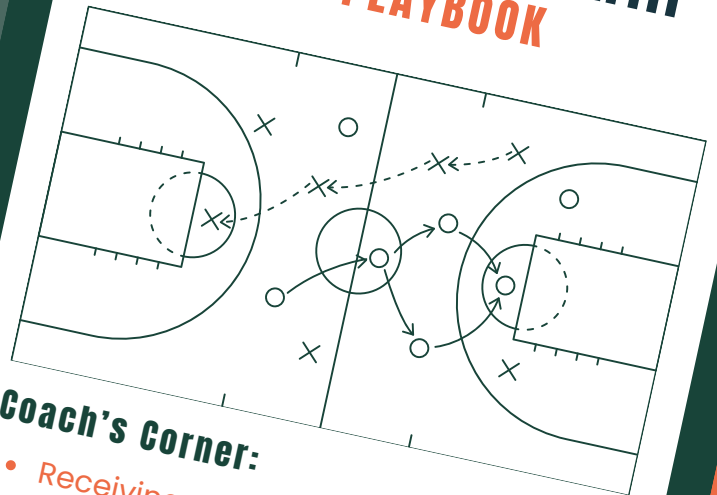




Coach's Corner

Spousal Support Playbook

 **Speaker Law Firm**
THE PLAYBOOK



Coach's Corner:

- **Receiving a Spousal Support Award**
- Seeking Your Attorney Fees
- Getting a Stay Pending Appeal
- Changing Domicile
- Changing Schools

Spousal Support Playbook

What counts as income?

Income includes “earnings, pension plans, unemployment compensation, tax refunds, and Social Security benefits.” MCL 552.602(o). Income may be **imputed** if the payer spouse does not exercise an ability to earn income or voluntarily reduces income to avoid paying spousal support. Michigan Family Law Benchbook ch 6 (ICLE 2d ed 2006) (last updated 03/08/2024).; see also *Cassidy v Cassidy*, 318 Mich App 463, 476 (2017); *Ackerman v Ackerman*, 197 Mich App 300, 303 (1992).

The 2017 Tax Act amended IRC 71 to eliminate taxable alimony and spousal support for judgments entered after December 31, 2018. Michigan Family Law Benchbook ch 9 (ICLE 2d ed 2006) (last updated 03/08/2024).

What counts as expenses?

Spousal support “may include the payment of the expenses of medical, dental, and other health care.” MCL 552.601(ii)(i). The trial court can also consider “household expenses, food, clothing, medical and like expenses, house maintenance and help, education, and the various domestic financial outlays of a family,” as well as “expenses for consulting a psychiatrist.” *Rogers v Rogers*, 335 Mich 207, 210 (1952).

Preliminary questions:

- **Has the claimant alleged facts sufficient to show a need for spousal support?** MCR 3.206(A)(5). Support is intended for the “Suitable maintenance” of the spouse and in a sum “necessary to conserve any real or personal property.” MCL 552.13.
 - **If yes, continue to the next question.**
 - **If not, no spousal support awarded.**
- **Is the respondent able to pay spousal support?** MCR 3.206(A)(5). The ability of the respondent to pay spousal support not only considers income, but the respondent’s assets. *Woodington v Shokoohi*, 288 Mich App 352, 356 (2010) (stating that the factors a court should consider in determining spousal support include “the source and the amount of property awarded to the parties” and “the abilities of the parties to pay support.”)
 - **If yes, continue to Spousal Support Factors.**
 - **If not, no spousal support awarded.**

Spousal Support Factors

The Supreme Court of Michigan has held in *Sparks v Sparks* that it was “not desirable, or feasible, for [it] to establish a rigid framework for applying the relevant factors.” 440 Mich 141, 158 (1992). The trial court has broad discretion in creating its rulings, and “there can be no strict mathematical formulations.” *Id.* at 158-159. The factors to be considered will “not always be equal,” and the factors might be irrelevant in some cases. *Id.* at 159. “The determination of relevant factors will vary depending on the facts and circumstances of the case.” *Id.* “The object in awarding spousal support is to balance the incomes and needs of the parties so neither will be impoverished.” *Berger v Berger*, 277 Mich App 700, 726 (2008).

