

**SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY  
FAMILY COURT DEPARTMENT**

***SPOUSAL MAINTENANCE GUIDELINES  
ORIGINALLY APPROVED APRIL 19, 2000;  
REVIEWED AND REAPPROVED OCTOBER 16, 2002***

**CAUTION: These guidelines contain a mathematical formula for calculating spousal maintenance. The formula should be used only after a threshold determination of eligibility for spousal maintenance is made under A.R.S. § 25-319 (A)(1), (2), or (4). The guidelines are simply intended to provide the court and parties with a starting point for discussion, negotiation or decision-making. They do not change or create public policy. They do not constitute a presumption. Most importantly, they are not intended to replace the trial court's obligation to consider specific evidence, as well as all applicable statutory factors. Section VI of the guidelines sets forth the statutory factors and some case law.**

**REVIEW: These guidelines shall be reviewed biennially after the date of approval by the Court's Family Court Department.**

**I. BACKGROUND**

Recent years have seen growing national recognition of the value of spousal maintenance guidelines. Arizona is typical of most states in that spousal maintenance decisions are governed by broad statutory and case law principles that make it possible to justify a range of results in most cases. The Proposed Final Draft of the American Law Institute's comprehensive study, *Principles of the Law of Family Dissolution* (1997), concludes that without guidelines, there is considerable variability in spousal maintenance awards. "Some decisional variation would be expected in even a perfect system, because trial courts must have discretion in these matters to deal appropriately with factual variations that no statute can comprehensively anticipate. But it

seems clear that the variation arises at least in part because trial courts apply different principles as often as they face different facts. As a consequence, decisions are very difficult to predict. This unpredictability affects the negotiations that settle the great majority of cases.” *Id. at 6.*

The American Law Institute recommends a more complex guideline system than the one set forth here. Under its recommendation, spousal maintenance awards increase more steeply with the duration of the marriage when there have been marital children cared for primarily by the obligee, than they do in childless marriages. The court’s spousal maintenance committee chose to recommend a simpler guideline system that does not attempt to distinguish childless marriages from those with children. The duration factor adopted in these guidelines will yield, at any given marital duration, an award that is greater than that suggested by the ALI in childless marriages, but less than that suggested for marriages in which the obligee has spent many years caring for the marital children. To the extent the presence or absence of children is thought relevant under applicable principles, it can be taken into account on a case-by-case basis.

After the committee tentatively chose the duration factor contained in these guidelines, 0.015, it undertook an empirical study to determine how close the award called for under the proposed guidelines would come to awards that are actually granted. A random sample of cases decided in Maricopa County between 1996 and 1998 was selected in the following manner: Every fifth case was examined to see if it contained a spousal maintenance order, and if the file contained the necessary information on spousal incomes, spousal ages, marital duration, award amount, and award duration. (For this purpose, gross incomes, rather than after-tax incomes, were used.) Every examined file that contained this information was included in the sample. The spousal maintenance order in about two-thirds of these cases was the result of a judicial decision following a contested hearing; in the remaining one-third the decree reflected a maintenance order that had been agreed upon by the parties. In addition, family court judges were asked to keep track of newer cases as they were decided, and to forward the information to the committee. These newer cases were added to the sample. In this way a data set of 160 cases was obtained.

The awards in these 160 cases were then compared to the award that would result if the proposed guidelines were applied to each case. The resulting correlation of 0.75 reflects a very high correspondence between the award amounts called for by the guidelines and the amounts that family court judges, and attorneys settling actual cases, believed appropriate. As a further check, a regression analysis was done on this data to obtain a “best fit” line--to see what the highest possible correlation would be, if one constructed a formula, after the fact, that would fit this particular data set as well as possible. That “best fit” line produced a correlation that was only slightly higher, 0.79. It appears that the formula contained in these guidelines reflects current practice in Maricopa County, as to award *amount*, as well as could be achieved by any plausible formula that might be adopted.

A similar analysis was conducted on the duration of the award. As an initial matter, the committee examined a guideline that called for an award duration equal to 0.6 times the marital duration. The committee found that the correlation between this formula, and actual amounts, was only 0.21. The committee then examined three alternatives that set the award duration at

0.3, 0.4, and 0.5 of the marital duration. Similar correlations were obtained for each of these choices. It appears that there is very great variability in existing practice as to award duration. For that reason, the guidelines provide a range of factors for award duration, rather than select any single factor as the guideline.

