Alimony Guidelines Review

8:45 a.m.- 9:45 a.m.

Presented by

Prof. Andrea Charlow
Drake University Law School
2621 Carpenter Ave
Des Moines, IA 50311
Phone: 515-271-2066
I. Current Alimony Rules

a. IA. Code § 598.21A –
   i. Length of marriage
   ii. Age & health
   iii. Property distribution
   iv. Education
   v. Earning capacity
   vi. Ability to become self-supporting
   vii. Tax consequences
   viii. Agreements between parties
   ix. Antenuptial agreement
   x. Other relevant
   xi. no prioritization or explicit underlying policy – implicit standard of living during marriage

b. Types of support
   i. Traditional – award for indefinite duration
   ii. Rehabilitative – award provides opportunity for payee to raise his or her earning capacity. See, In re Marriage of Probasco, 676 N.W.2d 179 (IA 2004) citing In re Marriage of Francis, 442 N.W.2d at 63 (IA 1989).
   iii. Reimbursement – reimburses payee for contributions such as cost of graduate school, lost earnings from delaying his or her own career, when little or no property, See, in re Marriage of Robert, 820 N.W.2d 158 (IA CTApp 2012)
   iv. Combination – The court is not limited to one type of spousal support. In re Marriage of Becker, 756 N.W.2d 822, 827 (IA 2008).

c. In re Marriage of Gust, 858 N.W.2d 402 (IA 2015)
   i. Duration of marriage important factor
      1. 20 year marriages generally warrant traditional spousal support
   ii. Traditional support predicated on need and ability
      1. Self sufficient at marital standard of living
      2. Need based on earning capacity
   iii. Duration – death, remarriage, or recipient self supporting at marital standard of living
1. Retirement – not automatic termination – review for modification at time of retirement
2. Dissent – retirement is contemplated and burden of proof is on payee and likely in this case that payor will not have sufficient funds to pay at retirement

iv. No set formula but
1. “We have, however, approved spousal support where it amounts to approximately thirty-one percent of the difference in annual income between spouses.”
2. Case briefly reviews spousal support guidelines in other states & those recommended by the AAML & ALI

d. Select Court of Appeals cases subsequent to Gust
i. Scope of Review –
2. “Generally we will disturb the trial court’s ruling only when there has been a failure to do equity.” In re Marriage of Smith, 573 N.W.2d 924, 926 (IA 1998).

ii. In re Marriage of Mauer, 863 N.W.2d 35 (IA Ct App 2015) – footnote 7 cites to Gust and the AAML guidelines as not binding in Iowa but a “reality check” on an award.

iii. In re Marriage of Larson, 2015 WL 5965116 (IA CT App. 2015) – October 2015 decision reaffirms that there is no mathematical formula for spousal support. “We do not believe the court intended Gust to set a fixed percentage. It remains our duty imposed by our legislature to apply statutory factors set forth in Iowa Code Section 598.21A. Yet at times the factors leave the trial court with little guidance in fixing the specific amount. The percentage applied in Gust is useful to allow a court to ‘be in the ball park’ but the percentage amount may still; be ‘out in left field’ because of the factors set forth in section 598.21A. If the statutory factors do not weigh heavily to either side, the thirty-one percent of the parties’ net income provides a reasonable guide, as approved in Gust.” District court awarded $2500/month, Court of Appeals awarded $5000/month rehabilitative alimony for 2 years, and $3000/month traditional alimony thereafter. (Thirty one percent would have been $31987/month.) Court explained award based on large disparity in income, wife’s inability to achieve marital standard of living, husband’s ability to maintain standard of living, 32 year marriage, use of husband’s worst earnings for computation and husband’s generous company benefits.
iv. In re Marriage of Fitzgerald, 886 N.W.2d 202 (IA CT APP 2015) - “While there is no mathematical formula to determine the amount of support, the supreme court noted in Gust that it has generally ‘approved spousal support where it amounts to approximately thirty-one percent of the difference in annual income between spouses.’” Court of Appeals awarded $1200 requested by wife rather than $400 ordered by district court. Formula would have resulted in $1253. Court provided reasons why $400 was not equitable.

v. In re Marriage of Johnson, 2015WL1848657 (IA Ct App 2015) – “One formula approved in Gust involves spousal support calculated as approximately thirty-one percent of the difference in annual income between spouses. Id. (citing In re Marriage of Michael, 839 N.W.2d 630, 638 & n. 7 (Iowa 2013)).” The court found an award for less than 31% was not inequitable. ($750 order v. $900 at 31%)

vi. In re Marriage of Wilson, 864 N.W.2d 553 (IA Ct App 2015) – refers to AAML formula cited in Gust and approved as equitable an award of $96 less than 30% would have yielded.

