2016 | Annual Family Law Seminar

Alimony: Formulas, Trends & Practices

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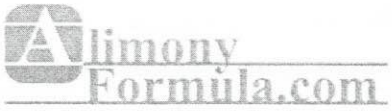
THE DIVORCE SPOUSAL SUPPORT CALCULATOR: AN ALIMONY FORMULA RESOURCE

– and Tool for Computing Suggested Alimony Payments in Divorce Cases –



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Last Revised: November 17, 2011

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I. INTRODUCTION

In many states there is not currently any "formula" for the calculation of spousal support obligations (also referred to as "**alimony**"). However, there is a reform movement toward seeking more limited and formulaic calculation of alimony in many states.

On September 26, 2011, the Massachusetts Alimony Reform movement resulted in the passage of The Alimony Reform Act of 2011. The reform movement, however, is not limited to Massachusetts. According to a Wall Street Journal article lawmakers in Pennsylvania, New Jersey and Oklahoma are proposing bills to limit the duration of alimony and address related issues, such as ending alimony upon cohabitation of the recipient with another adult.[1]

There are seemingly as many different opinions in the family law field as there are ways to interpret the broad language of the current discretionary laws relating to the award of spousal support. The authors have created a tool – the *Divorce Spousal Support Calculator* – to enable family law practitioners to better advise their clients regarding the settlement of divorce cases where a primary issue is the proposed alimony payment from one spouse to the other.

NOTE: To view and use the *Divorce Spousal Support Calculator* please visit www.alimonyformula.com. In addition, a Sample worksheet created with the *Divorce Spousal Support Calculator* is attached to this article as **Appendix A**.

For their assistance and inspiration in creating this tool, we would like first to say "*Thank You*" to **Promethean Software Corporation** – the creators of **TurboLaw® Document Software** – as we have modeled our *Divorce Spousal Support Calculator* after the very user-friendly *Massachusetts Child Support Guidelines Worksheet* calculator which TurboLaw® Document Software offers to its subscribers as a template for Microsoft Excel. The *Massachusetts Child Support Guidelines Worksheet* calculator is a tool used daily by almost all Massachusetts family law practitioners to calculate the amount of child support to be paid by one spouse to the other spouse where non-emancipated children are involved in a divorce, paternity or separate support case in the Massachusetts Probate & Family Court. ***NOTE:*** To obtain your own copy of **TurboLaw® Document Software** for use on your own computer, contact Promethean Software Corporation at **www.turbolaw.com** or call (800) 518-8726.

The purpose of the *Divorce Spousal Support Calculator* is not to suggest that any one of the formulas presented herein is better than any other at approximating the required evaluation under the current laws of your state. However, the authors do believe that a more consistent approach to the calculation of the alimony obligation – based on quantifiable factors – can benefit divorcing spouses in coming to agreements more quickly and more fairly, thus ending the stresses and expense of divorce litigation sooner rather than later.

Therefore, while we do not endorse any of the specific alimony guideline formulas described herein for use other than in their specific jurisdictions, we do hope that reference to these

formulas will assist family law practitioners in providing both their clients and the Court with increased guidance on appropriate sums for alimony or spousal support in Divorce Agreements.

Each of the formulas was developed by their respective authors after considered and learned debate, and at the very least, we believe that the family law bar and our clients can both learn from the result of that debate in other forums and apply what has been learned to the resolution of disputes in divorce litigation. It is in that spirit and with that purpose that we present the following:

II. SAMPLE FACT PATTERN USED IN THIS MEMORANDUM:

As a practical matter, these formulas are provided as guidelines and should not be substituted for critical analysis of the facts of each individual case by experienced and qualified counsel and Judges.

For demonstration purposes, each formula is accompanied by a sample calculation to show just how those particular guidelines or formulas would apply to the following sample fact pattern:

- **Jane and John Loveless** have been **married for 19 years**.
- They have **no children** together.
- **Jane earns $25,000 gross per year** ($20,000 net) and this is consistent with her earning ability during the marriage.
- **John earns $125,000 per year** ($100,000 net) and this is consistent with his earning ability during the marriage.
- There are **insufficient other assets to allow for an alimony buyout** (a/k/a no "lump sum alimony payment")

Based on these facts, we now discuss "***What should John's periodic alimony payment be and for how long should he pay it?***"

III. GUIDELINES CURRENTLY AND PREVIOUSLY USED IN MASSACHUSETTS:

A. The Alimony Reform Act of 2011

On January 18, 2011, Senator Gale D. Candaras (D - Wilbraham) and Representative John V. Fernandes (D - Milford) filed **An Act to Reform and Improve Alimony**. The Act proposed sweeping changes to the Massachusetts alimony laws, and was signed into law on September 26, 2011. The Act takes effect on March 1, 2012.

