

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	
)	
ADOPTION OF THE ARIZONA)	Administrative Order
SPOUSAL MAINTENANCE)	No. 2023 - <u>119</u>
GUIDELINES)	(Replacing Administrative Order
)	No. 2022-119)
)	

The Legislature recently amended A.R.S. § 25-319 in Chapter 301, Laws 2022 (2nd Reg. Sess.), effective September 24, 2022, requiring that the Supreme Court establish guidelines for determining and awarding spousal maintenance. To that end, on July 20, 2022, this Court issued Administrative Order No. 2022-83 establishing the Spousal Maintenance Guidelines Subcommittee of the Family Court Improvement Committee (“Subcommittee”) to recommend statewide spousal maintenance guidelines. This Court also issued Administrative Order No. 2022-119 on September 22, 2022, to provide interim guidance to family court judges pending the Subcommittee’s recommendations and adoption of guidelines.

The Subcommittee’s recommendations for statewide spousal maintenance guidelines, having come before the Arizona Judicial Council on June 27, 2023, were approved and recommended for adoption.

Therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED that the attached statewide spousal maintenance guidelines (“Guidelines”) are adopted effective July 10, 2023, and shall be applicable as follows:

1. For dissolution and legal separation petitions with an original filing date on or after September 24, 2022, the Guidelines apply unless the parties stipulate otherwise.
2. For dissolution and legal separation petitions with an original filing date before September 24, 2022, the Guidelines do not apply unless the parties stipulate otherwise.
3. For post-decree petitions seeking modification of a spousal maintenance order:
 - a. The Guidelines apply if the original filing date of the dissolution or legal separation petition from which the spousal maintenance order originated is on or after September 24, 2022.

b. The Guidelines do not apply, unless the parties stipulate otherwise, if the original filing date of the dissolution or legal separation petition from which the spousal maintenance order originated is before September 24, 2022.

IT IS FURTHER ORDERED that for the time period of September 1, 2023 to August 31, 2024, the presiding judge of the superior court in each county shall report data needed to conduct an evaluation of the guidelines as determined by the Administrative Director, including the number of spousal maintenance orders issued, the number of deviations, and whether the deviations were upward or downward. The manner and frequency of reporting shall be determined by the Administrative Director.

IT IS FURTHER ORDERED that on or after October 1, 2024, the Family Court Improvement Committee shall undertake a review and make further recommendations regarding the Guidelines as necessary. The Family Court Improvement Committee shall report its findings and recommendations to the Arizona Judicial Council by March 31, 2025.

IT IS FURTHER ORDERED that on a quadrennial basis, the Family Court Improvement Committee shall undertake an economic data and case file review to ensure that the application of the Guidelines results in the determination of appropriate spousal maintenance amounts. The findings and recommendations of the first quadrennial review shall be reported by the Family Court Improvement Committee to the Arizona Judicial Council by March 31, 2029. The findings and recommendations of subsequent quadrennial reviews shall be reported by the Family Court Improvement Committee to the Arizona Judicial Council by March 31st every fourth year thereafter.

IT IS FURTHER ORDERED that this Order replaces Administrative Order No. 2022-119.

Dated this 3rd day of July, 2023.

FOR THE COURT:

ROBERT BRUTINEL
Chief Justice

ARIZONA SPOUSAL MAINTENANCE GUIDELINES

Table of Contents

SECTION I. GENERAL INFORMATION	2
A. EXECUTIVE SUMMARY.....	2
B. PURPOSES	3
C. EFFECTIVE DATE	3
D. APPLICATION.....	4
SECTION II. DETERMINING FAMILY SIZE.....	6
SECTION III. DETERMINING SPOUSAL MAINTENANCE INCOME.....	7
A. DETERMINING THE SPOUSES' ACTUAL INCOMES	7
B. DETERMINING THE SPOUSES' ATTRIBUTED INCOME	10
C. PROPERTY TO INCLUDE WHEN DETERMINING A SPOUSE'S ACTUAL INCOME AND FINANCIAL RESOURCES	12
SECTION IV. DETERMINING THE FAMILY'S AVERAGE MONTHLY MORTGAGE PRINCIPAL.....	13
SECTION V. DETERMINING THE DURATION OF THE AWARD.....	14
SECTION VI. DEVIATIONS IN CONTESTED SPOUSAL MAINTENANCE CASES....	19
SECTION VII. TEMPORARY ORDERS.....	22
SECTION VIII. MODIFICATIONS.....	23

SECTION I. GENERAL INFORMATION

A. EXECUTIVE SUMMARY

The legislature amended Arizona’s spousal maintenance statute, A.R.S. § 25-319, effective September 24, 2022, and directed the Supreme Court to establish Spousal Maintenance Guidelines. On June 30, 2023, the Supreme Court approved the Guidelines for determining the amount and duration of spousal maintenance awards in Arizona. The criteria for determining whether a spouse is eligible for spousal maintenance under A.R.S. § 25-319(A) did not substantively change. But under A.R.S. § 25-319(B), courts “may award spousal maintenance pursuant to the guidelines *only for a period of time and in an amount necessary to enable the receiving spouse to become self-sufficient.*” [Emphasis added.]

