

6 Spousal Support

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Summary of Spousal Support

This is a summary of major principles only, with cross-references to more detailed discussion in sections of the *Benchbook*.

Factors in awarding spousal support. §6.1, §§6.4–6.17.

The court may award spousal support as is just and reasonable if the property award is insufficient for the suitable support of either party and any children of the marriage of whom the party has custody. The court must consider “the ability of either party to

pay and the character and situation of the parties, and all the other circumstances of the case.” MCL 552.23(1).

Factors to be considered include the following:

- **Past relations and conduct of the parties.** How the parties conducted the marriage as well as fault in the breakdown of the marriage. Fault is only one factor and should not be assigned disproportionate weight.
- **Length of the marriage.** A long-term marriage is especially relevant where one spouse has no career or marketable skills and his or her standard of living may be reduced because of the divorce.
- **Ability of the parties to work.**
- **Source of and amount of property awarded to the parties.** The focus is on the income-earning potential of the assets rather than their value; a spouse is not required to dissipate property awarded to meet daily needs where spousal support can be available.
- **Ages of the parties.**
- **Ability of the parties to pay spousal support.** Sources considered in determining the ability to pay include earnings, pension plans, unemployment compensation, tax refunds, and Social Security benefits. *Ability to pay* includes the payer spouse’s unexercised ability to earn if income is voluntarily reduced to avoid paying spousal support. Factors relevant to the ability to pay include (1) the parties’ employment histories, (2) reasons for any termination of employment, (3) work opportunities available, (4) diligence in trying to find employment, and (5) availability of employment.
- **Present situation of the parties.**
- **Needs of the parties.**
- **Health of the parties.** The parties’ health is relevant to the ability to work and to the personal needs of the spouse seeking support.
- **Prior standard of living of the parties.**
- **Whether either party is responsible for the support of others.**
- **Contributions to the joint estate by the parties.**
- **A party’s fault in causing the divorce.**
- **How cohabitation affects a party’s financial status.**
- **General principles of equity.**

The court must make findings on each factor relevant to the claim before it.

Amount and duration of spousal support. §§6.18–6.20.

Factors relevant to the amount of support.

- duration of the marriage
- the parties’ contribution to the joint estate
- the parties’ ages

- the parties' health
- the parties' stations in life
- the parties' necessities and circumstances
- the parties' earning abilities

Rehabilitative spousal support.

Rehabilitative spousal support is temporary spousal support to help the dependent spouse make the transition to self-support. It can be appropriate to

- encourage a spouse to seek full-time employment and self-sufficiency
- allow a spouse to complete an advanced degree or obtain a marketable skill when he or she had worked while the other spouse obtained a degree
- allow a spouse to adjust to a lifestyle not based on combined incomes
- allow a spouse to obtain new job skills and enter the workforce

Permanent spousal support (generally until death or remarriage).

It has been found appropriate when there is

- a long-term marriage with a spouse who has no career or marketable skills
- a long-term marriage, one spouse with superior earning skills, and the other spouse with questionable earning capacity
- great discrepancy between incomes and a spouse who devoted most of his or her adult life to homemaker role
- serious doubt that a spouse could support himself or herself because of a disability

Mandatory and Optional Judgment Provisions. §§6.22–6.24.

If spousal support is not granted, the judgment must either reserve the question or state that neither party is entitled to spousal support. If the judgment is silent regarding spousal support, the issue is reserved for possible later consideration. MCR 3.211(B)(4).

Any provisions regarding spousal support must be prepared on a Uniform Support Order (see SCAO forms FOC 10b, FOC 10c). This order must accompany any judgment or order affecting spousal support, and both documents must be signed by the judge. The Uniform Order governs if the terms of the judgment or order conflict with it. The final judgment must either incorporate the Uniform Order by reference or state that none is required.

See §6.23 for a list of mandatory judgment provisions.

Enforcement. §§6.26–6.36.

Like child support (see §§5.38–5.46), enforcement mechanisms include income withholding, liens, contempt, license suspensions, and interception of tax refunds.

Enforcement of other states' orders. §§6.37–6.41.

Michigan courts enforce other states' orders if the payer was personally served or present in that court.

A Michigan party who has properly applied to another state's court for modification of the spousal support order may apply for a stay of proceedings in Michigan. The stay is effective for 60 days pending submission of satisfactory evidence that the other state has changed its order.

The Uniform Interstate Family Support Act (UIFSA). §6.39.

The act permits the petitioner to enforce income withholding orders by filing the order directly with an employer or by registering the order with the state's support enforcement agency.

On request, a support enforcement agency must provide services to a resident petitioner or a foreign petitioner meeting the UIFSA's requirements and may provide services to a nonresident petitioner.

Only the state court that issued the spousal support order may modify the order.

The Interstate Income Withholding Act. §6.40.

Only the Friend of the Court can request income withholding in other jurisdictions under the act. A payer subject to a foreign support order may initiate voluntary income withholding by filing a request with the Friend of the Court.

Once an order of income withholding is entered under the act, it has the same force and effect as those obtained under the Support and Parenting Time Enforcement Act (SPTEA).

Modification. §§6.43–6.51.

If the court had personal jurisdiction over the payer at the time of the judgment, the court has continuing jurisdiction to revise or amend the order.

No minimum period must elapse before modification can be requested.

Retroactive modification is not available. However, the court can approve the parties' agreement for retroactive modification.

Modification is possible only on a showing of new facts or changed circumstances since the judgment that justify a revision. The petitioner has the burden of justifying a change by a preponderance of the evidence.

Once a change in circumstances is shown, the court considers all the circumstances in deciding what modification to make.

