

MAINTENANCE & ALIMONY

Why Can't I Get No Satisfaction?

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I. Introduction

The first case regarding alimony in Texas was decided in 1870 by the Texas Supreme Court. *Wiley v. Wiley*, 33 Tex. 358 (Tex. 1870). Mr. Wiley sued for divorce after less than one year of marriage and accused the wife of "disreputable conduct", elaborating on the allegations "with a good deal of detail and apparently with much gusto." *Id.* Ms. Wiley countersued for divorce, accusing Mr. Wiley of "violence to her person and other brutal and cruel treatment of her." *Id.* The case was tried to a jury and the jury found in favor of Ms. Wiley. *Id.* The district court awarded her alimony in the amount of **\$50.00 per year** for 12 years, but denied her request for attorney fees. Ms. Wiley appealed. *Id.* The Texas Supreme Court found this amount insufficient and awarded Ms. Wiley **\$100.00 per year** plus \$100.00 in attorneys fees! *Id.*

For many years, the perception was that alimony was against the public policy of the State of Texas, and support was incompatible with the community property system. The Texas Legislature tried for many years but failed to pass an alimony statute. Then, finally, in 1995, Texas became the 50th state to provide for permanent, court-ordered alimony.¹

¹ For a thorough review of the history of alimony in Texas, see James W. Paulsen,

II. Maintenance v. Alimony – Distinguished

Alimony, as defined by the Internal Revenue Code, is a cash payment paid to or for the benefit of a spouse pursuant to a divorce decree or separation agreement. 26 U.S.C.A. §71(b). Although court-ordered maintenance under Texas law will most always be "alimony" under the Internal Revenue Code, "alimony" is not always "maintenance".

Before the legislature authorized court-ordered maintenance, parties to a divorce could enter into written agreements providing for future support of a spouse, which were incorporated into the divorce decree. See Tex. Fam. Code §7.006; see also *Francis v. Francis*, 412 S.W.2d 29, 32 (Tex. 1967); *Woolam v. Tussing*, 54 S.W.3d 442, 446 (Tex. App. – Corpus Christi 2001, no pet.). Because such settlement agreements did not constitute court-ordered alimony, they were not void under Texas' previous prohibition against alimony. *Francis*, 412 S.W.2d at 29. Such assumed obligations were characterized as a contractual duty, enforceable under the law of contracts. *Id.* at 31.

Remember the Alamo[ny]! The Unique Texas Ban on Permanent Alimony and the Development of Community Property Law, 56 SPG Law & Contemp. Probs. 7 (1993).

Now, with the provisions of Texas Family Code chapter 8, it becomes imperative to distinguish between “alimony” and “maintenance”. If the parties intend for an order to pay spousal support to fall within the parameters of Chapter 8, including the enforceability provisions, then the decree should contain specific findings regarding the obligee’s eligibility for maintenance under the statute. *In re Dupree*, 118 S.W.3d 911, 915 (Tex. App. – Dallas 2003, pet. denied).

If the parties intend that the spousal support obligation be an agreement between the parties pursuant to §7.006, the provisions of the agreement should be contained in an agreement incident to divorce, and there should be no order language contained in the divorce decree commanding the payments be made. *See Dupree*, 118 S.W.3d at 916. It is also important to distinguish between the terms “alimony” and “maintenance” depending on the intent of the parties. In *Taylor*, the Texarkana court of appeals allowed an obligor to be held in contempt where the divorce decree provided that the parties agreed to “contractual maintenance” and the agreement was incorporated into the decree with command language. *In re Taylor*, 130 S.W.3d 448, 449 (Tex. App. – Texarkana 2004, orig. proceeding).

III. Court-Ordered Maintenance

Texas’ maintenance statute is not only the youngest statute providing for post-divorce spousal support, but also the most restrictive in the nation. James W. Paulsen, *The History of Alimony in Texas and the New “Spousal*

Maintenance” Statute, 7 Tex. J. Women & L. 151 (1998).

Maintenance is defined as an award in a suit for dissolution of a marriage of periodic payments from the future income of one spouse for the support of the other spouse. Tex. Fam. Code §8.001.

A. Eligibility

To be eligible for maintenance, two threshold circumstances must be present: (1) the person against whom the maintenance is requested must have been convicted of family violence; or (2) the duration of the marriage must be at least 10 years. Once one of these threshold events is met, a party may sue for maintenance.

