

December 21, 2011

INTERIM MAINTENANCE GUIDELINES CASE HISTORIES
Compiled by Members of the
Lawyers Committee Against Domestic Violence

The cases summarized here were litigated by attorneys at inMotion, The Legal Aid Society, The Legal Project, New York Legal Assistance Group, Pace Women's Justice Center, and Sanctuary for Families as well as attorneys in private practice. In some cases identifying facts have been changed to protect client confidentiality.

December, 2011

Our client was 62 years old and in the hospital on a two-week stay when her husband of 19 years left her. He is 53 years old and a member of the Teamster's Union. He works fixing boilers. Last year, he made about \$80,000. Our client's sole income is a \$698 monthly Social Security check.

Our office first met the wife when she was fighting an eviction proceeding in housing court. Her husband had abandoned the marital apartment and instructed the landlord to put her name on the lease. We commenced a divorce, requested a stay of the housing court proceeding, and asked for temporary maintenance.

On the return date of the motion, the husband had documentation showing that he had been laid off (he works for his cousin) and that his only income was unemployment compensation. We argued that even if the husband's allegation that he was out of work was true, there was still a disparity in income that the guidelines were designed to address. We asked the judge to calculate temporary maintenance based on husband's unemployment, subject to retroactive adjustment after discovery and trial. The judge ordered the husband to pay the guideline amount. Without the temporary maintenance statute, the judge would have accepted the argument that the husband should not have to pay anything since he claimed that "he was only receiving unemployment."

October, 2011

A case from Bronx County. The wife is 54 and prior to the marriage she had had been a nurse. However, she has been out of the workforce for many years. She was a housewife and raised the children, all now emancipated. The husband is a physician with both a private practice and a hospital staff position. He earns approximately \$500,000. The parties always lived very frugally, and they do not own their home. The

marital residence is a rental apartment. All marital assets are titled to the husband. The wife was subjected to severe abuse during the marriage, including one instance where the husband broke her arm. Recently, the husband decided that he no longer wanted to be married and moved out of the marital residence. He then filed for divorce.

The wife's attorney made a motion for *pendente lite* relief, including maintenance and counsel fees. At the hearing on the motion, opposing counsel indicated that he had explained the temporary maintenance guidelines statute to his client and readily consented to the relief requested. It was clear that had this application been made prior to the enactment of the statute, there would have been aggressive opposition. The award of temporary maintenance was calculated under the guidelines, and the amount agreed upon was in conformity with the presumptive amount. (There was no additional award made to cover the rent on the apartment).

October, 2011

We represent the husband in a case in which the parties have been married 30 years. They have a 19-year-old son. The couple purchased a co-op that is the marital residence. The wife used her separate property for the down payment and the husband has paid the mortgage and maintenance, \$2,766 total monthly, throughout the marriage. The husband earns approximately \$97,000. The wife has been on Social Security Disability since 2003 and her income is \$17,982 annually. The wife's attorney filed an Order to Show Cause seeking maintenance. Using the temporary maintenance and the child support standards calculations, she sought \$1,235 monthly in maintenance and \$697 monthly for basic child support. The parties used the temporary maintenance guidelines in negotiations and agreed that the husband would pay to the wife a total of \$1,840 monthly for support for her and support of her child. The husband also agreed to continue paying the mortgage until the house is sold.

Our best case scenario, if the court were to accept our argument that \$14,934 should be deducted from husband's income because of additional expenses he pays for the child (attorneys fees, psychiatrist, tutoring, medical, etc), he would still have to pay approximately \$1,000 in maintenance and \$760 in child support- total \$1,760. *Their* best case scenario, our client would pay about \$1,235 spousal and \$700 child support (\$1,935 total). The wife agreed to sell the co-op (which the husband wanted). We agreed to \$1,840 as total support (in the middle of \$1,760 and \$1,935) and husband would pay mortgage until house sold.

