

**The “A” Word**  
**The Challenge of Dealing with Alimony in the State of Iowa**

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- I. When a potential client comes in to ask questions about spousal support / alimony, typically that attorney advises them of the following:
  - A. **Iowa Code § 598.21A.**
    1. Criteria for determining support. Upon every judgment of annulment, dissolution, or separate maintenance, the court may grant an order requiring support payments to either party for a limited or indefinite length of time after considering all of the following:
      - a. The length of the marriage.
      - b. The age and physical and emotional health of the parties.
      - c. The distribution of property made pursuant to section 598.21.
      - d. The educational level of each party at the time of marriage and at the time the action is commenced.
      - e. The earning capacity of the party seeking maintenance, including educational background, training, employment skills, work experience, length of absence from the job market, responsibilities for children under either an award of

custody or physical care, and the time and expense necessary to acquire sufficient education or training to enable the party to find appropriate employment.

- f. The feasibility of the party seeking maintenance becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage, and the length of time necessary to achieve this goal.
- g. The tax consequences to each party.
- h. Any mutual agreement made by the parties concerning financial or service contributions by one party with the expectation of future reciprocation or compensation by the other party.
- i. The provisions of an antenuptial agreement.
- j. Other factors the court may determine to be relevant in an individual case.

- 2. Necessary content of order. Orders made pursuant to this section need mention only those factors relevant to the particular case for which the orders are made but shall contain the names, birth dates, addresses, and counties of residence of the petitioner and respondent.

**B. Refer to different types of alimony.**

- 1. Rehabilitative alimony: Serves to support an economically dependent spouse through a limited period of re-education or retraining following divorce, which creates an incentive and opportunity for that spouse to become self-supporting.
- 2. Reimbursement alimony: Based upon economic sacrifice by one spouse during the marriage that directly enhanced the future earning capacity of the other spouse. Generally occurs after an advanced degree is obtained by one spouse during a short-term marriage.
- 3. Traditional alimony: Generally in marriages of long duration where alimony can be used to compensate a spouse who leaves the marriage at a financial disadvantage. Usually occurs when there is a disparity in earning capacity that is significant.

4. Combination: The Court orders rehabilitative alimony for a set period and even though one spouse can obtain employment, they then receive traditional long term alimony because they can never become fully self supporting.
- C. **Highly discretionary.** Can go to ten different judges with the same facts and get ten different opinions. Can vary from county to county.
- D. **Recent developments in case law.**

**Iowa Supreme Court:**

- *In re Gust*, 858 N.W.2d 402 (Iowa 2015):
  - **Facts:**
    - Steven & Linda, married in 1985
    - Two children – ages 17 & 21 (at the time of trial)
    - Steven:
      - Age: 57 (at time of trial)
      - Bachelor’s degree in economics from ISU in 1977
      - Began working at MD Construction in 2005 (current position – general manager)
        - Base Salary: \$76,000/year
        - 2011 incentive payments: \$16,000
        - 2012 expected incentive payments: \$6,000-8,000
        - Received partially paid health insurance, paid vacation, and paid sick leave
        - **Earning capacity:** \$92,000/year
      - Entity – Sound Real Estate, LLC – Linda and Steven sole members
        - Original purpose: to flip houses
        - Entitled to equal amounts of any distributions
        - 2011: Steven withdrew \$64,000 from Sound
          - Used to pay credit card debt and provide temporary support for Linda during pendency of dissolution proceeding
        - Business not expected to continue
      - Entity – SafeCon – business owned by Steven’s girlfriend
        - No plans for Steven to work for SafeCon while employed full time by MD Construction
      - **Living expenses:** \$4837/month
    - Linda:
      - Age: 52 (at time of trial)
      - Lived in rented townhouse with parties’ minor son
      - Attended DMACC many years ago, where she was close to obtaining a two-year degree
      - Employment:
        - 1982-86: worked as a secretary for an accounting firm