1. Family Violence

Eligibility for maintenance under the family violence provisions requires (1) conviction of or receiving deferred adjudication for a criminal offense that also constitutes an act of family violence under Title 4; and (2) the offense occurred within 2 years before the date on which a suit for divorce was filed, or while a suit for divorce was pending. Tex. Fam. Code §8.051(1).

Title 4 defines family violence as follows:

(1) An act by a member of a family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive

measures to protect oneself; or

(2) Abuse, as that term is defined by Sections 261.001(C), (E) and (G) by a member of a family or household toward a child of the family or household; or

(3) Dating violence, as that term is defined by Section 71.0021.

Notice that the statute does not require the parties to have been married during the commission of family violence. It is conceivable that a spouse could have been convicted before the marriage of an offense that would constitute dating violence, and then get married and have a divorce filed within two years of the date the offense occurred.

Having a protective order granted with a finding of family violence is not sufficient to constitute a criminal adjudication under the statute.

Sections 261.001(C), (E), and (G) address the investigation of child abuse and neglect. Abuse includes the following acts or omissions by a person:

(C) Physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm

(E) Sexual conduct harmful to a child's mental, emotional, or physical

welfare, including conduct that constitutes the offense of indecency with a child under Section 21.11 penal Code, sexual assault under Section 22.011 Penal Code, or aggravated sexual assault under Section 22.021, Penal Code.;

(G) Compelling or encouraging the child to engage in sexual conduct as defined by Section 43.01 of the Penal Code

Tex. Fam. Code §261.001. The following is a general, non-exhaustive list of crimes, the prosecution of which will qualify for maintenance: Murder, Capital Murder, Manslaughter, Indecency, Assault, Sexual Assault, Aggravated Assault, Aggravated Sexual Assault, Injury to a child, elderly or disabled individual, Abandonment or Endangerment, Deadly Conduct, Terroristic Threat, Leaving a Child in a Vehicle; violation of Protective Order or Magistrate's Order, Enticement, Harassment, and Stalking.

2. Ten Year Marriage

The second broad category of eligibility for maintenance requires that the parties be married for 10 years or longer, and the spouse seeking maintenance lacks sufficient property, including property distributed to the spouse as a part of the divorce to provide for the spouse's minimum reasonable needs. In addition, the spouse seeking maintenance must fall into one of the following additional categories:

(1) The spouse is unable to support him/herself through appropriate employment because of an

incapacitating physical or mental disability;

(2) The spouse seeking maintenance is the custodian of a child who requires substantial care and personal supervision because a physical or mental disability makes it necessary, taking into consideration the needs of the child, that the spouse not be employed outside the home; or

(3) The spouse seeking maintenance clearly lacks earning ability in the labor market adequate to provide support for the spouse's minimum reasonable needs, as limited by Section 8.054.

Tex. Fam. Code §8.051(2).

a. Minimum Reasonable Needs

Deciding the minimum reasonable needs for a particular individual is a fact-specific determination that should be made by the trial court on a case-by-case basis. *Lopez v. Lopez*, 55 S.W.3d 194, 198 (Corpus Christi 2001, no pet.).

It is helpful, but not essential, for a spouse to present evidence of the itemized dollar amounts of monthly expenses. *Trueheart v. Trueheart*, 2003 WL 22176626, *2 (Tex. App. – Houston [14th Dist.] 2003, no pet.). Other evidence such as the spouse's abilities, education, mortgage concerns, and business opportunities is also relevant. *Id.*

Even where the spouse is awarded assets as a part of the property division in the divorce, the liquidity of those assets is also relevant consideration.

"In considering assets awarded in the divorce, the law does not require a spouse to spend down long-term assets, liquidate all available assets, or incur new debt simply to obtain job skills and meet needs in the short term. *Trueheart*, 2003 WL 22176626 at *3. For example, tax deferred community assets awarded to wife were unavailable to meet her needs, therefore maintenance was allowed. *Amos v. Amos*, 79 S.W.3d 747, 749 (Tex. App. – Corpus Christi 2002, no pet.).

It is apparently an open question as to whether child support to be received by the spouse seeking maintenance should be included as property awarded to a spouse for purposes of analyzing spousal maintenance requirements. *Cooper v. Cooper*, ____ S.W.3d ____, 2004 WL 1351415, *3 (Tex. App. – Houston [1st Dist.] 2004, no pet. h.).

b. Disability

Maintenance awarded on the basis of the spouse's or child's disability seems to be the most commonly litigated aspect of maintenance.