October, 2011

Our client and his wife are both civil servants at the United Nations. She earns about \$150,000. He earns close to \$210,000. There are two children. The wife asked for interim maintenance, although she would not be entitled to any under the guidelines. We agreed that no interim maintenance would be paid although the husband will continue to pay half of the mortgage on the marital home where the wife resides with one child (the other is in college).

September, 2011

In 2010, Mr. F., a fifty-four year old mail room employee earning over \$36,000 annually, informed his sixty-three year old wife of thirty years that he planned to stop paying rent, that they would be evicted, and she should make plans to “go her own way.” Ms. F. had income of \$595 monthly from SSA. She had applied for SSA when she had lost her part-time employment, and Mr. F refused to buy her food or give her money for transportation or necessities. Because they were living together, Ms. F. was not eligible for public assistance and/or food stamps.

Ms. F filed for divorce in February 2011 and made a motion for interim relief, including temporary maintenance using the guidelines in the new law. The Court set temporary maintenance at \$157.61 weekly, the guidelines amount, because of the immanent eviction after which Ms. F would not be living with Mr. F. By working with a community agency, Ms. F found Senior Affordable Housing, so with the interim maintenance Ms. F was able to meet her basic needs. At a hearing on the issue of permanent maintenance, the sole issue in the case, Mr. F. argued that he had never given Ms. F money throughout the marriage, so why should he have to do so now. However, because of the interim maintenance guidelines, we were able to negotiate a good final maintenance award. Before the interim guidelines went into effect, the Court would just have looked at Mr. F’s low income and felt that he really could not afford maintenance and missed the dire situation of the totally un-resourced spouse.

August, 2011

In 2006, Mr. R, a New York City police officer, abandoned the home he shared with his wife and their younger child to live with another woman. He left his wife not only with the burden of maintaining a household for herself and her daughter but with debt for the family car, which Ms. R cannot even drive, and cell phone bills. Ms. R obtained an order of child support from Family Court in 2008, and a combined order of child and spousal in 2010. The 2010 order set spousal support at \$285 a month or \$3,420 a year.

Mr. R filed for divorce in February, 2010, but he did not serve the divorce summons until December. At the time, Mr. R earned about \$90,000 a year, while Ms. R had about \$20,000 in yearly earnings. Their daughter was emancipated a month later, so the child support order was eliminated. Ms. R was left with her own earnings and the spousal support award, which together were insufficient to meet her basic needs.

Ms. R's attorney made a motion for interim relief arguing that since Ms. R. did not receive notice of the divorce action until after the effective date of the new interim maintenance legislation, temporary maintenance should be based upon the guidelines in the new law. The court agreed, vacated the Family Court award, and set temporary maintenance at \$2,007 per month or an additional \$24,084 a year. With this money, Ms. R. can meet her expenses, maintain her household, and work towards paying off the debt left in her name after her husband filed for bankruptcy.

August, 2011

In 2008 Ms. A married her husband in their home country of Guyana. At the time, Ms. A lived with her 13-year-old daughter, whom she had raised by herself. The daughter's father resided in a different country and had never supported her. For the first year of the marriage, Ms. A stayed in Guyana while Mr. A returned to New York City where he had lived for many years. Mr. A visited Ms. A frequently and sent her money each month. When Ms. A and her daughter joined Mr. A in New York, Ms. A found work as a home health aide. However, problems immediately developed. Mr. A physically and verbally abused Ms. A. Among other things, he would deny her sleep and food. His drinking became a serious issue, and Ms. A's daughter was subjected to drunken rages at all hours of the night. When Ms. A asked her husband to find treatment for his alcoholism and counseling for the abuse, he sued for divorce. Ms. A had been in New York less than a year.

After the divorce was filed, the family continued to live together. Although Mr. A demanded that Ms. A and her daughter move out of his apartment, Mr. A refused to pay maintenance and Ms. A could not possibly find an apartment without financial help. Ms. A had earned about \$10,000 the previous year; Mr. A earns \$65,000 a year working for the MTA. However, Mr. A's abusive behavior escalated, and Ms. A and her daughter were forced to seek refuge in a domestic violence shelter.

