



New Jersey

FAMILY LAW

Summary Guide for Trial or Settlement

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Grounds for Nullity of Marriage

- Either party has another wife, husband, partner in a civil union couple or domestic partner living at the time of the second or other marriage.
- Parties are within degrees prohibited by law. However, no challenge permitted after death of a party if marriage had not been annulled during lifetime of the party.
- Either of the parties are physically and incurably impotent provided the moving party was ignorant of same or incapacitated at time of the marriage and has not subsequently ratified the marriage.
- Either of the parties lack the capacity to marry due to lack of understanding because of mental condition or influence of intoxicants, drugs or similar agents; where there was a lack of mutual consent to the marital relationship; duress or fraud as to the essentials of the marriage and has not subsequently ratified the marriage.
- Where the moving party at the time of the marriage was under the age of 18, unless such marriage be confirmed by the party after arrival at such age.

Cause of Action for Divorce from Bed and Board

- Same causes as Divorce from Bonds of Matrimony.
- Both parties petition or join in requesting such relief.
- In the case of reconciliation thereafter the parties may apply for a revocation or suspension of the judgment.
- The granting of a Bed and Board Divorce shall in no way prejudice either party from thereafter applying to the Court for conversion of said Divorce to a Divorce from the Bonds of Matrimony which application shall be granted as a matter of right.
- The property rights of the parties who were Divorced from Bed and Board shall be as though a judgment of absolute divorce had been entered. Any property transaction by either of them during such status shall provide for the existence of such judgment which shall be distinctly recited and referenced for the public record thereof.

Causes of Action from Divorce from Bond of Matrimony

- Adultery.
- Willful continued desertion for 12 or more months which may be established by proof that the parties have ceased to cohabit as husband and wife.
- Extreme Cruelty: physical or mental cruelty which endangers the safety or health of the Plaintiff or makes it improper or unreasonable to expect Plaintiff to continue to cohabit. Complaint shall be based upon allegations that occurred 3 months prior to the filing date. The three month rule does not apply to the counterclaim.
- Eighteen or more consecutive months of continuous separation without a reasonable prospect of reconciliation. After the eighteen month period there is a presumption that there is no reasonable prospect of reconciliation.
- Voluntarily induced addiction to or habituation to any narcotic drug defined as a New Jersey Controlled Dangerous Substance or habitual drunkenness for a period of twelve or more consecutive months.
- Institutionalization for mental illness for a period of twenty four or more consecutive months.
- Imprisonment of the defendant for eighteen or more consecutive months provided that where the action is not commenced until after the defendant's release, the parties have not resumed cohabitation.
- Deviant sexual conduct.
- Irreconcilable differences causing the breakdown of the marriage for a period of six months and which make it appear that the marriage should be dissolved and that there is no reasonable prospect of reconciliation.

Venue for Filing a Complaint for Divorce Nullity or Separate Maintenance

- The county in which plaintiff was domiciled when the cause of action arose.
- If plaintiff was not domiciled in New Jersey, then the county in which defendant was domiciled when the cause of action arose.
- If neither party was domiciled in New Jersey when the cause of action arose, then the county in which plaintiff is domiciled when the cause of action is commenced.
- If plaintiff is not domiciled in this State, then the county where defendant is domiciled when service of process is made.

New Jersey Family Law

Spousal Support

A. Permanent Alimony spousal support paid

- For indefinite duration
- Terminates on remarriage or death of either party.
- Modification or termination of cohabitation.

B. Rehabilitative Alimony: Award based upon a plan in which the payee shows:

- The scope of rehabilitation.
- The steps to be taken.
- The time frame including a period of employment during which rehabilitation will occur.
- An award of rehabilitative alimony may be modified based either upon changes of circumstances or the non-occurrence of circumstances that the Court found would occur at the time of the rehabilitation award.