Unlike other areas of law, there is no requirement that a party submit expert medical testimony about a disability to sustain the award. *Pickens v. Pickens*, 62 S.W.3d 212 (Tex. App. – Dallas 2001, pet. denied). Disability may be inferred from circumstantial evidence or the competent testimony of a lay witness, even if it is directly contradicted by expert medical testimony. *Id.* at 215-16.

Even where the disability existed at the time of the marriage and did not substantially change or worsen during

the marriage, maintenance can still be awarded. *Smith v. Smith*, 115 S.W.3d 303 (Tex. App. – Corpus Christi 2003, no pet.).

c. Earning capacity

A spouse's earning capacity in the labor market is also examined on a case-by-case basis. A spouse does not have to be unemployed to qualify for maintenance; even where the spouse had employment, but the earnings are insufficient to meet the spouse's monthly needs, maintenance can be awarded. *In the Matter of the Marriage of Hale*, 975 S.W.2d 694, 698 (Tex. App. – Texarkana 1998, no pet.).

Even where the spouse seeking maintenance has a college education, where the facts show that she did not work during the marriage and she lacks job skills in the current job market, maintenance may still be awarded. *Deltuva v. Deltuva*, 113 S.W.3d 882, 888 (Tex. App. – Dallas 2003, no pet.).

A spouse must show that he or she exercised diligence in seeking suitable employment or in developing the necessary job skills during the separation and pendency of the divorce. Tex. Fam. Code §8.053(a)(2).

B. Presumptions

The presumption is *against* maintenance. Tex. Fam. Code §8.053(a). The presumption is rebutted only if the spouse seeking maintenance has exercised diligence in seeking suitable employment or developing the necessary skills to become self-supporting during a period of separation and during the time the suit for

dissolution of the marriage is pending. *Id.* However, the presumption does not apply to a spouse who seeks maintenance as a result of a physical or mental disability. Tex. Fam. Code §8.053(b).

C. Factors

Once a court determines that a spouse is eligible to receive maintenance, the court must determine the nature, amount and manner of support payments by considering all relevant factors. Tex. Fam. Code §8.052.

1. Factors

The factors to be considered include:

(1) The financial resources of the spouse seeking maintenance, including the community and separate property and liabilities apportioned to that spouse in the dissolution proceedings, and that spouse's ability to meet the spouse's needs independently;

(2) The education and employment skills of the spouses, the time necessary to acquire sufficient education or training to enable the spouse seeking maintenance to find appropriate employment, the availability of that education or training, and the feasibility of that education or training;

(3) The duration of the marriage;

(4) The age, employment history, earning ability, and physical and emotional condition of the spouse seeking maintenance;

(5) The ability of the spouse from

whom maintenance is requested to meet that spouse's personal needs and to provide periodic child support payments, if applicable, while meeting the personal needs of the spouse seeking maintenance;

(6) Acts by either spouse resulting in excessive or abnormal expenditures or destruction, concealment, or fraudulent disposition of community property, joint tenancy, or other property held in common;

(7) The comparative financial resources of the spouses, including medical, retirement, insurance, or other benefits, and the separate property of each spouse;

(8) The contribution by one spouse to the education, training, or increased earning power of the other spouse;

(9) The property brought to the marriage by either spouse;

(10) The contribution of a spouse as a homemaker;

(11) Marital misconduct of the spouse seeking maintenance; and

(12) The efforts of the spouse seeking maintenance to pursue available employment counseling as provided by Chapter 304 Labor Code.

Tex. Fam. Code §8.052.

Based on these factors, it seems that the spouse opposing maintenance should introduce evidence regarding his/her lack of ability to pay, including evidence regarding his/her monthly expenses and income, and the

existence or absence of any income-producing property which may be used to pay support.

Further, fault in the break-up of the marriage is a relevant factor in setting maintenance, as is the management and/or waste of the community estate by either spouse.

Note that the Texas statute does not strictly prohibit payment of maintenance to a spouse who was at fault in the break-up of the marriage or committed other bad acts. These are all merely factors to consider in determining what amount, if any, to provide for a spouse's minimum reasonable needs.

