length of a marriage is the period of time from the date of marriage until the date of filing of an action for dissolution of marriage.

TYPES OF ALIMONY

- In any award of alimony, the court may order periodic payments or payments in lump sum or both
- BRIDGE-THE-GAP
 - assist a party with legitimate identifiable short-term needs, and the length of an award may not exceed 2 years
- REHABILITATIVE
 - to assist a party in establishing the capacity for self-support through either
 - The redevelopment of previous skills or credentials; or
 - The acquisition of education, training, or work experience necessary to develop appropriate employment skills or credentials
- DURATIONAL
 - provide a party with economic assistance for a set period of time following a marriage of short or moderate duration or following a marriage of long duration if there is no ongoing need for support on a permanent basis.
- PERMANENT
 - may be awarded to provide for the needs and necessities of life as they were established during the marriage of the parties for a party who lacks the financial ability to meet his or her needs and necessities of life following a dissolution of marriage. Permanent alimony may be awarded following a marriage of long duration if such an award is appropriate

TYPES OF ALIMONY

- The trial court must expressly identify the Nature and Factual Basis for the Form and Duration of the Alimony Award
- Speigner v. Speigner 312 So. 3d 1289 (Fla 1st DCA 2021)
 - There is a rebuttable presumption that if alimony is to be awarded after a long term marriage, it should be permanent alimony. If a court finds that permanent alimony is not appropriate because there are no ongoing need for support on a permanent basis, durational alimony may be appropriate even in a long term marriage
- Taylor v. Davis 324 So. 3d 270 (Fla DCA 2021)
 - The trial court erred in awarding permanent alimony in this 3 year marriage when no exceptional circumstances existed (must have written findings of exceptional circumstances)

Reform: Senate Bill 1796

A. Definitions

- Active Gross Income vs. Income
 - Material Participation Tests
 - 7 different tests
- Alimony: court-ordered or voluntary
- Gross income and 61:30(2)

Reform: Senate Bill 1796

B. Initial Alimony Award

- Elimination of Permanent
- Adultery
- Factors: Standard of Living
 - Duration of the Marriage
- Life Insurance

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C. Supportive Relationship Changes

- 1. Burden of Proof
- 2. Modification

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- Retroactivity and section (14)
- Modification and F.S. 61.14

Imputation

- Closely Held Businesses
- Voluntary
Unemployment/Underemployment
- Parents and Significant Others