

Do Real Men Get Alimony?

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# Do Real Men Get Alimony?

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Whether the words “real men” conjure up images of Cary Grant or Dennis Rodman, there is no question that long-held ideas about sex roles and gender identities are changing. So too are the gender-related alimony issues facing the courts as men seek support from their wives—and occasionally get it. A review of the case law reveals how courts view these issues as well as successful strategies for seeking support for men and defending against those requests.

Reported decisions range in time from 1973 through 1995. Predictably, the first reported decision on a man receiving spousal support came from an appellate court in California. Equally predictable was the appellate court’s reversal of the trial court’s denial of spousal support to the 48-year-old, lung-cancer-stricken husband of a 73-year-old woman.

As you can see from the chart on page 28, those who were granted support have similar characteristics. Specifically, most of the men who sought support during this period had some type of physical or mental illness that prevented them from being employed. Of the 14 appellate decisions, six involved men who suffered from disability, alcoholism, or mental illness.

Of the 14 trial court decisions that were appealed and reported, only four resulted in support. Each of the four men was disabled, and all four appellate courts affirmed the

lower courts’ decisions. Of the 10 denials of spousal support to men, appellate courts affirmed eight and reversed two. The reversals occurred in the cases of a California man who suffered from lung cancer and a Kentucky man who was disabled.

Only four of these cases involved awards of child custody. None of the men in question received custody. However, only the *Lee* decision in Illinois made any discernible connection between the custody outcome and the spousal support decision. In *Lee*, the appellate court

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observed that although the trial court denied the husband’s request for spousal support, he could be construed to have received consideration for his need to rehabilitate himself in that the trial court abated his obligation to pay his wife child support while he attended school.

### **Practical strategies**

When dealing with newer legal or factual issues, lawyers often forget to apply basic concepts to pleadings, researching case law, and arguing motions. With the changes that have taken place in the anatomy of the American family, lawyers should make the following checklist part of every initial client contact and

strategy session to avoid waiving arguments or defenses.

**Initial interview:** Whether you are interviewing male or female clients, question them thoroughly about their work history and that of their spouses. If during the process of taking a detailed history it becomes apparent that a male client might be entitled to support, make him aware of this option. Most men may not even think of seeking support. Explain to the client that there is nothing shameful about receiving the support he needs to pay his expenses.

Being thorough about both parties’ histories and current arrangements for the children will enable the lawyer to create precise analogies to and distinctions between cases in which women receive alimony. In discussing the issue of support with a male client, be realistic about the statutes and case law of the particular jurisdiction that bolster or undermine men’s claims for support. If your client is a woman and her spouse appears to have a claim for spousal support, make her aware of the potential exposure.

**Pleadings:** When representing a man who may need to receive alimony, be sure to plead the request. In *In re the Marriage of Boyd*, 643 P.2d

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# Alimony for Men

Case Name	State	Year	Trial Court Decision	Appellate Court Decision	Disability Illness	Children	Custody	Years Married	Husband's Age	Wife's Age
Higgason	CA	1973	Denied based on antenuptial agreement	Reversed	Lung Cancer	?	?	2	48	73
Fried	FL	1980	Denied	Affirmed	No	?	?	?	58	57
Wolf	IL	1989	Two-year reviewable maintenance	Affirmed	Yes	No	N/A	16	?	?
Shields	IL	1988	Granted	Affirmed	Alcoholic and in nursing home	No	N/A	8	69	45
Pruitt	IL	1981	Maintenance in gross	Affirmed	Yes	No	N/A	5	?	?
Lee	IL	1979	Spousal support denied but no child support ordered	Affirmed	No	3	Wife	17	42	42
Leitsch	KY	1992	Denied	Reversed	Yes	No	N/A	16	?	?
Chaudoir	LA	1984	Pendente lite denied	Affirmed	No	2	Wife	6	?	?
Chew	NY	1992	Granted	Issue not raised	Yes	No	N/A	14	64	41
Wood	NY	1980	Denied	Affirmed	?	?	?	?	?	?
Williams	SC	1988	Denied	Affirmed	Back injury	2 1 minor	Wife	21	?	?
Hogan	SC	1983	Did not address request	Remanded	Alcoholic	?	?	?	?	?
Johnson	TN	1995	Denied rehabilitative alimony but abated child support and awarded more property	Affirmed	No	1	Wife	9	28	26
Brundage	VA	1995	Denied	Affirmed but indicated trial court should have reserved issue	No	Yes	Wife	?	?	?

804 (Colo. App. 1982), the appellate court held that the trial court did not abuse its discretion in denying the husband's request to consider the issue of maintenance. Not only did the husband not include such a request in his petition, but he failed to request the ability to amend the pleading and did not ask for a continuance to allow an amendment. Likewise, because a man who needs alimony is unlikely to have resources to contribute to child support, a lawyer should routinely include a request to abate or reserve issues of child support.