2. Relationship to property division

The relationship of maintenance to property division is complex. On the one hand, the factors to be considered in dividing the community estate and the factors for an award of spousal maintenance are "inextricably intertwined". *In the Matter of the Marriage of Combs*, 958 S.W.2d 848, 851 (Tex. App. – Amarillo 1997, no writ). In this view, reversal of a maintenance award on appeal might require a redivision of the community estate. *Id.* Further, an award of maintenance is from the future income of the spouse, which necessitates an examination of the financial resources available to the spouse, including the community and separate property and liabilities apportioned to the spouse upon divorce. William V. Dorsaneo III and Joseph W. McKnight, TEXAS LITIGATION GUIDE §362.07[6] (2001). In fact, one court has held that an award of temporary spousal support is clearly an aspect of

the community property division. *Edsell v. Edsell*, 240 S.W.2d 424, 429 (Tex. Civ. App. – Eastland 1951, no writ).

To the contrary, the Austin Court of Appeals distinguishes between maintenance and the property division. *O'Carolan v. Hopper*, 71 S.W.3d 529 (Tex. App. – Austin 2002, no pet. history). The trial court awarded a great portion of the community estate to husband and ordered him to pay spousal support to the wife for 2 years. *Id.* The Austin Court found that the trial court treated spousal maintenance as if it were property and attempted to use that maintenance in lieu of awarding any property to the wife. *Id.* Thus, in the opinion of the Austin Court, property division and maintenance are separate remedies and cannot be intermingled.

D. Amount and Duration

The amount and duration of maintenance is limited in order to carry out the legislative intent to restrict maintenance to the least amount and shortest reasonable time period. Tex. Fam. Code §§8.054 and 8.055.

As a general rule, a court may not order maintenance that remains in effect for more than three years. Tex. Fam. Code §8.054(a) *see Deltuva v. Deltuva*, 113 S.W.3d at 889. Additionally, the maintenance order must be limited to the shortest reasonable time period that allows the spouse seeking maintenance to meet his/her minimum reasonable needs by obtaining appropriate employment or developing an appropriate skill, unless the spouse's ability to provide for him/herself is substantially or totally diminished due to a physical or mental disability, duties as

custodian of an infant or young child, or another compelling impediment to gainful employment. *Id.*

The exception to this requirement is where a spouse is unable to support him/herself through appropriate employment because of an incapacitating physical or mental disability of the spouse or child. Tex. Fam. Code §8.054(b). Then, the court may order maintenance for an indefinite period for as long as the disability continues. *Id.*

Maintenance is limited to the lesser of \$2,500 per month or 20% of the spouse's monthly *gross* income. (Note that this calculation is based on gross income, unlike the calculation of child support which is based on net income.) This calculation is made, not solely looking to a spouse's salary, but to all sources of income attributable to the spouse. *Tomlinson v. Tomlinson*, 2003 WL 751177, *3 (Tex. App. – Corpus Christi 2003, no pet.). Where a spouse is self-employed, income is defined as to include all benefits less ordinary and necessary expenses required to produce that income. *In the Matter of the Marriage of Graves*, 2003 WL 22053096, *2 (Tex. App. – Texarkana 2003, no pet.).

E. Fact-Finder

1. Jury v. Nonjury

Eligibility for, amount and duration of a maintenance award are questions for the trial court. A party is not entitled to a jury trial on a maintenance question.

Even where a jury found that the spouse was "unable to support herself

because of an incapacitating physical or mental disability”, the finding was not binding on the trial court in awarding maintenance. *Kennedy v. Kennedy*, 125 S.W.3d 14, 21 (Tex. App. – Austin 2002, pet. denied). The trial court did not abuse its discretion in refusing to award maintenance where the spouse had sufficient resources, including property awarded in the divorce, to provide for her minimum reasonable needs. *Id.*

2. Findings of Fact

Once a court has ruled on a maintenance request, findings of fact should be requested. One court stated that the required findings basically should track the statutory language:

The court specifically found that the Limbaughs’ marriage lasted ‘ten years or more,’ that Maria ‘lacks sufficient property to provide for her minimum reasonable needs,’ and that she ‘clearly lacks earning ability in the labor market adequate to provide support for her minimum reasonable needs.’ These are the only findings necessary to support a spousal maintenance award.

