ALIMONY

Presented by:
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WHAT IS ALIMONY:

"An allowance made to one spouse by the other for support pending or after legal separation or divorce"

- *Alimony*, Merriam-Webster's Dictionary of Law (1996)

GENERAL RULES

1. Alimony and Spousal Support can only be granted in divorce and separate maintenance proceedings

- Courts have no authority to order support payments absent statutory authority. *Williams v. Williams*, 97 P.3d 1124, 1131 (Nev. 2004)
- The only available statutory authority for support, other than child support, in Nevada is found under NRS 125.010 – NRS 125.280, essentially only in actions for divorce and separate maintenance.

GENERAL RULES

1. Alimony and Spousal Support can only be granted in divorce and separate maintenance proceedings

- There is no authority for granting alimony in annulment cases. *Williams v. Williams*, 97 P.3d 1124, 1126 (Nev. 2004).

- No authority for alimony in cases involving a putative spouse. Parties must be legally married for the court to award alimony. *Williams v. Williams*, 97 P.3d 1124, 1131 (Nev. 2004).

GENERAL RULES

1. Alimony and Spousal Support can only be granted in divorce and separate maintenance proceedings

- No “common law” marriage in Nevada – so no alimony in cases where unmarried couples cohabitated.

- Essentially, you need a valid marriage in order to request alimony.

GENERAL RULES

1. Alimony and Spousal Support can only be granted in divorce and separate maintenance proceedings
   - ONE EXCEPTION: Domestic Partnerships registered in Nevada
     - NRS 122A.300 provides that, for the most part, termination of domestic partnerships are governed by NRS 125. Essentially, the same general rules apply for domestic partners as for legally married spouses.
     - Must be a valid domestic partnership, which, in Nevada, requires registration with the Secretary of State and adherence to the requirements of NRS 122A.100.

GENERAL RULES

2. Alimony may be granted in a lump sum, or it may be granted as periodic payments. *See*, NRS 125.150(1)(a); *Kogod v. Cioffi-Kogod*, 439 p. 3d 397, 400 (Nev. 2019).

3. Alimony is an equitable award, subject to the court's sound discretion. NRS 125.150(1)(a)

GENERAL RULES

3. Alimony is an equitable award, subject to the court's sound discretion. NRS 125.150(1)(a)
   a. There is no bright-line rule for determining when alimony is appropriate;
   b. No bright-line rule for how much alimony should be awarded;
   c. No bright-line rule for the duration of any alimony that may be awarded;
   d. There is no calculator we can point to, no mathematical formula like that provided for calculating child support, that can determine how much a party will pay in alimony.
   e. Accordingly, the district court is vested with a wide range of discretion in determining what is just and equitable. *Buchanan v. Buchanan*, 523 P. 2d 1, 5 (Nev. 1974)

SO HOW DOES THE COURT MAKE ITS DETERMINATION

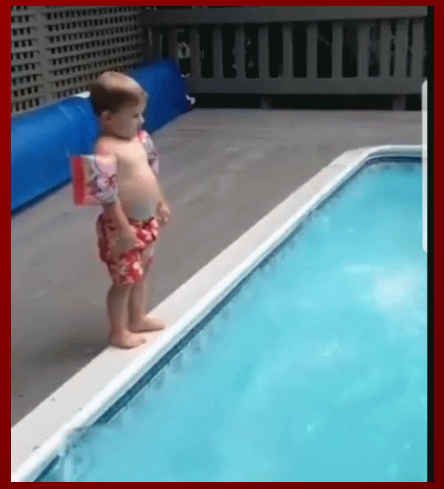
The lawyerly answer… it depends.

3 TYPES OF SPOUSAL SUPPORT ORDERS

1. Pendente Lite/Temporary Support Orders

2. Post-Decree Alimony

3. Rehabilitative Alimony



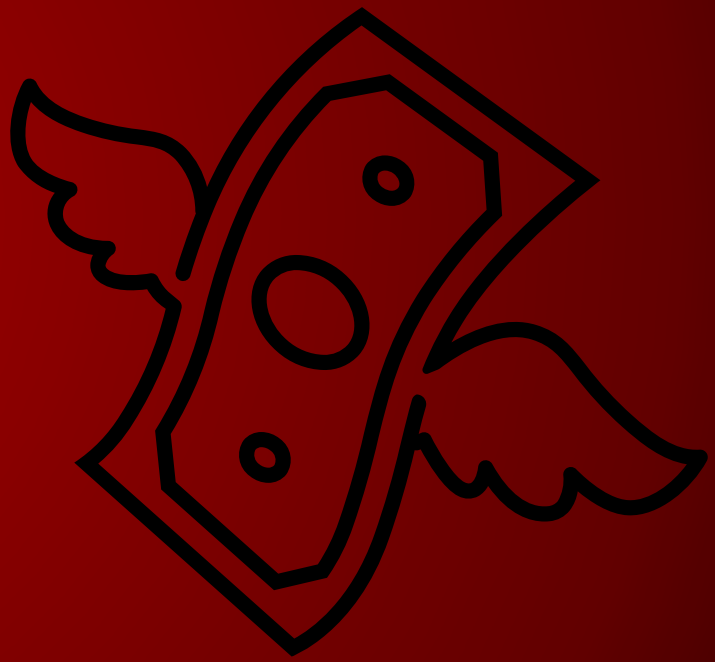
Let’s dive into each type…

3 TYPES OF SPOUSAL SUPPORT ORDERS

1. Pendente Lite Support Orders

a. Also known as temporary spousal support/preliminary spousal support
b. NRS 125.040/NRS 125.200
c. Ordered during the pendency of a divorce/separate maintenance case
d. Meant to provide "temporary maintenance" during litigation and before trial.

- Remember, the payor spouse paying the monthly expenses is considered spousal support.



3 TYPES OF SPOUSAL SUPPORT ORDERS

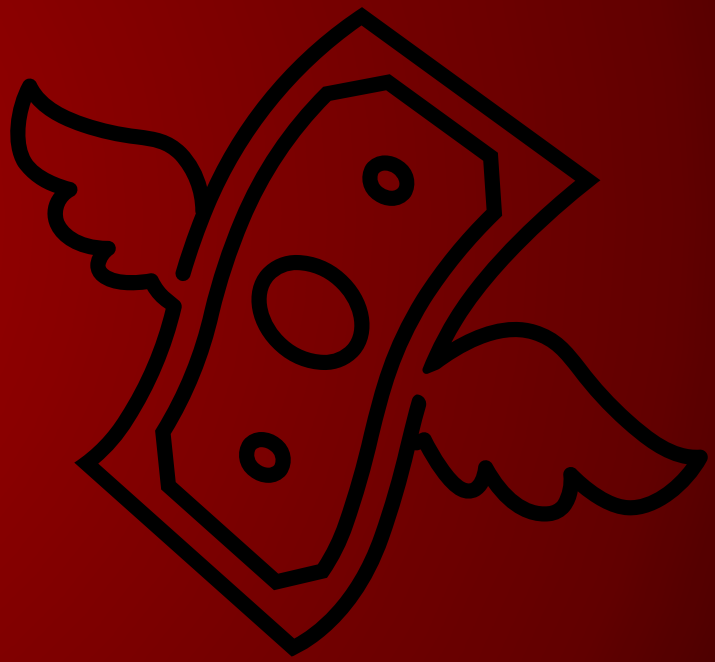
2. Post-Decree Alimony

a) Alimony awarded as part of the decree of divorce;

b) Alimony is governed by NRS 125.150(1), NRS 125.150(5), and NRS 125.150(9);

c) Can be lump-sum, or through periodic payments;

d) Periodic payments can be permanent or temporary;