## **II. GENERAL PRINCIPLES RELATING TO SPOUSAL MAINTENANCE**

A.R.S. § 25-319 provides for a two-part test for determining spousal maintenance. The first portion of the test deals with entitlement of the receiving spouse from the obligor spouse. A.R.S. § 25-319 (A). Once that test has been met, it is necessary to apply criteria under subsection (B) to determine the amount and duration of the award. *See Gutierrez v. Gutierrez*, 193 Ariz. 343, 972 P.2d 676 (App. 1999). Since the issue of entitlement is separate and distinct from issues involving duration and amount of the award, the parties are cautioned to separately and realistically assess each issue starting with entitlement. It is important to recognize that neither the statute nor the case law sets priorities among the Subsection (B) factors, or specifies their relative weight.

The trial court is obliged to specifically address in its decision each factor under A.R.S. § 25-319 (B) that the parties place at issue if either party requests findings of fact or conclusions of law. *Hughes v. Hughes*, 177 Ariz. 522, 525, 869 P.2d 198, 201 (App. 1993). "In the absence of such a request, such detailed findings are not required." However, the court is required to consider all applicable factors in any case.

## **III. SCOPE AND APPLICATION OF GUIDELINES**

A.R.S. § 25-319 (A) provides four grounds upon which the court may find a party eligible for spousal maintenance. These guidelines are intended to assist the parties and the court in the calculation of spousal maintenance to be granted under three of these four grounds, those set forth in paragraphs (1), (2), and (4) of A.R.S. § 25-319 (A). These three paragraphs establish that a spouse is eligible for maintenance if that spouse:

"1. Lacks sufficient property, including property apportioned to the spouse, to provide for that spouse's reasonable needs;" or

"2. Is unable to be self-sufficient through appropriate employment or is the custodian of a child whose age or condition is such that the custodian should not be required to seek employment outside the home or lacks earning ability in the labor market adequate to be self-sufficient;" or

"4. Had a marriage of long duration and is or an age that may preclude the possibility of gaining employment adequate to be self-sufficient."

These three provisions all describe a spouse who, for any one of a variety of reasons, is unable at the termination of the marriage to be self-sufficient at an appropriate level. Case law establishes that the standard of living during the marriage, and the relative financial resources of the spouses at the time of dissolution, are relevant in determining that appropriate level. A.R.S. § 25-319 (B)(2) provides that the duration of the marriage is relevant in determining the amount of spousal maintenance to be ordered.

These guidelines are intended to apply to the dissolution of marriages of at least five years' duration, in which the expected income of the obligee immediately following dissolution does not exceed 75% of the obligor's expected post-dissolution income. For purposes of these guidelines, "income" means gross income from all sources that are treated as income under the Arizona Child Support guidelines, and includes income from a spouse's separate property and from community property apportioned to that spouse. In determining income for the purpose of these guidelines, earnings may be imputed to a spouse on the same basis as earnings are imputed under the Arizona Child Support guidelines.

The amount and duration suggested by the guidelines is necessarily based on the assumption that the financial circumstances projected for the parties at the time of dissolution will not change substantially during the order's term. In applying the guidelines, the parties and Court should also consider unusual tax situations and situations in which one or both parties' financial circumstances are reasonably expected to change substantially during the suggested term of the order. In any event, reasonable projections of the parties' post-dissolution financial circumstances may prove erroneous over time. A.R.S. § 25-327 provides for modifications of spousal maintenance orders when there are changes in the parties' financial circumstances that are "substantial and continuing."

These guidelines yield a suggested monthly award amount, and a suggested duration. Tradeoffs between duration and amount may freely be made to yield financially equivalent awards the terms of which are more appropriate to the parties' situation. Further, spousal maintenance orders may be made in cases to which these guidelines do not apply, as appropriate under the standards of A.R.S. § 25-319 (A) and (B).

#### **IV. CALCULATION OF THE GUIDELINE AMOUNT AND DURATION**

- A. The guideline amount is based upon two factors: a) the duration of the marriage (calculated or rounded to the nearest whole number of years), and b) the incomes the spouses are reasonably expected to have at the time of dissolution (calculated or rounded to the nearest whole dollar).