Sanctuary for Families, representing Ms. A, filed a motion for interim maintenance. Ms. A needed support from the husband to be able to afford permanent housing after she had stayed the maximum time allowed in the shelter (135 days). While Ms. A continued to work as a home health aide part-time, she would need a second job, full-time employment, and/or an LPN certification to earn enough money to support herself and her daughter.

Although the divorce was filed prior to the effective date of the interim maintenance legislation, the Court indicated that it would consider the interim maintenance guidelines when it made its decision. Under the guidelines, the monthly payment would have been more than \$1,300. The husband's counsel insisted that Mr. A could pay no more than \$400 per month. A conference with the judge's court attorney resulted in a settlement granting the client 15 months of maintenance, starting at \$1,000 for the first three months and then decreasing to \$800 per month for three months, then to \$550 per month for six months, then to \$300 per month for three months.

This maintenance will allow Ms. A to pay rent on an apartment for herself and her daughter, who is an excellent student, and to obtain the training she needs to get a better-paying job in the health care field. In the experience of lawyers at Sanctuary for Families, prior to the enactment of the interim maintenance guidelines a woman like Ms. A would have been told that she could not get any maintenance for a marriage that was this short, especially when she could work.

June, 2011

In May of 2011, after four years of marriage to a very physically abusive man, our client left the marital apartment with the couple's two-year old son. She filed for an Order of Protection in Family Court, and then, deciding that there was no hope for the marriage, she filed for divorce. At the time, her only income was unemployment compensation. Her husband, who works for the New York City Department of Sanitation, refused to make voluntary contributions to support her or their child.

We sought temporary maintenance under the guidelines. On the first court date, the husband appeared late and asked for time to find an attorney. The judge adjourned the case for a month. On the adjourned date, the husband did not appear nor did he submit opposition to the motion. We asked for an order on default, and the Court granted the motion and ordered the husband to pay the guideline amount of temporary maintenance. Without the guidelines, this never would have happened; the case would have been adjourned again.

With the temporary maintenance, the wife is able to send the child to a daycare center where he can socialize with other children two days a week, and she can begin to support herself as she looks for an apartment. At the present time, she is living with her parents and is now able to contribute to her and her child's living expenses.

May, 2011

An upstate reduced-fee legal services program has a client whose income is just under \$19,000. Her husband's income is just under \$89,000. They have two children, and they have been married for ten years.

Upon commencement of the divorce proceeding, the wife's attorney made a motion for interim relief, which the husband opposed. The judge awarded temporary maintenance of \$824 bi-weekly, based on the interim maintenance guidelines, and child support of \$587 bi-weekly, which was arrived at by adding the temporary maintenance to the wife's income and subtracting it from the husband's income, and then doing the Child Support Standards Act calculations. This resulted in pre-tax income of about \$55,000 for the wife and two children and \$52,000 for the husband. The Court also awarded the wife \$5,000 in attorney's fees. This temporary relief will allow the wife to litigate this matter appropriately and to support her household until the matter is resolved. Prior to the enactment of the new statutes there would have been no temporary maintenance and no attorney fees awarded.

May, 2011

Mrs. O, a victim of domestic violence, had been married for 20 years, during which time she and her husband had a comfortable, middle-class life. They have two children, a 12 year old and an 8 year old who is so severely disabled that she receives all nutrients through a feeding tube and has no hope of ever being able to walk or talk.

Mrs. O was never privy to any financial information and never worked outside the house during the marriage. Mr. O owns his own business (known for cash income) and claims he has been selling off assets for years to pay the household bills. Although Mr. O refused to pay temporary maintenance, he was meeting his obligations under a \$175/week (\$753 a month) temporary child support order issued in Family Court. The Family Court matters were consolidated with a divorce case in Supreme Court.