Limbaugh v. Limbaugh, 71 S.W.3d 1, 12 (Tex. App. – Waco, no pet.). This is acceptable for the spouse seeking maintenance and defending an award in his/her favor. However, for the spouse seeking to overturn an award of maintenance, many more findings of fact should be requested, such as:

- the amount of minimum reasonable needs of obligee;

- the types of employment the obligee could or could not perform;

- the amount of obligor’s gross income;

- the amount of obligee’s available income and/or property;

- efforts by the obligee to seek suitable employment;

- efforts by the obligee to develop the necessary skills to become self-supporting;

- facts regarding any disability finding regarding the obligee or obligee’s children;

- shortest reasonable time period to meet obligee’s minimum reasonable needs;

- All factors listed in §8.052.

IV Post-Decree Issues

A. Withholding Order

Maintenance withholding is discretionary with the court. Tex. Fam. Code §8.101(a). It is not required that the obligor be in arrears prior to the entry of a withholding order if the order is for court-ordered maintenance. Tex. Fam. Code §8.101(a).

The maintenance withholding statutes do not apply to contractual alimony or maintenance unless the agreement specifically permits withholding or the payments are not timely made. Tex. Fam. Code §8.101(b).

Under certain circumstances, a maintenance withholding order may be combined with a child support withholding order, but such order must comply with the laws regarding child support withholding and clearly state the priority of withholding as follows:

- (1) current child support;
- (2) current spousal maintenance;
- (3) child support arrearages; and
- (4) spousal maintenance arrearages.

Tex. Fam. Code §8.101(d). But, a maintenance withholding order takes precedence over all other types of garnishments other than child support. Tex. Fam. Code §8.105.

Income withholding is also appropriate for maintenance arrearages, even if the current obligation has passed. Tex. Fam. Code §§ 8.102, 8.103, 8.104.

The maximum amount that may be withheld is 50% disposable earnings.

Section 8.152 sets out the requirements for the withholding order. Tex. Fam. Code §8.152. Either the obligee or obligor may request that such order be issued. Tex. Fam. Code §8.153.

B. Enforcement

Traditional enforcement remedies are available for the enforcement of maintenance. Enforcement by contempt is available for court-ordered or agreed

orders for Chapter 8 maintenance. Tex. Fam. Code §8.059. Also, a judgment can be rendered against the obligor for the past-due amounts, even in a default judgment situation. *Id.*

The following affirmative defenses apply to an allegation of contempt for non-payment of maintenance:

- the obligor lacked the ability to provide maintenance in the amount ordered;

- the obligor lacked property that could be sold, mortgaged, or otherwise pledged to raise the funds needed;

- the obligor attempted unsuccessfully to borrow the needed funds; and

- the obligor did not know of a source from which the money could have been borrowed or otherwise legally obtained.

Id. The obligor carries the burden of proof on the affirmative defenses by a preponderance of the evidence. *Id.*

C. Modification

Maintenance is intended as temporary assistance to a spouse after a divorce; therefore, it is limited to the shortest reasonable length of time. This time period is determined by the code to be three years in the case of a lack of earning capacity, but it is unlimited in duration for maintenance awarded on the basis of a disability of either the spouse or child. When circumstances of the spouse receiving the maintenance change such that maintenance may no longer be warranted, the maintenance

order may be modified. Tex. Fam. Code §8.057; *see also Carlin v. Carlin*, 92 S.W.3d 902 (Tex. App. – Beaumont 2002). Note, however, that maintenance may only be modified downward, and may not be increased.

Notice of a request for modification must be served as in filing a new lawsuit. *Id.* The standard for modification is whether there has been a material and substantial change of circumstances by either party. *Id.* The modification suit must be filed in the court that made the original award.

Where a party's disability improves to the point that he or she could work at a job that would meet his or her minimum reasonable needs, the maintenance can be reduced or terminated. *See Tyler v. Talburt*, 2003 WL 1964186 (Tex. App. – San Antonio 2003, no pet.).

D. Termination

There are three statutory grounds for termination of a maintenance order:

- (1) the death of either party;
- (2) the remarriage of either party;
- (3) after hearing, the cohabitation with another person in a permanent

place of abode on a continuing, conjugal basis.

Tex. Fam. Code §8.056.