The guideline amount equals: [Obligor Income minus Obligee Income] multiplied by the Duration Factor (calculated or rounded to the nearest whole dollar).

The Duration Factor equals: The duration of the marriage (calculated or rounded to the nearest whole number of years) multiplied by 0.015 (calculated or rounded to the nearest hundredth), but cannot exceed 0.50.

- B. The guideline duration of a spousal maintenance order is a range equaling the duration of the marriage (calculated or rounded to the nearest whole number of years) multiplied by 0.3 - 0.5 (calculated to the nearest tenth). When a) the duration of the marriage is 20 years or more, *and*, b) the obligee, at the time of dissolution, is 50 years old or more, the guideline is an award of indefinite duration. An award of indefinite duration may specify that it shall terminate at such time as the obligor retires from gainful employment, if the retirement occurs at or after an age specified in the order.

All awards are modifiable as provided by applicable law. A post-decree increase in the obligor's income to levels greater than his or her income during the marriage is generally not, by itself, grounds for modification.

## V. EXAMPLES

### EXAMPLE ONE

- 1) Husband's income at the time of dissolution is \$100,000 annually, or \$8,333 per month.
- 2) Wife's income is \$15,000 annually, or \$1,250 per month.
- 3) The duration of the marriage is twenty years.
- 4) Wife is 40 years old at the time of dissolution.
- 5) Result: \$2,125 monthly for 6 - 10 years.
- 6) Post-award incomes: Husband, \$6,208; Wife, \$3,375.
  - A) The duration factor equals  $0.015 \times 20$ , or 0.30.
  - B) The guideline amount is then calculated this way:  
 $\$8,333 \text{ minus } \$1,250 = \$7,083$  (the difference between husband's and wife's income).  
 $\$7,083 \times 0.3 = \$2,125$  monthly spousal maintenance (calculated or rounded to nearest whole dollar).
  - C) Calculation of the award's duration: The guideline duration for a marriage of twenty years is  $20 \times 0.3 - 0.5 = 6.0 - 10.0$  years.

### EXAMPLE TWO

- 1) Husband's income is \$3,500 monthly.
- 2) Wife's income is \$1,250 monthly.

- 3) The duration of the marriage is 30 years.
- 4) Age of Wife at time of dissolution is 50.
- 5) Result: An award of \$1,013 of indefinite duration.
- 6) Post-award incomes: Husband, \$2,487; Wife, \$2,263.

A) Duration factor:

$$0.015 \times 30 = 0.45.$$

B) Amount:

$$\$3,500 - \$1,250 = \$2,250.$$

$$\$2,250 \times 0.45 = \$1,013 \text{ (calculated or rounded to nearest whole dollar).}$$

C) Duration: The guidelines indicate an award of indefinite duration.

### **EXAMPLE THREE**

- 1) Husband's income is \$4,350 monthly.
- 2) Wife's income is \$2,455 monthly.
- 3) The duration of the marriage is 13 years.
- 4) Age of Wife at time of dissolution is 35.
- 5) Result: \$379 monthly for 3.9 – 6.5 years.
- 6) Post-award incomes: Husband, \$3,971; Wife, \$2,834.

A) Duration factor:

$$0.015 \times 13 = 0.20 \text{ (calculated or rounded to nearest hundredth).}$$

B) Amount:

$$\$4,350 - \$2,455 = \$1,895.$$

$$\$1,895 \times 0.20 = \$379.$$

C) Duration:

$$13 \text{ years of marriage} \times 0.3 - 0.5 = 3.9 - 6.5 \text{ years (calculated to nearest tenth).}$$

## **VI. ANALYSIS OF STATUTORY FACTORS**

### **A.R.S. § 25-319 (A)**

The court may award spousal maintenance if it finds any one of the four statutory factors of A.R.S. § 25-319 (A). Elliot v. Elliot, 165 Ariz. 128, 796 P.2d 930 (App. 1990). To make any award for spousal maintenance, the evidence must first support a finding under one of the subsections to A.R.S. § 25-319(A). Rainwater v. Rainwater, 177 Ariz. 500, 502, 869 P.2d 176, 178 (App. 1993).