The Guidelines lead to an amount range from which the court determines the appropriate award. Yet if the court finds the amount resulting from applying the amount range is inappropriate or unjust, the court may deviate based on the factors in Section VI of the Guidelines. The Guidelines also establish duration ranges for the spousal maintenance award, but the statute does not authorize a deviation from the duration ranges.

The Spousal Maintenance Calculator uses data from the United States Bureau of Labor Statistics Consumer Expenditure Survey. The method applied to the data is a per capita method adopted by the United States Department of Agriculture Survey of Expenditures on Children by Families, adjusted for inflation. The Spousal Maintenance Calculator is based on expenditure and income data for persons with similar demographic and geographic characteristics.

The Consumer Expenditure Survey data tables report the number of people in a household (i.e., “consumer unit”) in five categories: one person; two people; three people; four people; five or more people. Households containing five or more people are aggregated into one category.

There are examples throughout the Guidelines using fictitious party names to help understand the Guidelines. If there is a discrepancy between the Guidelines’ examples and language, the Guidelines’ language controls.

These Guidelines differ from Arizona’s Child Support Guidelines. The court must apply the Spousal Maintenance Guidelines to award spousal maintenance. If the court is

considering spousal maintenance and child support, spousal maintenance must be determined first.

B. PURPOSES

1. To allow the requesting spouse to become self-sufficient.
2. To achieve consistency in awards for persons in similar circumstances.
3. To provide guidance in establishing spousal maintenance awards and to promote settlements.

C. EFFECTIVE DATE

The effective date of the amendments to A.R.S. § 25-319 was September 24, 2022.

1. Original Dissolution or Legal Separation Petition

For original dissolution or legal separation petitions filed **on or after** September 24, 2022, the Guidelines apply unless the parties agree otherwise. *See* Arizona Supreme Court Administrative Order [2022-119](#).

For original dissolution or legal separation petitions filed **before** September 24, 2022, the Guidelines do not apply unless the parties agree otherwise.

2. Modification Petitions

- a. For original dissolution of marriage or legal separation petitions filed **on or after** September 24, 2022.

The court must apply the Guidelines. When deciding a modification petition subject to the Guidelines, a party can establish a substantial and continuing change of circumstances by showing that applying the Guidelines would change an existing order.

- b. For original dissolution of marriage or legal separation petitions filed **before** September 24, 2022.

The Guidelines do not apply and cannot form the basis for finding changed circumstances under A.R.S. § 25-327. If a party otherwise establishes changed

circumstances, the court may, but need not, consult the Guidelines to determine the amount – but not the duration – of an award.

D. APPLICATION

Eligibility and Entitlement. Under Arizona law, there is a distinction between “eligibility” for spousal maintenance and “entitlement” to spousal maintenance. As explained below, a spouse may be eligible but not entitled to spousal maintenance.

Eligibility means that a party meets at least one of the factors under A.R.S. § 25-319(A). A requesting spouse cannot use a spousal maintenance calculator and the corresponding spousal maintenance range to prove eligibility under A.R.S. § 25-319(A). If a court determines that the requesting spouse is not eligible for spousal maintenance, there is no requirement to use the Spousal Maintenance Calculator. If a court determines that a party is eligible for spousal maintenance, the court must proceed with the spousal maintenance calculation under the Guidelines.

Entitlement means that after calculating the spousal maintenance amount under the Guidelines, and if the court determines that application of the Guidelines is just and appropriate, the court must award the party spousal maintenance. A.R.S. § 25-319(B). On the other hand, if the court determines that the amount of spousal maintenance is inappropriate or unjust under the Guidelines, the court may deviate under Section VI and award either an appropriate amount or nothing.

Application of the Guidelines creates an amount range for the spousal maintenance award consistent with each party’s ability to be self-sufficient during the duration of the award and to allow the receiving spouse to become self-sufficient during that time.

Using the Spousal Maintenance Calculator. To calculate the spousal maintenance award, use the Spousal Maintenance Calculator found on the Supreme Court’s website, <https://www.azcourts.gov/familylaw/Child-Support-Family-Law-Information/Spousal-Maintenance-Guidelines>. To calculate the amount range, input relevant data into the information fields on the worksheet.

Step 1: Determine Family Size

To determine the family size, use the criteria in Section II.

Step 2: Determine the parties’ combined Spousal Maintenance Income

Applying Section III of the Guidelines, first calculate each spouse's actual income. If a party's income is attributed, input that amount. The Spousal Maintenance Calculator automatically adds the actual and any attributed income for both spouses to determine the parties' combined Spousal Maintenance Income.

Step 3: Determine the Family's Average Monthly Mortgage Principal

Add the principal portion of the mortgage payment for all residences the family uses. *See* Section IV.