- 1992-94: worked as a bookkeeper in Steven’s business, H & S Builders
- Did some work for Generativity, an assisted nursing care facility in Lake Panorama
- Beginning 2008:
  - Two part-time jobs with Ankeny Community School District (\$15,000/year; no benefits):
    - Media center - \$12/hour
    - Barcoding textbooks - \$9/hour
  - **Earning Capacity:** \$22,500/year
- Aside from employment, took care of the house and kids until 2008 while Steven earned an income to support the family
- **Living expenses:** \$3819/month
- **Trial Court Disposition:**
  - Court ordered petitioner to pay \$1400/month in spousal support, increasing to \$2000/month upon the termination of child support, for life
- **Issues:**
  - Issue 1: Whether traditional spousal support of unlimited duration in the amount of \$2000 per month was fair
  - Issue 2: How the court should treat the issue of the potential impact of Steven’s future retirement on the spousal support obligation
- **Conclusions:**
  - **Issue 1:**
    - \$2,000/month of traditional spousal support was fair
      - 27-year marriage, Linda was stay-at-home mom, marital lifestyle
      - General rule – unlimited in duration except upon remarriage of payee spouse, or death of either party
        - Exceptions do exist
          - Ex: *In re Marriage of Becker*, 756 N.W.2d 822, 827 (Iowa 2008) (Court limited spousal support in a 22-year marriage where the record showed that after a period of time, the income of the payee spouse “should allow her to become self-supporting at a standard of living reasonably comparable to the standard of living she enjoyed during the marriage”).
  - Trial court in best position to balance the parties’ needs, and Supreme Court will only intervene on appeal where there is failure to do equity

- **Issue 2:**
  - Best course = follow *In re Marriage of Michael*, 839 N.W.2d 630, 639 n.8 (Iowa 2013)
    - Hold that the question is not ripe for review and must await Steven's actual retirement
    - Future retirement raises too many speculative issues to be considered in the initial spousal support award
      - Don't know important facts (e.g., retirement age, financial position of parties, etc.)
  - Iowa legislature has expressly directed that in order to modify spousal support awards, a court must consider a variety of specific factors. Iowa Code § 598.21C(1).
  - Question must be brought in a modification action in the future, when Steven is actually going to retire.
- *In re Mauer*, 874 N.W.2d 103 (Iowa 2016):
  - **Facts:**
    - Richard & Carol, married in July 1985 (married 28 years at time of trial)
    - Richard:
      - In medical school/residency at the time the parties met and were married
      - Completed residency in 1989 – received only small stipend as a resident
      - Started successful ophthalmology practice in Waterloo
      - Sole owner of three closely held corporations:
        - Cedar Valley Ophthalmology, P.C.
          - Does business as Mauer Eye Center in Waterloo
          - Has 45-50 employees
        - Mauer Vision Center, P.C.
          - Does business in Waverly
          - Has several employees
        - D'Vine Medical Spa, L.L.C.
      - Richard and Carol each owned an interest in Mauer Land, L.L.C.
        - Limited liability company that owns the building housing both Mauer Eye Center and D'Vine Medical Spa
        - Also owned three commercial lots at Pinnacle Prairie in Cedar Falls and a commercial property leased by Veridian Credit Union
    - Carol:
      - Worked in computer sales while Richard was completing a three-year residency – primary breadwinner for couple during that period
      - Stopped working just before first child born
        - Devoted herself to being a mother and homemaker
        - Offered to return to work several times, but Richard