### **A.R.S. § 25-319 (A)(1)**

“Lacks sufficient property, including property apportioned to such spouse. to provide for that spouse’s reasonable needs.” “Property” refers to all property, community and separate, capable of providing for the reasonable needs of the spouse seeking support. Property includes that property capable of being converted to a form of property that yields income. It does not require, however, that the spouse seeking support consume or use up his or her property to meet his or her reasonable needs. Deatherage v. Deatherage, 140 Ariz. 317, 681 P.2d 469 (App. 1984); Baum v. Baum, 120 Ariz. 140, 584 P.2d 604 (App. 1978).

“Based upon the trial court's determination that a return of ten percent was an appropriate, and in fact conservative estimate, it is clear that the wife's total properties are capable of yielding well in excess of her reasonable needs of \$16,800 per year. Hence, the wife is not entitled to spousal maintenance pursuant to A.R.S. § 25-319 (A)(1).” Deatherage v. Deatherage, 140 Ariz. 317, 321, 681 P.2d 469, 473 (App. 1984). However, in Deatherage, the court acknowledged that the wife may require “some time to make the non-income producing properties productive or income producing as she may choose “ and, therefore, two years was held to be ample time within which to accomplish this. Id.

“A.R.S. § 25-319 (A)(1) requires that the trial court consider the 'income earning potential' of property apportioned to a spouse.” Kelsey v. Kelsey, 186 Ariz. 49, 53, 918 P.2d 1067, 1071 (App. 1996) (citing Deatherage).

### **A.R.S. § 25-319 (A)(2)**

“Is unable to be self-sufficient through appropriate employment...” “Appropriate employment” does not mean “any” employment; neither does it mean mere hopes of employment nor speculative expectations of employment. Thomas v. Thomas, 142 Ariz. 386, 690 P.2d 105 (App. 1984).

Where a spouse had not worked for several years and was not certified in her profession as a nurse at the time of dissolution, she was entitled to support. In re the Marriage of Foster, 125 Ariz. 208, 608 P.2d 785 (App. 1980).

“[O]r is the custodian of a child whose age or condition is such that the custodian should not be required to seek employment outside the home or lacks earning ability in the labor market adequate to be self-sufficient.” Child of age three falls within age contemplated by this section. Lincoln v. Lincoln, 155 Ariz. 272, 746 P.2d 13 (App. 1987).

Health of spouse seeking maintenance is relevant consideration. McCarthy v. McCarthy, 146 Ariz. 207, 704 P.2d 1352 (App.1985); In re Marriage of Hinkston, 133 Ariz. 592, 653 P.2d 49 (App. 1982).

Efforts to obtain employment (or to fail to try to do so) during the pendency of the proceedings may also be considered. Lindsay v. Lindsay, 115 Ariz. 322, 565 P.2d 199 (1977).

“Hence, we decline to read § 25-319 (A)(2) as foreclosing the possibility of any maintenance whatsoever unless a spouse is totally incapable of self-support.” Sommerfield v. Sommerfield, 121 Ariz. 575, 578, 592 P.2d 771, 774 (1979).

**A.R.S. § 25-319 (A)(3)**

“Contributed to the educational opportunities of the other spouse.”

**A.R.S. § 25-319 (A)(4)**

“Had a marriage of long duration and is of an age that may preclude the possibility of gaining employment adequate to be self-sufficient.” A 49 year-old spouse who had not worked for 24 years prior to entry of decree, and who previously held only clerical positions, is entitled to an award of spousal maintenance.

Spouse in marriage of approximately 30 years who had not worked for “several years” and was formerly, but not presently, certified as a registered nurse was entitled to an award of support. In re Marriage of Foster, 125 Ariz. 208, 608 P.2d 785 (App. 1980).

Spouse of 27 years, who had not worked for last eight, had only a tenth grade education and had Huntington's disease was entitled to indefinite maintenance. In re Marriage of Hinkston, 133 Ariz. 592, 653 P.2d 49 (App.1982).

**A.R.S. § 25-319 (B)**

If the Court finds one of the four factors set forth in subsection 319 (A), it must then consider each of the factors set forth in subsection 319 (B) in order to determine the amount and duration of the award. “The current aim is to achieve independence for both parties and to require an effort toward independence by the party requesting maintenance...The key issue for the parties and the court will be whether that independence will be achieved by a good faith effort.” Schroeder v. Schroeder, 161 Ariz. 316, 778 P.2d 1212 (1989).