In Massachusetts, there were multiple bills presented in the legislature proposing amendment of MGL, Chapter 208 § 34. In the Massachusetts House a bill sponsored by 72 representatives proposed to add multiple restrictions to alimony awards, including limiting the duration of alimony, providing for periodic reductions in the amount of alimony, and addressing the issue of cohabitation.[2]

Another bill, proposed in the Massachusetts Senate, suggested only that the Massachusetts legislature add the words "*and duration*," as an amendment to the Massachusetts Alimony Statute, MGL, Chapter 208 § 34, to clarify the apparent scope and breadth of discretion available to the Probate & Family Court Judges in fixing alimony orders.[3] There was significant debate over whether the Senate bill doesn't go far enough and whether the House bill goes too far.[4]

In 2007, the Massachusetts Bar Association and Boston Bar Association created a Joint Alimony Task Force (hereinafter, the "MBA-BBA Joint Task Force", which focused "on stimulating judicial, academic and legislative discussion in order to foster consistent and predictable alimony awards".[5] The MBA-BBA Joint Task Force began with a goal of recommending standards for reasonableness of amount and duration of alimony awards in Massachusetts.[6]

One of the goals of the MBA-BBA Joint Task Force was "to achieve some predictability in alimony awards" - similar to the predictability that has now been achieved in setting child support payments by the use of the Massachusetts Child Support Guidelines – in situations where *only* spousal support (i.e. no child support) is being awarded by the Court and "to provide guidelines to the attorneys of the Massachusetts Bar to help them to achieve divorce agreements on the alimony issue".[7] In other words, the goal was to give guidance and recommendations "to make the application of the law of alimony be fundamentally fair".[8]

Initially, the MBA-BBA Joint Task Force recommended that alimony be classified into one of 4 groups, each to be treated differently by the Court as to duration and modification.[9] These recommendations were essentially incorporated into The Alimony Reform Act of 2011 which contains the following **Four Classifications of Alimony**:

1. **General Term Alimony** – also known as periodic alimony, which consists of weekly payments made for the duration of either a definite term, or which ends upon the occurrence of a specific event, such as death of the Payor, death or remarriage of the Payee, etc.[10]

2. **Rehabilitative Alimony** – also known as rehabilitative alimony, which is designed to improve the income-earning capability of the Payee Spouse, if, for example, the Payee Spouse wishes to enroll in school to learn a trade or skill that can increase their income-earning capacity. The costs of such schooling can be ordered to be paid by the Obligor Spouse to the Payee Spouse. However, this finite sum, which can be paid in periodic payments or upon periodic events, would be limited in duration in most cases to a **maximum payment period of five (5) years**. Rehabilitative Alimony would also be subject to modification if there is a material

change of circumstances, such as if the schooling failed to pan out as had been envisioned or planned.[11]

3. **Reimbursement Alimony** – consists of reimbursing the Payee Spouse for a finite sum determined based on the cost or value of the asset or sacrifice attributed to the Payee Spouse. For example, reimbursement alimony would be paid if the Payee Spouse brings significant assets into the marriage which cannot be repaid, or the Payee Spouse works and supports the household while the Obligor Spouse attends medical school, or the Payee Spouse has cared for an elderly family member in lieu of working, etc. Reimbursement Alimony is NOT subject to modification. [12]

4. **Transitional Alimony** – is designed to assist the Payee Spouse in the transition out of the marriage to independent living and would be based in large part on the real financial needs of the Payee Spouse. For example, transitional alimony would be paid if the Payee Spouse moved to Massachusetts from a small town in Iowa and a short term marriage failed and the Payee Spouse needs funds now to move back to Iowa to be with family or, alternatively, if the Payee Spouse had given up a job and now needs short term payments so that the Payee Spouse can find a replacement job. Transitional Alimony is also *NOT* subject to modification if there is a material change of circumstances.[13]

Determining Rehabilitative Alimony, Reimbursement Alimony or Transitional Alimony necessarily depends on the facts specific to that case, and are not easily subject to a formula.

Regarding General Term Alimony, the **new law** institutes a **maximum** amount of alimony to be paid.[14]

- **The Alimony Reform Act cap for alimony payments should be calculated as follows:** Alimony payments should not exceed the need or 30-35% of the difference between the gross income of the divorced spouses.[15]

This **maximum formula** excludes from income any amounts used to calculate child support.

The new law also makes recommendations or **Duration Guidelines** for General Term Alimony as follows:

- **The Alimony Reform Act's durational component is calculated as follows:** Alimony shall be paid for a maximum number of years calculated by multiplying the length of the marriage by the following durational factors
  - **For marriages of less than 6 years**: 50%;
  - **For marriages of 6-10 years**: 60%;
  - **For marriages of 11-15 years**: 70%;

- **For marriages of 16-20**: 80%; or
- **For marriages of 20 years or more**: permanent/indefinite.[16]

However, the new law also recommends other endpoints regardless of the length of the marriage, including ending alimony upon:

- Upon the cohabitation of the recipient spouse with another person for a continuous period of at least three months (may also result in suspension or reduction instead of termination; [17] or
- Upon the payor attaining the full retirement age when he or she is eligible for the old-age retirement benefit under the United States Old-Age, Disability, and Survivors Insurance Act, 42 U.S.C. 416.[18]

