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Divorce Law Advisor

A Newsletter by Budd Larner, P.C.

Can One Attorney Represent Both Spouses in a Divorce?

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In this issue:

Can One Attorney Represent Both Spouses in a Divorce?

Alimony: A Legal Primer

Adultery & Alimony

About Us

No matter how amicable you may think your divorce will be, the reality is that an inherent conflict exists in the joint representation by one attorney of a husband and wife in a divorce proceeding. No type of case involves more confidences or is more susceptible to overreaching by one party than a divorce case. With custody of children and financial issues at stake, you are best served by one attorney advocating for you alone.



Divorce proceedings are necessarily adversarial in that there are certain results you will want to be achieved that are in conflict with those desired by your spouse. As soon as such differences develop, a conflict arises. Joint representation would limit your lawyer's ability to pursue the desired course for you because it is at odds with the lawyer's other client, your spouse.

A lawyer can properly represent only one spouse's interests given that a lawyer's duty of loyalty is to his or her client. Consider that premise when you are looking to maximize the distribution of marital property, protect income and support, and obtain the most desirable custody arrangement. It is impossible for one attorney to achieve this for both spouses at the same time. Independent representation is the only way to ensure that each spouse's rights are properly protected during a divorce proceeding. ■

Alimony: A Legal Primer

Introduction

New Jersey law allows a Court the discretion to award alimony in an amount and for such duration as the Court deems just. The law provides a list of factors the Court must consider in awarding spousal support.

Types of Alimony

There are four types of alimony that a Court may award to a dependent spouse:

- **Permanent Alimony** - periodic payments terminable upon death, re-marriage or cohabitation;
- **Rehabilitative Alimony** - payable for a short but specific and terminable period of time intended to assist the unemployed spouse reentering the work force to obtain job training;
- **Reimbursement Alimony** - reimburses supporting spouse for financial contributions he or she made to the spouse's successful professional training; and

- **Term (limited duration)** - alimony award terminating upon a fixed number of years.

Note: a Court may also combine two different types of alimony.

Factors

There are numerous factors that can be considered by a Court in making an alimony or maintenance award. Some of the more common ones are:

- Duration of the marriage
- Age and health of the parties
- Standard of living during marriage
- Ability of the payor to pay
- Actual needs of the payee
- Assets of the parties

Tax Considerations

Tax considerations must always be analyzed when alimony is in issue. An experienced matrimonial lawyer and financial consultant are a necessary part of your divorce team. ■



Adultery & Alimony

A recent New Jersey Supreme Court decision preserves a judge's ability to consider marital fault when awarding alimony to a dependent spouse, but only in the most egregious circumstances. In practice, however, marital fault is rarely taken into consideration. Rather, the Court will still rely on economic factors.

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Founded in 1934, Budd Lerner is a firm of approximately 100 attorneys providing a full range of legal services to businesses and individual clients. The Firm's Family and Matrimonial Law attorneys have extensive experience in:

- Divorce and annulment
- Custody and visitation
- Domestic violence
- Preparation of all types of agreements including cohabitation, marital, premarital, separation, reconciliation and property settlement agreements
- Post-judgment issues including enforcement and modification of judgments and agreements
- Appellate practice
- Adoption
- Children's rights
- Palimony
- Paternity
- Guardianship