At the preliminary conference, Mr. O's attorney said this client refused to pay any temporary maintenance. Mr. O's purported income tax returns from 2007-2009 show income ranging from \$22,000-\$45,000 per year. However, based on the family's lifestyle (4 bedroom house in a nice neighborhood) and Mr. O's expensive tastes (cars, dinners out, parties, Rolex watch), it was clear that his income was much higher.

We filed a motion by order to show cause for temporary maintenance arguing for application of the guidelines based on an imputed income of \$200,000, and in the alternative, asking for interim support based on needs. We requested \$5,000 per month in interim maintenance and an upward modification of temporary child support from

\$175/week (\$753 a month) to \$2,900 per month for a total of \$7,900 per month. The judge decided that because she did not have enough information to determine Mr. O's gross income, she would order temporary maintenance based either on Mrs. O's needs or the standard of living of the parties before the couple separated, whichever was greater.

The judge found that Mrs. O's reasonable needs were \$7,300 per month. Temporary child support remained the same, \$175/week (\$753 a month). The total payments are \$8,053 a month, only \$153 off from the amount we requested using the interim maintenance guidelines. Although the judge said that her decision was based on Mrs. O's needs, the amounts are very close, and we believe the interim guidelines strongly influenced the judicial reasoning and the outcome, which was very good for our client.

May, 2011

Ms. P, a native of France now in her late thirties, met her husband while vacationing in Greece. Ms. P eventually moved to New York, and she married her husband in 2001. The couple has two children, ages 8 and 10.

Ms. P, an artist, did not graduate from high school, and English is not her first language. Besides sporadic attempts to market her art work, Ms. P has not earned money since her marriage. Mr. P holds multiple degrees and is a teacher in the NYC school system. He earns about \$90,000 per year.

The marriage was marred by Mr. P's emotional abuse. Mr. P controlled the family finances, and he was suspicious of Ms. P's every move. At various times before and after he filed for divorce, he hacked into Ms. P's email accounts. He refused to provide money to Ms. P for incidental items for herself or their children, forcing her to beg whenever she needed something for the household.

When Mr. P sued Ms. P for divorce in 2009 the parties still lived together in the marital residence with the children. The situation was fraught with stress, and, as the litigation dragged on, it became increasingly difficult for Ms. P to live under the same roof as her abuser. Without access to family financial resources, however, she had no choice. Approximately one year into the litigation, the older child was diagnosed with cancer, creating more difficulties. At one point, court intervention was necessary to keep Mr. P from blocking Ms. P's visits to her hospitalized child.

Early in the litigation, Ms. P was awarded \$100 per week in temporary maintenance, but Mr. P refused to make the payments unless Ms. P gave him with receipts to substantiate expenditures. Several applications to the court were required because Mr. P insisted on deciding which expenses should be covered by the \$100 provided to

Ms. P. Mr. P is adamant that Ms. P is not entitled to any financial settlement, although he has a pension and substantial savings accrued during the marriage. Mr. P has used every device he can find to delay the conclusion of the litigation.

Recently, Ms. P made the difficult decision to move out of the marital residence. Ms. P reluctantly ceded custody of the children to Mr. P, and Mr. P. provided Ms. P with an advance payment towards equitable distribution. With this money, Ms. P could move out of the marital home. However, despite diligent efforts (including attending GED classes and various workshops), Ms. P was unable to find a job. Mr. P refused to “pay a penny more” to Ms. P, who was now in danger of losing her recently-acquired housing.

A motion for a modification of the interim award was made. Although the case had been commenced before the interim maintenance guidelines went into effect, Ms. P’s attorney proposed that the court should use the guidelines and award Ms. P \$485 per week.

At oral argument, the judge refused to decide the motion. He did, however, affirm the accuracy of the guideline calculation. After much discussion, the judge indicated that he was inclined to grant the application under the guidelines but would consider a downward modification to take into consideration that Mr. P’s role as custodial parent. The judge told the husband that he had the power to award the full amount requested and strongly encouraged the parties to settle on a reasonable amount, i.e., \$325 per week. The parties ultimately agreed, and the motion was adjourned for two months for a report on Ms. P’s efforts to find employment.