Sample Calculation:

Calculation of ***Maximum*** Alimony Order:

	John's Gross Income	$125,000
-	Jane's Gross Income	$ 25,000
=		$100,000
x		35%
	Suggested Annual Alimony CAP:	**$ 35,000 from John to Jane**

Calculation of ***Maximum*** Alimony Duration:

	Length of Marriage	19 years
x		80 %
=	**Suggested Maximum Duration:**	**15.2 years**

The deviation factors which could result in a different amount or duration are:

- Advanced age; chronic illness; or unusual health circumstances of either party;
- Tax considerations applicable to the parties;
- Whether the payor spouse is providing health insurance and the cost of heath insurance for the recipient spouse;
- Whether the payor spouse has been ordered to secure life insurance for the benefit of the recipient spouse and the cost of such insurance;
- Sources and amounts of unearned income, including capital gains, interest and dividends, annuity and investment income from assets that were not allocated in the parties divorce;

- Significant premarital cohabitation that included economic partnership and/or marital separation of significant duration, each of which the court may consider in determining the length of the marriage;
- A party's inability to provide for his or her own support by reason of physical or mental abuse by the payor;
- A party's inability to provide for his or her own support by reason of a party's deficiency's of property, maintenance or employment opportunity; and
- Upon written findings, any other factor that the court deems relevant and material.

Other Notable Provisions of the Alimony Reform Act of 2011:

Factors to Determine Type, Amount and Duration of Alimony: the length of the marriage; age of the parties; health of the parties; both parties' income, employment and employability, including employability through reasonable diligence and additional training, if necessary; economic and non-economic contribution to the marriage; marital lifestyle; ability of each party to maintain the marital lifestyle; lost economic opportunity as a result of the marriage; and such other factors as the court may deem relevant and material.

Gross Income Shall Not Include: Capital gain income and dividend and interest income which derives from assets equitably divided between the parties under Section 34; and Gross Income already used to calculate Child Support.

Attributing Income: In determining the incomes of parties with respect to the issue of alimony, the Court may attribute income to a party who is unemployed or underemployed.

Remarriage of Payor: income and assets of the payor's spouse shall not be considered in a redetermination of alimony in a modification action.

Overtime or 2nd Job: shall not be considered if first job is full time, and additional income started after initial order.

B. The "Rough-Cut 1/3–1/3–1/3 Rule of Thumb" Formula

Many practitioners have long used a rule of thumb to reference a "quick and dirty" estimate of what would be an appropriate periodic alimony Order. Although not containing any reference to the many factors listed in discretionary statutes, the 1/3–1/3–1/3 formula often approximates an appropriate Order by essentially estimating a rough equalization of net income: One third for the payor, one third for the payee, and one third for the Federal and State government (i.e. taxes).

- **The 1/3-1/3-1/3 formula suggests that alimony should be calculated as follows:** Alimony equals one third of the total of the payor's gross income plus the payee's gross income, minus the payee's gross income.[19]

Sample Calculation:

Calculation of ***Suggested*** Alimony Order:

	John's Gross Income	$125,000
+	Jane's Gross Income	$ 25,000
=		$150,000
÷		3
		$ 50,000
-	Jane's Gross Income	$ 25,000
=	**Suggested Annual Alimony Order:**	**$ 25,000 from John to Jane**

Calculation of ***Suggested*** Alimony Duration:

Suggested Duration:	**none suggested**

C. The "Ginsburg" Formula

The Honorable Edward M. Ginsburg, retired Justice of the Middlesex Probate & Family Court, wrote an article, published in the Massachusetts Family Law Journal in 1997, that has probably been referred to in every alimony conference, seminar or debate in Massachusetts since it was written.[20]

- **Judge Ginsburg's formula suggests that alimony should be calculated as follows:** The payor's income after the payment of alimony should equal the total of the payor's income and the payee's income divided by 1.8.[21] Or, in other words, alimony equals the payor's income minus that amount.

Judge Ginsburg's article also suggests a durational component for how long should John pay alimony to Jane?[22]

- **Judge Ginsburg's durational component is calculated as follows:**
  - **For marriages of less than 5 years** (a "short term marriage") there is normally no alimony Order;
  - **For marriages of 5-15 years** (an "intermediate-term marriage"), the number of years that alimony should be ordered is at most the number of years of the

marriage, i.e., for an 8-year marriage, alimony should end after no later than 8 years; or

- **For marriages of 15 years** or more (a "long-term marriage), alimony should be "permanent" or of an "indefinite" length.[23] It is important to note that when the authors refer to "permanent" alimony, this suggested duration is still subject to the typical restrictions on alimony that it ends upon the death of either spouse or the remarriage of the payee.