II. PROBLEMS WITH CURRENT SYSTEM
   a. Ambiguous – factors are not weighted, are not connected to any particular amount of award and are not simple to apply.
   b. Inconsistent
   c. Unpredictable – discourages settlement and promotes “judge shopping.”
   d. Lack of guidance for judges

III. PROS & CONS OF GUIDELINES
   a. Benefits
      i. Predictability
      ii. Consistency
      iii. Decreased litigation
      iv. Avoid judge shopping
   b. Issues
      i. Arbitrary –
         1. How do you find a number or method that really tracks marital standard of living –
            a. Rural v. urban,
            b. Some couples spend more than they earn,
            c. Alimony amount depends on income, etc.
      ii. Impedes judicial discretion/independence
      iii. Application may be automatic effectively eliminating discretion and exceptions
iv. Variation from guidelines may be discouraged if required to state reasons

IV. Guidelines adopted for temporary first, some states informally by county, some by statute
   a. AAML – does not recommend guidelines at this time
   b. First determine eligibility for alimony and then apply formula

V. MECHANICS OF GUIDELINES
   a. Percent difference in income - This method takes the difference in income of the spouses and multiplies it by a preset percentage to arrive at the amount of spousal support.
      i. There are two major variations -
         1. Difference in income times set percent
         2. Percent of the payee's income minus set percent of the payor's income (AAML)
         3. The percentage may be the same for all marriages or it may vary by the number of years the marriage lasted
         4. Range instead of set amount - judicial discretion
         5. Variation is permitted according to statutory factors.

   b. Time constraints by marriage duration
      i. Eligibility for alimony affected by duration - In some states short marriages negate eligibility for alimony. ME, TX
      ii. Duration of marriage determines duration of alimony - Some states set the term of alimony by the duration of the marriage. CA, TX
      iii. Amount affected by duration - Some states adjust the amount of alimony based on the length of the marriage. AZ, Colo. Rev. Stat. 14-10-114 (2014)


   d. Deviation factors
      i. Children
         1. Subtract actual child support - Some states subtract the actual amount of the child support.
            a. Does not account for portion of child support allotted towards overall household expenses (rent, mortgage, utilities, etc.) MA
2. **Factor in child support** - Some states factor in the actual amount of the child support award when determining alimony.
   a. Add child support into payee’s income before alimony calculation
3. **Alter spousal support percent for child support** - Some states adjust the amount of alimony when there are minor children instead of subtracting the actual amount of the child support order from the payor’s income. KS, PA
   a. Acknowledges some portion of child support used to support household but percent variation not dependent on actual amount of child support awarded
4. **Spousal support deducted from child support** - IL 750 ILCS 5/505(a)(3)(g-5) – Deduction for “obligations pursuant to a court order for maintenance in the pending proceeding actually paid or payable under Section 504 to the same party to whom child support is payable.”
   ii. **High incomes** - Some states cap alimony for high income payors, exclude high incomes from guideline calculations or allow for variation for high income payors. IL AAML

VI. **SAMPLE JURISDICTION**
   a. **Illinois**
      i. Guidelines by statute – 750 ILCS 5/504
      ii. Child support – maintenance deducted prior to computing child support – 750 ILCS 5/505
      iii. Not for multiple family situations or combined income above $250,000
      iv. Not mandatory for temporary order
      v. Length of marriage does not affect amount of support
      vi. 30% of payor gross income minus 20% of payee gross income
      vii. Support plus gross income of payee may not exceed 40% of combined gross income
      viii. Duration depends on length of marriage - percent of length of marriage multiplied by different percent for each 5 year block up to 20 years at which point duration of award is permanent or actual length of marriage

VII. **QUESTIONS**
   a. Guidelines or not
      i. Can we achieve both consistency & fairness
   b. What kind of guidelines
i. Range
ii. Calculation factors
   1. Income differential
   2. Age
   3. Marriage duration - effect
   4. Child support
   5. Urban v. rural
iii. Calculation formula
   1. How do you compute marital standard of living - not amenable to empirical study like child support
iv. Type
   1. Temporary
   2. Permanent
   3. Rehabilitative
   4. Reimbursement
v. Applicability to
   1. Settlement agreements
   2. Modification petitions
vi. Effect of debt allocation, especially for families who lived above their means during the marriage
vii. Minimum income?

VIII. REFERENCES AND RECOMMENDED ARTICLES
f. The Spousal Support Advisory Guidelines: A New and Improved Guide to the Final Version, Canadian Department of Justice, March 2010