

PSS and Alimony

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Spousal Support

- ▶ Prior to 1995: Completely based on fault
- ▶ After 1995: Purpose/goal less clear
 - Economic Need
 - Economic Parity
 - Rehabilitation
 - Punish guilty party

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Jurisdiction

- ▶ Trial court has no jurisdiction to enter PSS or alimony order unless parties have physically separated.
 - *Baumann-Chacon v. Baumann*, 212 NC App 137 (2011)
 - Exception? PSS and alimony can be requested in pleading for divorce from bed and board filed before separation.
- ▶ Personal jurisdiction requires that defendant have minimum contacts with NC
 - Unless waived by defendant

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Waiver of right to support

- ▶ Entitlement to PSS and/or alimony can be waived by an *express provision* in a prenuptial agreement or in a separation agreement
 - GS 50-16.6(b)
 - General waiver of "all marital rights" is insufficient; need specific reference to alimony or spousal support
 - Cannot waive right to support *during* marriage, before separation

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Dependent Spouse

- ▶ Actually, substantially dependent on other spouse to maintain accustomed standard of living, or
- ▶ Substantially in need of maintenance and support in order to maintain accustomed standard of living
- ▶ Never reach issue of support unless find moving party is a dependent spouse

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Dependent spouse

- ▶ Dependency can be established by showing spouse has insufficient income to meet reasonable needs

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Supporting Spouse

- ▶ A spouse upon whom the moving party is dependent
- ▶ Never reach issue of support unless find nonmoving party is a supporting spouse

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Supporting Spouse

- ▶ Supporting spouse can be established by showing spouse has income in excess of his/her reasonable needs

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PSS and Alimony

- ▶ Reasonableness of expenses and needs is determined by consideration of the accustomed standard of living of the parties and the present financial circumstances of the parties.

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Postseparation Support

- ▶ Temporary alimony
 - Ends as provided by statute GS 50-16.1A(4)
- ▶ Interlocutory order so don't use much court time
 - Can decide on affidavits or verified pleadings alone
 - Findings are not binding in alimony hearing; parties have the right to relitigate all facts found in PSS order
- ▶ Can be modified only upon changed circumstances

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PSS

- ▶ If PSS order entered at time of divorce, alimony claim must be pending
 - GS 50-16.1A(4)
- ▶ Trial court has discretion to begin PSS payments at time of separation or at time of hearing, or sometime in between, but order must explain beginning date

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PSS

- ▶ Subject to consideration of fault, must award PSS if:
 - Moving party is dependent
 - Nonmoving party is supporting
 - Dependent spouse has inadequate resources to meet his/her reasonable needs, and
 - Supporting spouse has ability to pay

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PSS

- ▶ Decision shall be based on financial needs of the parties, but judge can consider fault if supporting spouse brings it up first.
 - Trial court shall consider marital misconduct of dependent spouse. GS 50-16.2A(d)
 - If court considers marital misconduct of dependent spouse, then also must consider misconduct of supporting spouse. GS 50-16.2A(d)
 - No form of marital misconduct is an absolute bar to PSS

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Termination/duration of PSS

- ▶ GS 50-16A.1A(4): PSS terminates upon whichever first occurs:
 - The date specified in PSS order
 - The date of an order allowing or denying alimony
 - The date of a dismissal of an alimony claim
 - The date of entry of a divorce judgment if there is no claim for alimony pending at time judgment is entered

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Alimony

- ▶ “Permanent” support
 - Duration up to you
 - Beginning date at time of separation, time of entry of order, or anytime in between, but must explain
- ▶ Subject to fault considerations, court “shall” award if:
 - Moving spouse is dependent
 - Other spouse is supporting, and
 - Judge determines award is equitable after considering all relevant factors, including those listed in statute

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Fault in Alimony

- ▶ Pre-separation illicit sexual behavior by supporting spouse = alimony
- ▶ Pre-separation illicit sexual behavior by dependent spouse = no alimony
- ▶ Pre-separation illicit sexual behavior by both = judge decides weight and impact
- ▶ Any other marital misconduct = judge decides weight and impact

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Alimony

- ▶ Order must explain amount and duration
- ▶ Ends automatically upon
 - Death of either party
 - Remarriage or cohabitation of dependent spouse
- ▶ Modification allowed upon showing change of circumstances affecting need for or ability to pay support
 - Never have subject matter jurisdiction to modify alimony order entered in another state after UIFSA

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Manner of Payment

- ▶ 50-16.7(a)
 - Lump sum
 - Periodic payment
 - Income withholding
 - Transfer of title or possession of personal property
 - Security interest in or possession of real property
 - Title to real property owned by obligor to pay lump sum award, but only if net value of property does not exceed total amount to be satisfied

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Attorney fees

- ▶ Either PSS or alimony, court can award reasonable fees to dependent spouse at any time that spouse would be entitled to alimony or PSS
 - GS 50-16.4
- ▶ Order needs findings that spouse is:
 - Entitled to relief demanded; and
 - Without sufficient means to subsist during the prosecution of case and to defer the cost of litigation; and
 - Dependent

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Modification



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PSS and Alimony

- ▶ Both can be modified only upon a showing of a substantial change in circumstances since the entry of the original order
- ▶ If substantial change is established, court must recalculate PSS or Alimony based on current circumstances

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Substantial change

- ▶ Must be substantial
- ▶ Moving party has burden of proof to establish substantial change
- ▶ Change must relate to the financial needs of the dependent spouse or the supporting spouse's ability to pay
 - Consider statutory factors used to determine original award
