



WISCONSIN LEGISLATIVE COUNCIL
REPORT TO THE LEGISLATURE

SPECIAL COMMITTEE ON
REVIEW OF SPOUSAL
MAINTENANCE AWARDS IN
DIVORCE PROCEEDINGS

[2011 ASSEMBLY BILL 134]

May 19, 2011

RL 2011-06

Special Committee on Review of Spousal Maintenance Awards in Divorce Proceedings

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May 19, 2011

CONTENTS

PART I - KEY PROVISIONS OF COMMITTEE RECOMMENDATION	3
2011 Assembly Bill 134, Relating to Termination of Maintenance Upon the Payee's or Payer's Death and Notices Relating to Maintenance.....	3
PART II - COMMITTEE ACTIVITY.....	5
Assignment.....	5
Summary of Meetings.....	5
PART III - RECOMMENDATION INTRODUCED BY THE JOINT LEGISLATIVE COUNCIL	7
2011 Assembly Bill 134, Relating to Termination of Maintenance Upon the Payee's or Payer's Death and Notices Relating to Maintenance	7
Appendix 1 - Committee and Joint Legislative Council Votes	9
Appendix 2 - Lists of Joint Legislative Council Members	11
Appendix 3 - List of Committee Members.....	13
Appendix 4 - Committee Materials List.....	15

PART I

KEY PROVISIONS

OF COMMITTEE RECOMMENDATION

The Special Committee on Review of Spousal Maintenance Awards in Divorce Proceedings recommends the following bill to the Joint Legislative Council for introduction in the 2011-12 Session of the Legislature.

2011 Assembly Bill 134, Relating to Termination of Maintenance Upon the Payee's or Payer's Death and Notices Relating to Maintenance

2011 Assembly Bill 134:

- Provides that, unless already terminated for another reason, maintenance (formerly known as “alimony”) terminates upon the death of the payee (recipient of the maintenance) or the payer.
- Provides that when a court orders maintenance or family support (a combination of child support and maintenance) in a divorce, annulment, or legal separation, the court must include in the order a requirement that the payee notify the court and the payer if the payee remarries.
- Requires the court to vacate a maintenance order upon notice from the payee that he or she has remarried, in addition to vacating the order upon the application of the payer and proof of the payee’s remarriage (current law).

PART II

COMMITTEE ACTIVITY

Assignment

The Joint Legislative Council established the Special Committee on Review of Spousal Maintenance Awards in Divorce Proceedings and appointed the chairperson by a May 7, 2010 mail ballot. The committee was directed to study: (a) the purpose and goals of awarding maintenance; (b) making application of the maintenance considerations given in s. 767.56, Stats., more uniform and predictable; (c) whether the statutes should provide guidance to the courts relating to amount and duration of a maintenance award; (d) whether cohabitation should be considered when revising maintenance orders under s. 767.59, Stats.; and (e) whether marital fault should be considered when determining a maintenance award.

Membership of the Special Committee was appointed by June 30, 2010 and October 20, 2010, and January 6, 2011 mail ballots. The final committee membership consisted of one Senator, three Representatives and 13 public members. A list of committee members is included as *Appendix 3* to this report.

Summary of Meetings

The Special Committee held three meetings on the following dates:

August 24, 2010
October 14, 2010
December 8, 2010

At the August 24 meeting, the Special Committee heard invited testimony from committee member and retired Waukesha County Circuit Judge, Robert Mawdsley, regarding the process used to teach maintenance issues to judges at the Wisconsin Judicial College, including the use of a computer program developed by Judge Mac Davis of Waukesha County and the use of maintenance fact scenarios with groups of judges. After the staff described the current maintenance law in Wisconsin and provided an overview of pertinent maintenance laws in other states, committee members spent the remainder of the meeting discussing ideas and concepts to be explored at the next meeting of the committee, including the lack of consistency in maintenance decision-making amongst judges in various areas of the state, the need to retain judicial discretion as part of any committee recommendations for changes in current maintenance law, and the need for guidelines and clarity in the maintenance law, especially with reference to pro se litigants.

At the October 14, 2010 meeting, Judge Mawdsley demonstrated to the Special Committee the specific process through which spousal maintenance is taught at the Judicial College, using the Judge Davis formula and a specific fact situation. After the staff reviewed its Memos relating to modification of maintenance awards, the background of no-fault divorce in Wisconsin, and studies on the use of maintenance in divorce cases, including pro se cases, the committee reviewed Memo No. 3 from the staff, *Suggested Options, to Date, for Revising Wisconsin's Spousal Maintenance Laws* (October 7, 2010). The committee had an extensive discussion of the various alternatives on the key issues presented in the Memo, including guidelines based on other states' laws or on uniform laws as to the circumstances in which maintenance should be awarded; the possible elimination or restriction of indefinite maintenance; the amount and duration of maintenance payments in general; the use of cohabitation as a factor in the initial maintenance award or in modifying a maintenance award; the notices required where the maintenance recipient remarries and the significance of the income of a payer's new spouse in a modification of maintenance determination; and the effect of an inheritance by

the recipient or the death of a payer on maintenance payments. The committee directed the staff to prepare various bill draft proposals in accordance with their suggestions.