Judge Ginsburg explains that these suggested durations are subject to adjustment if there are "countervailing equities" relating to such factors as the health or age of the parties.[24] In addition, Judge Ginsburg notes that even "permanent" alimony is subject to modification when circumstances change, as is often the case upon the retirement of the payor.[25]

Sample Calculation:

Calculation of ***Suggested*** Alimony Order:

	John's Gross Income	$125,000
+	Jane's Gross Income	$ 25,000
=		$150,000
÷		1.8
	John's after payment Income	$ 83,333
	John's Gross Income	$125,000
-	John's after payment Income	$ 83,333
=	**Suggested Annual Alimony Order:**	**$ 41,667 from John to Jane**

Calculation of ***Suggested*** Alimony Duration:

	Length of the Marriage	19 years
>		15 years (long-term)
=	**Suggested Duration:**	**Permanent**

The Honorable Robert A. Scandurra, First Justice of the Barnstable Probate & Family Court, has presented at many of the conferences in which Judge Ginsburg's formula has since been discussed and has expressed his own informed and researched opinion about that formula.[26]

Judge Scandurra conducted his own independent research in approximately 2002 in which he reviewed approximately 2 years worth of actual divorce agreements that litigants had reached in his Court relating to the payment of alimony from one spouse to the other. After examining the Rule 401 Financial Statements of the parties in those cases, upon which these alimony

settlements were reached, he found that, on average, the alimony agreements reached by represented parties in divorce litigation were equal to approximately 15-20% less than the alimony Order as would be suggested by the application of Judge Ginsburg's formula.[27]

IV. GUIDELINES USED IN JURISDICTIONS OTHER THAN MASSACHUSETTS:

The following guidelines are presented in alphabetical order of their source.

A. The American Academy of Matrimonial Lawyers Formula

The American Academy of Matrimonial Lawyers ("**AAML**") assigned a commission to review the approaches used by other jurisdictions in determining spousal support.[28] After reviewing those approaches, the AAML commission designed a formula that reaches results comparable to the majority of jurisdictions.

- **The AAML formula suggests that alimony should be calculated as follows:** Alimony equals 30% of the payor's gross income minus 20% of the payee's gross income (with the payee's total income including alimony not to exceed 40% of the combined gross income of the parties).[29]

This figure is then subject to adjustment if any of the following **deviation factors** apply:

1. A spouse is the primary caretaker of a dependent minor or a disabled adult child;
2. A spouse has pre-existing court-ordered support obligations;
3. A spouse is complying with court-ordered payment of debts or other obligations (including uninsured or unreimbursed medical expenses);
4. A spouse has unusual needs;
5. A spouses' age or health;
6. A spouse has given up a career, a career opportunity or otherwise supported the career of the other spouse;
7. A spouse has received a disproportionate share of the marital estate;
8. There are unusual tax consequences;
9. Other circumstances that make application of these considerations inequitable; or
10. The parties have agreed otherwise.[30]

In addition, the AAML guidelines have a durational component computed subject to the deviation factors.

- **The AAML durational component is calculated as follows:** Alimony shall be paid for a number of years calculated by multiplying the length of the marriage by the following durational factors

- **For marriages of 0-3 years**: 30%;
- **For marriages of 3-10 years**: 50%;
- **For marriages of 10-20 years**: 75%; or
- **For marriages of 20 years or more**: permanent.[31]

Sample Calculation:

Calculation of ***Suggested*** Alimony Order:

	John's Gross Income x 30%	$ 37,500
-	Jane's Gross Income x 20%	$ 5,000
=	Suggested Alimony Order	$ 32,500

Required Comparison to Maximum Order:

	John's Gross Income	$125,000
+	Jane's Gross Income	$ 25,000
=		$150,000
x		40 %
=		$ 60,000
-	Jane's Gross Income	$ 25,000
	Maximum Alimony Order	$ 35,000
>	Suggested Alimony Order	$ 32,500
=	**Suggested Annual Alimony Order:**	**$ 32,500 from John to Jane**

Calculation of ***Suggested*** Alimony Duration:

	Length of Marriage	19 years
x		75 %
=	**Suggested Duration:**	**14.25 years**

B. Arizona - Maricopa County Spousal Maintenance Formula

The Arizona statute contains a list of thirteen factors to be considered in determining appropriate spousal maintenance similar to that of the Massachusetts statute.[32] The Maricopa County Superior Court, however, has recommended a more specific formula in cases when spousal support is appropriate.[33]

- **The Maricopa County formula suggests that alimony should be calculated as follows:** Alimony equals the difference between the parties' income multiplied

by the "marital duration factor". The "marital duration factor" equals 0.015 multiplied by the number of years of the marriage with a maximum value of 0.5, with the exception that there is **no alimony** in marriages less than five years or when the payee's income is more than 75% of the obligor's income.[34]

Sample Calculation:

Calculation of ***Suggested*** Alimony Order:

Threshold Evaluations:

	Length of Marriage	19 years
>		5 years
=		**Pass**
	John's Gross Income	$125,000
>		75 %
=		$ 93,750
>	Jane's Gross Income	$ 25,000
		Pass

Continue on to Calculation of Alimony Order:

	Length of Marriage	19 years
x		0.015
=	Marital Duration Factor:	0.285
	John's Gross Income	$125,000
-	Jane's Gross Income	$ 25,000
=		$100,000
x	Marital Duration Factor	0.285
=	**Suggested Annual Alimony Order:**	**$ 28,500 from John to Jane**

Calculation of ***Suggested*** Alimony Duration:

Suggested Duration:	**none suggested**

C. California - Santa Clara County Formula

Similar to Arizona, there is not a statutorily mandated alimony formula in California, but this has not stopped many of their Courts from using a guideline created in Santa Clara County.[35]

- **The Santa Clara County formula suggests that alimony should be calculated as follows:** Alimony equals the payor's net income multiplied by 40% minus the payee's net income multiplied by 50%. The net income is derived by taking the payor's gross monthly income and deducting income tax and Social Security payments.[36]

In addition, the Santa Clara County formula has a durational component.

- **The Santa Clara County durational component is calculated as follows:** Alimony shall be paid for a minimum number of years calculated by using the following formulas depending on the length of the marriage.
  - **For marriages of 0-10 years**: 50% multiplied by the length of the marriage;
  - **For marriages of 10-20 years**: the number of months multiplied by the number of months again and then divided by 240; or
  - **For marriages of 20 years or more**: equal to length of the marriage.[37]

Sample Calculation:

Calculation of ***Suggested*** Alimony Order:

	John's Net Income x 40%	$ 40,000
-	Jane's Net Income x 50%	$ 10,000
=	**Suggested Annual Alimony Order:**	**$ 30,000 from John to Jane**

Calculation of ***Maximum*** Alimony Duration:

	Length of Marriage	19 years
x		12 months/year
=		228 months
x		228 months
÷		240
=		216.6 months
÷		12 months/year
=	**Suggested Minimum Duration:**	**18.05 years**

D. Kansas - The Johnson County Bar Association Formula

Kansas law limits alimony to 121 months with a one-time potential extension of up to a further 121 months.[38] The Johnson County Bar Association has developed non-binding guidelines for

the purpose of calculating spousal support and has recommended them for use by both Judges and practitioners in Johnson County.[39]

- **The Johnson County Bar Association formula suggests that alimony should be calculated as follows:** Alimony equals 25% multiplied by the difference of the parties' gross income up to a difference of $50,000 per year. If the difference exceeds $50,000, then alimony equals $12,500 per year plus 22% multiplied by the excess difference.[40]

In addition, the Johnson County guidelines have a durational component.

- **The Johnson County Bar Association durational component is calculated as follows:** Alimony shall be paid for a maximum number of years calculated by using the following formulas depending on the length of the marriage.
  - **For marriages of 0-5 years**: length of the marriage divided by 2.5; or
  - **For marriages of 5 years or more**: 2 years plus the length of the marriage divided by 3.[41]

Sample Calculation:

Calculation of ***Suggested*** Alimony Order:

	John's Gross Income	$125,000
-	Jane's Gross Income	$ 25,000
=		$100,000
-		$ 50,000
=		$ 50,000
	First $50,000 x 25%	$ 12,500
+	Excess Difference ($50,000) x 22%	$ 11,000
=	**Suggested Annual Alimony Order:**	**$ 23,500 from John to Jane**

Calculation of ***Maximum*** Alimony Duration:

	Length of Marriage	19 years
-		5 years
=		14 years
÷		3
=		4.67 years
+		2 years
=	**Suggested Maximum Duration:**	**6.67 years**

E. Maine Formula

Maine restricts the amount and duration of alimony that can be awarded by a Court by statute.[42] Initially, the Maine statute defines multiple classifications of alimony, which have different factors that must be considered by the Court.[43]
Those **Five Classifications of Alimony** and their different treatments and applications are:

1. **General Support** – "may be awarded to provide financial assistance to a spouse with substantially less income potential than the other spouse so that both spouses can maintain a reasonable standard of living after the divorce."[44] The Maine statute creates a presumption limiting the **duration** of General Support, which is described at further length below.[45]

2. **Transitional Support** – may be awarded to provide for needs relating to divorce transitions such as relocation or re-entry or advancement in the work force, "including, but not limited to, physical or emotional rehabilitation services, vocation training and education."[46]

3. **Reimbursement Support** – may be awarded to provide an equitable balancing of the party's overall financial relationship "in response to exceptional circumstances" such as economic misconduct by one spouse or substantial contributions to one spouse's education or occupational advancement during the marriage. [47]

4. **Nominal Support** – may be awarded soley as a means of preserving the court's authority to award further support in the future.[48]

5. **Interim Support** – may be awarded to provide for temporary support during a pending divorce case.[49]

Determining Transitional Support or Reimbursement support is necessarily dependent on the facts specific to that case, and are not easily subject to a formula. This article is not concerned with temporary support, such as the Nominal or Interim Support described in the Maine statue but rather the amount and duration of more permanent orders.

