

DOMESTIC ABUSE & LEGAL SYSTEM: WHAT YOU NEED TO KNOW

AN ONLINE WEBINAR WITH

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TO ASK QUESTIONS ANONYMOUSLY,
BEFORE, DURING AND AFTER THE CALL:

WWW.ADAIAD.ORG/ASK-ANONYMOUS-QUESTION

Custody



- **Physical Custody** Who the children will primarily reside with.
- **Legal Custody** Who makes decisions for the children.
- **Joint Custody** Both parents make decisions for the children. One cannot make a decision without the consent of the other.
- **Sole Custody** One parent has physical custody and can make unilateral decisions for the children.

Custody



How is physical custody decided? Best interests of the children Best interests include the following factors:

- Primary caregiver
- Domestic abuse
- Mental health
- Alcohol & drug use
- Criminal history
- Prior findings of abuse or neglect
- Willingness to foster relationship between child and noncustodial parent
- Child's wishes
- Sibling unity
- Religion
- Age/health of the parties
- Parties' availability
- Parties' finances
- Prior custody agreements

Custody



Key players in a custody dispute:

- Judge
- Law Guardian / Attorney for the child
- Forensic
- Court approved supervisor
- ACS (Administration for Child Services)

Support



Child Support Basic monthly support paid by the non-custodial parent for the support of the subject children

- Child support is mandatory
- Lasts until the child turns 21

Add on expenses Expenses paid for the benefit of the children in addition to basic support. Includes, unreimbursed medical expenses, child care, and sometimes tuition.

Support



How is child support decided?

- Based on a percentage of the non-custodial parent's adjusted gross income
- Income is capped at a combined parental income of \$143,000 per year

Child Support Percentages:

- One Child 17%
- Two Children 25%
- Three Children 29%
- Four Children 31%
- Five + Children no less than 35%

Support



Self-Support reserve In 2016, self-support reserve was set at \$16,038 - if non-custodial parent's income is lower than this then basic support is \$25 per month for all the of the children.

Support



Spousal Support Support paid by the monied spouse to the non-monied spouse.

- Post-divorce support is referred to as “maintenance”
- Discretionary
 - Based on length of marriage
 - Parties’ respective incomes
 - Monied spouse’s income is capped at \$175,000
 - If child support will be paid

Support



How is spousal support calculated?

- <http://www.nycourts.gov/divorce/calculator.pdf>
- Also includes factors for the court to consider when deviating from the formula

How long does it last for?

- For a marriage of 0 to 15 years: 15% to 30% of the length of marriage
- For a marriage over 15 years to 20 years: 30% to 40% of the length of marriage
- For a marriage over 20 years: 35% to 50% of the length of marriage

Support



Factors to consider when deviating from post-divorce maintenance:

- The age and health of the parties;
- The present or future earning capacity of the parties, including a history of limited participation in the workforce;
- The need of one party to incur education or training expenses;
- The termination of a child support award before the termination of the maintenance award when the calculation of maintenance was based upon child support being awarded which resulted in a maintenance award lower than it would have been had child support not been awarded;
- The wasteful dissipation of marital property, including transfers or encumbrances made in contemplation of a matrimonial action without fair consideration;

Support



Factors to consider when deviating from post-divorce maintenance:

- The existence and duration of a pre-marital joint household or a pre-divorce separate household;
- Acts by one party against another that have inhibited or continue to inhibit a party's earning capacity or ability to obtain meaningful employment. Such acts include but are not limited to acts of domestic violence as provided in section four hundred fifty-nine-a of the social services law;
- The availability and cost of medical insurance for the parties;
- The care of children or stepchildren, disabled adult children or stepchildren, elderly parents or in-laws provided during the marriage that inhibits a party's earning capacity;
- The tax consequences to each party;

Support



Factors to consider when deviating from post-divorce maintenance:

- The standard of living of the parties established during the marriage;
- The reduced or lost earning capacity of the payee as a result of having forgone or delayed education, training, employment or career opportunities during the marriage;
- The equitable distribution of marital property and the income or imputed income on the assets so distributed;
- The contributions and services of the payee as a spouse, parent, wage earner and homemaker and to the career or career potential of the other party; and
- Any other factor which the court shall expressly find to be just and proper.
- The refusal to remove barriers to the other party's remarriage

Equitable Distribution



Equitable Distribution The distribution of marital property and debt

- Property includes tangible and intangible assets
- **Marital property / debt** Acquired from the date of marriage until the divorce filing date
 - Some exceptions:
 - Third party gifts
 - Inheritances
 - Personal injury awards

Equitable Distribution



- **Separate property / debt** Acquired from before the marriage or after the divorce is filed
 - If acquired before the marriage must be kept separate from marital money