To determine the average monthly amount, the total principal paid for the 12 months before the action is filed is divided by 12. Do not include mortgage interest, taxes paid on the residence, or homeowner's insurance. Unlike the other numbers in the Calculator, this number is a monthly amount.

Step 4: Determine Expenditures

After Steps 1 through 3 are completed, the Spousal Maintenance Calculator automatically generates an amount range that includes expenditures for one adult and one-half of the family's indivisible housing expenditures, excluding the principal on all residential mortgages. The Spousal Maintenance Calculator combines these expenditures and the average monthly mortgage principal into a combined expenditure figure. The receiving spouse's share of the combined expenditures represents the receiving spouse's contribution toward the combined expenditures without a spousal maintenance award. The receiving spouse's share is calculated proportionately to that spouse's share of the combined Spousal Maintenance Income.

Step 5: Calculate the Amount Range

The amount range is the amount remaining after subtracting the receiving spouse's share of expenditures from the combined expenditures. After considering the statutory factors and facts in a particular case, the court can award an amount within the amount range. If the court determines the amount range is unjust, the court can deviate from the amount range, including an award of zero. *See* Section VI.

If the combined annual Spousal Maintenance Income is greater than 80% of state minimum wage and less than \$44,000, the calculator will produce a spousal maintenance range beginning with zero. If the court, in its discretion, elects to award spousal maintenance, the amount must be consistent with the paying spouse's ability

to pay. If the combined annual Spousal Maintenance Income is 80% of state minimum wage or less, the calculator will produce a spousal maintenance award of zero.

If there is a zero award, whether under the Spousal Maintenance Calculator or by deviation, the court need not determine a duration range under Section V. The final order must specify that neither party is entitled to spousal maintenance.

Step 6: Determine the Duration Range

To determine the appropriate duration range, the court must use the criteria in Section V. The court cannot deviate from the duration ranges under Section VI.

Step 7: Determine the Spousal Maintenance Award

The court must award spousal maintenance consistent with the amount and duration ranges that will enable the receiving spouse to become self-sufficient unless the court determines a deviation is appropriate. Unless the court deviates, the court need not make additional findings of fact and conclusions of law if the spousal maintenance award is within the amount range. A party, however, may request findings under Rule 82, Arizona Rules of Family Law Procedure, about the figures used in the Spousal Maintenance Calculator.

SECTION II. DETERMINING FAMILY SIZE

To determine the family size, include the parties and any child for whom at least one of the parties has a legal obligation to support and for whom that party is actually paying support. Unlike child support, if a parent does not actually pay child support and does not live with the child, that child is not included in the family size. A court order for support of the child is unnecessary.

Example 1: Pat and Marty are getting divorced. Pat has a child from another relationship. Pat is not that child's primary residential parent but pays child support. The parties must include the child in determining family size because Pat is legally obligated to support the child.

Example 2: Pat and Marty are getting divorced. Pat has a child from another relationship. Pat is the child's primary residential parent and receives child support. The parties include the child in determining family size because Pat is legally obligated to support the child.

Example 3: Pat and Marty are getting divorced. Pat has a child from another relationship. Pat neither has contact with the child nor pays child support. The parties do not include the child in determining family size.

Example 4: Pat and Marty are getting divorced. They have three adult children, ages 21 (Ben), 23 (Mary), and 25 (Gordon), living at home. Mary has special needs requiring continued support. The parties include Mary in determining family size because there is a legal obligation to support Mary. There is no legal obligation to support Ben or Gordon, so they are not included in the family size.

The Consumer Expenditure Survey data tables report the number of people in a household (i.e., “consumer unit”) in five categories: one person, two people, three people, four people, and five or more people. The maximum household size is five because the survey data aggregated families of five or more into one category.

SECTION III. DETERMINING SPOUSAL MAINTENANCE INCOME

A. DETERMINING THE SPOUSES’ ACTUAL INCOMES

1. What is included in Actual Income?

- a. The terms “Actual Income” and “Spousal Maintenance Income” do not have the same meaning as “Gross Income” or “Adjusted Gross Income” for tax purposes. “Actual Income” and “Spousal Maintenance Income” may differ from Child Support Income.
- b. Actual Income includes income from any source before any deductions or withholdings. Actual Income may consist of salaries, wages, commissions, bonuses, dividends, severance pay, military pay, pensions, interest, trust income, annuities, capital gains, social security benefits subject to statutory limitations, workers’ compensation benefits, unemployment insurance benefits, disability benefits, military disability benefits to the extent includable under the law, interest paid on equalization payments, recurring gifts, or prizes.
- c. Income may include monies received from retirement assets. Once the spouse reaches full retirement age as defined by 42 U.S.C. § 416(l), the court may

include an amount for income or distributions from the currently available retirement assets.

Example 1: Chris is 50 years old and has an IRA. The court shall not add income from the IRA until Chris reaches full retirement age as defined by 42 U.S.C. § 416(l).

Example 2: Chris has reached full retirement age and has an IRA but does not take distributions. The court may include an amount as income to Chris.