“To strike the proper balance, the trial court need not apply every factor listed in 25-319 (B). In what is necessarily a case-by-case inquiry, some factors will not apply. The trial court may abuse its discretion, however, by neglecting an applicable factor.” Rainwater v. Rainwater, 177 Ariz. 500, 502, 869 P.2d 176, 178 (App. 1993).

There is a public policy in favor of “fixed term maintenance as a means to promote a diligent effort to become self-sustaining” but this goal must be balanced against a realistic appraisal of the possibility that the claimant spouse will later become self-sustaining in some reasonable approximation of the standard of living established during the marriage. Rainwater, 177 Ariz. At 503, 869 P.2d at 179.

“But Schroeder also reaffirms the trial court's discretion to award indefinite maintenance when it appears from the evidence that independence is unlikely to be achieved.” Id. See also



Gutierrez v. Gutierrez, 193 Ariz. 343, 348-349, 972 P.2d 676 (App. 1999)(indefinite award affirmed after 19-year marriage).

Additionally, Schroeder shows that assessing the likelihood of a successful transition to independence requires a prediction that may vary not only from case to case, but from time to time within a case. Id.

“We add that our decision is strongly affected by the presumptive modifiability of spousal maintenance awards.” Id. at 504, 869 P.2d at 180 (citing Schroeder).

In Zale v. Zale, 193 Ariz. 246, 248, 972 P. 2d 230 (1999), the decree provided that husband “shall pay spousal maintenance to [wife] in the sum of \$600.00 per month for the first 18 months following signing of decree, \$750.00 per month thereafter,... This spousal maintenance obligation shall be reviewed 36 months after the signing of this decree.” The Supreme Court held this language unambiguously provided for an indefinite spousal maintenance award even though the earlier minute entry contained some inconsistent language. The judgment controls.

### **A.R.S. § 25-319 (B)(1)**

“The standard of living established during the marriage.” The statute and case law clearly require a case by case analysis to determine the impact of the parties' standard of living on spousal maintenance. Thomas v. Thomas, 142 Ariz. 396, 690 P.2d 105 (App. 1984). The court should consider the following:

- A. Was there a recent change in the standard of living or did the parties enjoy a consistent standard of living during the marriage? Kelsey v. Kelsey, 186 Ariz. 49, 918 P. 2d 1067 (App.1996).
- B. Was the standard of living supported through accumulation of debt? Lincoln v. Lincoln, 155 Ariz. 272, 746 P.2d 13 (App. 1987).
- C. To maintain the customary standard of living, will one party be required to consume assets while the other will be able to live off income? Thomas, supra; Bender v. Bender, 123 Ariz. 90, 597 P.2d 993 (App. 1979).
- D. Subsection (B)(1), along with paragraphs (B)(2), (6), and (7), are “counterweights to the goal of promoting mutual financial independence.” Hughes v. Hughes, 177 Ariz. 522, 524, 869 P.2d 198,200 (App.1993). These factors “bear heavily on the trial court's effort to establish an equitable award.” Id. at 524-525, 869 P.2d at 200-201.
- E. “We do not suggest that at the end of every marriage, the party of lesser earning capacity is entitled to enough support to maintain the standard of living achieved during the marriage.” Rainwater v. Rainwater, 177 Ariz. 500, 504, 869 P.2d 176, 181 (App.1993). Further, “there will be a case-to-case variance in the degree to which the marital standard of living may be seen as a product of the marriage. For this reason, such factors as length of marriage, the receiving spouse's contributions to the education and earning capacity of the paying spouse, and the receiving spouse's reduction in income or career opportunities for the benefit of the family

home and children bear heavily on the trial court's effort to establish an equitable award." Id. (citing A.R.S. § 25-319(B)(2), (6), and (7)).

### **A.R.S. § 25-319 (B)(2)**

"The duration of the marriage." The court has stated that a marriage of 4-1/2 years (which included a 2-1/2 year separation) was a marriage of "short duration." Marriages of 25 years and 32 years respectively have been found to be marriages of "long duration." Nelson v. Nelson, 114 Ariz. 369, 560 P.2d 1276 (1977); Mori v. Mori, 124 Ariz. 193, 603 P.2d 85 (1979); Thomas, supra.