Equitable Distribution



Factors:

- Parties' respective incomes and earning capacity
- Length of the marriage
- Parties' ages and health
- The need of a custodial parent to occupy or own the marital residence and to use or own its household effects
- The loss of inheritance and pension rights upon dissolution of the marriage as of the date of dissolution
- The loss of health insurance benefits upon dissolution of the marriage
- Any award of maintenance
- Any equitable claim to, interest in, or direct or indirect contribution made to the acquisition of such marital property by the party not having title, including joint efforts or expenditures and contributions and services as a spouse, parent, wage earner and homemaker, and to the career or career potential of the other party

Equitable Distribution



Factors:

- The liquid or non-liquid character of all marital property
- Probable future financial circumstances of each party
- The impossibility or difficulty of evaluating any component asset or any interest in a business, corporation or profession, and the economic desirability of retaining such asset or interest intact and free from any claim or interference by the other party
- Tax consequences to each party
- The wasteful dissipation of assets by either spouse
- Any transfer or encumbrance made in contemplation of a matrimonial action without fair consideration
- Any other factor which the court shall expressly find to be just and proper

Order of Protection / Exclusive Occupancy



- An order of protection case initially commences **ex parte** = the other side is not given notice and is not in court.
- Orders of Protection through Family Court are civil cases
 - No criminal consequences unless the respondent violates the order.
- Can cover both the petitioner and minor children.
- Must have a family relationship with the respondent.

Order of Protection / Exclusive Occupancy



- **Refrain from Order** Respondent must refrain from certain types of behaviors
- **Stay Away Order** Respondent must fully stay away from the persons the order covers
 - Stay away from person
 - Stay away from house
 - Stay away from place of employment
 - Stay away from school

Order of Protection / Exclusive Occupancy



- **Temporary Order of Protection** If granted, lasts from court date to court date.
- **Final Order of Protection** = If granted, generally lasts either 2 or 5 years.

Order of Protection / Exclusive Occupancy



- **Request for Exclusive Occupancy** Request made as part of a divorce case asking that the other side be excluded from the marital residence.
- Can be granted on either a temporary basis while the case is pending or on a final basis to go in effect once the divorce is resolved.
- **High standard:** threat to persons or property in the home.
- Can be made either ex parte or with the other side on notice.
 - If the other party is given notice the standard may be easier to meet.

Family Court vs Supreme Court



Family Court:

- Custody
- Support
- Orders of Protection
 - Cases start by filing petitions
 - Support is kept separate - cases will go before different judges

Family Court vs Supreme Court



Supreme Court:

- Custody
- Support
- Orders of Protection
- Exclusive Occupancy
- Distribution of Property
- Divorce
 - Case is started by filing for divorce
 - Everything goes before one judge

Family Court vs Supreme Court



Integrated Domestic Violence Court (“IDV”)

- Only applicable to cases where there is an active domestic violence criminal case and either one of the following:
 - Divorce
 - Custody
 - Order of Protection

Arbitration vs Mediation vs Litigation



Mediation

- Is it compulsory? No
 - Both parties can enter and leave mediation whenever they chose
- Who makes decisions? The parties
- Who meditates? Any neutral individual that both parties trust

Arbitration vs Mediation vs Litigation



Arbitration

- Is it compulsory? Not until both parties sign an “Arbitration Agreement”
 - The Agreement must pick a Bais Din
 - Once signed it is binding - not reversible without both parties’ consent or unless Bais Din recuses itself
 - Never sign anything at a Get ceremony until reviewing first with a lawyer
- Who makes decisions? The Bais Din
- Is it recognized in New York?
 - Custody arbitration is not but financial arbitration is recognized.

Arbitration vs Mediation vs Litigation



Litigation -

- Is it compulsory?
 - One side can start a case and once started the other side must show or risk the judge making decisions without him/her
- Who makes decisions? The judge or parties' settlement
 - Can always mediate once litigation commences.

Referrals



Counseling / Advocacy

- Met Council: 212- 453- 9618
- OHEL: 1800- 603- 6435
- Jewish Board: 1844- 663 – 2255

Shelter

- OHEL: 1800- 603- 6435

Legal Services

- Shalom Task Force: Sarah's Voice: 347-592-2124

To ask an anonymous question: www.adaiad.org/ask-anonymous-question

Referrals



Benefits

- Met Council: 212- 453 - 9532
- CoJo: 718- 377-2900

Other

- Shalom Task Force: 1888 – 883 - 2323
- Organization for the Resolution of Agunot: One Step Forward—
844 – 673 - 5463
- Hebrew Free Loan Society: 212 - 687- 0188
- Safe Horizon, Project Safe (lock changing): 855-234-1042