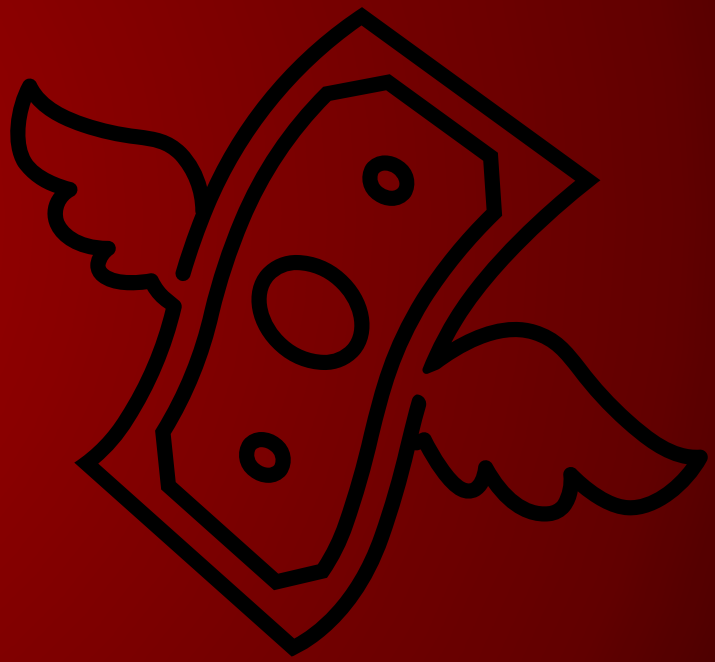


3 TYPES OF SPOUSAL SUPPORT ORDERS

2. Post-Decree Alimony

a) Temporary Alimony
   i. Will have a specified end-date or number of payments.

b) Permanent Alimony
   i. No specified end-date
   ii. Will *usually* terminate upon death of either party or remarriage of the receiving party unless otherwise intended.



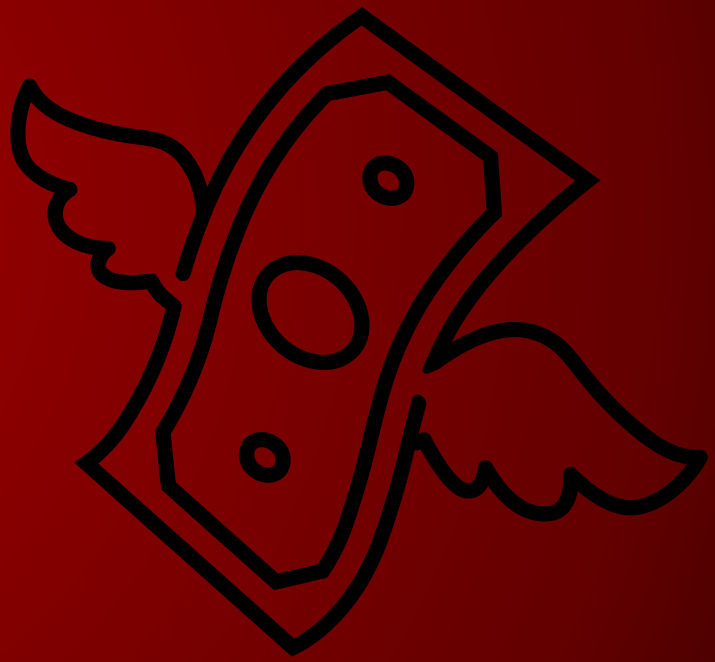
3 TYPES OF SPOUSAL SUPPORT ORDERS

3. Rehabilitative Alimony

a) Awarded as part of the final decree of divorce

b) NRS 125.150(10)

c) Meant to provide support to the receiving spouse aimed specifically at allowing that spouse to obtain training or education relating to a chosen job or career path.



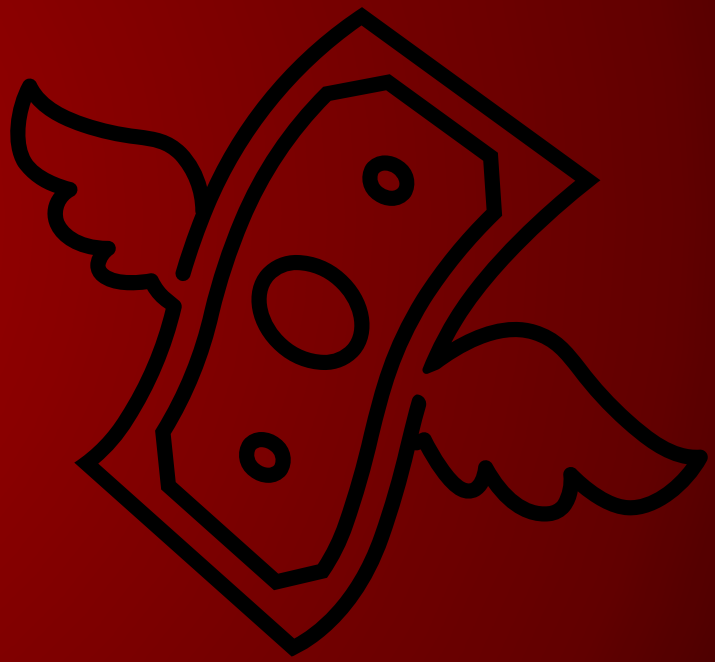
PENDENTE LITE SPOUSAL SUPPORT

PENDENTE LITE SPOUSAL SUPPORT

- Awarded during the pendency of a divorce or separate maintenance case
  - Statutory authority: NRS 125.040 provides for an award of temporary maintenance during the pendency of a divorce case.
  - Statutory authority: NRS 125.200 provides for temporary maintenance during pendency of an action for separate maintenance – what is commonly known as a "legal separation".

PENDENTE LITE SPOUSAL SUPPORT

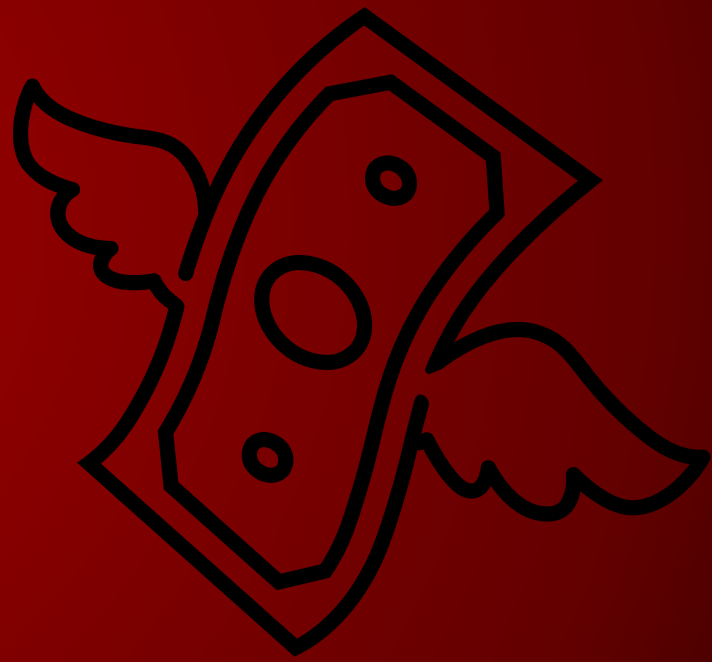
- Requires a Motion:
  - NRS 125.040: “Upon application of a party and notice to the other party”
- The district court can reach into a party’s separate property:
  - “The Court may make any order affecting property of the parties, or either of them, which it may deem necessary or desirable to accomplish the purposes of this section.” NRS 125.040(2).