Although the court did not "adopt" the formula, the court noted that at least one commentator has divided the cases into three categories: long-term marriage with traditional homemaker (over 20 years); medium length marriages (10-20 years); and short-term marriages (under 10 years). Schroeder, supra, 161 Ariz. at 320, note 5.

The length of marriage is merely one factor to be considered. Oppenheimer v. Oppenheimer, 22 Ariz. App. 238, 526 P.2d 762 (1974).

### **A.R.S. § 25-319 (B)(3)**

"The age, employment history, earning ability and physical and emotional condition of the spouse seeking maintenance." A spouse may receive spousal maintenance beyond date of graduation in anticipation of a delay in finding satisfactory employment and becoming self-supporting. Earley v. Earley, 6 Ariz. App. 110, 430 P.2d 456 (1967).

The presence of young children is a factor to consider under Subsection 319 (B)(3), as well as under Subsection 319 (A). Oppenheimer v. Oppenheimer, 22 Ariz. App. 238, 526 P.2d 762 (App. 1974); Lincoln v. Lincoln, 155 Ariz. 272, 746 P.2d 13 (App. 1987).

Age, employment history and earning ability often are multiple factors in the same case. The courts generally look to the history and the realistic ability of the spouse seeking maintenance to obtain appropriate employment. In addition, "appropriate employment" is subjective and would depend on lifestyle established during the marriage. Sommerfield v. Sommerfield, 121 Ariz. 575, 592 P.2d 771 (1979); Hinkston v. Hinkston, 133 Ariz. 592, 653 P.2d 49 (App. 1982); Thomas v. Thomas, 142 Ariz. 386, 690 P.2d 105 (App. 1984).

It is the ability to earn, and not the actual earnings, that is the determinant factor. Neal v. Neal, 116 Ariz. 590, 570 P.2d 758 (1977). Nonetheless, a long period of unemployment for a registered nurse has supported an award of spousal maintenance. Foster v. Foster, 125 Ariz. 208, 608 P.2d 785 (App. 1980).

The duration of spousal maintenance often is influenced by the projected employability and income of the spouse seeking support. Wisner v. Wisner, 129 Ariz. 333, 631 P.2d 115 (App.1981).

Ability to provide earnings is not limited to employment, but would also include the ability to convert property into income-producing property. Deatherage v. Deatherage, 140 Ariz. 317, 681 P.2d 469 (App. 1984).

“Yet we also recognized, as in earlier decisions, that this goal [to achieve independence for both parties and to require an effort toward independence by the party requesting maintenance] must be balanced with some realistic appraisal of the probabilities that the receiving spouse will in fact subsequently be able to support herself in some reasonable approximation of the standard of living established during the marriage.” Hughes v. Hughes, 177 Ariz. 522, 523-24, 869 P.2d 198, 199-200 (App. 1993) (Citing Rainwater and quoting Sommerfield).

An award of spousal maintenance was not disturbed on the obligor's motion, because the award nevertheless was insufficient to meet wife's monthly expenses, the husband was 51, regularly employed, and able to pay the maintenance ordered, and “Although employed, the wife has no special work skills.”

“It is apparent from these changes [*infra*] that the legislature does not regard a 25-319 (B) decision as exclusively an inquiry into the speed with which the receiving spouse might become self-supporting without maintenance.” Rainwater, 177 Ariz. at 504, 869 P.2d at 182. In 1987, when the legislature enacted the most recent amendments to § 25-319, it expanded subsection (B) by adding, as factors bearing on the length and duration of maintenance: (6) The contribution of the spouse seeking maintenance to the earning ability of the other spouse; (7) The extent to which the spouse seeking maintenance has reduced his or her income or career opportunities for the benefit of the other spouse; and (8) The ability of both parties after the dissolution to contribute to the future educational costs of their mutual children. Rainwater, 177 Ariz. at 504, 869 P.2d at 182.

#### **A.R.S. § 25-319 (B)(4)**

“The ability of the spouse from whom maintenance is sought to meet that spouse’s needs while meeting those of the spouse seeking maintenance.”