- preferred she stay home with the children
  - Cared for children and the family home
  - Devoted herself to various community activities
  - 2007: became a licensed massage therapist and began practicing at D'Vine Medical Spa
    - Worked approx.. 25-30 hours/week
    - Didn't now, but Richard paid her through contributions to a 401k retirement account
  - 2009-2012: taught classes at a massage school, for which she was paid approx.. \$3,000/year
  - No regular income from employment since 1989
- Richard paid between \$11,000 and \$12,000/month for benefit of Carol and two minor children, consistent with his obligations under a temporary support order
- **Trial Court Disposition:**
  - Court ordered Richard to pay \$18,000/month in spousal support, decreasing to \$10,000/month when Carol reaches retirement age and \$5,000/month when Richard reaches retirement or actually retires, whichever occurs later.
  - After post-trial motions to amend or enlarge the findings or rulings of the district court, the court ordered Richard to pay \$9,100/month in spousal support initially, decreasing to \$7,000/month when Carol reaches retirement age and \$5,000/month when Richard reaches retirement age or actually retires, whichever occurs later.
- **Court of Appeals Disposition:**
  - Court of Appeals determined that the spousal support award by the district court was inequitable and modified the decree, ordering Richard to pay \$25,000/month in spousal support until Carol's remarriage or the death of either party.
- **Issue:**
  - Whether the Court of Appeals' modification of the traditional spousal support awarded by the district court was fair and equitable
- **Conclusion:**
  - The Court of Appeals' modification of the spousal support awarded by the district court was not fair – inconsistent with the requirement of applying Iowa Code § 598.21A(1)
    - Any court, including appellate courts, must apply the factors in Iowa Code § 598.21A(1) in making spousal support determinations
    - Court of Appeals incorrect to conclude awarding Carol \$25,000/month was consistent with AAML guidelines
    - Determination by Court of appeals that spousal support award exceeding the amount accounted for in Carol's excessive budget was necessary to achieve equity between the parties is incompatible with the 598.21A(1) requirements

- Without spousal support, Carol will be unable to maintain lifestyle she was used to prior to dissolution of the marriage
  - Property settlement valued at \$1,762,118
  - Capable of generating approx.. \$32,000 in annual investment income from investable preretirement assets (assuming a 4% return)
  - **Earning Capacity (revised):** \$57,000 per year in employment and investment income
- **Spousal Support Award:**
  - Iowa Supreme Court found that Carol requires approx.. \$13,000/month (approx.. \$156,000/year) to enjoy a standard of living approaching that which she enjoyed during her marriage
  - Assuming tax rate of 25%, Carol requires approx.. \$208,000 in pretax income from her employment, investments, and spousal support
    - Requires approx.. \$151,000 in spousal support per year - \$12,583.33/month
    - \$12,600 per month constitutes an equitable spousal support award in this case
  - Carol entitled to lifetime spousal support
    - Agree with the district court that equity requires the spousal support award to decrease when Carol reaches retirement age and when Richard reaches retirement age
      - When Carol reaches retirement age, she will be able to draw income from the retirement assets the court did not consider in setting her preretirement spousal support
      - § 598.21A(1) requires Court to account for retirement of both parties
        - When Carol reaches age of 66 years and 6 months, Richard shall pay spousal support in the amount of \$6500/month.
        - When Richard reaches the age of 66 years and 6 months or actually retires, he shall pay spousal support of \$5000/month
        - If Richard retires before Carol reaches 66 years and 6 months, Richard shall pay \$5000/month in spousal support
    - Spousal support shall cease upon Carol's remarriage or the death of one of the parties

- *In re Erpelding*, \_\_\_ N.W.2d \_\_\_ (Iowa July 6, 2018) (pending publication):
  - **Facts:**
    - 18-year marriage, 2 minor children at time of DOM
    - Parties executed premarital agreement waiving the right to seek an award of attorney fees in the event of dissolution
      - Litigated issues pertaining to physical custody of the two minor children, child support, spousal support, and property division during DOM
  - **Trial Court Disposition:**
    - Found waiver provision in premarital agreement was enforceable and denied the request for attorney fees
  - **Court of Appeals Disposition:**
    - Court of Appeals reversed on the attorney fee issue, concluding that the waiver provision violates public policy and is therefore unenforceable to the extent the attorney fees arise from litigation of child-related issues
  - **Issue:**
    - Whether waiver of right to attorney’s fees in premarital agreement is enforceable, or whether it violates public policy
  - **Conclusion:**
    - Court decided attorney fee issue can be resolved “without an enunciation of Iowa’s public policy on the enforceability of premarital-agreement provisions waiving attorney fees”
      - Rely instead of well-established principles of statutory interpretation
    - Court concluded that “a premarital-agreement waiver of attorney fees pertaining to child support or spousal support is unenforceable because it adversely affects a spouse’s or child’s right to support in contravention of section 596.5(2).”
      - “In the spousal support context, the complexity of the determination speaks to the importance of counsel.”
      - “Moreover, such an interpretation of the statute will not result in an automatic award of attorney fees in every dissolution case in which support issues are litigated. An award of attorney fees remains within the discretion of the district court.”
- *In re Sisson*, 843 N.W.2d 866 (Iowa 2014):
  - **Facts:**
    - 11-year marriage, 1 minor child at time of DOM
    - Modification action (custody)
    - Travis:
      - Licensed public accountant, registered to sell securities
      - Owned and operated an accounting, tax, and financial services