Was there a significant positive or negative change in the standard of living?

A determination of spousal support considers the ability to maintain a prior standard of living as affected by the other spouse’s ability to provide spousal support. *Cassidy v Cassidy*, 318 Mich App 463, 471 (2017).

Yes

No

Does the party have health care expenses and does the party’s health also impact that party’s ability work? *Myland v Myland*, 290 Mich App 691, 698-699 (2010).

Yes. Amount of expenses: _____

No

Did the past relations and conduct of the parties during the marriage result in or contribute to the breakdown of the marriage? *Berger v Berger*, 277 Mich App 700, 718 (2008). Note this factor is typically relevant only in divorce proceedings and not for a postjudgment modification.

Yes

No

How long were the parties married? The length of the marriage may also be relevant in determining spousal support. *Butler v Simmons-Butler*, 308 Mich App 195, 224 (2014). But the number of years since the divorce that the spouse has been receiving support is also relevant. *Korth v Korth*, 256 Mich App 286, 289 (2003) (stating that the trial court was “required to limit its consideration to ‘the length of the *marriage*,’ not the length of the *relationship*.”).

Length of Marriage: _____

Years Since Divorce: _____

The ability of the parties to work considers any factor affecting a party's employability or the ability to support oneself. The claimant should provide any evidence of an attempt to find employment. *Loutts v Loutts*, 309 Mich App 203, 214 (2015). **Does the party have an ability to work?**

Yes. Amount of money the party has the ability to earn: _____

No

The source and amount of property awarded to the parties weighs the potential for income producing assets, rather than the value. A spouse should not be required to dissipate property to meet one's daily needs where spousal support can be available. *Seifeddine v Jaber*, 327 Mich App 514, 523-524 (2019). **Was the spouse awarded sufficient property with earning potential?**

Yes

No

The age of the parties' factors in the ability to work, employability, and the ability to gain new employment or the security of employment. *Korth v Korth*, 256 Mich App 286, 290 (2003) (holding that the trial court's spousal support to plaintiff was inequitable when defendant was sixty years old and retired while plaintiff was forty-seven.). **How old are the parties?**

Husband's Age: _____

Wife's Age: _____

The needs of the parties with an emphasis on any significant extraordinary expenses not otherwise considered subsequently affecting the continuing ability of one spouse to pay and the continuing needs of the spouse seeking support. *Richards v Richards*, 310 Mich App 683, 691 (2015). The present situation of the parties including any significant, reasonable and necessary obligations, marital or otherwise, being paid by a party not otherwise considered affecting the present ability of one spouse to pay and the present needs of the spouse seeking support. *Elahham v Al-Jabban*, 319 Mich App 112, 133-134 (2017) (holding that the trial court did not abuse its discretion in discussing the present situation of the parties and awarding initial spousal support.). **Does either spouse have present needs based on significant, reasonable and necessary obligations?**

Yes. If yes, which spouse and what present needs?

No

The responsibility for the support of others considers whether a party is responsible for the support of any person not otherwise considered within these guidelines. (e.g., reasonable and necessary expenses not covered under the Child Support Formula; or for adult children, grandparents or other persons because of some type of physical or mental condition.) *Andrusz v Andrusz*, 320 Mich App 445, 458 (2017) (stating that whether a party has “responsibility of others,” irrespective if why, is a proper, equitable consideration.”). **Does either spouse have responsibility for the support of others?**

Yes. Which Spouse: _____

No

Contributions of the parties to the joint estate. *Richards v Richards*, 310 Mich App 683, 691 (2015). **Did the payee spouse contribute to the joint estate?**

Yes

No

The effect of cohabitation on a party’s financial status considers whether a party has no other financial choice but to live with a family member or friend or is doing so to establish their independence; or whether one is living with someone contributing to or able to contribute to the party’s financial obligations. *Smith v Smith*, 278 Mich App 198, 202-203 (2008). **Is one of the spouses cohabiting?**

Yes. Which Spouse: _____

No

The general principle of equity must be considered in determining spousal support. *Luckow v Luckow*, 291 Mich App 417, 427 (2011). **Is the award of spousal support required to do equity?**

Yes

No