V. Appellate Issues

A spousal maintenance award is reviewed under the abuse of discretion standard. *In Re Marriage of Hale*, 975 S.W.2d 694, 697 (Tex. App. – Texarkana 1998, no pet.) This means that a trial court abuses its discretion when it rules arbitrarily, unreasonably, without regard to guiding legal principles, or without supporting evidence. *Pickens v. Pickens*, 62 S.W.3d at 214. Keep in mind, under the abuse of discretion standard, legal and factual sufficiency are not independent grounds for asserting error; instead, they are relevant factors in assessing whether the trial court abused its discretion. *Id.*

When a spouse appeals a trial court's award of spousal maintenance, it will be necessary to supercede or suspend execution of the judgment pending appeal. Otherwise, the judgment remains in full force and effect, subject to enforcement by contempt, and particularly criminal contempt, even if the judgment is reversed on appeal. *In re Sheshtawy*, ___ S.W.3d ___, 2004 WL 3019232, *8 (Tex. 2004).

APPENDIX A

EMPLOYMENT EXPERT Q&A

- 1. State your name for the record.**
- 2. How are you presently employed?**
- 3. Briefly describe your educational background.**
- 4. What professional experience do you have?**
- 5. How long have you worked in the employment field?**
- 6. I am showing you what has been marked as Exhibit ___, do you recognize this document?**
- 7. Is this a copy of your c.v.?**

[Admit Exhibit ___ into evidence.]

- 8. Are you familiar with the job market in this area?**
- 9. I am showing you a copy of _____'s resume, which has previously been admitted as Exhibit ___. Have you seen this before?**
- 10. Have you reviewed _____'s education and previous job experience?**

11. Can you tell me what his/her educational background is?

12. What is his/her job experience?

13. Does _____ have any other job skills that might assist him/her in getting a job?

14. What types of jobs do you think _____ might be qualified?

15. What job skills make him/her qualified for that job?

[Go through each different type of job.]

16. Are those types of jobs available in this area?

17. How much does each typically pay?

18. Do you know of any jobs that are available right now for which _____ might be qualified?

19. In your opinion, does _____ have the job skills to get a job in this area making \$_____?

20. Are those types of jobs available at the present

time?

PASS THE WITNESS.

APPENDIX B

FINANCIAL EXPERT Q&A

- 1. State your name for the record.**
- 2. How are you presently employed.**
- 3. Are you familiar with _____?**
- 4. Briefly detail your educational background?**
- 5. What is your professional experience?**
- 6. Have you ever been qualified as an expert witness by a court?**
- 7. I am showing you what has been marked as Exhibit ____.
Do you recognize this document?**
- 8. Is this a copy of your c.v.?**

[Offer Exhibit ____ into evidence.]

- 9. Are you familiar with the assets that Mr. and Mrs. ____ have?**
- 10. Have you had an occasion to review the proposed property division in this case?**
- 11. Have you also reviewed the parties' respective separate property?**
- 12. Have you also reviewed _____'s anticipated monthly**

expenses after the divorce?

- 13. How much will _____ require per month to meet her expenses?**
- 14. Have you prepared a summary of ____'s anticipated expenses after the divorce?**
- 15. I am showing you what has been marked as Exhibit ____.
Do you recognize this document:**
- 16. Does this document reflect _____'s anticipated monthly expenses after the divorce?**

[Offer Exhibit ____ into evidence.]

[Go over the specific items.]

- 17. Have you reviewed the anticipated monthly expenses?**
- 18. Have you worked with _____ to reduce any excess expenses?**
- 19. Have you investigated what _____'s minimum reasonable needs will be?**
- 20. What did you do?**
- 21. In your opinion, are these monthly expenses _____'s minimum reasonable needs?**
- 22. What resources does she have to meet those expenses?**

- 23. Does she currently have any income from employment?**
- 24. Does she currently have any income from other sources?**
- 25. How much child support do you anticipate she will receive after the divorce?**
- 26. Have you reviewed _____'s proposed property division?**
- 27. If the Court divides the community property as _____ requests, will she receive any assets that will produce income for her?**

[Go over anticipated income stream from assets.]

- 28. Does _____ have any separate property assets that will produce income for her?**
- 29. How much per month can _____ anticipate in income from all sources?**
- 30. How much more will she need to meet her needs?**
- 31. How long will she need this amount?**

PASS THE WITNESS.