PENDENTE LITE SPOUSAL SUPPORT: Presenting your case

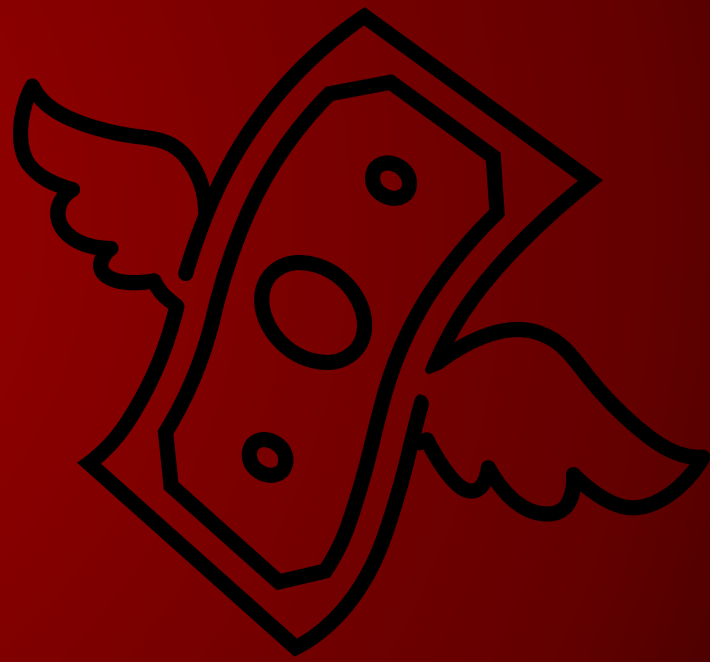
- NRS 125.040 requires the court to take "into consideration the financial situation of each of the parties."

What is the court looking for?



PENDENTE LITE SPOUSAL SUPPORT: Presenting your case

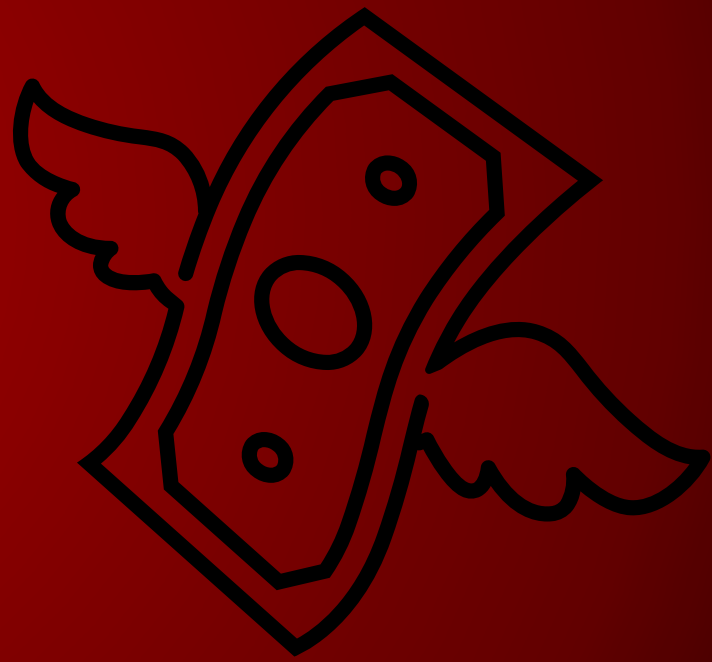
- Preliminary support appropriate when "in fairness" the requesting party should have financial assistance from the other party. *Engebretson v. Engebretson*, 338 P.2d 75 (Nev. 1959)
- Show the Court that there exists a "need"



PENDENTE LITE SPOUSAL SUPPORT: Presenting your case

- NRS 125.040 provides for pendente lite orders as are "necessary" to accomplish temporary maintenance

- Discuss higher earning party's income, excess income, and discretionary expenses and the need of the requesting party.

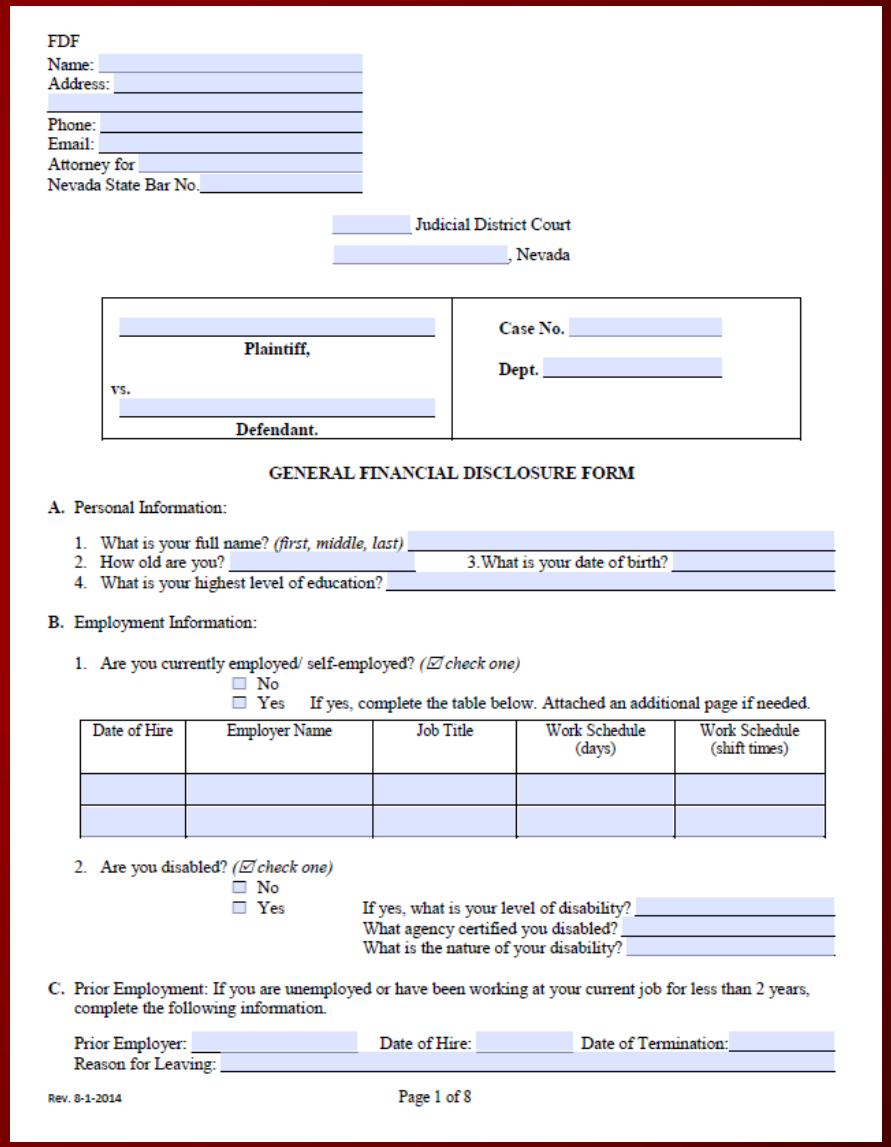


PENDENTE LITE SPOUSAL SUPPORT: Presenting your case

- During your presentation, remind the Court:
  - The requesting party does not need to be destitute
  - The requesting party does not need to utilize or deplete their own separate estate before receiving temporary support
  - The “status quo” of the marital lifestyle should be the benchmark

PENDENTE LITE SPOUSAL SUPPORT: Presenting your case

- The Financial Disclosure Form:
  - The local rules require the filing of the FDF
  - The FDF is helpful for the Courts to determine whether support is **needed** pendente lite and whether the potential payor has the **ability** to pay



FDF
Name: _____
Address: _____
_____
Phone: _____
Email: _____
Attorney for _____
Nevada State Bar No. _____

_____ Judicial District Court
_____, Nevada

_____ **Plaintiff,** vs. _____ **Defendant.**	**Case No.** _____ **Dept.** _____

GENERAL FINANCIAL DISCLOSURE FORM

A. Personal Information:

1. What is your full name? *(first, middle, last)* _____
2. How old are you? _____ 3. What is your date of birth? _____
4. What is your highest level of education? _____

B. Employment Information:

1. Are you currently employed/ self-employed? *(☑ check one)*
   - ☐ No
   - ☐ Yes If yes, complete the table below. Attached an additional page if needed.