- d. The Guidelines annualize seasonal or fluctuating actual income. The court may average fluctuating income over periods exceeding one year.
- e. The court may consider whether non-continuing or non-recurring income is regarded as Actual Income.
- f. Actual Income from self-employment, rent, royalties, a business proprietorship, or a jointly owned partnership or a closely held corporation is calculated by taking total income received before any deductions or withholdings minus ordinary and necessary expenses required to produce the Actual Income. Ordinary and necessary expenses include one-half of the self-employment tax actually paid.
- g. Expense reimbursements or benefits a spouse receives during employment, self-employment, or business operation may be included as Actual Income if they are significant and reduce personal living expenses. Cash value may be assigned to in-kind or other non-cash personal employment benefits. The court may consider whether including these benefits as income would inflate the spouse's Actual Income resulting in an award based on income they do not actually have. In such cases, attributing income may not be appropriate. *Hetherington v. Hetherington*, 220 Ariz. 16, 23-24, ¶ 29 (App. 2008).
- h. Continuing or recurring military entitlements, including but not limited to Basic Allowance Housing (BAH) and Basic Allowance Subsistence (BAS), may be included as Actual Income. Military-provided housing may be an in-kind or other non-cash employment benefit.

- i. If a child not common to the parties is included in the family size in Section II, the court may include annualized child support actually received from a third party for that child as part of Actual Income.

Example: Pat and Marty are getting divorced. Pat has a child from the previous marriage. Pat receives child support from the child's other legal parent. In determining Pat's Actual Income, include the child support Pat receives.

2. What is not included in Actual Income?

- a. Sums a spouse receives from the other spouse in this case as child support for a common child under a court order.

Example 1: Pat and Marty were divorced, and Pat received a spousal maintenance award of \$1,000 a month for five years. Pat also received a child support award of \$200 a month for their child. Two years later, Pat petitioned to modify the spousal maintenance award. In applying the Guidelines to the modification petition, do not include Pat's \$200 child support as income. The child is included in the family size, but the \$200 child support award is not included in Actual Income.

Example 2: Pat files for divorce from Marty. While their divorce is pending, Marty pays Pat \$200 a month in temporary child support for their child. At the dissolution trial, do not include Pat's temporary child support of \$200 a month as Actual Income because, although the child is included in the family size, the temporary child support award is not included as Actual Income.

- b. For the paying spouse, federal disability benefits under 10 U.S.C. § 1413a or 38 U.S.C. chapter 11. *See* A.R.S. § 25-530.
- c. Reasonable spousal maintenance the payor spouse pays on existing court orders in another case.
- d. Marital property distributed between the spouses, except to the extent that such property generates income for a spouse.

3. When is overtime included in Actual Income?

The expenditure schedules in the Spousal Maintenance Calculator reflect the standard of living for the parties during the marriage. So unlike child support

income, a court should include overtime or extraordinary work regimen income regularly earned by the marital community.

B. DETERMINING THE SPOUSES' ATTRIBUTED INCOME

1. Attributed Income is not actually earned or received but is an assigned income based on a court finding that the amount attributed should be used to calculate combined Spousal Maintenance Income.
2. In deciding whether to attribute income, the court considers the following factors:
 - a. The receiving party's plan, efforts, and opportunity to achieve self-sufficiency;
 - b. Whether attributing income will interfere with the receiving party's ability to achieve self-sufficiency;
 - c. The party's assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record, other employment barriers, and record of seeking employment;
 - d. The local job market, the availability of employers willing to hire the party, the prevailing earnings level in the local community, and standards for the number of hours considered full-time based on a particular field of employment;
 - e. If the receiving party can find suitable employment in the marketplace at a greater income based on the party's current educational level, training and experience, and physical capacity; and
 - f. The reasons a party is unemployed or underemployed, whether voluntarily or involuntarily.
 - i. If involuntary, whether it is reasonable for that party to find replacement income above actual earnings.
 - ii. If voluntary with reasonable cause, whether the party's decision and its benefits outweigh the impact of the reduced income on the party's ability to become self-sufficient or pay spousal maintenance.
 - iii. If the party complaining of a voluntary reduction in income acquiesced to the other party's conduct and the reasons behind the acquiescence.

- iv. The timing of the action in question in relation to the entry of a decree or the execution of a written agreement between the parties.
 - v. If voluntary and without good cause, whether income attribution is appropriate.
3. If the court attributes income to calculate the combined Spousal Maintenance Income, the court must note the amount attributed in the worksheet.
4. As explained in Section III(C)(4), income from dissipated income-producing property may be attributed.
5. The court may decline to attribute income to either party. Examples of when it might be inappropriate to attribute income include, but are not limited to, the following:
 - a. A party is physically or mentally disabled.
 - b. A party is engaged in reasonable career or occupational training to establish basic skills or that is reasonably calculated to enhance earning capacity.
 - c. A party's presence in the home is required because of a natural or adopted child's unusual emotional or physical needs.
 - d. A party is the caretaker of a young child, and childcare costs are prohibitive.
 - e. A party is retired. There is a rebuttable presumption against income attribution if a person retires and has attained full retirement age under the Social Security Act. *See* 42 U.S.C. §416(l).
 - f. A party is incarcerated. The court does not usually attribute income to an incarcerated party but may consider that party's ability to pay.

