



Cathy R. Cook
Ethan J. Arenstein
Attorneys at Law

Scott M. Brooks, Paralegal
Elizabeth J. Byrd, Legal Assistant

114 East Eighth Street, Cincinnati, Ohio 45202
Phone: 513.241.4029 • Fax: 513.723.8634

SPOUSAL SUPPORT IN OHIO

A PRIMER

By

Cathy R. Cook
Attorney at Law

In Ohio, the legislature has passed a statute governing spousal support. Unfortunately, the statute only sets guidelines, rather than a formula as the child support statute does. The basic standard in the statute is “appropriate and reasonable”. Several concepts are incorporated into the factors listed in the statute. These include need, rehabilitation, continuation of the marital standard of living and human capital. The last involves the ability to earn a stream of income over a lifetime. Investments in human capital are made through education and work experience. Human capital is diminished by lack of ongoing training and remaining out of the workforce. The theory is that the spouse whose human capital is diminished and thus earning capacity is decreased, by homemaking duties should be compensated for the loss in divorce.

By utilizing guidelines, rather than formulas, the statute creates problems of lack of uniformity in decisions and lack of predictability of awards. Even the 14 factors listed are given no ranking as to the order of importance. As a result, courts have held that all factors must be considered and no one factor may be taken in isolation. While there is a great deal of judicial discretion in applying the factors, the court must reveal the bases for its award in its decision.

STATUTORY FACTORS

The statutory factors are:

- 1. Income of the parties, from all sources, including, property divided in the divorce**
The division of marital property is divided before spousal support is determined. Therefore, if a party is awarded income producing property, such as an investment or a business, that income is considered as to whether spousal support is needed or can be paid.
- 2. The relative earning abilities of the parties**
The court must look at not only how much the parties currently earn, but what each is capable of earning given his or her education and work history.
- 3. The ages and physical, mental, and emotional conditions of the parties**
Both physical and mental health as well as chronological age affects the need for and length of time during which support should be paid. These also effect whether a party can pay support and for how long.
- 4. The retirement benefits of the parties**
This includes pensions, 401k plans, IRAs, and Social Security benefits.
- 5. The length of the marriage**

- 6. The appropriateness of the custodial parent remaining home with the children rather than obtaining employment**
- 7. The standard of living the parties established during the marriage**
Generally, both parties' standard of living declines in divorce, but where there was a high standard of living and one spouse was a homemaker, this can be a significant issue.
- 8. The education of the parties**
- 9. The relative assets and liabilities of the parties, including, but not limited to, any court-ordered payments by the parties**
This is similar to the first factor, but adds expenses the parties are required to pay, such as marital debts, child support, and health insurance.
- 10. The contribution of each party to the education, training, and earning ability of the other party, including, but not limited to, any party's contribution to the acquisition of a professional degree of the other party**
In Ohio, a professional degree is not a marital asset. However, the future income value of a degree acquired during marriage is a consideration for spousal support.
- 11. The time and expense necessary for the spouse who is seeking spousal support to acquire education, training, or job experience so that the spouse will be qualified to obtain appropriate employment, provided the education, training, or job experience and employment is, in fact, sought**
Support for a spouse to obtain education or training to obtain employment to support himself or herself is known as rehabilitative spousal support.
- 12. The tax consequences, for each party, of an award of spousal support**
Spousal support is taxed as regular income to the payee and deductible as a dollar for dollar deduction on the first page of the income tax return to the payer.
- 13. The lost income production capacity of either party that resulted from that party's marital responsibilities**
This is the human capital factor described above.
- 14. Any other factor that the court expressly finds to be relevant and equitable**
The legislature left room for the court to consider other factor deemed relevant in a particular case.

In awarding support, the court must determine both the amount and duration of support. Rehabilitative support is short term, while sustenance support can be for life. Whenever a marriage reaches 20 years, and there is a disparity in the parties' income, spousal support will be an issue.

If support is awarded, one of the issues to be considered is whether that support will be reviewable in the future. The statute provides that the court has no jurisdiction to modify a spousal support award unless the decree reserves jurisdiction to modify the amount or terms of the support and the circumstances of either party has changed. Change of circumstances is defined to include, but not be limited to, any increase or involuntary decrease in wages, salary, bonuses, living expenses, or medical expenses.

In deciding whether to request that court retain jurisdiction, the parties will want to consider the likelihood of a change in circumstances in the future that will require more support or prevent paying support.

Spousal support is one of the most difficult areas of domestic relations law, as the factors must be applied on a case by case basis. You will definitely want to obtain the assistance of counsel in analyzing your situation.

HOW CAN I RECEIVE MORE INFORMATION?

We hope you have found this report useful. As you can see, there are a number of issues to examine when determining spousal support. We strive to obtain full information from you to examine all factors that may affect your situation. If you would like to discuss your situation, please call the office at **513-241-4029** or email us at **cathy.cook@cathycooklaw.com**. We offer a free phone consultation. For a more in-depth analysis of your situation, we offer an in office case audit.

LEGAL NOTICE

The above is an overview of spousal support in the state of Ohio. It is not legal advice, and does not create an attorney-client relationship with Cathy R. Cook, Attorneys at Law. Your own situation should be reviewed and analyzed by an attorney.