- practice in West Des Moines
    - Earnings at time of DOM: \$226,000
  - Alfronia:
    - Worked before marriage/birth of child in retail management (Manager at Younkers)
    - Annual earnings when left workforce: \$40,000
    - Developed tremors in her hands shortly after divorce – decided not to enroll in cosmetology school and, instead, returned to Younkers as an assistant sales manager (paid hourly wage of \$11.40)
    - Eventually diagnosed with GK Multiple Myeloma—an incurable blood cancer
      - Able to continue employment, with some limitations
- **Trial Court Disposition:**
  - District court denied request by Travis to modify the custody arrangement and modified alimony by increasing the monthly amount to \$2100 and extended payments for the remainder of Alfronia’s life.
  - The court also ordered Travis to pay one-half of the medical expenses incurred by Alfronia not covered by her insurance plan (considered supplemental spousal support).
- **Court of Appeals Disposition:**
  - Court of Appeals affirmed the decision of district court to deny the application to modify physical care, and affirmed the increase in spousal support of \$2100, as well as the order for Travis to pay ½ of noncovered medical expenses.
  - Also awarded Alfronia \$3000 in appellate attorney fees.
- **Issue:**
  - Whether the modified decree is equitable
    - Whether there has been a substantial change in circumstances
    - Whether a permanent award of spousal support is justified
- **Conclusion:**
  - Alfronia’s medical condition was a circumstance beyond the contemplation of the parties at the time of DOM
    - Her disease “has not only been a factor in preventing her from pursuing a career as a cosmetologist, but it has disrupted her ability to assimilate back into her former career.”
    - “We conclude that Alfronia has suffered a substantial reduction in her earning capacity due to her medical condition. The change is permanent and will continue to adversely impact her earning capacity as her disease progresses.”
  - Court concluded that spousal support should be increased to \$1600/month and that the spousal support award must be modified to continue for the remainder of her life

- Based upon “the underlying purpose of spousal support—providing support for the former spouse while they are incapable of self-support”
    - This requirement may terminate in the event Alfronia remarries
- *In re Mihm*, 842 N.W.2d 378 (Iowa 2014):
  - **Facts:**
    - Scott and Melissa, married 1997, three children; DOM: 2008
    - Modification action – termination of spousal support and recalculation of child support
  - **Trial Court Disposition:**
    - District court confirmed that Melissa had remarried and that Melissa had not shown any extraordinary circumstances justifying a continuation of spousal support
    - Melissa also failed to show a substantial change in circumstances that would justify modifying the child support obligation – court denied her request to modify the child support
      - Melissa agreed to amount of child support less than that provided by child support guidelines—not later permitted to modify the agreed-upon amount, except under rare circumstances
      - “A dissolution decree’s child support determination is final as to circumstances that were known or should have been known through reasonable diligence at the time of the decree”
      - District court concluded that “nothing showed that Scott’s job or income had changed in a way that could not have been known at the time of the original decree”
  - **Court of Appeals Disposition:**
    - Affirmed the district court’s decision – held Melisa “had not shown a substantial change in circumstances to justify modifying the amount of child support under the decree”
  - **Issue:**
    - Whether there has been a substantial change in circumstances justifying a modification of the child support amount under the original divorce decree
  - **Conclusion:**
    - Melissa’s spousal support was appropriately terminated
      - “Melissa’s remarriage and the consequent loss of spousal support alone may not be a substantial change in circumstances justifying modification of child support. . . . But they are clearly factors the court shall consider. . . . Here, the loss of spousal support results in a decrease in the amount of money available each month with which Melissa can support the former couple’s two children remaining in her physical custody.”
      - “Now, in light of the elimination of spousal support, Melissa has experienced a twenty-five percent reduction in the amount of

money available each month with which to support herself and her two children from her first marriage. The loss of the spousal support has had a significant effect on Melissa's income."