Example: Pat and Marty divorced, and Pat received a \$ 2,000-a-month spousal maintenance award for five years. After two years, Marty is sentenced to prison and loses employment income. But Marty is still receiving proceeds from a family trust. Marty petitions to terminate the spousal maintenance obligation. The court may attribute income to Marty after considering that Marty's

criminal actions voluntarily created unemployment and that Marty still receives trust income.

C. PROPERTY TO INCLUDE WHEN DETERMINING A SPOUSE'S ACTUAL INCOME AND FINANCIAL RESOURCES

1. What is property?

- a. property includes all assets capable of generating income or reducing living expenses in their current or converted form. *See Deatherage v. Deatherage*, 140 Ariz. 317, 321 (App. 1984).
- b. For purposes of Actual Income and unless rebutted, the court must consider all property available to a party, including sole and separate property and assets.
- c. When considering the property's income potential, the court may attribute a four percent rate of return unless rebutted.
- d. The first \$100,000 of a party's property is not subject to a rate of return. Property subject to a rate of return include, but are not limited to, the following:
 - i. An asset that increases or decreases in value because of external market conditions and can generate a rate of return to the owner (e.g., stocks, bonds, real estate, and an interest in entities where the owner is not an active participant); and
 - ii. If available, vested or partially vested stock options and restricted stock units, deferred compensation, and similar employment benefits.

2. What is not included as property?

The court does not consider how marital property is distributed between the spouses except to the extent such property can produce income.

3. What is double counting of property?

Property should not be double counted. Examples of when double counting can occur:

- a. The community owns a 100 percent interest in a business. When the value of the business is established, the employee spouse's reasonable compensation is subtracted from the total business earnings to arrive at a present value. The spouse being bought out is awarded 50 percent of that value. Double counting occurs if the total business earnings are also used to calculate the employee spouse's income. However, if the employee spouse's reasonable compensation is not included in the value of the business, it is not double counting to consider the employee spouse's reasonable compensation when calculating the employee spouse's income. If the court finds that income is counted twice, the court may adjust the income downward.

The same concept applies when the community owns less than a 100 percent interest, or there is a community lien on a business that is one party's separate property.

- b. When there is a present value buyout of a defined benefit retirement plan, the employee spouse pays the non-employee spouse up front for their share of the future benefit. Double counting occurs if the non-employee spouse has already been paid for the future benefit up front, and that same future benefit is also used to calculate the employee spouse's income. If the court finds that the benefit is counted twice, the court may adjust the income downward.

4. How do the excessive or abnormal expenditures or dissipation of property affect what is included as property?

The court must consider "[e]xcessive or abnormal expenditures, destruction, concealment, or fraudulent disposition of community, joint tenancy and other property held in common." A.R.S. § 25-319(B)(11). This factor is sometimes referred to as marital waste.

If the spouse wasted an income-producing asset, the court may assign any reduction in that income to that spouse. The court may also consider marital waste as grounds for deviating under Section VI(C)(10).

SECTION IV. DETERMINING THE FAMILY'S AVERAGE MONTHLY MORTGAGE PRINCIPAL

The tables from the U.S. Bureau of Labor Statistics, Consumer Expenditure Survey do not include the principal payment of a mortgage because it considers mortgage principal

payments as an accumulation of equity and not an expense. As a result, the mortgage principal must be added separately. But the calculator accounts for other housing components, such as rent, interest, taxes, insurance, interest on a home equity line of credit, and other expenditures.

The mortgage principal for all residences the family uses should be included. The mortgage principal for investment properties should not be included.

To determine the average monthly amount of this expenditure, the total principal paid for the 12 months before the action is filed is divided by 12. Unlike the other numbers in this calculator, this number is a monthly amount.

SECTION V. DETERMINING THE DURATION OF THE AWARD

A. What is Arizona's policy regarding spousal maintenance duration?

Under A.R.S. § 25-319(B), as revised effective September 24, 2022, the spousal maintenance award is only for a time period and in an amount necessary to enable the receiving spouse to become self-sufficient. In that regard, the duration of the award is directly linked to how long it will take for the receiving spouse to achieve financial self-sufficiency. See *Rainwater v. Rainwater*, 177 Ariz. 500, 503 (1993); *Schroeder v. Schroeder*, 161 Ariz. 316, 321 (1989); *Thomas v Thomas*, 142 Ariz. 386, 392 (1984).

B. How is the duration of a spousal maintenance award determined?

1. Marriage Length

For spousal maintenance purposes, the marriage length is the number of months from the date of marriage to the date of service of process of the dissolution or legal separation petition. The time before the parties were legally married is specifically omitted from this calculation. Marriage length includes periods of physical separation without the initiation of dissolution or legal separation proceedings.