Date of Hire	Employer Name	Job Title	Work Schedule (days)	Work Schedule (shift times)

2. Are you disabled? *(☑ check one)*
   - ☐ No
   - ☐ Yes

   If yes, what is your level of disability? _____
   What agency certified you disabled? _____
   What is the nature of your disability? _____

C. Prior Employment: If you are unemployed or have been working at your current job for less than 2 years, complete the following information.

Prior Employer: _____ Date of Hire: _____ Date of Termination: _____
Reason for Leaving: _____

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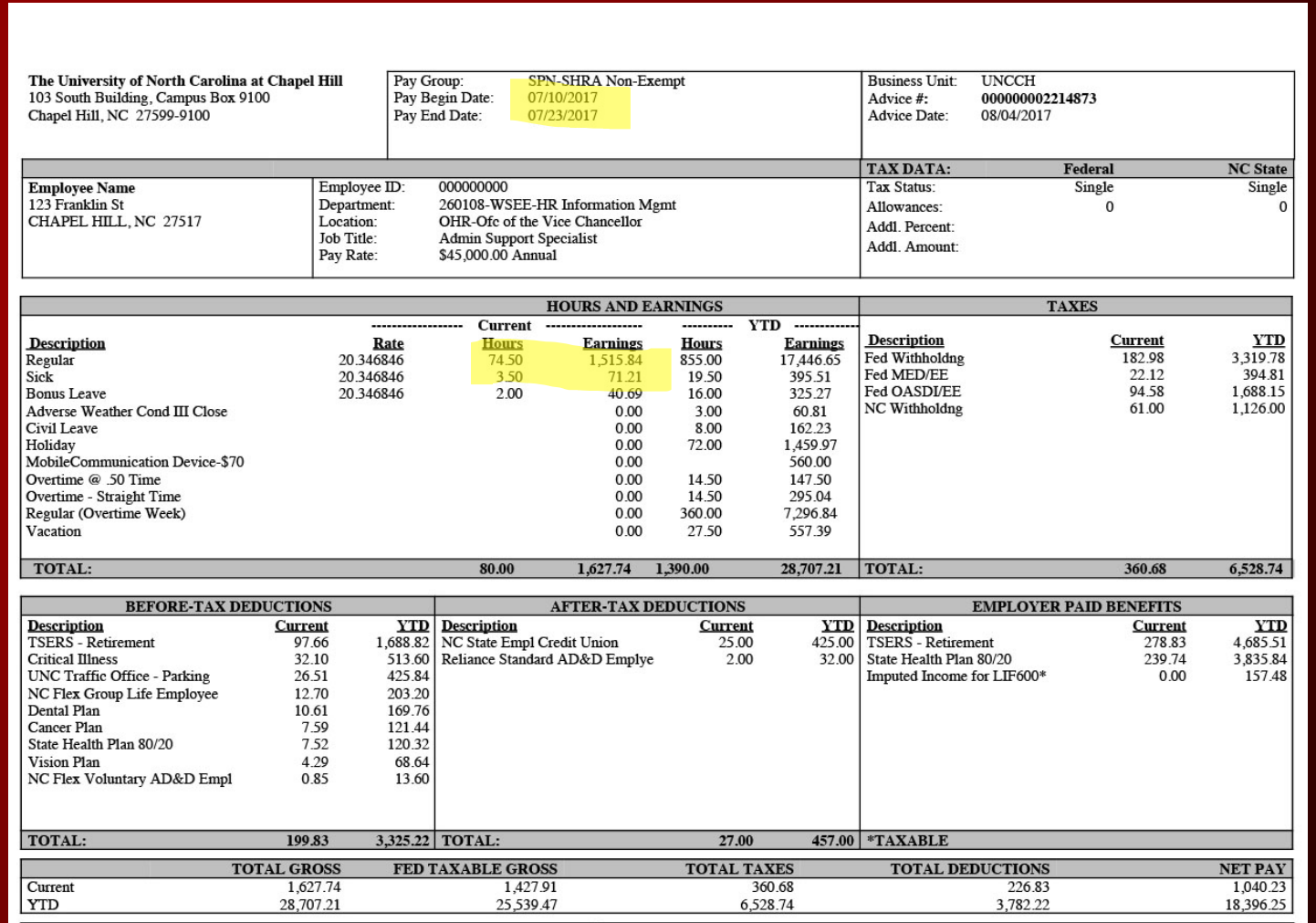
FINANCIAL DISCLOSURE FORM

- Litigants AND Attorneys constantly run into the issue of miscalculating monthly income and deductions… sometimes to their client's own disadvantage.
- This may seem like basic knowledge, but income and deductions should be calculated based on frequency of pay.



The University of North Carolina at Chapel Hill
103 South Building, Campus Box 9100
Chapel Hill, NC 27599-9100

Pay Group: SPN-SHRA Non-Exempt
Pay Begin Date: 07/10/2017
Pay End Date: 07/23/2017

Business Unit: UNCCH
Advice #: 000000002214873
Advice Date: 08/04/2017

Employee Name
123 Franklin St
CHAPEL HILL, NC 27517

Employee ID: 000000000
Department: 260108-WSEE-HR Information Mgmt
Location: OHR-Ofc of the Vice Chancellor
Job Title: Admin Support Specialist
Pay Rate: $45,000.00 Annual

TAX DATA:	Federal	NC State
Tax Status:	Single	Single
Allowances:	0	0
Addl. Percent:		
Addl. Amount:		

HOURS AND EARNINGS

		Current		YTD	
Description	Rate	Hours	Earnings	Hours	Earnings
Regular	20.346846	74.50	1,515.84	855.00	17,446.65
Sick	20.346846	3.50	71.21	19.50	395.51
Bonus Leave	20.346846	2.00	40.69	16.00	325.27
Adverse Weather Cond III Close			0.00	3.00	60.81
Civil Leave			0.00	8.00	162.23
Holiday			0.00	72.00	1,459.97
MobileCommunication Device-$70			0.00		560.00
Overtime @ .50 Time			0.00	14.50	147.50
Overtime - Straight Time			0.00	14.50	295.04
Regular (Overtime Week)			0.00	360.00	7,296.84
Vacation			0.00	27.50	557.39
TOTAL:		80.00	1,627.74	1,390.00	28,707.21

TAXES

Description	Current	YTD
Fed Withholdng	182.98	3,319.78
Fed MED/EE	22.12	394.81
Fed OASDI/EE	94.58	1,688.15
NC Withholdng	61.00	1,126.00
TOTAL:	360.68	6,528.74

BEFORE-TAX DEDUCTIONS

Description	Current	YTD
TSERS - Retirement	97.66	1,688.82
Critical Illness	32.10	513.60
UNC Traffic Office - Parking	26.51	425.84
NC Flex Group Life Employee	12.70	203.20
Dental Plan	10.61	169.76
Cancer Plan	7.59	121.44
State Health Plan 80/20	7.52	120.32
Vision Plan	4.29	68.64
NC Flex Voluntary AD&D Empl	0.85	13.60
TOTAL:	199.83	3,325.22

AFTER-TAX DEDUCTIONS

Description	Current	YTD
NC State Empl Credit Union	25.00	425.00
Reliance Standard AD&D Emplye	2.00	32.00
TOTAL:	27.00	457.00