Maine's General Support category is that most similar to the other formulas described elsewhere in this article.

The Maine statute requires that a court review the following factors before awarding alimony:

" 1. The length of the marriage;
2. The ability of each party to pay;
3. The age of each party;
4. The employment history and employment potential of each party;
5. The income history and income potential of each party;
6. The education and training of each party;

7. The provisions for retirement and health insurance benefits of each party;
8. The tax consequences of the division of marital property, including the tax consequences of the sale of the marital home, if applicable;
9. The health and disabilities of each party;
10. The tax consequences of a spousal support award;
11. The contributions of either party as homemaker;
12. The contributions of either party to the education or earning potential of the other party;
13. Economic misconduct by either party resulting in the diminution of marital property or income;
14. The standard of living of the parties during the marriage;
15. The ability of the party seeking support to become self-supporting within a reasonable period of time;
16. The effect of the following on a party's need for spousal support or a party's ability to pay spousal support:
    (1) Actual or potential income from marital or nonmarital property awarded or set apart to each party as part of the court's distributive order pursuant to section 953; and
    (2) Child support for the support of a minor child or children of the marriage pursuant to chapter 63; and
17. Any other factors the court considers appropriate. "[50]

The Maine statute does not provide a formula for the amount of General Support.[51] The Maine statute does, however, create a presumption limiting the **duration** of General Support as follows:

- **The Maine statute durational component is calculated as follows:** Alimony shall be paid for a maximum number of years calculated by using the following formulas depending on the length of the marriage.
  - **For marriages of 0-10 years**: no alimony; or
  - **For marriages of 10-40 years**: the length of the marriage divided by 2;
  - **For marriages of 40 years or more**: maximum of 20 years.[52]

In addition, the Maine statute requires the Courts to determine any potential limit on the payment of alimony related to cohabitation of the recipient."[53]

Sample Calculation:

Calculation of ***Maximum*** Alimony Duration:

	Length of Marriage	19 years
>		10 years
=	**Suggested Maximum Duration:**	**9.5 years**

F. Pennsylvania Formula

Under Pennsylvania law, the amount of support to be awarded is determined by a formula outlined in the Pennsylvania Code.[54]

- **The Pennsylvania formula suggests that alimony should be calculated as follows:** Alimony equals 40% of the difference in the parties' net incomes (after subtracting other support orders, if any, from the payor's income).[55] Adjustments can be made for other expenses such as health insurance, day care and extracurricular expenses, medical expenses, and mortgage payments.[56]

Sample Calculation:

Calculation of ***Suggested*** Alimony Order:

	John's Net Income	$100,000
-	Jane's Net Income	$ 20,000
=		$ 80,000
x		40 %
=	**Suggested Annual Alimony Order:**	**$ 32,000 from John to Jane**

Calculation of ***Maximum*** Alimony Duration:

Suggested Duration:	**none suggested**

G. Texas Formula

Texas is one of the most restrictive states when it comes to ordering spousal support; or "maintenance" as it is defined in the Texas statute.[57] There are very strict restrictions created by the Texas statute, which limit the situations in which alimony can be awarded.[58] In Texas a court may order alimony only if the payor committed an act of family violence within 2 years of the divorce, or if the marriage was 10 years or longer and the recipient is unable to support themselves due to disability, taking care of a disabled child, or clearly lacks income earning ability.[59]

Some of the limitations of the Texas Law were expanded on June 17, 2011 (taking effect on September 1, 2011).[60] The new law is described below.

The new Texas statue requires that a court review the following factors before awarding alimony:

" 1. Each spouse's ability to provide for that spouse's needs independently, considering that spouse's financial resources on dissolution of the marriage;
2. The education and employment skills of the spouses, the time necessary to acquire sufficient education or training to enable the spouse seeking maintenance to earn sufficient income, and the availability and feasibility of that education or training;
3. The duration of the marriage;
4. The age, employment history, earning ability, and physical and emotional condition of the spouse seeking maintenance;
5. The effect on each spouse's ability to provide for that spouse's minimum reasonable needs while providing periodic child support payments or maintenance, if applicable;
6. The acts by either spouse resulting in excessive or abnormal expenditures or destruction, concealment, or fraudulent disposition of community property, joint tenancy, or other property held in common;
7. The contribution by one spouse to the education, training, or increased earning power of the other spouse;
8. The property brought to the marriage by either spouse;
9. The contribution of a spouse as homemaker;
10. The marital misconduct, including adultery and cruel treatment, by either spouse during the marriage; and
11. any history or pattern of family violence, as defined by Section 71.004."[61]

The Texas statute limits the amount of alimony to the amount required to pay the recipient's "minimum reasonable needs", and also has a formula which sets a **CAP** or "Not-to-Exceed" limitation on the amount of alimony to be paid.[62]

- **The Texas CAP for alimony payments should be calculated as follows:** Alimony payments should not exceed the lesser of $5,000 per month or 20 percent of the payor's average monthly gross income.[63]