With the modified award, Ms. P is able to stay in her new home and does not have to move to a shelter, or, worse, back in with her abuser. The guideline calculation played an absolutely critical role in Mr. P’s agreement.

February, 2011

In 2007 Ms. B., a \$10 an hour medical assistant, married Mr. B., a truck delivery man in the Teamsters Union, who was earning about \$36,000 a year. The couple have two children, born in 2009 and 2010. Mr. B. became increasingly violent as Ms. B’s attention was shared with their infants, and he was excluded from their rental apartment pursuant to a Criminal Order of Protection. Ms. B’s family helped her provide for herself and the babies. In the past, Ms. B. had not pursued the prosecution of assaults because of financial concerns – she no longer had any income and had to care for two infants.

Ms. B wanted a divorce and we filed shortly after the effective date of the interim guidelines and immediately moved for temporary maintenance and child support.

Because of the formula, Ms. B. was able to settle the motion the first day she appeared in court, without wasting judicial resources. The clear numbers made the settlement easy. On consent, Ms. B. was awarded temporary support of weekly payments of \$231.00 in maintenance and \$135.00 in child support. She was able to be safe, pay her bills with some help from her family, and arrange to go back to school on weekends when Mr. B. had the children under the supervision of his sister. The divorce case settled shortly after using the same amounts for permanent maintenance and child support with an agreement that the maintenance award would end after two years because of the short duration of the marriage.

If we had not had the guidelines at the commencement of the case, we might still be arguing the *pendent lite* motion. The guidelines helped lead to a just and fair agreement and the case was concluded within three months.

February, 2011

Mrs. L is a 29 year old woman with cognitive disabilities. She has been married to Mr. L for almost 6 years and separated for about a year ago. The couple have two children, ages 1 and 3. Mr. L earns approximately \$55,000 per year according to documents submitted to the court, although he claims he only has an annual income of only \$30,000. Mrs. L has not been employed but has an SSD award of \$700 per month. Throughout the relationship, Mr. L has physically abused Mrs. L and has ruled her life. He had complete control over the family finances, and he forced Mrs. L to drop out of school.

Family Court petitions for custody and support were pending when the pro se husband filed for divorce. Mrs. L obtained full custody of both children, and Family Court had issued a temporary support order for the children only (not the wife) in the amount of \$384.00 biweekly. The parties agreed to try to resolve the Family Court support issues before proceeding with the divorce, but the husband filed an RJI and asked for a preliminary conference.

At the preliminary conference in Supreme Court, we raised the issue of temporary maintenance (orally, not by written motion), and the husband said that he wasn't going to pay it. The court attorney referee told the husband that there was a formula for temporary maintenance, so he could either pay that amount or he could expect me to file a motion in the divorce, at which time he would have to pay the formula amount plus attorneys' fees. We showed the husband the calculation for temporary maintenance and child support, which came to biweekly payments of \$341.86 and \$199.42, respectively, for a total biweekly award of \$541.28. After much discussion, the husband agreed to this amount. It is very unlikely that he would have agreed to any

interim maintenance at all without the interim maintenance guidelines and the court attorney referee's involvement.

February, 2011

Legal Aid represented Mrs. D, an immigrant from Ghana, who spoke very little English. During her marriage she had endured severe domestic violence, both physical and emotional, at the hands of her husband. When she first came to Legal Aid, she already had an order of protection from Family Court. Her husband had moved out of the marital residence, stopped paying bills and now refused to provide any support for her or her two young children. She and children were on the verge of being evicted. Mrs. D was a home health worker earning approximately \$13,500 annually, and Mr. D. earned approximately \$44,200 per year.