At the December 8, 2010 meeting, the Special Committee discussed and decided whether bill drafts prepared by the staff should be submitted to the committee for a mail ballot. After a full discussion, the committee determined that the following bill drafts, as redrafted or subdivided as appropriate by the staff into final form, should be submitted to committee members for their vote by mail ballot: WLC: 0031/1, relating to termination of maintenance upon the payee's or payer's death and notices relating to maintenance; WLC: 0039/1, relating to termination of maintenance upon cohabitation of the payee; WLC: 0007/1, relating to when a maintenance award may be granted and the duration of such an award; WLC: 0015/1, relating to amount and duration of maintenance records; WLC: 0006/1, relating to amount and duration of maintenance awards; WLC: 0040/1, relating to providing notice in a summons in certain actions affecting the family describing a court's authority to grant a maintenance award; and WLC: 0041/1, relating to prohibiting consideration of income of payer's subsequent spouse, and permitting consideration of an inheritance received by a payee, for maintenance revision purposes.

PART III

RECOMMENDATION INTRODUCED BY THE JOINT LEGISLATIVE COUNCIL

This part of the report provides background information on, and a description of, the bill as recommended by the Special Committee on Review of Spousal Maintenance Awards in Divorce Proceedings.

2011 Assembly Bill 134, Relating to Termination of Maintenance Upon the Payee's or Payer's Death and Notices Relating to Maintenance

Background

Under current law, in an action for divorce, annulment, or legal separation, a court may order one party (payer) to pay maintenance (formerly known as alimony) to the other party (payee) for a limited or indefinite length of time.

Current law does not specify the effect of either party's death on the maintenance order.

Current law provides that, if a payee of maintenance remarries, the court must vacate the maintenance order upon the application by the payer and proof of the payee's remarriage.

Description

Termination Upon Payer's or Payee's Death

The bill provides that, unless already terminated for another reason, such as the payee's remarriage or the expiration of a limited time under an order, maintenance terminates upon the death of the payee or the payer, whichever occurs first. Under the Internal Revenue Code, maintenance must end at the payee's death in order for the payer to be able to deduct the payments from his or her gross income for income tax purposes.

Notices Relating to Maintenance

The bill provides that, when a court orders maintenance or family support (a combination of child support and maintenance), the court must include in the order a requirement that the payee notify the court and the payer if the payee remarries.

The bill requires a court to vacate a maintenance order upon notice from the payee that he or she has remarried, or upon the application of the payer and proof of the payee's remarriage.

Appendix 1

Committee and Joint Legislative Council Votes

The following bill draft is recommended by the Special Committee on Review of Spousal Maintenance Awards in Divorce Proceedings to the Joint Legislative Council for introduction in the 2011-12 Session of the Legislature.

Special Committee Vote

The Special Committee voted, by a January 24, 2011 mail ballot, to recommend the following draft to the Joint Legislative Council for introduction in the 2011-12 Session of the Legislature. The votes on the bill draft are as follows:

- WLC: 0031/1, relating to termination of maintenance upon the payee's or payer's death and notices relating to maintenance, passed by a vote of Ayes, 14 (Reps. Staskunas, Vruwink, and Kleefisch; Sen. Olsen; Public Members Bruch, Budny, Hatfield, Mansfield, Matznick, Mawdsley, Pence, Pocan, Potter, and Seubert); Noes, 1 (Public Member Lundin); and Not Voting, 2 (Public Members Grogan and Plale). [WLC: 0031/1 subsequently became LRB-1401/1.]

Joint Legislative Council Vote

- Rep. Kaufert moved, seconded by Sen. Schultz, that **LRB-1401/1**, relating to termination of maintenance upon the payee's or payer's death and notices relating to maintenance, be introduced by the Joint Legislative Council. The motion passed on a roll call vote of Ayes, 13 (Reps. Ballweg, Barca, Fitzgerald, Grigsby, Kaufert, Nygren and Suder; and Sens. Lazich, Cullen, Erpenbach, Miller, Schultz and Taylor); Noes, 2 (Rep. Berceau and Sen. Lasee); and Absent, 7 (Reps. Kramer, Pasch and Vos; and Sens. Darling, Fitzgerald, Galloway and Leibham).

[Sens. Fitzgerald and Galloway noted that had they been present, they would have voted "aye."]