The Texas statute also limits the **duration** of alimony to the "shortest reasonable period" that allows the recipient to meet their "minimum reasonable needs" and as follows:

- **The Texas statute durational component is calculated as follows:** Alimony shall be paid for a maximum of:
  - **5 years**, if due to a family violence conviction and marriage is under 10 years;

- **5 years**, if marriage is between 10 and 20 years;
- **7 years**, if marriage is between 20 and 30 years;
- **10 years**, if marriage is 30 years or more;
- except in the case of an "incapacitating physical or mental disability, in which case the award may last as long as the disability.[64]

In addition, the Texas statute allows the Courts to terminate alimony if the recipient "cohabits with another person in a permanent place of abode on a continuing, conjugal basis."[65]

Sample Calculation:

Calculation of ***Maximum*** Alimony Order:

	John's Gross Income	$125,000
x		20%
	Suggested Annual Alimony CAP:	$ 25,000 from John to Jane
<		$ 60,000 ($5,000/month cap)
	Suggested Annual Alimony CAP:	**$ 25,000 from John to Jane**

Calculation of ***Maximum*** Alimony Duration:

	Length of Marriage	19 years
>		10 years
=	**Suggested Maximum Duration:**	**5 years**

H. Virginia - The Fairfax County Formula

The Fairfax County Virginia Courts use temporary spousal support guidelines, which were adopted by a committee of attorneys and Judges and have become commonly used in other counties in Virginia as well.[66]

The guidelines are not binding and are adjustable by factors such as fault (*e.g.*, did the payee cause the divorce by being unfaithful?), payment of other expenses such as a mortgage, or where the gross income of the parties is relatively high (over $10,000 per month).[67] The guidelines, although technically only intended for temporary support orders, have become commonly used as a starting point for final orders.[68]

- **The Fairfax County formula suggests that alimony should be calculated as follows:** Alimony equals 30% of the gross income of the payor minus 50% of the gross income of the payee.[69]

Sample Calculation:

Calculation of ***Suggested*** Alimony Order:

	John's Gross Income x 30%	$ 37,500
-	Jane's Gross Income x 50%	$ 12,500
=	**Suggested Annual Alimony Order**	**$ 25,000 from John to Jane**

Calculation of ***Maximum*** Alimony Duration:

Suggested Duration:	**none suggested**

I. Other States

Although the authors have not found in their research any other states using formulas for the calculation of the amount or duration of alimony, there are many reforms and proposed reforms in other states that address other issues with alimony reform.

For example, Florida recently enacted new legislation to allow Judges to award different types of alimony (rehabilitative, durational, or permanent) and to set a durational limit on alimony depending on the length of the marriage.[70] Other states, including New Jersey and Tennessee have also instituted changes to their alimony laws which include different types of alimony depending on the situation.[71]

V. COMPARATIVE RESULTS:

Although the formulas suggested by these sources differ in their application, the results are relatively consistent and provide a way "objectively" to help divorce litigants compromise on the question of "***What should the alimony Order be in my case and how long should it be paid?***"

At a minimum, the use of these formulas should help the parties and their counsel to agree on a reasonable range of alimony and thereby enable constructive dialogue to proceed.

In the sample fact pattern provided, above, the suggested alimony Order for John to pay to Jane under these different approaches ranges **from a low of $23,500** (Johnson County Bar Association, Kansas) **to a high of $41,667** (Judge Ginsburg).

Although this range appears to be a wide gap, a $18,167 difference between the high and the low alimony payment calculation, **the simple average** of all of the suggested Orders **is $29,067**, which is **within $3,000 of the results yielded by the application of four of these formulas** (and the average deviation overall was only $3,980). When experienced family law practitioners come within $3,000 on almost any issue, compromise is expected and usually occurs.

If one were to apply the three (3) "Massachusetts formulas" only, then the average would yield **John making an alimony payment of $33,056 to Jane**, a bit higher than the average of all of the formula results but not unreasonable, especially since the cost of living is higher in Massachusetts than in other parts of the United States.

The length of time that alimony should be paid by John to Jane, based on the 19-year length of their marriage and their respective incomes, ranges **from a minimum cap of 3 years** (Texas) **to a permanent order** (Judge Ginsburg). Excluding Texas and the Johnson County Bar Association durational component, however, the remaining suggested durations range from 9.5 years to a permanent order. Again there is considerable similarity shown by these formulas which we believe can assist practitioners and litigants in reaching settlements.

VI. CONCLUSTIONS (FOR NOW):

While these formulas, guidelines and recommendations do not take into account the many other factors required for consideration in each individual case, there is arguably some value to both consistency and predictability – a point stressed by Judge Ginsburg for over a decade now.

This "value to consistency and predictability" has worked well in the creation and the uniform application of the Massachusetts Child Support Guidelines. The sums that a non-custodial parent is to pay to the custodial parent for child support are seldom argued anymore before the Courts or among the parties and their counsel. The calculation of the child support sum has become a simple "given" and used in the majority of all divorces with a high degree of acceptance by the Justices of the Probate and Family Court, the divorce parties and their experienced family law counsel as basically fair.

