Mediation Associates
of New York & New Jersey

THE NEW NYS SPOUSAL MAINTENANCE STATUTE
WHAT YOU NEED TO KNOW IF YOU ARE CONSIDERING SEPARATION OR DIVORCE
PART ONE

by Janice Starr, Esq.

Prior to 2010, maintenance (formerly alimony) was based on a "needs-based" assessment and was at the Court's discretion. We had no guiding mathematical formula for ascertaining maintenance. Then, in 2010, the legislature gave the Courts some temporary maintenance guidelines (especially important for victims of domestic violence or those that were not being supported during the pendency of the litigation) while litigation was pending with the intention of either fixing the amount of maintenance or modifying the amount of maintenance upon the end of the litigation. In the ensuing years, members of the bar along with many interest groups were concerned that the maintenance statutes were inadequate.

On June 15, 2014, the New York State Assembly passed, and on June 24, 2015, the New York State Senate unanimously approved, bill # A.7645/S.5678-2015 which addresses the duration and amount of both temporary and post-divorce maintenance, which was largely a compromise solution between the members of the bar and the several interest groups. The resulting calculations will become Law upon Governor Cuomo's signature and the new statute will apply to cases commenced upon 120 days after the bill is signed into Law. Although, in mediation, we are not compelled to do exactly what the Court would order, we are still negotiating in the "shadow of the Law" and must be within certain boundaries. That is, in order to have the informed consent of both parties, each party must understand the current statutory law and case law as regards the particular issue of separation/divorce with which we are dealing and then rationally apply or modify those laws to the specific facts of their family pattern and dynamics.

Our clients are fully informed about 1) the several factors that the Court would consider when ordering both temporary and post-divorce maintenance amounts; and 2) the temporary maintenance guidelines calculation, which have existed since 2010. Upon the enactment of the new law, it will become our duty and privilege to make sure our clients both understand the new law which will undoubtedly affect their negotiations. Rest assured, we will always be on top of all changes in the Law and that we are the very best at teaching our clients the specifics of that Law and how it may impact each of them.

What is wonderful about mediation is that the mediators are able to explain the Law and its impact on each side while both parties are in mediation session in an atmosphere of grace and cooperation which allows for the following thinking: **"Let's reach the best solution for our kids and also find that sweet spot where each of us feels that our solution was equitable."**

I will address the several specific changes in my next article, PART TWO. Here is a preview: A party's enhanced earning capacity from licenses, degrees, goodwill, etc. will no longer be considered, by the Court, a marital asset as part of equitable distribution, but might be calculated into an income scenario which might affect the amount of maintenance paid to the lesser earning spouse. Let me know if you are particularly interested in this topic by emailing us.

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