Appendix 2

Joint Legislative Council

[Joint Legislative Council Members Who Selected and Appointed Committee and Its Membership]

Co-Chair

FRED A. RISSER

Senate President

100 Wisconsin Avenue, Unit 501
Madison, WI 53703

Co-Chair

MARLIN D. SCHNEIDER

Representative

3820 Southbrook Lane
Wisconsin Rapids, WI 54494

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President Pro Tempore
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4903 Roigan Terrace
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ROBERT WIRCH

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N4692 Maple Road
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REPRESENTATIVES

JOAN BALLWEG

170 W. Summit Street
Markesan, WI 53946

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1360 Alpine Lane
Neenah, WI 54956

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TERESE BERCEAU

4326 Somerset Lane
Madison, WI 53711

THOMAS NELSON

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1510 Orchard Drive
Kaukauna, WI 54130

TONY STASKUNAS

Speaker Pro Tempore
2010 South 103rd Court
West Allis, WI 53227

SPENCER BLACK

5742 Elder Place
Madison, WI 53705

MARK POCAN

309 N. Baldwin Street
Madison, WI 53703

ROBIN VOS

4710 Eastwood Ridge
Racine, WI 53406

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Minority Leader
910 Sunset
Horicon, WI 53032

This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the co-chairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees.

Joint Legislative Council

[Current Joint Legislative Council Members Receiving Committee Report]

SENATE MEMBERS

MARY LAZICH, Co-Chair

4405 South 129th Street
New Berlin, WI 53151

TIM CULLEN

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Janesville, WI 53545

ALBERTA DARLING

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River Hills, WI 53217

JON ERPENBACH

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Waunakee, WI 53597

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PAM GALLOWAY

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Wausau, WI 54403

FRANK LASEE

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JOE LEIBHAM

President Pro Tempore

3618 River Ridge Drive
Sheboygan, WI 53083

MARK MILLER

Minority Leader

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DALE SCHULTZ

515 North Central Avenue
Richland Center, WI 53581

LENA TAYLOR

1518 West Capitol
Milwaukee, WI 53206

ASSEMBLY MEMBERS

JOAN BALLWEG, Co-Chair

170 W. Summit Street
Markesan, WI 53946

PETER BARCA

Minority Leader

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Kenosha, WI 53144

TERESE BERCEAU

4326 Somerset Lane
Madison, WI 53711

JEFF FITZGERALD

Speaker

910 Sunset
Horicon, WI 53032

TAMARA GRIGSBY

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Majority Leader

102 South 4th Avenue
Abbotsford, WI 54405

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960 Rock Ridge Road
Burlington, WI 53105

This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the co-chairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees.

*Terry C. Anderson, Director, Legislative Council Staff
1 East Main Street, Suite 401, P.O. Box 2536, Madison, Wisconsin 53701-2536*

Appendix 3

Review of Spousal Maintenance Awards in Divorce Proceedings

Representative Tony Staskunas, **Chair**
2010 South 103rd Court
West Allis, WI 53227

Representative Joel Kleefisch
W357 N6189 Spinnaker Drive
Oconomowoc, WI 53066

Jeff Plale
1404 18th Avenue
South Milwaukee, WI 53172

Judith Budny
Poulos, Sengstock, Budny & Ludwig, S.C.
10150 W. National Avenue #390
West Allis, WI 53227-2145

Dr. Malcolm Keith Hatfield
6937 Brook Road
Franksville, WI 53126

Marsha Mansfield, Director
Economic Justice Institute, UW-Madison
975 Bascom Mall
Madison, WI 53706

Judge Robert Mawdsley
515 W. Moreland Boulevard
Waukesha, WI 53188-2428

Judge William Pocan
Milwaukee County Courthouse
901 North Ninth Street
Milwaukee, WI 53233

Kenneth Seubert
1515 W. 4th Street
Marshfield, WI 54449

Representative Amy Sue Vruwink, **Vice-Chair**
9425 Flower Lane
Milladore, WI 54454

Senator Luther Olsen
1023 Thomas Street
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Michael J. Bruch, Family Court Commissioner
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STUDY ASSIGNMENT: The Special Committee is directed to study: (a) the purpose and goals of awarding maintenance; (b) making application of the maintenance considerations given in s. 767.56, Stats., more uniform and predictable; (c) whether the statutes should provide guidance to the courts relating to amount and duration of a maintenance award; (d) whether cohabitation should be considered when revising maintenance orders under s. 767.59, Stats.; and (e) whether marital fault should be considered when determining a maintenance award.

17 MEMBERS: 1 Senator; 3 Representatives; and 13 Public Members.

LEGISLATIVE COUNCIL STAFF: Don Salm, Senior Staff Attorney; Margit Kelley and Chadwick Brown, Staff Attorneys; and Tracey Young, Support Staff.

