

PSS and Alimony
February 2009

Spousal Support

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

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

Supporting Spouse

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

Postseparation Support

- ▶ Temporary alimony
 - Ends as provided by statute unless you order otherwise
- ▶ Interlocutory order so don't use much court time
- ▶ Can be modified based on changed circumstances affecting need for or ability to pay support

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

PSS

- ▶ Decision shall be based on financial needs of the parties, but
- ▶ Judge can consider fault if supporting spouse brings it up first

Alimony

- ▶ "Permanent" support
 - Duration up to you
- ▶ 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

Fault in Alimony

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

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

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

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
