

Helpful Article #7: Spousal Support

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When spouses separate and or divorce, the support of one spouse by the other is often necessary. In mediation, couples are encouraged to discuss this issue fully in order to arrive at an equitable solution. One or both spouses usually want to know what would happen if they went to court. The answer to that question is that there is no answer. It is impossible to predict what a judge would decide under a given set of circumstances. What we can do, however, is to look at the law in New York for guidance, to understand what it says about spousal support, and the factors the court considers when making an award of maintenance.

New York State's Domestic Relations law states that the court may award maintenance in a matrimonial action "as justice requires", and that the court should consider the standard of living the parties established during the marriage, whether the party requiring support is able to provide for his or her own reasonable needs, and whether the other party has sufficient means to provide for the reasonable needs of the other. The court also considers the overall circumstances of the case and of each spouse. Maintenance can be awarded on a temporary or on a permanent basis.

The Domestic Relations law in New York lists the following factors to be considered by the court in deciding whether or not to award maintenance, the amount of the award and its duration:

1. the income and property of each party, including any marital property already distributed;
2. the length of the marriage and the health of each spouse;
3. the present and future earning capacity of each spouse;
4. the ability of the spouse seeking maintenance to become self-supporting, and if applicable, the period of time and training necessary;
5. whether the spouse seeking maintenance has reduced or lost lifetime earning capacity due to forfeiture of education, career opportunities, etc. during the marriage;
6. the presence of the children of the marriage in the homes of both spouses;
7. tax consequences to each party;
8. the contributions of the spouse seeking maintenance as spouse, parent, wage earner and homemaker, and to the career or career potential of the other spouse;
9. the wasteful dissipation of marital property by either spouse;
10. any transfer or encumbrance of property made in contemplation of a matrimonial action without fair consideration;
11. any other factor which the court considers just and proper.
12. loss of health insurance benefits.

Please keep in mind that couples in mediation are not bound to follow "the letter of the law" when negotiating issues of spousal support, but it is necessary to have an understanding of the law and the factors that should be taken into consideration in order to arrive at an equitable solution for the entire family.