2. Duration Ranges

If a party is eligible for spousal maintenance under A.R.S. § 25-319(A) and is entitled to an award under A.R.S. § 25-319(B), the court must apply one of the following duration ranges for the spousal maintenance award:

a. Standard Duration Ranges

- i. For marriages less than 24 months, a duration range of 3 months up to 12 months of spousal maintenance;
- ii. For marriages of 24 months but less than 60 months, a duration range of 6 months up to 36 months of spousal maintenance;
- iii. For marriages of 60 months but less than 120 months, a duration range of 6 months up to 48 months of spousal maintenance;
- iv. For marriages of 120 months but less than 192 months, a duration range of 12 months up to 60 months; and
- v. For marriages of 192 months or more, a duration range of 12 months up to 96 months, subject to the Rule of 65.

Example: Lauren and Angel were married for 60 months and 1 day before the dissolution petition was served. If either party seeks spousal maintenance, the duration range in this case is between 6 and 48 months.

b. The Rule of 65

When the age of the party seeking spousal maintenance combined with the marriage length exceeds 65 (age + marriage length as of the date of service of process of the dissolution or legal separation petition), the duration range is within the court's discretion. This formula is known as the Rule of 65.

For the Rule of 65 to apply, three things must be true: (1) the party seeking the award is at least 42 years old, (2) the marriage length, as defined above, is at least 16 years (192 or more months), and (3) the age of the spouse seeking spousal maintenance plus the marriage length is equal to or greater than 65.

In qualifying cases, the duration of the award must be determined on a case-by-case basis. The public policy that underlies spousal maintenance applies, but the age of the party seeking the award combined with the length of marriage impacts a party's ability to achieve self-sufficiency with a good-faith effort within the stated duration range.

Example 1: Pat was 40 years old and had been married to Marty for 25 years when the dissolution petition was served. (40 + 25 = 65) Pat is requesting spousal maintenance. Does the Rule of 65 apply? No, the Rule of 65 does not apply because Pat does not meet the age requirement.

Example 2: Pat was 50 years old and had been married to Marty for 15 years when the dissolution petition was served. (50 + 15 = 65) Pat is requesting spousal maintenance. Does the Rule of 65 apply? No, although Pat meets the age requirement, the Rule of 65 does not apply because Pat and Marty's marriage does not meet the length requirement.

Example 3: Pat was 43 years old and had been married to Marty for 17 years when the dissolution petition was served. (43 + 17 = 60) Pat is requesting spousal maintenance. Does the Rule of 65 apply? No, Pat meets the age requirement, and Pat and Marty's marriage meets the length requirement; however, the Rule of 65 does not apply because the sum of the two numbers is not 65.

Example 4: Pat was 42 years old and had been married to Marty for 23 years when the dissolution petition was served. (42 + 23 = 65) Pat is requesting spousal maintenance. Does the Rule of 65 apply? Yes, the Rule of 65 applies because Pat meets the age requirement, the marriage meets the length requirement, and the sum of the two numbers is 65.

c. Disability of Receiving Spouse

i. Indefinite Disability

The court must set a fixed-term award under the Standard Duration Range when a disability exists but there is uncertainty about how long the disability may impact self-sufficiency. *See Huey v. Huey*, 253 Ariz. 560, 563, ¶ 8 (App. 2022). If the receiving spouse seeks to modify the duration of spousal maintenance, the receiving spouse bears the burden of proving the disability impacting the spouse's self-sufficiency continues to exist or is permanent. *Id.* at ¶ 11. The modification action must be filed before the original fixed-term spousal maintenance award expires.

ii. Permanent Disability

If the evidence shows that the party seeking spousal maintenance has a condition or a circumstance that prevents the party from ever achieving self-sufficiency, the duration of the award must be determined on a case-by-case basis after considering other financial resources.

d. Extraordinary Circumstances

When a spouse shows by clear and convincing evidence that extraordinary circumstances delay the receiving spouse from becoming self-sufficient, the court must determine the fixed-term duration range on a case-by-case basis. The court must make specific findings stating the extraordinary circumstances on which it relies.

Extraordinary circumstances include, but are not limited to:

- i. The requesting party is the custodian of a child whose age or condition is such that the parent should not be required or is unable to seek employment;
- ii. A catastrophic event or illness; and
- iii. All actual damages and judgments from conduct that resulted in criminal conviction of either spouse in which the other spouse or a child was the victim.

C. How is the award's specific duration determined once the court decides which duration range applies?

For determining the award's specific duration, the court must consider the relevant statutory factors under A.R.S. § 25-319(B), including, but not limited to, the following:

1. The standard of living established during the marriage;
2. The marriage length;
3. The age, employment history, earning ability, and physical and emotional condition of the spouse seeking maintenance;

4. The ability of the spouse from whom maintenance is sought to meet that spouse's needs while meeting those of the spouse seeking maintenance;
5. The spouses' comparative financial resources, including their comparative earning abilities in the labor market;
6. The contribution of the spouse seeking maintenance to the earning ability of the other spouse;
7. How much the spouse seeking maintenance has reduced that spouse's income or career opportunities for the other spouse's benefit;
8. The financial resources of the party seeking maintenance, including marital property apportioned to that spouse, and that spouse's ability to meet that spouse's own needs independently;
9. The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment and whether such education or training is readily available.