There is little case law directly discussing this paragraph. The Court has held that an award of less than 25% of the obligor's income was within the obligor's ability. Sommerfield v. Sommerfield, *supra*. The ability to pay includes consideration of earnings as well as income producing assets, including sole and separate income-producing assets. Lincoln v. Lincoln, *supra*.

The parties' debt structure and expenses are factors to consider. Cooper v. Cooper, 167 Ariz. 482, 808 P.2d 1234 (App. 1991).

It is the ability to earn, and not actual earnings, which is determinative. Williams v. Williams, 166 Ariz. 260, 801 P.2d 495 (App. 1990).

“This court has determined that future earnings and/or earning capacity may be considered by the trial court [in determining a spousal maintenance award].” Williams, 166 Ariz. at 266, 801 P.2d at 501 (citing Mitchell v. Mitchell, 152 Ariz. 312, 316, 732 P.2d 203, 207, (App. 1985)).

#### **A.R.S. § 25-319 (B)(5)**

“The comparative financial resources of the spouses, including their comparative earning abilities in the labor market.” This section is crucial in determining the spousal maintenance award. Pyeatte v. Pyeatte, 21 Ariz. App. 448, 520 P.2d 542 (App. 1974).

An award of 24% (\$125.00) of the disparity of earnings between spouses was not error. See Pyeatte, *supra*; nor is an award of 47% (\$50.00) of the disparity. Aliprandini v. Aliprandini, 10 Ariz. App. 23, 455 P.2d 472 (1969).

Wife of 14 years, with no income, modest education and no special training received 16.5% (\$ 150.00) of her husband's income. Warren v. Warren, 2 Ariz. App. 206, 407 P.2d 395 (1965). If wife is unable to support herself fully, an award of less than 25% of husband's income (\$700.00) is justified. Sommerfield v. Sommerfield, 121 Ariz. 575, 592 P.2d 771 (1979).

#### **A.R.S. § 25-319 (B)(6)**

“The contribution of the spouse seeking maintenance to the earning ability of the other spouse.” See Pyeatte and Wisner cases discussed below. *See also*, Kelsey, *supra*.

#### **A.R.S. § 25-319 (B)(7)**

“The extent to which the spouse seeking maintenance has reduced that spouse's income or career opportunities for the benefit of the other spouse.”

#### **A.R.S. § 25-319(B)(8)**

“The ability of both parties after the dissolution to contribute to the future educational costs of their mutual children.”

It is not improper to attribute certain expenses to a recipient of spousal maintenance regarding the recipient's ability to contribute to the college expenses of the parties' children. “In so doing the trial court [is] entitled to conclude that [the spousal maintenance recipient] would make some contribution if her income were supplemented by spousal maintenance and that husband's expenses for the education of his children would be correspondingly reduced.” Rainwater v. Rainwater, 177 Ariz. 500, 505, 869 P.2d 176, 181 (App. 1993).

#### **A.R.S. § 25-319 (B)(9)**

“The financial resources of the party seeking maintenance, including marital property apportioned to that spouse, and that spouse’s ability to meet that spouse’s own needs independently.” To determine financial resources of the spouse seeking maintenance, the following should be considered:

A. What marital property was awarded or separate property confirmed to the spouse seeking maintenance?

1. Were liquid assets received and what income can they generate?
2. Was a residence or use of a residence received which requires low or no monthly payments?
3. Was a vehicle received which requires low or no monthly payments and what is the condition of that vehicle?
4. Was income producing property received?
5. Was non-income producing property with income producing potential received?

B. What are the needs of the spouse seeking maintenance and can those needs be met without an award of spousal maintenance? Martin v. Martin, 156 Ariz. 440, 752 P.2d 1026 (1986).

C. The ability of the receiving spouse to meet his or her needs must be considered in light of a reasonable approximation of the standard of living established during the marriage. Thomas v. Thomas, 142 Ariz. 386, 690 P.2d 105 (App. 1984).

D. The ability of the receiving spouse to meet his or her needs cannot be based upon mere hopes and speculative expectations of employment. Thomas, supra.