C. Limited Duration Alimony:

- A court must make a determination that an award of permanent alimony is not warranted and set forth specific findings on the evidence setting forth the reasons therefore.
- In determining duration the Court shall consider the length of time it would reasonably take for the recipient to improve his or her earning capacity to a level where limited duration alimony is no longer appropriate.
- Limited duration alimony may be modified based either upon change of circumstances or the non-occurrence of circumstances the Court found would occur at the time of the award.
- The Court may modify the amount of a limited duration alimony award based on changed circumstances but shall not modify the length of the term except in unusual circumstances.

D. Reimbursement Alimony:

- This is alimony awarded under circumstances in which one party supported the other to advance the other's education, anticipating participation in the fruits of the earning capacity generated by that education

E. Pendente Lite Alimony

- Spousal support paid during the pendency of the litigation for Divorce, Divorce from Bed and Board or Nullity

General Factors to be Considered in Determining Amount and Duration Of Alimony

- Actual need and ability of the parties to pay.
- The duration of the marriage or civil union.
- The age, physical and emotional health of the parties.
- The standard of living established in the marriage or civil union and the likelihood that each party can maintain a reasonably comparable standard of living.
- The earning capacities, educational levels, vocational skills, and employability of the parties.
- The length of absence from the job market of the party seeking maintenance.
- The parental responsibilities for the children.
- The time and expense necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment, the availability of the training and employment and the opportunity for future acquisitions of capital assets and income.
- The history of the financial and non-financial contributions to the marriage or civil union by each party including contributions to the care and education of the children and interruption of the personal careers or educational opportunities.
- The equitable distribution of properties ordered and any payouts on equitable distribution, directly or indirectly, out of current income, to the extent this consideration is reasonable, fair and just.
- The income available to either party from investment of any assets held by that party.
- The tax treatment and consequence for both parties of any alimony award, including the designation of all or portion of the payment as a non-taxable payment.
- Any other factor which the Court may deem relevant.

Motion Requirements

A. Time for service and filing.

- Motion together with supporting affidavits and briefs shall be filed no later than 24 days before the return date. (motion shall be filed on Tuesday for a motion date falling on Friday, 24 days later).
- Opposing affidavits, cross-motions or objections, shall be served and filed no later than 15 days before the return date. (a response must be served and filed Thursday for a motion falling on Friday 15 days later).
- Answer or response to opposing affidavits and cross-motions shall be served and filed no later than 8 days before the return date. (such papers are filed on Thursday for a motion date falling on Friday of the following week).
- If service is by mail, 3 days shall be added to the above time periods.
- Two copies of all motions, cross-motions, certifications and briefs shall be filed.

B. Page limits.

- Certifications in support of a motion shall not exceed 15 pages.
- Certifications in opposition to a motion or in support of a cross-motion or both, shall not exceed 25 pages.
- Reply certifications to an opposing pleading shall not exceed 10 pages.
- This rule does not apply to affidavits for service in connection with counsel fee applications.
- Court may relax page limits for good cause shown.

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Termination of Alimony

- Death of either party except arrearages that have accrued prior to the date of the payor's death shall not be vacated or annulled.
- Remarriage of the recipient if the recipient is receiving permanent or limited duration alimony. There, the alimony terminates as of date of marriage except that accrued arrearages prior to the date of marriage shall not be vacated or annulled.
- The remarriage of a former spouse receiving rehabilitative or reimbursement alimony shall not be cause for termination of such alimony unless the Court finds that the circumstances upon which the alimony award was made have not occurred or unless the payor demonstrates an agreement or good cause to the contrary.
- Where cohabitation occurs, i.e., the alimony recipient is living together in an informal relationship similar to that of a married couple, such cohabitation is a changed circumstance that might warrant modification or elimination of alimony. The Court focuses on "economic needs" to determine modification/elimination of alimony where:
 - a) The third party contributes to the support of the dependent spouse thereby reducing needs or,
 - b) The third party resides in the home of the dependent spouse without contributing anything toward the household expenses thereby changing the nature of the initial alimony award.

