

MAINTENANCE IN COLORADO

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As of January 1, 2014, the maintenance statute has been amended to include some new provisions. The basis and intent of the statute remains focused on providing economic support when a spouse is in need and the other spouse has the ability to pay. The legislature recognizes that the economic lives of spouses are frequently and closely intertwined in marriage and in certain situations spousal maintenance may be necessary.

The changes to the maintenance statute reflect the legislature's belief that courts, and litigants alike would benefit from a more detailed statutory framework for determining fair and equitable maintenance awards. Thus, the maintenance statute now includes provisions with a suggested "guideline amount and term of maintenance." This addition to the statute gives the courts and litigants a starting point for determining fair and equitable maintenance based on number of months the parties were married. The guidelines specifically outline a mathematical formula for the courts to consider when determining the amount and length of appropriate maintenance. It is important for party's to understand that the guidelines are a mere suggestion and not an entitlement. Moreover, the Courts are still required to consider each case on a case-by-case basis taking into account the length of marriage, the health of the party's and the lifestyle of the party's during their marriage.

The statute has also been expanded to include changes to the modification or termination of maintenance, security for the payment of maintenance, and a more inclusive section defining the relevant terms used in the maintenance statute. The statute also states that the enactment of the new maintenance statute does not in and of itself constitute a "substantial and continuing" change of circumstances for purposes of modifying maintenance orders entered before January 1, 2014.

The Court of Appeals recently addressed whether maintenance was modifiable if a party to a decree of dissolution fails to provide full disclosure of all martial assets and liabilities as required by C.R.C.P 16.2.

According to C.R.C.P. 16.2(e)(10):

[i]t is the duty of parties to an action for decree of dissolution of marriage...to provide full disclosure of all material assets and liabilities. If the disclosure contains misstatements or omissions, the court shall retain jurisdiction after the entry of a final decree or judgment for a period of 5 years to allocate material assets or liabilities, the omission or non-disclosure of which materially affects the division of assets and liabilities.

Ultimately, the Court found that maintenance is not subject to the provisions of C.R.C.P. 16.2(e)(10).

Specifically, In re the Marriage of Dadiotis, held that the modification of maintenance was not subject to the provisions of C.R.C.P 16.2(e)(10), and the wife's conduct in this case was not fraudulent.

In Dadiotis, the husband was ordered to pay \$1,000 in maintenance per month until his wife's death or re-marriage after failing to appear for a permanent orders hearing in 2004. The husband filed a motion to modify the maintenance order in 2008, and the parties agreed to reduce the monthly payment to \$750. In 2012, the husband became aware of additional income from his wife's betting business that was not disclosed during the 2008 proceedings. Based on the discovery of this additional income the husband filed a motion to terminate maintenance pursuant to C.R.C.P. 16.2(e)(10), and on the basis of fraud.

The appellate court first considered whether the husband's maintenance should be terminated because of the wife's failure to comply with C.R.C.P. 16.2(e)(10). The court held that Rule

16.2(e)(10) does not apply to re-determining maintenance because the language of the rule must be strictly construed. The language of the rule permits the court only "to allocate material assets or liabilities, the omission or non-disclosure of which materially affects the divisions of assets or liabilities." Since there is no mention of maintenance in the rule, the court refused to "judicially legislate" the inclusion of maintenance into the rule. The court additionally rejected Mr. Daditios' argument that maintenance should be interpreted as a liability.

The appellate court then rejected the husband's claim of fraud and found that any non-disclosure was immaterial because the husband knew of the wife's business, he knew about the debt from the wife's business, and he failed to ask about the income from the business.

Given the many revisions to the maintenance statute in Colorado, if one is faced with a maintenance situation it is important to consult with an attorney in order to fully understand how the statute and new guidelines may affect your case.