Conversely, when filing petitions for dissolution of marriage on behalf of a woman who has exposure to a claim for alimony, include an allegation that the husband should be denied maintenance and facts supporting that conclusion.

**Constitutionality:** When representing a man, consider challenging any statutory scheme that does not provide that men can receive spousal support. In states where statutes do not provide the authority for courts to award support to men, keep in mind the United States Supreme Court's decision in *Orr v. Orr*, 440 U.S. 268, 99 S. Ct. 1102 (1979), which held that the husband's failure to ask for alimony did not deprive him of standing to attack the constitutionality of an Alabama state law that allowed women but not men to receive alimony. In view of that case, lawyers should explain to male clients that constitutional challenges can be made when statutes or case law do not provide for men to receive support.

Lawyers representing women should not count on the enforceability of statutory provisions that omit men. They should warn their clients that constitutional challenges can succeed. Some states will construe a statute as gender neutral to preserve its constitutionality. *Wood v. Wood*, 104 Misc. 2d. 109, 428 N.Y.S. 2d. 136 (N.Y. Fam. Ct. 1980). Arguing this

point will give female clients a chance to head off costly trips to state or federal appellate courts.

**Expert witnesses:** Even women who seek support after spending their married lives bearing and raising children and acting as helpmates often require expert witnesses to testify regarding their lack of vocational skills and work experience. A lawyer should encourage a man seeking

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alimony to do the same. Distinguish for him the unique issues involved in his case and the need for other experts to explain the gender stereotypes and societal bias working against him. If client or attorney is uncomfortable with the notion of seeking support, hire an expert, who in many jurisdictions is not subject to discovery and disclosure rules, to

evaluate the man's capacity to support himself. If the man is unemployed due to a disability or mental health issue, the lawyer should consider physical and mental examinations and expert testimony.

If a man can no longer support himself due to forces in the economy or trends in the business in which he historically earned his income, the lawyer should consider hiring experts who are familiar with the specific field in question or knowledgeable about the particular economic trend at issue.

If a male client questions why he should spend money on an expert, the lawyer should point out that the notion of men receiving support is new to the law and there is little precedent on the issue. Until a man receiving alimony becomes commonplace, it must be treated as a novel issue of fact for the judge.

Judges are human and may fall prey to the same stereotypes that plague the rest of us. At the very least, they are bound to regard men's claims for support with skepticism as all litigants going through divorces tend to paint their economic prospects in the worst possible light. An expert witness can bolster your

client's testimony and lend credibility.

**Relation to custody:** In making decisions regarding custody and visitation, consider how the arrangement may impact your client's need for alimony. Be prepared to show the court why abating or reserving child support will not be sufficient relief.

When representing women who receive custody, point out the obvious fact that a man who is not working will not be able to contribute child support. Quantify the burden this will impose on your client. Argue that the man will receive a benefit if he is not ordered to pay child support and that this should be considered a mitigating factor in any court-ordered spousal support award.

**Court appearance:** Lawyers seeking support on behalf of male clients should expect the judges to view these requests as unusual. The best defense against having your client's claim taken lightly is a good but tactful offense. Do not hesitate to raise a judge's consciousness to the gender bias that may subconsciously be influencing his or her decision

making. Draw a clear analogy for the judge by beginning sentences with "Your Honor, if Mrs. Smith were presenting the same arguments and facts that Mr. Smith is presenting...."

**Malpractice tip:** If the lawyer thinks a client should seek support, but the client refuses, write a letter to the client confirming the advice. Then ask the client to sign the letter as an acknowledgment of having

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read it and having understood the consequences of not pursuing the recommended course of action. Conversely, if a man insists on seeking support for purposes of harassment, and the lawyer does not believe he has a valid case, the lawyer should consider withdrawing.

When a lawyer cannot offer any insight into possible outcomes, he or she should write a comprehensive letter to the client discussing the pros and cons of the situation. This type of letter will assist the lawyer in collecting fees in the event of an unsuccessful claim. If the client later attempts to sue the attorney for malpractice, the letter will constitute an admission.

**Strategy:** In considering support for a male client, lawyers should explain that even if alimony is not awarded, other financial relief is possible. Note, for example, reported decisions in which child support abatements were made available to men who needed time to rehabilitate themselves or were disabled.

Preparing your client for all the possibilities in which a court may grant him relief will allow him to recognize the value of your services even if relief is limited to a disproportionate distribution of the property, a lesser share of the marital debt, or a reduction or abatement of his child support obligation.

**Research:** In addressing the issue of support for a man, look for similarities and distinctions between cases in which women received or were denied support. In a few cases, men have received maintenance. However, most of those involved clients who were mentally ill or disabled. Be sure the factual comparisons for research purposes are as complete as possible and take into account any custody or visitation arrangements that would impact the outcome.

Although the case law on spousal support for men lacks the factual diversity necessary to enable attorneys to predict outcomes in a wide variety of cases, lawyers who consider the strategy issues outlined above are less likely to waive a client's right or omit an argument that can be made either in support of or against a request for spousal support for men. ■