Tax Treatment of Alimony

Alimony is taxable to the recipient and tax deductible to the payor if:

- The payment is made to a spouse or on behalf of a spouse under a divorce or separation agreement.
- The instrument does not designate the tax treatment as a payment which is not includable in gross income and not allowable as a deduction.
- The parties are not members of the same household if legally separated by a divorce or separate maintenance decree.
- The payor is not liable to continue making the payments after the death of the payee nor must the payor be obligated to make substitute payment after the death of the payee.
- Note, amounts are disallowed to the extent that reductions in alimony are related to contingencies involving the child such as the happening of a contingency (a child reaching a certain age, marrying, dying, leaving school or similar contingency) or an event associated with a contingency of a child that is child related.
- Under *Kean v. Commissioner*, 95 AFTR 2nd, 2005-2299 (407 F.3d 186) an unallocated *pendente lite* order or agreement (if reduced to writing) is taxable to the recipient and tax deductible to the payor.
- One cannot "front load" alimony payments. Consult a tax advisor if the alimony payments reduce during the first year to avoid recapture

The Custody of Children

Public Policy under N.J.S.A. 9:2-4

- A. Assurance that minor children have frequent and continuing contact with both parents after a separation or divorce.
- B. It is in the public interest to encourage parents to share the rights and responsibilities of child rearing to effectuate the above policy.

Types of Custodial Arrangements

- A. Joint custody of minor child to both parents.
- B. Sole custody to one parent with parenting time for the non-custodial parent.
- C. Any other child arrangement as the Court may determine to be in the best interests of the child.

Components of Custody

- A. Legal custody: Provisions for consultations between the parents in making major decisions regarding the health, education and general welfare of the child.
- B. Physical custody: provisions for residential arrangements so that a child resides either solely with one parent or alternatively with each parent in accordance with the needs of the parents and the child.

Factors to be Considered in Making a Custody Award

- The parents' ability to agree, communicate and cooperate in matters relating to the child.
- The parents' willingness to accept custody and any history of unwillingness to allow parenting time not based on substantiated abuse.
- The interaction and relationship of the child with parents and siblings
- The history of domestic violence, if any.
- The safety of the child and the safety of either parent from physical abuse by the other parent.
- The preference of the child when of sufficient age and capacity to reason so as to form an intelligent decision.
- The needs of the child.
- The stability of the home environment offered.
- The quality and continuity of the child's education.
- The fitness of the parents.
- The geographical proximity of the parents' homes.
- The extent and quality of the time spent with the child prior to or subsequent to the separation.
- The parents' employment responsibilities.
- The age and number of the children.
- A parent shall not be deemed unfit unless the parent's conduct has a substantial adverse effect on the child.

General Relief Sought in Pendente Lite Motions

- Award of *pendente lite* custody.
- Parenting time scheduling including holidays and vacations.
- A best interest report.
- Appointment of a psychologist, psychiatrist or other expert to evaluate the family and make recommendations regarding custody and parenting time.
- An award of exclusive possession of the marital residence.
- Payment of the shelter expenses for the marital residence which may include mortgage, taxes, homeowners insurance, home equity loans, etc.
- An award of spousal and child support.
- Payment of specific outstanding bills.
- Payment of health insurance and medical expenses for spouse and children including uncovered medical, dental, prescriptive drugs and eyeglass expense.
- Payment of college or private school.
- Restraint of sale or dissipation of assets and borrowing same until further Order of the Court.
- Continuation of the life insurance coverage with designated beneficiaries.
- Appointment of a valuation expert for a business, professional practice or for real estate.
- Appointment of a vocational expert to determine earning capacity.
- Sealing a safe deposit box.
- Awarding counsel and professional fees.

