

Fact/Fiction In Divorce

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Fiction: If/When I file for divorce, my spouse will not be required to financially support me and/or my children.

FACT: During the divorce process, the parties are required to maintain the financial status quo.

Deciding to file for divorce is difficult. There are many unknowns and fears especially for a lesser earning or non-working spouse when considering whether to file for divorce. One such fear is that the financially dependent spouse will not have sufficient money for herself or himself or the children during the divorce proceedings. While this fear may be very real, there is no actual basis for same under New Jersey law. New Jersey statutory and case law clearly require that the parties maintain the “status quo.” This essentially means that everything that was being provided for during the marriage must continue to occur until the parties are officially divorced.

Pursuant to N.J.S.A. 2A:34-23:

Pending any matrimonial action brought in [New Jersey]...the court may make such order as to the alimony or maintenance of the parties...as the circumstances of the parties and the nature of the case shall render fit, reasonable, and just.

The “alimony or maintenance” referenced in the above statute is known as “pendente lite support.” Pendente lite for those who do not speak Latin essentially translates to “pending litigation.” The purpose of pendent lite support is to provide a dependent spouse with a means of support while the parties are separated and during their divorce litigation. This means that if one spouse has contributed to or has primarily maintained the mortgage or rent and all living expenses (e.g. food, clothing, gas, car etc.), for the family, that spouse must continue to do so. Additionally, all insurances (e.g. homeowner’s

insurance, car insurance, health insurance, dental insurance, life insurance etc.) must be maintained during your divorce litigation. Therefore, if a Complaint for Divorce is filed, neither spouse can terminate the other's health insurance or remove a spouse as the beneficiary on a life insurance policy.

Remember that every case is different and every pendente lite support award is based upon the unique facts and circumstances of each family. It is important to know that when a Court determines the amount of pendente lite support to award a spouse, it considers, among others, the following factors: the supported spouse's needs, the supporting spouse's means, and the parties' standard of living. This should alleviate one's fear that he or she will be deprived of financial support or insurance coverage after the divorce process is initiated.

Making the choice to file for divorce is difficult. However, it is important to choose an attorney who can provide you with reasonable expectations and a full understanding of the process in order to minimize your anxiety. If you are considering filing for divorce or have any questions about the divorce process, please contact an attorney at Einhorn, Barbarito, Frost & Botwinick who can provide you with guidance every step of the way.