Appendix 4

Committee Materials List (Copies of documents are available at www.legis.state.wi.us/lc)

Results of the Joint Legislative Council Meeting
<ul style="list-style-type: none"> • Results Letter
Recommendation to the Joint Legislative Council - May 4, 2011 Meeting
<ul style="list-style-type: none"> • Memo to Members of the Special Committee, <i>Council Consideration of Committee Report</i> (February 23, 2011). • Proposed Report to the Legislature, No. 2011-06, <i>Legislation on Review of Spousal Maintenance Awards in Divorce Proceedings</i> (February 18, 2011). • LRB-1401/1, relating to termination of maintenance upon the payee's or payer's death
Results of the January 24, 2011 Mail Ballot
<ul style="list-style-type: none"> • Results Letter
January 24, 2011 Mail Ballot
<ul style="list-style-type: none"> • WLC: 0006/2, relating to amount and duration of maintenance awards. • WLC: 0007/2, relating to when a maintenance award may be granted and the duration of such an award. • WLC: 0015/2, relating to duration of maintenance awards. • WLC: 0031/1, relating to termination of maintenance upon the payee's or payer's death and notices relating to maintenance. • WLC: 0040/1, relating to providing notice in a summons in certain actions affecting the family describing a court's authority to grant a maintenance award. • WLC: 0041/1, relating to prohibiting consideration of income of payee's subsequent spouse, and permitting consideration of an inheritance received by a payee, for maintenance revision purposes. • WLC: 0083/1, relating to duration of maintenance awards. • WLC: 0084/1, relating to amount and duration of maintenance awards • WLC: 0085/1, relating to amount and duration of maintenance awards • WLC: 0086/1, relating to amount and duration of maintenance awards • WLC: 0093/1, relating to the effect of cohabitation on revision of a maintenance order in certain actions affecting the family.
December 8, 2010 Meeting
<ul style="list-style-type: none"> • Memo No. 7, <i>Summary List of Bill Drafts</i> (December 2, 2010). • Bill drafts: <ul style="list-style-type: none"> ○ WLC: 0006/1, relating to . ○ WLC: 0007/1, relating to when a maintenance award may be granted and the duration of such an award. ○ WLC: 0015/1, relating to amount and duration of maintenance awards. ○ WLC: 0016/1, relating to prohibiting certain individuals from receiving maintenance where there is evidence of domestic abuse. ○ WLC: 0030/1, relating to eliminating maintenance awards in actions affecting the family. ○ WLC: 0031/1, relating to termination of maintenance upon the payee's or payer's death and notices relating to maintenance. ○ WLC: 0039/1, relating to termination of maintenance upon cohabitation of the payee. ○ WLC: 0040/1, relating to providing notice in a summons in certain actions affecting the family describing a court's authority to grant a maintenance award. ○ WLC: 0041/1, relating to prohibiting consideration of income of payee's subsequent spouse, and permitting consideration of an inheritance received by a payee, for maintenance revision purposes. • Memorandum, submitted by Public Member Michael Bruch (December 7, 2010).

October 14, 2010 Meeting

- [Memo No. 3](#), *Suggested Options, to Date, for Revising Wisconsin's Spousal Maintenance Laws* (October 7, 2010).
 - [Enclosure 1](#)
 - [Enclosure 2](#)
- [Memo No. 4](#), *Brief Review of Wisconsin's Laws Regarding Modification of Maintenance Awards and Calculating Child Support* (October 7, 2010).
- [Memo No. 5](#), *Background on History of No-Fault Divorce Law in Wisconsin* (October 7, 2010).
 - [Enclosure 1](#)
 - [Enclosure 2](#)
- [Memo No. 6](#), *Excerpts Regarding Studies Relating to Maintenance in Divorce Cases, Including Pro Se Divorce Cases* (October 7, 2010).

August 24, 2010 Meeting

- [Memo No. 1](#), *Current Wisconsin Law Relating to Spousal Maintenance* (August 17, 2010).
 - [Enclosure](#), 2007 Assembly Bill 9.
- [Memo No. 2](#), *Background on Law Relating to Maintenance Payments (Alimony; Spousal Support) in the United States; Overview of Maintenance Payment Laws and Proposals in the 50 States* (August 17, 2010).
 - [Enclosure 1](#), *Alimony: Proposed Amendments to Title 23 of the Pennsylvania Consolidated Statutes*.
 - [Enclosure 2](#), *The New Art of Alimony*.
 - [Enclosure 3](#), excerpt: *Anti-Cohabitation Statutes in Other States*.
- [Excerpt](#), relating to the history of divorce and spousal support law (maintenance law), *Spousal Support Disorder: An Overview of Problems in Current Alimony Law*, from *Florida State University Law Review*, Vol. 33:501, pp. 503-513.
- [Chart](#), *Family Law Quarterly*, Volume 43, Number 4, p. 972 Winter 2010, indicating various factors (in the 50 states) that the court may or must take into account in determining maintenance awards.