D. For duration purposes, what is the starting date for a spousal maintenance award?

Unless the court orders otherwise, the spousal maintenance award begins on the first day of the first month following entry of the decree of dissolution of marriage or legal separation. Unless the court orders otherwise, a temporary spousal maintenance award is not part of the final award duration. *See* Section VII.

For temporary orders, the starting date is the first day of the month following the service of the temporary orders motion. *See* Section VII.

E. Are "lifetime" awards permitted?

Under Arizona law, there are no "lifetime" awards. Historically, indefinite-term spousal maintenance awards were mischaracterized as "lifetime" awards. Under the Guidelines, the court must determine the duration range according to Section V. When the court enters a fixed-term award, the burden of proof for any modification action brought during the term of the award is on the receiving spouse to establish that there are substantial and continuing changed circumstances to extend the duration of the award. When the court enters an indefinite-term award, the burden of proof for any future modification action to terminate the award or shorten its duration is on the paying spouse

to show there are substantial and continuing changed circumstances to terminate the award or set a fixed date for its termination. The court should consider where the burden of proof for future modifications is appropriately assigned in determining whether to order a fixed-term versus indefinite-term award. If the burden of proof is more properly on the receiving spouse, the court must order a fixed-term award.

SECTION VI. DEVIATIONS IN CONTESTED SPOUSAL MAINTENANCE CASES

A. A deviation occurs when a court orders spousal maintenance in an amount outside the amount range. Without an agreement, the court must apply the duration ranges. But an agreement by the parties as to amount or duration is not a deviation.

B. The court must deviate if, after considering all relevant factors, including those outlined in A.R.S. § 25-319(B) and applicable caselaw, it makes written findings stating:

1. Why an amount within the amount range is inappropriate or unjust in the particular case;
2. What the amount range would have been without the deviation; and
3. What the order is with the deviation.

C. In considering whether to deviate from the amount range, the court must consider all relevant factors including, but not limited to the following:

1. The standard of living established during the marriage;
2. The marriage length;
3. The age, employment history, earning ability, and physical and emotional condition of the spouse seeking maintenance;
4. The ability of the spouse from whom maintenance is sought to meet that spouse's needs while meeting those of the spouse seeking maintenance;
5. The spouse's comparative financial resources, including their comparative earning abilities in the labor market.
6. The contribution of the spouse seeking maintenance to the earning ability of the other spouse;

7. How much the spouse seeking maintenance has reduced that spouse's income or career opportunities for the other spouse's benefit;
8. The ability of both parties after the dissolution or legal separation to contribute to the future educational costs of their mutual children;
9. The financial resources of the party seeking maintenance, including marital property apportioned to that spouse, and that spouse's ability to meet that spouse's own needs independently;
10. Excessive or abnormal expenditures, destruction, concealment, or fraudulent disposition of community, joint tenancy, and other property held in common;
11. The cost for the spouse seeking maintenance to obtain health insurance and the reduction in the cost of health insurance for the spouse from whom maintenance is sought if the spouse from whom maintenance is sought can convert family health insurance to employee health insurance after the marriage is dissolved;
12. All actual damages and judgments from conduct that led to the criminal conviction of either spouse in which the other spouse or a mutual child was the victim;
13. The payment or receipt of spousal maintenance would compromise the spouse's ability to receive and afford out-of-pocket necessary or extraordinary health care or mental health services;
14. One spouse is the custodian of a child whose age or condition is such that the custodian should not have to seek employment outside the home;
15. One or both spouses reside in a location with significant price variation from the other spouse such that a deviation is necessary for parity between the spouses; or
16. The tax rates for each spouse.

D. The court may consider that there are expenses not included in the Spousal Maintenance Calculator as grounds for deviating from the presumptive range. Still, the following expenses are already included in the Spousal Maintenance Calculator and should not be grounds for deviating absent evidence of extraordinary expenses:

1. Health, dental, and vision insurance, and medical services, supplies, and drugs;

2. Utilities, fuels, and public services (excludes cable and satellite);
3. Housing (including mortgage principal payments);
4. Food;
5. Apparel and services (excludes children's costs);
6. Transportation;
7. Reading materials;
8. Personal care products and services;
9. Life insurance and other personal insurance;
10. Entertainment;
11. Tobacco products and smoking supplies; and
12. Alcoholic beverages.