- Court concluded that "the significant increase in Scott's income was not within the contemplation of the district court at the time of the decree."
- The Iowa Supreme Court found that "the evidence, when viewed as a whole, supports the conclusion that Melissa has shown a substantial change in circumstances since the entry of the original decree, warranting a modification of child support.
- Additionally, the Court could not conclude "that when Scott and Melissa stipulated to the monthly child support figure, they did so with the best interest of three children in mind."
  - "It is not for the parties to determine an appropriate level of child support. By statute, establishing an appropriate level of child support is ultimately the responsibility of the district court after being fully advised of the circumstances of the parties."

#### **Iowa Court of Appeals:**

- *In re Stenzel*, 908 N.W.2d 524 (Iowa Ct. App. 2018):
  - **Facts:**
    - Cheryl & Joel, married August 11, 1984
    - Joel:
      - Graduated from medical school in 1986; licensed to practice in Oklahoma and Iowa
      - Board certified in pediatrics and neonatal-perinatal medicine
      - In relatively good health (taking medication for anxiety, depression, and hyperlipidemia)
      - Works night and weekend shifts, in addition to weekday shifts
    - Cheryl:
      - Graduated with B.S. degree in pharmacy in 1987
      - Licensed pharmacist in Iowa and Oklahoma
        - Does not have Doctor of Pharmacy degree, which is currently required to become licensed
    - Joel moved to Tulsa, Oklahoma in March of 2013
      - Cheryl remained in DSM area and decided not to move to Tulsa
      - DOM petition in May of 2015 when she learned that Joel was involved in a relationship in Tulsa

- Earning Capacities:
  - Joel:
    - Average income (2008-2012): \$300,204
    - Current income: \$500,000 salary plus periodic profit distributions (likely increasing over the next five to six years to \$600,000+)
  - Cheryl:
    - Worked at hospitals from 1987-1993
    - No work from 1993-1995
    - Returned to work part-time in 1996
      - 1996: Medicap
      - 2007-2014: Dahl's
      - 2014: On-call pharmacist for Target
      - 2015: DGS Foods, LLC (d/b/a Price Chopper and Cash Saver)
    - Works 30 hrs/week, including every other weekend, earning \$48.25/hour; no benefits
    - Annual Income:
      - From 1984-2006, highest annual income was \$30,283
      - 2010-2013: ranged from \$4,674 to \$73,277
    - Earning capacity:
      - Could earn \$90,000-\$100,000/ year if she could find full-time employment working 42-44 hours/week.
      - Has applied for full-time pharmacy positions in DSM area but has not been successful
        - Ability to find full-time employment affected by degree, age
      - Reasonable to conclude that Cheryl's earning capacity is \$75,000/year
- Living Expenses:
  - Joel:
    - \$6669/month
    - No retirement savings indicated/estimated
  - Cheryl:
    - \$17,510/month (including \$5878/month toward retirement)
      - \$11,632 exclusive of retirement savings
- Parties' net worth: \$1,422,683
  - Divided: \$636,971/party in marital assets

- **Trial Court Disposition:**
  - The district court awarded spousal support in the amount of \$12,000/month, decreasing to \$8,000/month when Joel reached age of 62, and would decrease again to \$4,000/month when Joel reached the age of full social security retirement (age 67).
  
- **Issue:**
  - Whether the amount of spousal support awarded was equitable
    - “Joel argues the Iowa courts should specifically disavow the language from *Hettinga* and *Gust* concerning the purpose of traditional alimony being ‘to provide the receiving spouse with support comparable to what he or she would receive if the marriage continued,’ claiming it misstates the law to be applied.” *Stenzel*, 908 N.W.2d at 532.
  
