

PERMANENT ALIMONY

Florida's Solution

By K. Dean Kantaras

PERMANENT ALIMONY, IN theory, is awarded based on the need of the recipient for it and the ability of the payor to pay it. This is the standard in Florida by which a trial judge and the appellate courts determine whether or not alimony should be granted.

In determining the above, the length of a marriage is usually considered. Marriages are often defined as long term, short term or as being in the grey area. Generally, long-term marriages are fifteen years or longer, short-term marriages are usually seven years or less, and the grey area is somewhere between the two. Because there is no statute in Florida which defines or categorizes marriage by length, different judges define it differently. Therefore, confusion exists among lawyers as to how to advise a client concerning the alimony aspect of their marriage.

In long-term marriages, there is a presumption in the law in favor of awarding permanent alimony. However, there is no such presumption for short-term marriages. Alimony in marriages of a short term is dependent on the special circumstances; thus, alimony is not precluded simply because the marriage is of a short duration. Appellate Courts have ruled that the pertinent inquiry is whether or not a genuine inequity will result if alimony is not awarded. In other words, if the spouse requesting alimony is without a means of self-support as a result of something that has occurred during the marriage, then alimony should be appropriate.

When permanent alimony has been awarded, although the marriage is of a short duration, it is because the requesting spouse is incapable of self-support because of some physical or mental disability.



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One such case denied permanent alimony, only to be reversed by the appellate court because the wife suffered from breast cancer and other maladies. In that case, the wife proved burdensome ongoing medication costs because of her condition. This was a seven-year marriage, but the Court said it was not likely the wife could support herself on what she earned and awarded her permanent alimony.

In another case, a marriage that lasted only two years and eight months, the wife was awarded permanent alimony because of a psychiatric condition and history, which precluded gainful employment, even though the wife's psychiatric condition existed prior to the marriage.

The appellate court has also affirmed an award of permanent alimony to a woman who had a depressive neurosis

of such severity that she was basically nonfunctional.

However, an award of permanent alimony is not limited to a health issue of the spouse. A woman was awarded permanent alimony, because she was required to stay home to care for a severely disabled child and, therefore, was found to need support.

In another case, the trial judge did not award permanent alimony to the wife for a short-term marriage. The wife had been previously married and was receiving alimony from the first husband, but lost this previous alimony when she married her present husband. The appellate court reversed the lower court's ruling and directed the trial judge to award permanent alimony because the marriage in question had caused her the loss of the prior alimony.

Therefore, the question of permanent alimony will always depend upon the facts and circumstances, and it is difficult to predict the court's ultimate decision, as they attempt to do the right thing. ■■■

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