E. It is not a deviation to:

1. Award spousal maintenance in an amount that decreases gradually over time, otherwise known as a step-down award, if the amounts are within the amount range.
2. Round off the monthly spousal maintenance amount for ease of accounting.
3. Compromise on any individual figure incorporated in the Spousal Maintenance Calculator.
4. Adopt an agreement of the parties to an amount or a duration of spousal maintenance outside the amount or duration ranges in the Guidelines, if the court finds the following criteria are met:
 - a. The agreement is in writing or stated on the record under Rule 69, Arizona Rules of Family Law Procedure;

- b. All parties have entered the agreement free of duress and coercion; and
 - c. If the parties have entered into a written separation agreement under A.R.S. § 25-317 regarding spousal maintenance, and the court finds the agreement complies with A.R.S. § 25-317.
- 5. Adopt an agreement entered into during the pendency of the dissolution or legal separation petition when all parties have entered into the agreement with knowledge of the amount of spousal maintenance that would have been ordered under the Guidelines but for the agreement.
 - 6. Deny a spousal maintenance request if the combined annual Spousal Maintenance Income is less than \$44,000.

SECTION VII. TEMPORARY ORDERS

The policy underlying temporary orders is to maintain, if possible, the status quo while the case proceeds through the court. To that end, efficiency and expediency are the primary concerns.

To accomplish the twin goals of efficiency and expediency, the court must apply the Guidelines subject to these presumptions:

- A. Income will not be attributed to the receiving spouse if the receiving spouse has not been employed full-time by a bona fide employer for at least 24 months immediately before the petition was filed. A closely held business is not a bona fide employer if the receiving spouse did not work for the pay received.
- B. The amount range under the Guidelines applies.

The court must consider the allocation of expenses in making the temporary order because the Spousal Maintenance Calculator presumes the expenses are equally divided.

A temporary order does not prejudice the rights of the parties to be adjudicated at later hearings in the proceedings. The court can review and modify temporary orders when it resolves the case based on all the evidence rather than the more limited information that existed early in the case.

Unless the court orders otherwise, a temporary spousal maintenance award is not included in the final award duration period. *See* § V(D).

SECTION VIII. MODIFICATIONS

Modification petitions are governed by A.R.S. § 25-327 and the caselaw interpreting that section. *See e.g., Sheeley v Sheeley*, 10 Ariz. App. 318, 321 (1969) (A post-decree increase in the paying spouse's income, by itself, does not constitute a changed circumstance because the former spouse has no continuing right to share in the other spouse's post-decree increased earnings.).

A. What duration range applies when a party seeks to modify duration?

To extend the spousal maintenance award beyond the duration of the original award, the receiving spouse must show substantial and continuing changed circumstances after the entry of the initial spousal maintenance award. *See* A.R.S. § 25-327(A). When a substantial and continuing change in circumstances establishes that an extension of the award is appropriate, the modified term of the award may not exceed the maximum applicable Standard Duration Range unless a disability or extraordinary circumstance occurs after the award.

B. May the retirement of the party paying spousal maintenance during the term of the award constitute changed circumstances for modification purposes?

Yes. Under Arizona caselaw, the retirement of the paying party may constitute a change in circumstances for modification purposes. To establish amount or duration, it is inappropriate to consider what may occur in the future affecting employment and retirement. The correct approach is for the affected party to wait until the anticipated event occurs and then seek modification or termination of the award. *Chaney v Chaney*, 145 Ariz. 23, 26-27 (App. 1985).

C. If changed circumstances are found, what information is used in the Spousal Maintenance Calculator?

1. Family Size.

Use the same family size that applied at the dissolution or legal separation. The family size may be reduced if there is no longer a legal obligation to support a child who was included in the family size in the original spousal maintenance order.

Enter the lesser of:

- a. the family size that existed at the time of the entry of the spousal maintenance order subject to modification; or
- b. the family size that now would apply if an original spousal maintenance order were being determined.

Example 1: At the time of their divorce, Chris and Pat had two minor children common to the marriage, so the family size was 4. When Chris petitions to modify the support order, one of their children is now 22 years old. The family size is now 3.

Example 2: At the time of their divorce, Chris and Pat had two minor children common to the marriage, so the family size was 4. When Chris petitions to modify the support order, he has another child with his new wife. The family size remains four because Pat has no legal obligation to support the new child.

2. Mortgage Principal.

Do not include the mortgage principal in the modification calculation.

D. Do the Guidelines apply to modification petitions?

The effective date of the amendments to A.R.S. § 25-319 was September 24, 2022. As stated in Section I(C)(2), the Guidelines apply to modification petitions as follows:

1. For original dissolution of marriage or legal separation petitions filed **on or after** September 24, 2022.

The court must apply the Guidelines. When deciding a modification petition subject to the Guidelines, a party can establish a substantial and continuing change of circumstances by showing that applying the Guidelines would change an existing order.

2. For original dissolution of marriage or legal separation petitions filed **before** September 24, 2022.

The Guidelines do not apply and cannot form the basis for finding changed circumstances under A.R.S. § 25-327. If a party otherwise establishes changed

circumstances, the court may, but need not, consult the Guidelines to determine the amount – but not the duration – of an award.