The use of the Child Support Guidelines formula and the tool of the *Child Support Guidelines Worksheet* calculator for computing child support payments using a relatively small number of significant data inputs has, simply put, been a big help in Massachusetts divorce litigation. As a result, the *Child Support Guidelines Worksheet* calculator acts as a great aid and tool in helping experienced family law counsel advise their clients and end their disputes by way of settlement so that those divorce litigants can move on with their lives.

As the Child Support Guidelines have assisted practitioners and the Courts in reducing the length and expense of litigation, we hope that the Alimony Reform Act of 2011 will lead to an increase in the settlement of alimony issues in Massachusetts. Through the use of the *Divorce Spousal*

Support Calculator, we hope to provide a range of reasonable alimony orders to experienced family law counsel in other States, and assist practitioners in advising their clients to narrow their disputes and settle the alimony components of divorce cases. We hope that no divorce trial ever again has to take place simply because the parties cannot agree on the issue of alimony or spousal support.

Of course, we are not alone in our efforts to effectuate a reduction of inconsistencies in alimony awards by the Justices of our Probate & Family Courts in current and future divorce litigation. The Massachusetts Bar Association and the Boston Bar Association have worked diligently together through their MBA-BBA Joint Alimony Task Force to determine and make recommendations for standards in Massachusetts on calculating the amount and duration of alimony.[72] The Task Force members, including the current Co-Chairs, David H. Lee, Esq. and Denise Squillante, Esq., have expressed their concern in a recent MBA Lawyer's Journal article that Massachusetts Appellate Court decisions are actually discouraging marriage due to their inconsistency and case-by-case approach toward the calculation of the amount and duration of alimony.[73]

Although this debate led to reform in Massachusetts, it is still being addressed in other states, resulting in proposed legislation, ballot initiatives and lawsuits.[74] The formulas, guidelines and recommendations contained herein are therefore simply a "snapshot" of the current state of this on-going discussion and we expect that many states are now moving toward a more formulaic approach to alimony in order to approach that goal of consistency and predictability.

Until such time as a statute tells us all clearly what the proper way to calculate alimony shall be in all states, it is in the spirit of helping end each divorce case where the open question is "***What should the alimony payment be and for how long should it be paid?***" that the use of the formulas referenced in the *Divorce Spousal Support Calculator* is offered. Understanding the quantity and quality of thought that has gone into the creation of these various formulas, guidelines and recommendations is, of course, important but each family law practitioner should input the data into the Calculator and use the results with the understanding that those results are just guidelines.

However, if the use of the *Divorce Spousal Support Calculator*, while promoting consistency but sacrificing some flexibility, helps divorce litigants end their cases by assisting them to come to agreements on the issue of alimony or spousal support, then we will have fulfilled our purpose in creating the Calculator. It is our goal to improve the predictability of our legal justice system by the creative use of these formulas for the settlement of divorce cases and thereby improve judicial efficiency and the lives of each divorce litigant, taking to heart the old adage that justice delayed is justice denied.

APPENDIX A

Case Name John Loveless & Jane Loveless

Docket Number PL 11 D 0000 DV1

Date Prepared July 15, 2011

Name of Preparer Justin L. Kelsey, Esq.

DIVORCE SPOUSAL SUPPORT CALCULATOR WORKSHEET:

An Alimony Formula Resource

All amounts are $ / week, rounded to the nearest dollar

Click Calculate to view results of the various formulas below

Enter length of marriage in years	19
Enter payor spouse's gross annual income	$125,000
Enter payee spouse's gross annual income	$25,000
Enter payor spouse's net annual income[1]	$100,000
Enter payee spouse's net annual income[1]	$20,000

	Suggested Order		Post Gross Income	
Support Formula:	**Annually:**	**Weekly:**	**Payor:**	**Payee:**
AAML	$32,500	$625	$92,500	$57,500
Old 1/3 - 1/3 - 1/3	$25,000	$481	$100,000	$50,000
Ginsburg Formula	$41,667	$801	$83,333	$66,667
Massachusetts (max)	$35,000	$673	$90,000	$60,000
AZ - Maricopa County	$28,500	$548	$96,500	$53,500
CA - Santa Clara County[1]	$30,000	$577	$95,000	$55,000
KS - Johnson County	$23,500	$452	$101,500	$48,500
Pennsylvania[1]	$32,000	$615	$93,000	$57,000
Texas (max)	$25,000	$481	$100,000	$50,000
VA - Fairfax County	$25,000	$481	$100,000	$50,000

Duration Formula:	**Months:**	**Years:**
AAML	171	14.25
Ginsburg Formula (maximum)	permanent	permanent
Massachusetts (maximum)	182.4	15.2
CA - Santa Clara County (minimum)	216.6	18.05
Kansas - Johnson County (maximum)	80	6.7
Maine (maximum)	114	9.5
Texas (maximum)	60	5

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ENDNOTES

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