

# PERMANENT ALIMONY

## *Is it a Vanishing Right?*

By K. Dean Kantaras

**T**HE STATE OF FLORIDA MAY BE headed toward making permanent alimony only a memory of the past.

It is sometimes said that no person's life or property is safe when a legislature is in session. Unfortunately, the "right" to alimony or maintenance is being discussed by the Florida Legislature.

In all of the states, with rare exceptions, the right to support, commonly known as alimony or maintenance, has long been the norm when there was a demonstrated need for it and a corresponding demonstrated ability to pay.

Normally, the courts consider several factors when deciding whether or not to make an alimony award. Among those factors are: the standard of living established during the marriage, the length of the marriage, the relative financial resources of each of the parties, the age and emotional condition of each of the parties, their respective earning capacities, responsibilities for minor children, and the sources of income that are available to each party and the contributions of each spouse to the marriage. Since the financial resources of the parties is such an important factor, non-marital assets are factored in.

Assuming a need for alimony and the ability to pay alimony exists, the Judge must then decide what form of alimony to award. It is at this juncture that we begin to see what appears to be a shift in the legislative philosophy.

The courts have said repeatedly that when the legislature enacts a law, it must intend it to have meaning and effect or it wouldn't have enacted it. A new law that became effective on July 1, 2011 says, in part, "An act relating to alimony:.... revising provisions relating to factors to be considered for alimony awards; revising provisions relating to durational alimony; revising provisions relating to awards of permanent alimony; ...." The last provision was our first hint that things might change.



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Most of those are not new provisions of the law. They already existed, although durational alimony provision had been effective only a short time.

What is new is the language revising provisions relating to permanent alimony and which added to the presumption of permanent alimony. Prior to this statute, permanent alimony was presumed to be appropriate for a long-term marriage. This new act has added language that allows a court to take into consideration whether such an award is appropriate upon consideration of the factors discussed previously. Also added is a definition of a long term marriage. The statute now requires a marriage to have lasted at least 17 years to be considered long term. Previously, the proof required was "preponderance of the evidence," to award permanent alimony for less than a long-term marriage. Now, proof must be based on "clear and convincing evidence," which is a much higher standard. Also added is the following: "In awarding

permanent alimony, the court shall include a finding that no other form of alimony is fair and reasonable under the circumstances of the parties."

So far, it sounds like a lot of legal mumbo, jumbo to the average person. However, it must mean something or the legislature wouldn't have passed the law.

If you think you're going to get an answer on what all this means, you're wrong; because even the lawyers who specialize in family law don't know, since there aren't any appellate decisions giving us guidance. As time goes on, we will have some case law that will clarify what was meant. But for now, we can only speculate and guess.

Since alimony is paid mostly by men, and since the Florida Legislature is "inhabited" mostly by men, and since those men are mostly conservatives, I think we will see a move toward making it more difficult to obtain a permanent alimony award.

However, my predictions are just that, at this point. So for now, we must just wait to see how the courts will rule. ■■■

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*EDITOR'S NOTE: K. Dean Kantaras is an attorney limiting his practice to family law matters, including custody, related appeals and immigration. He is a member of the bar of the Supreme Court of the United States, The Florida Bar, and Clearwater Bar Association Family Law Section. Mr. Kantaras is Board Certified by The Florida Bar in Marital and Family Law. He is "A" rated by Martindale-Hubbell, which is the highest rating a lawyer can obtain. His offices are located at 3531 Palm Harbor Boulevard in Palm Harbor, 1014 U.S. Highway 19 North, Suite 110 in Holiday and 1930 East Bay Drive in Largo. He can be reached at (727) 781-0000, fax: (727) 938-3939 and emailed at [kdk@kalawgroup.com](mailto:kdk@kalawgroup.com).*