- **Conclusion:**
  - No inherent inconsistency between state purpose of traditional spousal support in long-term marriages and the factors in Iowa Code § 598.21A(1)
    - Standard of living during marriage sets the highest level of spousal support but sum must be adjusted by payee’s income or earning capacity, whichever is greater
    - Per *Mauer*, spousal support award is to be based on post-dissolution expenses to arrive at amount that permits spouse to maintain the lifestyle accustomed to during the marriage.
  - Court agreed with trial court that Cheryl’s earnings would not likely ever increase to a level that she would be able to maintain a comparable standard of living as that which she enjoyed during her marriage to Joel.
  - Charitable donations and retirement savings in reasonable amounts may be a part of the needs analysis in fixing spousal support.
    - Court modifies expense amount for charitable donations from \$1200/month to \$500/month
  - Equitable to reflect \$2200/month for her housing expense
  - Court affirms trial court’s decision – sets alimony payments at \$12,000/month, subject to Joel’s ability to pay that sum

#### IV. Future of Spousal Support / Alimony.

- A. Changes to Tax Code.
  - a. Alimony is no longer deductible to payor or included in income for payee
    - i. Effective for decrees/orders executed after 12-31-18
    - ii. No changes in decrees/orders executed before 12-31-18
  - b. Would change deductibility for any modification before 12-31-18
  - c. Examples. See attached.
  - d. Remember – still deductible with State of Iowa

- B. Guidelines.
  - a. States with guidelines
    - i. Illinois
    - ii. Arizona – Maricopa County
    - iii. California – Santa Clara County
    - iv. Kansas – Johnson County
    - v. Maine
    - vi. Pennsylvania
    - vii. Texas
    - viii. Virginia – Fairfax County
    - ix. Massachusetts

- C. Supreme Court Committee.
- D. Affect on child support.

Proposed revisions:

1. **Rule 9.5 - Income.**

**9.5(1)** *Gross monthly income.* In the guidelines, the term “gross monthly income” means reasonably expected income from all sources.

*a.* Gross monthly income includes traditional or rehabilitative spousal support payments to be received by a party in the pending matter and prior obligation traditional or rehabilitative spousal support payments actually received by a party pursuant to court order. For spousal support payments taxable to the payee and deductible by the payor, the payments shall be added to or subtracted from gross monthly income prior to the computation of federal and state income taxes.

For spousal support payments not taxable to the payee or deductible by the payor, the payments will be added or subtracted after the computation of federal and state income taxes in arriving at net monthly income.

2. **Rule 9.6**

**Guideline method for computing taxes.** For purposes of computing the taxes to be deducted from a parent’s gross income, the following uniform rules shall be used:

**9.6(6)** If a parent's gross income under rule 9.5(1) is adjusted because of spousal support received or paid by the parent, applicable federal and state tax law determines whether those spousal support amounts are used to increase or decrease the parent's taxable income for computing taxes under this rule.

C. Various Factors:

1. Earning capacity of parties.
2. Number of years married.
3. Payment of child support.
4. Caps for high / low income levels/lengthy marriages





# New Alimony Rules – Example 1

- Tom and Jane expect to finalize divorce in 2018.  
After-tax cost/benefit of alimony:

Divorce in 2018	Tom	Jane
Alimony (paid)/received	(24,000)	24,000
Tax rate	<u>37%</u>	<u>24%</u>
Tax (benefit)/expense	(8,880)	5,760
After-tax (cost)/benefit	(15,120)	18,240

- If divorce isn't final until 2019, paying \$24,000 in alimony would cost Tom an extra \$8,880; paying \$18,240 would cost Tom an extra \$3,120



## New Alimony Rules – Example 2

- Tom pays Jane \$24,000 per year in alimony
- Tom's income drops but alimony obligation remains (Change in Circumstances)
- Parties could modify agreement and apply new rules, providing better after-tax result:

	Before mod – Tom	Before mod – Jane	After modification
Payment	24,000	24,000	19,680
Tax rate	12%	24%	N/A
After-tax cost/benefit	21,120	18,240	19,680