EMPLOYER PAID BENEFITS

Description	Current	YTD
TSERS - Retirement	278.83	4,685.51
State Health Plan 80/20	239.74	3,835.84
Imputed Income for LIF600*	0.00	157.48
*TAXABLE		

	TOTAL GROSS	FED TAXABLE GROSS	TOTAL TAXES	TOTAL DEDUCTIONS	NET PAY
Current	1,627.74	1,427.91	360.68	226.83	1,040.23
YTD	28,707.21	25,539.47	6,528.74	3,782.22	18,396.25

FINANCIAL DISCLOSURE FORM

- So, now that the Court has the parties' correct income….
  - The court will:
    - Compare the income of the parties
    - Compare the deduction of the parties
    - Compare the monthly expenses as outlined on page 4 of the parties' respective Financial Disclosure Forms
    - Review the "excess" income per month of the higher earning spouse, if any
    - Make a determination for temporary support
      - REMEMBER: If your client is paying child support in addition, this should be relayed to the judge

REASONABLE AND NECESSARY CHART

- The Reasonable and Necessary Chart:
  - What if one of the parties is completely overestimating their monthly expenses in an effort to obtain spousal support? What if they do not have a need?
  - If one party is being unreasonable with their request, double dipping expenses, or over-estimating their expenses, the other party may file a Reasonable and Necessary Chart to outline the requesting party's expenses and compare the same with their proposed reasonable expenses
    - The parties are supposed to use their bank statements to qualify their financial disclosure expenses.

SAMPLE REASONABLE AND NECESSARY CHART

Potter v. Weasley
REASONABLE/NECESSARY EXPENSES

CASE NO. D-_____:D

NON-DISCRETIONARY		Wife	Husband's FDF	Husband's R/N	**	Children's Expenses	Comments
HOUSE EXPENSES	Mortgage/Rent/Lease						
	Property Taxes						
	Insurance						
	Other						
	Lawn care						
	Repair/Maintenance						
	Pool Service						
	Pest Control						
	Security						
DUES / MEMBERSHIPS	HOA						
	Other/gym						
UTILITIES	Gas						
	Electric						
	TV/Cable/Internet						
	Water						
	Trash						
TELEPHONE	Landline/fax						
	Cellular						
	Internet						
HEALTHCARE	Health Insurance						
	Dental/glasses						
	Unreimbursed Med Expenses/Prescriptions						
	Therapy						
TRANSPORTATION	Auto Insurance						
	Auto payment/lease						
	License / Registration						
	Gas / Oil						
	Other/Unknown						
	Repair / Maintenance						
DEBT	Credit Card - minimum						
	Other - student loans						
TOTAL		$0.00	$0.00	Difference from FDF and R/N		$0.00	

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DISCRETIONARY		Wife	Husband FDF	Husband's R/N	**	Children's Expenses	Comments
HOUSE MAINTENANCE	Housekeeping						
EDUCATION	Music						
	Extracurricular						
FOOD/GROCERY/ INCIDENTALS	F/G/I						
ENTERTAINMENT	Dining Out						
	Movies						
	Music/Videos						
	Miscellaneous - offroading						
	Other						
	Advertisment						
CLOTHING	Self						
	Children						
	Cleaning						
STORAGE							
APPEARANCE	Hair						
	Nails/pedi/Botox						
	Facials						
	Massage						
	Cosmetics						
	Other						
BOOKS/NEWPAPERS/ MAGAZINES	B/N/M						
MISCELLANEOUS	Church/Charity						
	Pets						
	Attorney Fees						
CONTRIBUTIONS	Savings						
	Alimony						
VACATIONS	Vacations						
TOTAL		$0.00	$0.00	FDF and R/N		$0.00	

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POST-DECREE ALIMONY

ALIMONY: CONSIDERATIONS

- Post-Decree Alimony, if any, is awarded as a part of the Decree of Divorce

- The Statutory Authority is found in NRS 125.150(1), NRS 125.150(5), and NRS 125.150(9).

- Alimony is an equitable award, subject to the Court's sound discretion. *See*, NRS 125.150(1) (court may award alimony "as appears just and equitable"); *Rutar v. Rutar*, 827 P.2d 829, 831 (Nev. 1992); *Sprenger v. Sprenger*, 878 P.2d 284 (Nev. 1994); *Kogod v. Cioffi-Kogod*, 439 P.3d 397 (Nev. 2020).

- In making a determination regarding alimony, the court may not consider marital fault or misconduct, or lack thereof. *Rodriguez v. Rodriguez*, 13 P.3d 415, 419 (2000) ("Alimony is not a sword to level the wrongdoer. Alimony is not a prize to reward virtue.").

Lump Sum Alimony

*Health/Life Expectancy of Payor

*Whether lump sum would deplete payor's assets

*Financial condition/means of support of payee

*Payee's life expectancy

*Whether payor simply wants to pay once and be done

Monthly Payments

*Monthly payments for a set duration and amount

*Permanent -- No specific end date

*Temporary -- Specific end date/number of payments

*Payments will terminate upon either party's death or the remarriage of the receiving party unless specifically ordered otherwise by the Court

ALIMONY: PAYMENT TYPES

NRS 125.150(4) provides for an award of alimony as the court deems "just and equitable"

Alimony can be in periodic payments or in a lump sum. NRS 125.150(4); *Sargeant v. Sargeant*, 495 P.2d 618 (Nev. 1972); *Daniel v. Baker*, 794 p. 2d 345 (Nev. 1990)

NRS 125.150(9)(a): The financial condition of each spouse

- State each party's income, separate property assets, equity in community property assets, and their ability to earn income

- Arguments for or against lump sum alimony payments can be discussed

- Arguments regarding a party's ability to pay

ALIMONY – NRS 125.150

As alimony is discretionary, the Court must consider the factors outlined in NRS 125.150(9) in addition to any other relevant factors in determining the amount and duration of alimony.

NRS 125.150(9)(b): The nature and value of the respective property of each spouse

- Separate property should be outlined here (including rents and profits therefrom, if any)
- The division of community property can be discussed in this section
- Discuss assets with passive income

ALIMONY – NRS 125.150

As alimony is discretionary, the Court must consider the factors outlined in NRS 125.150 in addition to any other relevant factors in determining the amount and duration of alimony.

NRS 125.150(9)(c): The contribution of each spouse to any property held by the spouses pursuant to NRS 123.030

- Discuss the contribution of each spouse to the jointly owned/community property
  - For example, a spouse that does not "work" but helped run the community business/maintain community property during the marriage

ALIMONY – NRS 125.150

As alimony is discretionary, the Court must consider the factors outlined in NRS 125.150 in addition to any other relevant factors in determining the amount and duration of alimony.

NRS 125.150(9)(d): The duration of the marriage

- This factor plays into the duration of the alimony award (i.e. how many months)
- We often see the Courts order alimony anywhere from 1/3 – 1/2 of the time of the marriage.
- The length of a marriage should not preclude or limit alimony and there have been several instances wherein the Court affirmed alimony awards for short-term marriages. *See* *Winn v. Winn*, 86 Nev. 18, 19-20, 467 P.2d 601, 602 (1970) (affirming an alimony award for an undefined duration for a marriage that lasted only two and a half years);
- If it is a long-term marriage, the life-time/permanent alimony arguments come into play

ALIMONY – NRS 125.150

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NRS 125.150(9)(e): The income, earning capacity, age and health of each spouse

- Income:
  - State each party's income
  - If one party is going to be paying child support in addition to alimony, include that as a notation to the Court so it is considered
- Age:
  - Whether they are close to retirement
  - Whether the payor spouse is older/younger than the payee spouse
  - Whether both are of an age that they can have gainful employment
- Health
  - Whether the payee spouse's health is diminished to the extent that they cannot obtain gainful employment

NRS 125.150(9)(f): The standard of living during the marriage

- Monthly living expenses during the marriage
- Type of home (size, location, school zone)
- Type of social circles the parties have gotten accustomed to during the marriage
- Vacation and travel during the marriage
- Do not just say “upper” “middle” or “lower” class – Explain the lifestyle.