Factors indicating a change in circumstances.

- **Remarriage**—can trigger modification or termination unless specifically stated otherwise in the judgment, but remarriage can be only one consideration.
- **Cohabitation**—does not constitute a de facto marriage; can be relevant where it improves a spouse's financial position.

- **Changes in need**—see examples in §6.48.
- **Changes in ability to pay**—see examples in §6.49.
- **Retirement**—effect appears to depend on whether parties fashioned award with retirement in mind; see examples in §6.50.
- **Death of the payer**—does not terminate the support obligation, which can be enforced against the estate, unless stated otherwise.

I. General Considerations

A. Statutory Authority

§6.1 The court's authority to award spousal support to either party in a divorce action is established by MCL 552.23(1).

Upon entry of a judgment of divorce or separate maintenance, if the estate and effects awarded to either party are insufficient for the suitable support and maintenance of either party and any children of the marriage who are committed to the care and custody of either party, the court may also award to either party the part of the real and personal estate of either party and spousal support out of the real and personal estate, to be paid to either party in gross or otherwise as the court considers just and reasonable, after considering the ability of either party to pay and the character and situation of the parties, and all the other circumstances of the case.

In other words, when the property award is insufficient to provide for the suitable support of a party and any children committed to his or her care, a court may award spousal support to that party after considering all the circumstances of that particular case.

B. When Support Orders May Be Sought

§6.2 Spousal support may be awarded on entry of a judgment of divorce or separate maintenance. MCL 552.23. In case of a default judgment, the party moving for entry of judgment must provide the trial court with sufficient evidence to make the necessary findings and conclusions in order to equitably divide the marital property and determine any other issues, such as spousal support. *Koy v Koy*, 274 Mich App 653, 735 NW2d 665 (2007).

During the pendency of the case, a party may request a temporary or interim order. MCL 552.13. The request is made by filing a verified motion. Notice and a hearing are required, and the order must state its effective date and whether its provisions may be modified retroactively by a subsequent order. MCR 3.207(C).

Pending entry of a temporary order, spousal support can be requested in an ex parte motion. MCR 3.207(B). An ex parte order requires a showing, set forth in a verified motion or affidavit, that irreparable injury, loss, or damage will result from the delay required to give notice or that giving notice itself will precipitate adverse action before the temporary order can be issued. *Id.*

Practice Tip

When faced with the task of making an immediate decision on a motion for temporary spousal support without the opportunity for an evidentiary hearing, some judges have used the following approach in determining the amount of spousal support:

1. *Determine each party's weekly net income. If the Friend of the Court recommendation is not available, put the burden on the attorneys and the parties to bring in the needed information.*
2. *Deduct from a party's income the payments he or she makes to protect a marital asset (e.g., mortgage payments).*

3. Add together each party's adjusted income, divide by half, and award spousal support to the party whose adjusted income does not meet half of the sum.

Example: The adjusted weekly income of Spouse #1 is \$500; the adjusted income of Spouse #2 is \$100. The total income of both parties is \$600. One-half of \$600 is \$300, which is the amount that should be available to each party. To reach that \$300 goal, Spouse #2, who has only \$100 of available income, would receive spousal support of \$200 from Spouse #1.

C. Spousal Support Established by an Agreement of the Parties

§6.3 There are a number of methods by which the parties may reach enforceable agreements regarding spousal support. The bulk of the law on these methods has developed in the context of property distribution and a more detailed discussion of the methods appears in §§8.4–8.11.

Antenuptial agreements. An antenuptial agreement is a contract entered into before marriage by which the parties can vary or relinquish marital rights, such as spousal support. *See generally* MCL 557.28, 700.2205. An enforceable antenuptial agreement must be in writing, must have been entered voluntarily after full disclosure, and must be fair when executed. *Rinvelt v Rinvelt*, 190 Mich App 372, 475 NW2d 478 (1991). One issue that may be raised in trying to void an agreement is that facts and circumstances have changed since the agreement was executed that would make its enforcement unfair and unreasonable. *See Rinvelt*.

The length of a marriage cannot be deemed a change in circumstances for the purposes of voiding an antenuptial agreement. *Reed v Reed*, 265 Mich App 131, 693 NW2d 825 (2005). Further, if the agreement expressly contemplated that the parties would separately acquire assets after the marriage, the fact that one party's assets grew significantly more than the other party's was foreseeable and not a change in circumstances requiring the court to void the agreement. *Id.*

Postnuptial agreements. As with prenuptial agreements, postnuptial agreements must meet certain requirements to be valid: They must be fair and equitable and they must be supported by sufficient consideration. *Rockwell v Estate of Rockwell*, 24 Mich App 593, 180 NW2d 498 (1970). Postnuptial agreements must not be made in contemplation of divorce or separation. *Wright v Wright*, 279 Mich App 291, 761 NW2d 443 (2008) (postnuptial agreement, which was entered into after parties had been married for several years and shortly before husband filed for divorce, was void as against public policy because it contemplated and encouraged separation and divorce of married couple). A postnuptial agreement signed in connection with an attempted reconciliation is enforceable if it is designed to keep the parties together and does not leave one party in a much better position in the event of divorce. *Hodge v Parks*, 303 Mich App 552, 844 NW2d 189 (2014).

Domestic relations mediation. A spousal support dispute may be referred for domestic relations mediation under MCR 3.216. This mediation is not binding. *See* MCR 3.216(I). To be enforceable, any resulting settlement agreement must be put in writing, signed by the parties and their attorneys, or placed on the court's record when reached, and acknowledged by the parties at the eventual hearing for entry of the judgment of divorce. MCR 3.216(H)(7).