APPENDIX C

PROVE-UP QUESTIONS FOR MAINTENANCE CLAIM

- 1. Please state your full name.**
- 2. Where do you reside?**
- 3. Are you married to _____?**
- 4. What was the date of your marriage?**

10-Year Marriage

- 5. So, you have been married for more than 10 years?**
- 6. Have you figured out how much money you need per month to meet your minimum needs?**
- 7. I am showing you a document marked as Exhibit ___, do you recognize this document?**
- 8. Is this your Monthly Financial Information Statement?**
- 9. Does this document reflect your average monthly expenses?**

Move to admit Monthly Financial Information Statement.

[Go over Monthly Financial Information Statement.....]

- 10. Do you believe all of these expenses are reasonable?**
- 11. Are these the minimum amounts that you could get by on?**
- 12. Have you examined your expenses and tried to find ways to cut them back?**
- 13. What efforts have you made in that regard?**
- 14. What property do you expect to receive as a part of the division**

upon divorce?

15.I am handing you a document marked as Exhibit ___, do you recognize this document?

16.Is this your Proposed Property Division, showing how you are requesting the marital property to be divided?

17.Is this a summary of your request for relief?

Move to admit Proposed Property Divison.

[Go over the proposed property division.....]

18.Is any of this property income producing?

19.[If yes] How much income does it produce in a month?

20.Are there any expenses that must be deducted from this amount every month?

21.Are there any expenses that must be deducted from this amount that do not occur every month?

22.So the average amount of income produced by this property is really \$___?

23.Could you sell any of the marital property you plan to be awarded in order to raise funds to support your minimum needs?

24.Do you have any separate property?

25.Is any of that separate property income producing?

26.How much income does it produce in a month?

27.Are there any expenses that must be deducted from this amount every month?

28.Are there any expenses that must be deducted from this amount that do not occur every month?

29.So the average monthly income is really \$____?

Disability

30.Do you suffer from any type of physical or mental disability?

31.What is the disability?

32.When were you diagnosed with this condition?

33.Do you see a doctor for the condition?

34.Is the condition incapacitating? How?

35.How does this condition affect your ability to work?

[Go over all ways the condition might affect the ability to do different types of work.]

Child's Disability

36.Does your child have a physical or mental disability?

37.What is the condition?

38.When was your child diagnosed with this condition?

39.Does the child attend school or day care? Why not?

40.Does the child's condition require substantial care? Describe.

41.Does the child's condition require personal supervision? Describe.

42.Is it possible for you to work outside the home, considering the

needs of the child? Why?

Lack of Earning Capacity

43.Are you employed at this time?

44.When was the last time you worked outside the home?

45.Please detail your employment history.

46.I'm showing you a documents marked Exhibit _____. Do you recognize this document?

47.Is this a copy of your resume?

48.What is your educational background?

49.What efforts have you made to find a job?

[Go through all efforts prior to and during divorce to find employment.]

50.Have you had any success?

51.What efforts have you made to improve your job skills?

52.What job skills do you have at the present time?

53.Has there been any change in those job skills since the divorce was filed?

54.At the present time, what types of jobs are you qualified for?

55.How much do those jobs typically pay?

56.Is that enough to support your minimum reasonable needs?

57.Why?

58.What efforts do you believe are necessary after the divorce to assist you in getting employment to meet your minimum reasonable needs?

59.How long will this take?

Family Violence

60.Has _____ ever been convicted of an offense that constitutes family violence?

61.What was the date of the event?

62.What happened?

63.Was he/she arrested?

64.What offense was he/she arrested for?

65.Is that what he/she went to court for?

66.I'm going to show you what has been marked as Exhibit _____. Do you recognize this document?

67. Is it a certified copy of the court file in Cause No. _____, styled The State of Texas v. _____?

[Move to admit Exhibit _____.]

68.Specifically referring to page ____ of this document, is that the judgment of the court convicting _____ of the offense of _____?

Amount and Duration

69.How much does your spouse earn?

70.How much will he/she being paying in child support?

71.How much do you earn from your present employment?

72.Do you have any other sources of income?

73.How much more do you need to meet your minimum reasonable needs?

74.How long will you need that amount?

75.Was your spouse at fault in the break-up of the marriage? How?

76.[Go over other applicable 8.057 factors.....]

77.How much are you asking the judge to award in maintenance?

78.How long are you asking that this amount continue?

79.Is this the least amount of money and duration necessary?

80.Are you asking that this be withdrawn automatically from his/her paycheck by wage withholding?

PASS THE WITNESS.

APPENDIX D