

## ALIMONY BASICS

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By statute, “alimony’ means an order (or agreement) for payment for the support and maintenance of a spouse or former spouse, periodically or in a lump sum, for a specified term.”

Under North Carolina law, only a “dependent spouse” can receive alimony. A “dependent spouse” is a spouse, either husband or wife, who is “actually substantially dependent upon the other spouse for his or her maintenance and support or is substantially in need of maintenance and support from the other spouse.”

Since 1995, marital fault can be a factor in determining whether, how much, and for how long, a supporting spouse shall pay alimony, but fault is no longer required, nor is it absolute bar. Except that, illicit sexual behavior by a supporting spouse means that spouse “shall” pay alimony to the dependent spouse. Likewise, illicit sexual behavior during the marriage and before the date of separation by a dependent spouse is an absolute bar to an award of alimony. Illicit sexual behavior is defined to include adultery. If both spouses each participated in an act of illicit sexual behavior during the marriage and prior to the date of separation, then alimony shall be denied or awarded at the discretion of the court after considering all of the circumstances.

Only acts committed during the marriage and before separation can be marital fault. Other types of martial fault include involuntary separation due to a criminal act; abandonment; maliciously turning a spouse of doors; cruel or barbarous treatment endangering the life of the other spouse; indignities rendering the other spouse’s condition intolerable or life burdensome; reckless spending, wasting, concealing, or diverting assets; and willful failure to provide necessary subsistence according to one’s means and condition.

There are no guidelines under the law for a court to use in determining when alimony is appropriate, in what amount, and for what duration it should be paid. The statute lists 16 factors that should be considered by the court, and these include marital misconduct of either spouse; relative earnings and earning capacities; age, mental, and physical condition of each spouse; amount and source of either spouse’s unearned income; duration of the marriage; standard of living of the parties established during the marriage; and the relative needs of the spouses.

Except for instances when illicit sexual behavior occurs, North Carolina courts have discretion in deciding on alimony. Even in instances of illicit sexual behavior, the amount and duration are within the court’s discretion.

In all alimony claims, there is a necessary economic analysis. In some matters, a determination of fault is also needed.

Whether you are a supporting spouse or dependent spouse, specific facts regarding you and your spouse as individuals are key to prosecuting or defending your alimony claim. Please discuss your situation with an experienced family law practitioner as early as you can in the separation process.