

## **PSS AND ALIMONY**

### **Discussion Questions**

#### **SCENARIO ONE**

**The Magnolias.** You have just finished the ED trial, and now you must address Wilma's claim for alimony. The PSS order had been entered by consent, and it required only that Henry pay the mortgage payment which includes taxes and insurance fees associated with the home. The child support also has been set by consent, with Henry ordered to pay \$1272 per month and one-half of all medical expenses not covered by insurance or Medicaid, until both children reach the age of 18. You hear that during the marriage, the Magnolias enjoyed a comfortable middle class lifestyle. Most summers they were able to take vacation at the beach or in the mountains. However, they stayed home most of the time due to the difficulty of traveling or going out with Henry Jr. They avoided spending a great deal on nursing care for Henry Jr. because Wilma is capable of caring for him at home. However, Wilma is concerned about what will happen when she is older and not as capable of caring for him. In addition to the convertible, Wilma drives a van that is equipped for Henry Jr.'s wheelchair. The van is in good condition but it has 150,000 miles on it. The total mortgage payment on the residence is \$937.02 per month, but it will be paid off completely in three years. Both Henry and Wilma owe significant amounts in attorney fees from the equitable distribution trial, and Wilma's attorney asked that you order Henry to pay all of Wilma's fees associated with the alimony claim.

Would you award alimony to Wilma? How would you articulate either your reasons for denying her request, or your reasons for the amount, duration and manner of payment of your award? How will you respond to the motion for attorney fees?

#### **SCENARIO TWO**

Assume the following facts:

H and W are in their early thirties. They've been married just over 10 years and they have two children, ages 2 and 5. H works in a blue collar job and he earns about \$50,000 annually; and the evidence shows that there is room for him to advance in his company. Wife was a secretary; since the birth of the second child, she has been a stay-at-home mom. Husband admits he has committed "acts of illicit sexual misconduct" and has been involved with a woman-friend for a while. He says he's in love with her and can't break off the affair. H moved out of the house and

rented an apartment. The assets and debts of the parties consist of \$5000 of joint (marital) consumer credit card debt which has a monthly payment of \$200; H and W own a house which has nominal equity and has an \$1000 monthly payment; H has a 2001 vehicle with a monthly payment of \$300 and W drives a 1995 Toyota van with no debt but with 110,000 miles on it. There is no family money to fall back on and W would be maximally employed with a job that pays \$1800 per month. If wife worked, day care would cost \$650 per month. Husband's rent is \$750 per month.

Guideline child support (without W working) is \$928 per month. If W works and earns \$1800 per month and the couple pays work-related day care, guideline child support is \$1074 per month.

H proposes selling the house, using the equity to pay off the credit card bills. He argues that he doesn't have enough money to pay child support plus alimony. W's position is that H should live with his girlfriend to minimize his living expenses and pay her \$800 per month in permanent, death/remarriage/cohabitation alimony plus \$928 in child support.

1. Would you award W PSS?  YES  NO
  
2. If you would award PSS, how much would you award and for how long: \_\_\_\_\_
  
3. What do you consider to be the most important factor(s) in your decision regarding PSS award?
  
  
  
  
  
  
  
4. Would you award permanent alimony?  YES  
 NO
  
5. If you would award permanent alimony, how much would you award?  
\$ \_\_\_\_\_
  
6. For how long:
  
  
  
7. What do you consider to be the most important factor(s) determining whether to award alimony, and the amount and duration of any alimony you award?

### SCENARIO THREE

Same facts as Case One except that, after separation, H discovered that W engaged in illicit sexual misconduct (a short affair many years ago with a high school boyfriend) during the marriage. H doesn't want to pay one penny of spousal support. Wife, however, says that H's ongoing adultery is entirely different from hers, that her affair happened because she felt inadequate because her husband didn't pay attention to her. She also believes that husband's infidelity is far worse than hers because, in addition to being surreptitious, it is ongoing, he promised to end that relationship, failed to do so and continues to carry on with his girlfriend.

1. Would you award Wife PSS?  YES  NO
2. If you would award PSS, how much would you award and for how long: \_\_\_\_\_.
3. What do you consider to be the most important factor(s) in your decision regarding PSS?
4. Would you award permanent alimony?  YES  NO
5. If you would award permanent alimony, how much would you award?  
\$ \_\_\_\_\_
6. For how long:
7. What do you consider to be the most important factor(s) in your decision regarding alimony?

### Scenario Four

Husband and Wife were married twenty-five years and are in their mid-50's. They have two adult children, both still in graduate school. Wife has a college degree and earned approximately \$10,000 per year as a legal assistant before marriage. She has not worked outside of the home at all during the marriage. Husband owns a business and his income tax returns (jointly filed) show a gross yearly income of approximately \$140,000. Husband runs many expenses through his company, however, and the parties lived a lifestyle that reflects far greater wealth than the earnings he claims for tax purposes. Husband leases a Lexus and Mercedes in the company name and owns resort property in the company name. He uses company funds to take luxury trips to high profile sporting events such as the World Series, Super Bowl, and various golf tournaments.

During the marriage, the parties lived well beyond their means, borrowing huge amounts

of money from husband's corporation. Because of the high amount of marital debt, Wife received very little in equitable distribution. Husband's lifestyle has not diminished since the parties' separation. His financial affidavit shows monthly income after taxes of approximately \$4,500 (and it includes almost \$1,500 in utilities and maid service). He also claims that he has \$4,300 in monthly payments for equity lines he obtained after separation. These lines are secured by various parcels of real property that are his separate property (purchased before marriage) and for business debts he ran up after separation.

Wife claims monthly needs which would allow her to live in a lifestyle greatly diminished from that enjoyed during the marriage. She also testifies that she must continue helping the children financially until they complete school. She is not opposed to working but feels it will be very difficult for her to find a job given her age, lack of recent experience and the current economic conditions in the community. She feels she is entitled to long term alimony given the length of the marriage and the fact that she gave up her career to care for the home and family.

1. Would you award W PSS?  YES  NO
2. If you would award PSS, how much would you award and for how long: \_\_\_\_\_
3. What do you consider to be the most important factor(s) in your decision regarding PSS?
4. Would you award permanent alimony?  YES  NO
5. If you would award permanent alimony, how much would you award? \_\_\_\_\_
6. For how long:
7. What do you consider to be the most important factor(s) in your decision regarding alimony?