ALIMONY – NRS 125.150

As alimony is discretionary, the Court must consider the factors outlined in NRS 125.150 in addition to any other relevant factors in determining the amount and duration of alimony.

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NRS 125.150(9)(g): The career before the marriage of the spouse who would receive the alimony

- A few considerations
  - If the payee had a great job and it's a short term marriage, they may still have connections to the industry, or their resume may still be viable
  - If the payee had a great job and it's a long term marriage, they may not easily be able to enter the work force and may need to take courses to become "current"
  - If the payee had no job or a low paying job, and it's a short term marriage, did their lifestyle change within that time frame?
  - If the payee had no job or a low paying job and it's a long term marriage, did they become accustomed to a lifestyle that requires alimony to sustain?

ALIMONY – NRS 125.150

NRS 125.150(9)(h): The existence of specialized education or training or the level of marketable skills attained by each spouse during the marriage

- If one spouse received training or marketable skills during the marriage and now the parties are divorcing, the other party may be seeking the ability to obtain the same.
- Moreover, the payee spouse may receive compensation as a result of them supporting the family while the payor spouse was earning the higher education/training/advancing their career.
- This factor overlaps with NRS 125.150(10) for rehabilitative alimony

As alimony is discretionary, the Court must consider the factors outlined in NRS 125.150 in addition to any other relevant factors in determining the amount and duration of alimony.

ALIMONY – NRS 125.150

As alimony is discretionary, the Court must consider the factors outlined in NRS 125.150 in addition to any other relevant factors in determining the amount and duration of alimony.

NRS 125.150(9)(i): The contribution of either spouse as homemaker

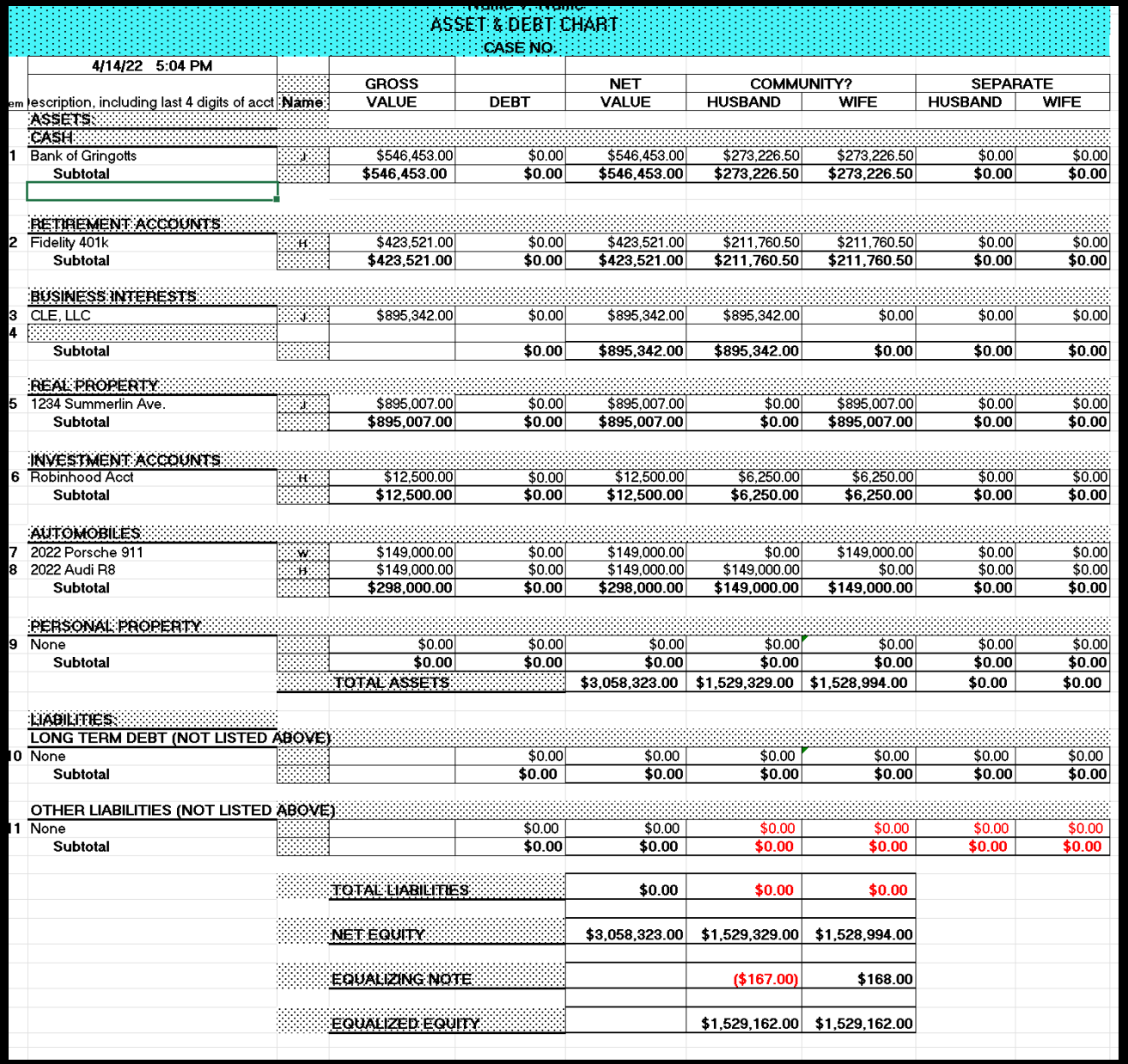
- Has either spouse discontinued their job or taken a long leave of absence during their employment to care for the children, the household, the pets, travel for the other spouse's work, etc.
- Has them being out of the work force diminished their ability to earn income?
- Did the payor spouse prevent the payee spouse from working?

NRS 125.150(9)(j): The award of property granted by the court in the divorce, other than child support and alimony, to the spouse who would receive the alimony

- This is where the property division and the passive income from property should be discussed.
- Whether there is a large community property division or a small division, it should be outlined
  - A marital balance sheet is great to show the actual net worth each party will have

ALIMONY – NRS 125.150

As alimony is discretionary, the Court must consider the factors outlined in NRS 125.150 in addition to any other relevant factors in determining the amount and duration of alimony.



ASSET & DEBT CHART

CASE NO.