Statutory Factors for Determining Child Support

- Needs of the child.
- Standard of living and economic circumstances of each parent.
- All sources of income and assets of each parent.
- Earning ability of each parent, including educational background, training, employment skills, work experience, custodial responsibility for training including the costs of providing child care, and the length of time and cost of each parent to obtain training or experience for appropriate employment.
- Need and capacity of the child for education, including higher education.
- Age and health of the child and each parent.
- Income, assets and earning ability of the child.
- Responsibility of the parents for the Court Ordered support of others.
- Reasonable debts and liabilities of each child and parent.
- Any other factors which the Court may deem relevant.

Factors to be Considered as to Whether a Parent Should Contribute to the Cost of Private School

- Ability of the non-custodial parent to pay.
- Past attendance of one or both parents at that or similar private school.
- Whether the child attended a private school before or after the divorce.
- Any prior agreement of the non-custodial parent to contribute to the costs of private school.
- The religious background of the parties.
- Whether special educational or psychological needs of the child would be advanced by private school.
- Whether it is in the child's best interest to attend private school.
- Whether the Court Order or the agreement of the parties confers on the residential custodial parent the right to decide on schooling.
- Whether the actions on the residential custodial parent to enroll the child in private school were reasonable under the circumstances.
- Whether such private school tuition is permitted or authorized as part of the state's child support guidelines or by other laws.
- Whether such private schooling will be of particular benefit to the child.
- Whether the non-custodial parent has been involved in the education of the child.
- The degree of involvement of the custodial parent in the child's education.
- Whether the views of the residential custodial parent are consistent with past practices regarding private school education.

Definition of Victim of Domestic Violence

- Any person who is 18 years of age or older.
- An emancipated minor.
- Such person has been subjected to domestic violence, by a spouse, former spouse, or any other person who is a present or former household member.
- There is no age requirement if the victim has a child in common with a defendant or anticipates having a child in common if one of the parties is pregnant.
- The definition of victim also includes a person who has had a dating relationship with the defendant.

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Standard for the Removal of Children from the State of New Jersey; *Baures v. Lewis*, 167 N.J. 91 (2001)

The custodial parent seeking removal must prove:

- a. that there is a good faith reason for the move. This is not a "particularly onerous" burden. In making a prima facie case, the moving party must come forward with a visitation proposal for the non-custodial parent; and
- b. the move would not be inimical to the child's interest.
- c. Upon making a prima facie showing, the burden then shifts to the non-custodial parent to produce evidence opposing the move as either not made in good faith or inimical to the child's interest.
- d. The Court then considers the following factors:
 - i) reasons given for the move;
 - ii) reasons given for the opposition;
 - iii) past history of the dealings between the parties insofar as it bears on the reasons advanced by both parties for supporting and opposing the move;
 - iv) whether the child will receive educational, health and leisure opportunities at least equal to what is available in New Jersey;
 - v) any special needs or talents of the child that require accommodation and whether such accommodation or its equivalent is available in the new location;
 - vi) whether visitation and communication schedule can be developed that will allow the non-custodial parent to maintain a full and continuous relationship with the child;
 - vii) the likelihood that the custodial parent will continue to foster the child's relationship with a non-custodial parent if the move is allowed;
 - viii) the affect of the move on the extended family relationships in New Jersey and in the new location;
 - ix) if the child is of age, his or her preference;
 - x) whether the child is entering his or her senior year in high school at which point he or she should generally not be moved until graduation without his or her consent.
 - xi) whether the non-custodial parent has the ability to relocate;
 - xii) any other factor bearing on the child's interests;

Note:

- a non-custodial parent is not free to reject every alternative visitation scheme offered by the custodial parent;
- the non-custodial parent's burden is not satisfied by merely showing that the move would require the visitation arrangement to change;
- The non-custodial parent must show that the change will negatively effect the child.

