

DISABILITY AND ALIMONY

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Florida Statute 61.08 establishes awards of alimony and what factors the courts will consider when awarding alimony. An award of alimony is based on whether either party has an actual need for alimony and whether either party has the ability to pay alimony. Permanent alimony may be awarded to provide for the needs and necessities of life as they were established during the marriage of the parties for the one who lacks the financial ability to meet his or her needs and necessities of life following a dissolution of marriage.

Permanent alimony is usually awarded following marriages of long duration, which is a marriage having a duration of 17 years or greater. Following a marriage of moderate duration, which is a marriage having a duration of greater than seven years and less than 17 years, permanent alimony may be awarded based upon clear and convincing evidence after consideration of the factors in Florida Statute 61.08. A marriage of short duration is a marriage lasting less than seven years. Permanent alimony may be awarded following a short-term marriage only if there are written findings by the judge that there are exceptional circumstances.

Even though permanent alimony is

“generally inappropriate in a short-term marriage,” a court has held that the short duration of the marriage does not preclude such an award. When considering an award of permanent alimony following a short-term marriage, the appropriate inquiry is “whether there would be any genuine inequity created by the dissolution of marriage without permanent alimony.” The Second District Court of Appeals defines the inquiry further and asks “whether the spouse requesting alimony is without means of self-support, as a result of anything that has transpired during the marriage.”

Generally, permanent alimony has been deemed appropriate following short-term marriages when the case involves requesting spouses who were incapable of self-support by reason of a physical or mental disability. “The Florida courts have

found permanent alimony appropriate in short-term marriage cases where the requesting spouse was disabled as a result of physical or mental ailments for which the payor spouse had no responsibility.”

Similarly, the Fourth District Court of Appeals affirmed an award of permanent alimony following a marriage of six years due to the wife’s severe disability, which prevented her from being employed on a continuous basis.

Depending on your individual circumstances, you may be entitled to permanent alimony even if your marriage lasted less than seven years. ■■■

EDITOR’S NOTE: K. Dean Kantaras is the managing partner of K. Dean Kantaras, P.A., a firm handling cases in family law and immigration. Mr. Kantaras is board certified in marital and family law by the Florida Bar. He has been practicing for over 25 years and is “AV” rated by Martindale-Hubbell. Vanessa C. Fernandez is an associate attorney at K. Dean Kantaras, P.A. She obtained her law degree from the University of Florida, Levin College of Law. Their offices are located at 3531 Alternate 19, Palm Harbor, 34683, (727) 781-0000 and 1930 East Bay Drive, Largo, 33771, kantaraslaw.com.