	4/14/22 5:04 PM								
			GROSS		NET	COMMUNITY?		SEPARATE	
Item	Description, including last 4 digits of acct	Name	VALUE	DEBT	VALUE	HUSBAND	WIFE	HUSBAND	WIFE
	ASSETS:								
	CASH								
1	Bank of Gringotts	J	$546,453.00	$0.00	$546,453.00	$273,226.50	$273,226.50	$0.00	$0.00
	Subtotal		**$546,453.00**	**$0.00**	**$546,453.00**	**$273,226.50**	**$273,226.50**	**$0.00**	**$0.00**
	RETIREMENT ACCOUNTS								
2	Fidelity 401k	H	$423,521.00	$0.00	$423,521.00	$211,760.50	$211,760.50	$0.00	$0.00
	Subtotal		**$423,521.00**	**$0.00**	**$423,521.00**	**$211,760.50**	**$211,760.50**	**$0.00**	**$0.00**
	BUSINESS INTERESTS								
3	CLE, LLC	J	$895,342.00	$0.00	$895,342.00	$895,342.00	$0.00	$0.00	$0.00
4									
	Subtotal			**$0.00**	**$895,342.00**	**$895,342.00**	**$0.00**	**$0.00**	**$0.00**
	REAL PROPERTY								
5	1234 Summerlin Ave.	J	$895,007.00	$0.00	$895,007.00	$0.00	$895,007.00	$0.00	$0.00
	Subtotal		**$895,007.00**	**$0.00**	**$895,007.00**	**$0.00**	**$895,007.00**	**$0.00**	**$0.00**
	INVESTMENT ACCOUNTS								
6	Robinhood Acct	H	$12,500.00	$0.00	$12,500.00	$6,250.00	$6,250.00	$0.00	$0.00
	Subtotal		**$12,500.00**	**$0.00**	**$12,500.00**	**$6,250.00**	**$6,250.00**	**$0.00**	**$0.00**
	AUTOMOBILES								
7	2022 Porsche 911	W	$149,000.00	$0.00	$149,000.00	$0.00	$149,000.00	$0.00	$0.00
8	2022 Audi R8	H	$149,000.00	$0.00	$149,000.00	$149,000.00	$0.00	$0.00	$0.00
	Subtotal		**$298,000.00**	**$0.00**	**$298,000.00**	**$149,000.00**	**$149,000.00**	**$0.00**	**$0.00**
	PERSONAL PROPERTY								
9	None		$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
	Subtotal		**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**
			TOTAL ASSETS		$3,058,323.00	$1,529,329.00	$1,528,994.00	$0.00	$0.00
	LIABILITIES:								
	LONG TERM DEBT (NOT LISTED ABOVE)								
10	None			$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
	Subtotal			**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**
	OTHER LIABILITIES (NOT LISTED ABOVE)								
11	None			$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
	Subtotal			**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**
			TOTAL LIABILITIES		$0.00	$0.00	$0.00		
			NET EQUITY		$3,058,323.00	$1,529,329.00	$1,528,994.00		
			EQUALIZING NOTE			($167.00)	$168.00		
			EQUALIZED EQUITY			$1,529,162.00	$1,529,162.00		

MARITAL BALANCE SHEET

ALIMONY – NRS 125.150

As alimony is discretionary, the Court must consider the factors outlined in NRS 125.150 in addition to any other relevant factors in determining the amount and duration of alimony.

NRS 125.150(9)(k): The physical and mental condition of each party as it relates to the financial condition, health and ability to work of that spouse

- This section should discuss disabilities, physical and mental health concerns, medication, etc. and relate how the same affects both parties' financial condition and ability to work
  - Payor spouse may be retiring soon due to health conditions
  - Payee spouse may not be able to obtain employment due to their physical ailments
  - Payee spouse's mental health may interfere with their ability to earn income

SO… ABOUT *KOGOD*

ALIMONY: *KOGOD V. CIOFFI-KOGOD*, 439 P.3D 397 (NEV. 2019)

- Relevant facts:
  - Marital estate valued at $47 million;
  - Parties married in 1991 and moved frequently to advance Husband's career
  - By 2009, Husband was earning 14 million per year and Wife was earning 55k per year
  - The court awarded wife a lump sump 1.6 million to compensate for economic loss as a result of the marriage and divorce but recognized that she did not need alimony for her own support
  - The district court awarded an unequal division of property in the wife's favor due to waste
    - Wife's portion of the community property was mostly awarded in cash assets, which passively earned her between $500,000 and $800,000 per year.
    - Husband's assets were mostly real property

ALIMONY: *KOGOD V. CIOFFI-KOGOD*, 439 P.3D 397 (NEV. 2019)

- Holdings:
  - While a district court may generally award alimony to narrow large post-divorce gaps in income and to maintain the parties' marital standard of living, the nature and value of the community property Wife received in the divorce removed any basis for awarding alimony. Wife can earn between $ 500,000 and $ 800,000 in passive annual income from the cash assets she received in the divorce. This passive income from interest and dividends easily covers Wife's monthly expenses and far exceeds the actual alimony award of $ 18,000 per month that the district court deemed just and equitable. Accordingly, the court reject Wife's argument that alimony was necessary to narrow her and Husband's large post-divorce income gap and to maintain her pre-divorce standard of living.
  - A large gap in income, alone, does not decide alimony. The award must meet the receiving spouse's economic needs **or** compensate for economic losses resulting from the marriage and subsequent divorce.

ALIMONY: *KOGOD V. CIOFFI-KOGOD*, 439 P.3D 397 (NEV. 2019)

Holdings:

- When determining if alimony is **just and equitable**, a district court must consider eleven statutory factors; the district court may also consider any other relevant factor, but it must not consider the marital fault or misconduct, or lack thereof, of the spouses
- Alimony can be "just and equitable" both when necessary to support the economic needs of a spouse and to compensate for a spouse's economic losses from the marriage and divorce, including to equalize post-divorce earnings or help maintain the marital standard of living.

NRS Factors for Need	NRS Factors for Economic Loss
NRS 125.150(9)(a)	NRS 125.150(9)(d)
NRS 125.150(9)(b)	NRS 125.150(9)(e)
NRS 125.150(9)(e)	NRS 125.150(9)(f)
NRS 125.150(9)(j)	NRS 125.150(9)(g)
NRS 125.150(9)(k)	NRS 125.150(9)(h)
	NRS 125.150(9)(i)

KOGOD: AN ANALYSIS

- Recognized the lack of clarity in determining alimony
  - NRS 125.150(9)'s "just and equitable" provision is "amorphous and does not explain the purpose of alimony."
  - Statute provides no guidance as to the interplay of each of the factors.
  - Citation to relevant articles:
    - Robert Kirkman Collins, The Theory of Marital Residuals: Applying an Income Adjustment Calculus to the Enigma of Alimony
    - Marshal Willick, In Search of a Coherent Theoretical Model for Alimony

- Historical roots of the "Needs" analysis:
  - Theory of Coverture from early 1900s
  - Early Nevada Case Law
    - *Foy v. Estate of Smith*, 58 Nev. 371, 376, 81 P.2d 1065, 1067 (1938)
    - *Applebaum v. Applebaum*, 93 Nev. 382, 386, 566 P.2d 85, 88 (1977)
    - *Greinstein v. Greinstein,* 44 Nev. 174, 174, 191 P. 1082, 1082 (1920)
    - *Lake v. Bender*, 18 Nev. 361, 410, 7 P. 74, 80 (1884)
      - Abrogated on other grounds by *Johnson v. Johnson,* 89 Nev. 244, 246, 510 P.2d 625, 626 (1973)

KOGOD: AN ANALYSIS

- But what do we mean by “Need”
  - 3 Levels of “Need”
    - Basic, subsistence level needs
    - “Moderate, middle-class” needs
    - The standard of living during the marriage
- The subjectivity of “Need” has led to a disparity in decisions…
- “As it stands, the legislature has placed that decision-making power in the hands of district courts to award alimony ‘as appears just and equitable.’”