Equitable Distribution

A. Statutory Factors

- Duration of the marriage.
- Age, physical and emotional health of the parties.
- Income or property brought to the marriage by each party
- Standard of living established during the marriage.
- Any written agreement made by the parties before or during the marriage concerning an arrangement of property distribution.
- The economic circumstances of each party at the time the division of property becomes effective.
- The income and earning capacity of each party, including educational background, training, employment skills, work experience, length of absence from the job market, custodian responsibilities for children and the time and expense necessary to acquire sufficient education or training to enable the party to become self supporting at a standard of living reasonable comparable to that enjoyed during the marriage.
- The contribution by each party to the education, training or earning power of the other.
- The contribution by each party to the acquisition, dissipation, preservation, depreciation or appreciation in the amount or value of the marital property, as well as the contribution of a party as a homemaker.
- The tax consequences of the proposed distribution to each party.
- The present value of the property.
- The need of a parent who has physical custody of a child to own or occupy the marital residence and to use or own the household effects.
- The debt and liabilities of the parties.
- The need for creation now, or in the future, of a Trust Fund to secure reasonably foreseeable medical or educational costs for a spouse or children.
- Any other factors which the Court may deem relevant.

Addressing the Marital Standard of Living

If an agreement or settlement contains an award of alimony, the parties:

- Shall include a declaration that the marital standard of living is satisfied by the agreement or settlement, or
- The parties shall by stipulation define the marital standard of living, or
- The parties shall preserve copies of their respective filed Case Information Statements until such time as alimony is terminated, or
- Any party who has not filed a Case Information Statement shall prepare Part D ("Monthly Expenses") of the Case Information Statement form, serve a copy of the budget on the other party and preserve Part D until such time as alimony is terminated.

New Jersey Family Law

Enforcement of Orders and Remedies Available

A. Custody and Parenting Time Orders.

- Compensatory time with children.
- Economic sanctions including but not limited to the award of monetary compensation for the cost resulting from a parent's failure to appear for scheduled parenting time such as child care expenses incurred by the other parent.
- Modification of transportation arrangements.
- Pickup and return of the children in a public place.
- Counseling for the children or parents or any of them at the expense of the parent in violation of the order.
- Temporary or permanent modification of the custodial arrangement provided such relief is in the best interest of the children.
- Participation by the parent in violation of the Order in an approved community service program.
- Incarceration with or without work release.
- Issuance of a warrant to be executed upon the further violation of the judgment or order.
- Any other appropriate or equitable remedy.

B. Alimony or Child Support Orders.

- Fixing amount of arrearages and entering a judgment upon which interest accrues.
- Requiring payment of arrearages on a period basis.
- Suspension of an occupational license or driver's license consistent with the law.
- Economic sanctions.
- Participation by the parties in violation of the order in an approved community service program.
- Incarceration with or without work release.
- Issuance of a warrant to be executed upon the further violation of the judgment or order.
- Income withholding.
- Execution on assets.
- Any other appropriate or equitable remedy.

The Following Criteria are Applied as to Allocation of College Expenses

- Whether the parent, if the parties had not divorced, would have contributed toward the cost of the requested higher education.
- The effect of background, values and goals of that parent on the reasonableness of the expectation of the child for higher education.
- The amount of the contribution sought by the child for higher education.
- The ability of the parent to pay that cost.
- The relationship of the requested contribution to the kind of school where cost of studies sought by the child.
- The financial resources of both parents.
- The commitment to and aptitude of the child for the requested education.
- The financial resources of the child, including assets owned individually or held in custodianship or trust.
- The ability of the child to earn income during the school year or on vacation.
- The availability of financial aid in the form of college grants and loans.
- The child's relationship to the paying parent, including mutual affection and shared goals as well as responsiveness to parental advice and guidance.
- The relationship of the education requested to any prior training and to the overall long range goals of the child.

Predicate Acts Which Constitute Domestic Violence

- Homicide.
- Terroristic threats.
- Criminal restraint
- Sexual assault.
- Ludeness.
- Burglary
- Harassment.
- Assault.
- Kidnapping.
- False imprisonment.
- Criminal sexual contact.
- Criminal mischief.
- Criminal trespassing.
- Stalking.

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