The trial court should consider the interest income a spouse will receive once IRAs become available to such spouse without penalty in the future, which is a financial resource to be considered pursuant to this section. Kelsey v. Kelsey, 186 Ariz. 49, 53, 918 P.2d 1067, 1071 (App. 1996); *see also* Rainwater v. Rainwater, 177 Ariz. 500, 502, 869 P.2d 176, 178 (App. 1993).

**A.R.S. § 25-319 (B)(10)**

“The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment and whether such education or training is readily available.”

- A. Is the employment sought or suggested appropriate for this spouse?
  - 1. Is this spouse likely to be employed in this type of employment?
  - 2. Is this spouse capable of completing the education or training necessary for this type of employment?
- B. Is the necessary education or training readily available?
- C. Is there any history of training or schooling for this spouse toward this employment? Cooper v. Cooper, 130 Ariz. 257, 635 P.2d 850 (1981).

### **A.R.S. § 25-319(B)(11)**

“Excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of community, joint tenancy and other property held in common.” Husband’s misrepresentation of income and attempt to conceal assets justifies an award of spousal maintenance. Thomas v. Thomas, 142 Ariz. 386, 690 P.2d 105 (App. 1984). In Martin v. Martin, 156 Ariz. 452, 752 P.2d 1038 (1988), the court confirmed that under paragraph 319 (B)(11), the court may consider excessive or abnormal expenditures, or destruction of community assets, as factors in awarding spousal maintenance but only after the trial court has determined that a spouse is entitled to spousal maintenance pursuant to subsection 319 (A); and, A.R.S. § 25-319 (A) does not authorize an award of spousal maintenance solely on the grounds that one spouse wrongfully disposed of common property.

### **A.R.S. § 25-319(B)(12)**

“The cost for the spouse who is seeking maintenance to obtain health insurance and the reduction in the cost of health insurance for the spouse from whom maintenance is sought if the spouse from whom maintenance is sought is able to convert family health insurance to employee health insurance after the marriage is dissolved.”

### **A.R.S. § 25-319 (C)**

Spousal maintenance awards are presumptively modifiable. Rainwater v. Rainwater, 177 Ariz. 500, 504, 869 P.2d 176, 181 (App. 1993). *See also* Schroeder v. Schroeder, 161 Ariz. 316, 323, 778 P.2d 1212, 1219 (1989) (“Spousal maintenance awards are presumed to be modifiable in amount and duration upon a showing of substantial and continuing change of circumstances affecting the purposes of the original decree.”). An award of “lifetime” spousal maintenance places the burden upon the “paying spouse to prove a change of circumstances sufficiently substantial to warrant shortening the duration of the award. A fixed term award, by contrast, places the burden on the receiving spouse to prove a change of circumstances sufficiently substantial to warrant extending the award.” Id.

Encouraging the receiving spouse to seek employment and to become self-sufficient (through a fixed-term, "rehabilitative" award), while a "worthy purpose," cannot form the basis for a spousal maintenance judgment "based upon 'mere hopes and speculative expectations.'" Lindsay v. Lindsay, 115 Ariz. 322, 327, 565 P.2d 199, 204 (App. 1977) (quoting, in part, Oppenheimer v. Oppenheimer, 22 Ariz. App. 238, 526 P.2d 762 (1974)). Under rehabilitative - type awards, the court should reserve jurisdiction to extend the award should "hopes and expectations prove to be unfounded." Id. at 328, 565 P.2d at 205 (quoting Oppenheimer). Should such reasonable expectations that the recipient spouse be able to find appropriate employment be unrealized "notwithstanding a maximum good faith effort," such circumstances would satisfy a showing of "changed circumstances" under A.R.S. § 25-327(A). Id. at 329, 565 P.2d at 206.

"An award until death or remarriage is a prediction by the trial court that one spouse will never be able to independently approximate the standard of living established during marriage, and that the other spouse will remain financially able to contribute to the first spouse's support." Rainwater v. Rainwater, 177 Ariz. 500, 505, 869 P.2d 176, 182 (App. 1993).

A "non-modifiable" spousal maintenance order will terminate on the death or remarriage of the recipient spouse absent "clear, express" language to the contrary. The term "non-modifiable" is not synonymous with the term "non-terminable." Diefenbach v. Holmberg, 200 Ariz. 415, 26 P.3d 1186 (App. 2001).