KOGOD: AN ANALYSIS

- Economic Loss
  - Alimony as a quasi-contractual remedy
  - Compensates for losses resulting from splitting one household into two through divorce
  - Compensates for foregoing career opportunities for the sake of the marriage
  - Compensates for a spouse's expectations
- Compare with contract principles
  - Expectation damages
  - Reliance damages
  - Opportunity cost damages

KOGOD: AN ANALYSIS

- Economic Loss as the basis for maintaining the marital standard of living in prior case law
  - *Shydler v. Shydler*, 954 P. 2d 37 (Nev. 1998)
  - *Sprenger v. Sprenger,* 110 Nev. 855, 860, 878 P.2d 284, 287 (1994)
  - *Gardner v. Gardner,* 110 Nev. 1053, 1058, 881 P.2d 645, 648 (1994)
  - In each case, economic loss, though not specifically addressed as such, served as policy rationale for the alimony award

FIRST INTERPRETATION OF HOW TO BRIEF *KOGOD*

Alimony can be "just and equitable" **both** (1) when necessary to support the economic needs of a spouse and (2) to compensate for a spouse's economic losses from the marriage and divorce, including (a) to equalize post-divorce earnings or (b) help maintain the marital standard of living.
(Interpret that these are two separate tests that should be analyzed)

1. **When necessary to support the economic needs of a spouse**

- After considering the NRS Factors based on need, district court may award alimony to ensure that an economically powerless spouse receives sufficient support to meet his or her need

- If a district court awards alimony to address a spouse's financial need, the basis for an award is clear-cut when one spouse is unable to meet the basic necessities of life such as food, clothing, and habitation

- A court can "reach very different figures for a spouse's 'needs,' depending on whether those needs are measured at a **subsistence** (survival) level, a level that the court believes to be **objectively reasonable**, or the actual **subjective marital standard of living**.

2. **To compensate for a spouse's economic losses from the marriage and divorce**

- After considering the NRS economic loss factors, the district court may award alimony to compensate for lost income-earning potential or a decreased standard of living
  - **Equalize Earnings/Earning Capacity**
    - A court can award alimony to make the "spouse whole at the end of the marriage by rewarding efforts in homemaking, childrearing, interruption of a career, or contributions to the success of the other.
    - Alimony might be seen as a remedy fashioned for the economic losses resulting from splitting one household into two through divorce
  - **Maintain Marital Standard of Living**
    - Enabling the lower-income-earning spouse to maintain a lifestyle as close as possible to the lifestyle enjoyed during the marriage

TL;DR: There must be an underlying rationale for alimony such as (1) economic need, (2) the receiving spouse's inability to maintain the marital standard of living, or (3) the receiving spouse's decreased income-earning potential as a result of the marriage.

SECOND INTERPRETATION OF HOW TO BRIEF *KOGOD*

The 3-Step Unified Test Approach

<u>Step 1</u>: Determine whether and to what extent a need exists

- 3 Levels of Need
  - Subsistence
  - Reasonable, subjective needs
  - Marital Standard of Living

<u>Step 2</u>: Determine the ability to pay

- What level of need can the payor spouse provide for?
  - Subsistence
  - Reasonable, subjective needs
  - Marital Standard of Living

<u>Step 3</u>: Economic Loss Analysis to determine what level of need should be provided for.

- The more extensive the economic loss, the greater the level of need that should be provided for.
  - Loss resulting from splitting one household into two through divorce?
  - Did the receiving spouse forego otherwise lucrative career opportunities?
  - Does the receiving spouse have a reasonable financial expectation?

<u>Factors to consider for Step 1 and 2:</u>

- NRS 125.150(9)(a) – Financial condition of each spouse
- NRS 125.150(9)(b) – The relative value of the parties' respective property
- NRS 125.150(9)(e) – Income, earning capacity, age and health
- NRS 125.150(9)(j) – The property award granted in the divorce
- NRS 125.150(9)(k) - The physical and mental condition of each party as it relates to the financial condition, health and ability to work of that spouse.

<u>Factors to consider for Step 3:</u>

- NRS 125.150(9)(d) – The duration of the marriage
- NRS 125.150(9)(e) – The income, earning capacity, age and health of each spouse,"
- NRS 125.150(9)(f) – The standard of living during the marriage
- NRS 125.150(9)(g) – The spouse's career before the marriage
- NRS 125.150(9)(h) – Specialized education or training during marriage
- NRS 125.150(9)(i) – The contribution of either spouse as homemaker

REHABILITATIVE ALIMONY/SUPPORT

- Rehabilitative alimony is designed to provide necessary training or education "relating to a job, career or profession."
- As stated before, you can make the argument for rehabilitative alimony if the payor spouse themselves obtained specialized education or training or the level of marketable skills during the marriage. It's not a requirement but if they did – it helps support the request for the payee spouse to obtain some training, as well.
- NRS 125.150(10) states: In granting a divorce, the court shall consider the need to grant alimony to a spouse for the purpose of obtaining training or education relating to a job, career or profession. In addition to any other factors the court considers relevant in determining whether such alimony should be granted, the court shall consider:
- a) Whether the spouse who would pay such alimony has obtained greater job skills or education during the marriage; and
- (b) Whether the spouse who would receive such alimony provided financial support while the other spouse obtained job skills or education.

MODIFICATION OF ALIMONY

- Unless otherwise ordered, alimony terminates upon the death of either party, or the subsequent remarriage of the spouse to whom payments were to be made
  - Remarriage terminates alimony even when subsequent marriage later ruled void
- Upon changed circumstances, a motion for modification of alimony can be filed
  - A change of 20% or more in the gross monthly income of a spouse who is ordered to pay alimony shall be deemed to constitute changed circumstances requiring a review for modification of the payments of alimony.
  - Cohabitation without remarriage.
  - No Modification of accrued payments
  - The court "shall consider whether the income of the spouse who is ordered to pay alimony, as indicated on the spouse's federal income tax return for the preceding calendar year, has been reduced to such a level that the spouse is financially unable to pay the amount of alimony the spouse has been ordered to pay."

MODIFICATION OF ALIMONY JURISDICTION

A district court retains jurisdiction to modify an award of alimony until the expiration of the period for which the original alimony award was decreed to run, even if the final payment has already been made.

- “To hold otherwise would allow a payor spouse to deprive the court of jurisdiction simply by making advance payments.“

A judgment for alimony arrearages extends the supporting spouse's alimony obligations for the period of the judgment, and these alimony obligations are modifiable until the expiration of the term specified in the judgment.”

Once the court loses jurisdiction, they cannot make orders – file your motion BEFORE the termination of alimony date.

NON-MODIFIABLE ALIMONY

- Any alimony award included in a Decree of Divorce, or merged into a Decree, will be modifiable regardless of any agreement to the contrary
  - Once an agreement is merged into a decree, the agreement loses its independent nature and the parties' rights rest solely upon the decree. *Day v. Day*, 80 Nev. 386, 389 (Nev. 1964).
  - Contract principles do not apply to merged agreements.
  - NRS 125.150(8) expressly allows the district court to modify alimony awards.

- Parties can, by separate agreement, provide for non-modifiable alimony
  - Agreement and decree must direct that the agreement is to survive the decree. *Ballin v. Ballin*, 371 P.2d 32 (Nev. 1962).
  - Subsequent litigation then rests upon the agreement, and contract principles apply. *Id*.

IMPUTATION OF INCOME

- So, the spouse asking for alimony is either underemployed or unemployed. How do you determine earning capacity?
  - Prior Income
  - Education/Experience/Market for those Skills
  - Job offers during the Marriage
  - Vocational Expert

OTHER RESOURCES

- Nevada Practice Manual
- Willick Law Group:
  - https://www.willicklawgroup.com/spousal-support-alimony/
- Hardy, The Honorable David A. (2009) "Nevada Alimony: An Important Policy in Need of a Coherent Policy Purpose," Nevada Law Journal: Vol. 9: Iss. 2, Article 4.
  - Available at: https://scholars.law.unlv.edu/nlj/vol9/iss2/4

COMMON QUESTIONS

So, if I get spousal support in a specific amount, will my alimony be the same amount?

If I get spousal support am I guaranteed to get alimony?

What if I don't ask for alimony during the divorce, but later I decide I need it?

What do I do if my former spouse is behind in alimony payments?

Is Alimony Taxable?

Do only Men Pay Alimony?

Is there a formula?

How do I enforce alimony?

What if my ex moved to a different state?

Can we agree to terminate alimony?

What if I retire, do I still have to pay alimony?

What if I had a good reason to stop paying alimony?