We began a divorce case simultaneously with an order to show cause seeking interim maintenance and interim child support. On the first return date of the motion (held three weeks after the case was filed), following a conference with the judge's law clerk, the judge issued an order on consent requiring Mr. D to pay approximately \$400 biweekly interim maintenance and \$400 biweekly interim child support – the exact amounts required by the new interim maintenance guidelines and the child support standards act. In addition, the judge ordered Mr. D to pay all of the rental arrears on the apartment immediately to avoid his family's imminent eviction.

Mrs. D now has enough money to pay the household bills and take care of her children. Without the new interim guidelines law, it is highly unlikely that Mrs. D would have been awarded anything more than minimal interim maintenance. Rather than agreeing to the amount required by the new law, the husband's attorney would have argued, almost certainly successfully, that Mrs. D is working, that Mr. D does not make that much, that he has to pay child support, and that he'll have nothing to live on.

December, 2010

Mrs. J met her Legal Aid attorney several years ago when the attorney provided legal information to a group of domestic violence survivors at a community-based organization, a monthly part of Legal Aid's Domestic Violence Project outreach. She was then 75 years old and was still living with her husband. She had been the victim of extreme violence and a cruel campaign of intimidation for over 30 years. During the last 20 of those years her husband had forced her to sleep on the bare floor of their dining room. If she tried to sleep on the couch or even on a rug he would destroy the couch or rug.

Several months after the attorney met Mrs. J, Mr. J threatened Mrs. J with a machete, and Mrs. J's adult children finally persuaded her to leave the marital residence. She then came to Legal Aid to discuss the possibility of a divorce. This meeting took place over a year before the matrimonial reform legislation had been passed in New York State providing for interim maintenance guidelines and no fault divorce. Mrs. J had never worked outside of the home. Mr. J, now retired, had been a Teamster and had significant pension income. Early in their marriage, the parties had purchased a home – the home Mrs. J finally fled after the machete incident – but the title was in Mr. J's name alone. Mrs. J's adult children were supporting her both financially and emotionally. However, Mrs. J was reluctant to begin a divorce because she felt that pleading cruel and inhuman treatment would be like poking a hornet's nest with a stick. She feared a long and involved court battle over maintenance. We could provide her with no sense of how much maintenance she could expect because of the unpredictability and inconsistency of the existing maintenance laws.

Once matrimonial reform legislation went into effect in October, 2010, however, Mrs. J decided to ask for a divorce using the new no fault ground. We began the action simultaneously with an Order to Show Cause seeking interim maintenance pursuant to the new guidelines law. On the very first court appearance, with the assistance of the judge's law clerk, we resolved the interim maintenance motion. Mr. J's attorney was able to persuade his client that based on the new law he really had no choice but to pay the exact guidelines amount – an amount that would, for the first time, enable Mrs. J to support herself without having to rely on the kindness of her adult children.

This result would have been highly improbable, if not impossible, without the interim maintenance guidelines. At best, we might have been able to negotiate a minimal interim maintenance award, but most likely the court would have been persuaded by the husband's argument that Mrs. J had managed to survive without his support for two years so no interim maintenance was necessary to preserve the status quo.

November, 2010

Legal Aid, representing a low income victim of domestic violence in a divorce, made a motion for interim maintenance and interim child support. The husband earned approximately \$60,000 per year and the wife, our client, earned approximately \$6,000 per year. The couple had three children, ages 20, 14 and 10. The 20 year old was working part time. All three lived with their mother.

On the first return date of the motion, the judge's law clerk met with counsel and the parties and quickly did the maintenance and child support guidelines calculations. Although the husband did not consent, the Judge immediately ordered interim maintenance pursuant to the guidelines (approximately \$1,200 per month) as well as

interim child support (approximately \$700 per month) with a slight downward deviation to take into account the eldest child's income of approximately \$1,000 per month.

Without the interim maintenance guidelines, it is unlikely that our client would have received anything more than a couple of hundred dollars a month in interim maintenance.