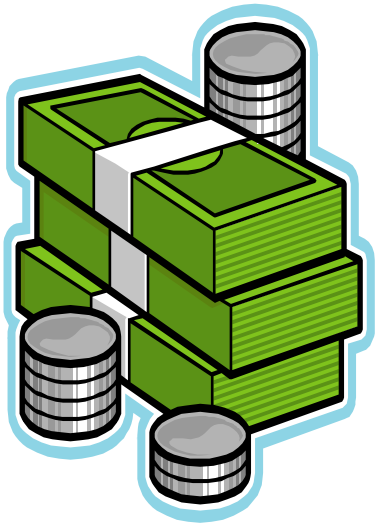




ASSISTING WITH SPOUSAL SUPPORT ISSUES



I. INITIAL NOTE

Throughout this manuscript, the information, issues, and considerations discussed will usually be applicable to both PSS and alimony claims, due to their inherent similarities. But for the most part, the focus will be on alimony claims.

II. COMPARING ALIMONY AND POSTSEPARATION SUPPORT

A. SIMILARITIES

Both postseparation support and alimony claims relate to the notion of spousal support (payment of monies by the supporting spouse to the dependent spouse). Not surprisingly, the starting point for both claims is the parties' incomes and expenses. But looking more closely at the statutory language for each claim as well as how each claim is customarily tried before, and decided by, the court, there are numerous distinctions worth pointing out, some very significant.

B. DIFFERENCES – GROUNDS/FACTORS IN DETAIL

In practice, postseparation support (PSS) is generally the less involved, condensed inquiry, often determined solely or mostly by affidavits and the pleadings in some counties. Even in counties where there are testimonial hearings, they are usually very limited (often no more than an hour for both sides to conduct everything), as there are multiple cases set for the same time. In short, the court looks at the *immediate needs* of the dependent spouse after separation and during the initial stages of litigation and looks at whether the supporting spouse has the *present* ability to pay spousal support without having to tap into assets or resources.

While the PSS and alimony statutes both include a list of factors, some of which are somewhat similar in language and purpose, the lists have notable differences, including how the court treats them. The factors listed under the PSS statute is relatively short, relates exclusively to the financial aspects of the parties, and appears to be an all inclusive, mandatory list:

In ordering postseparation support, the court shall base its award on the *financial needs of the parties*, considering:

- (1) the parties' accustomed standard of living;**
- (2) the present employment income and other recurring earnings of each party from any source;**
- (3) their income-earning abilities;**
- (4) the separate and marital debt service obligations;**
- (5) those expenses reasonably necessary to support each of the parties; and**

(6) each party's respective legal obligations to support any other persons.

N.C.G.S. §50-16.2A(b) (emphasis and numbered parentheses added).

The PSS statute also goes on to state that the judge *shall* consider any marital misconduct by the dependent spouse and accordingly, any marital misconduct by the supporting spouse, in deciding whether to award PSS and if so, the amount. N.C.G.S. §50-16.2A(d). When no marital misconduct applies, the court's ultimate determination, after weighing the aforementioned factors, is whether the dependent spouse has adequate resources to meet his or her reasonable needs *and* that the supporting spouse has the ability to pay. N.C.G.S. §50-16.2A(c). Because of the immediacy of a dependent spouse's financial needs in a PSS claim, while the list of factors certainly confer discretion to the court, in my experience, the inquiry still seems to be more financially-based and less discretionary than with alimony claims.

The alimony inquiry pertains to the *long-term* needs of the dependent spouse beyond the lawsuit and therefore the supporting spouse's *present and future* ability to pay and resources to meet these needs. As such, the alimony determination is a more in-depth analysis of the parties incomes, expenses, and numerous other factors and in fact, the alimony statute indicates that this is to be an equitable determination, thereby adding to the discretionary nature. Based on all these reasons, there is often a critical need for extensive discovery and/or fuller evidentiary hearings in order to best assess the issues relevant for an alimony claim.

The alimony statute includes some factors which do not even specifically relate to the finances and incomes of the parties. Also, each factor is only relevant and therefore to be considered by the court *if* evidence related to such factor is presented. Finally, there is a catch-all provision (“any other factor relating to the economic circumstances of the parties that the court finds to be just and proper”) which the PSS statute does not have, again adding further to the court's discretion, along with the explicit equitable charge mentioned above. The factors are as follows:

- (1) The marital misconduct of either of the spouses. Nothing herein shall prevent a court from considering incidents of post date-of-separation marital misconduct as corroborating evidence supporting other evidence that marital misconduct occurred during the marriage and prior to date of separation;**
- (2) The relative earnings and earning capacities of the spouses;**
- (3) The ages and the physical, mental, and emotional conditions of the spouses;**
- (4) The amount and sources of earned and unearned income of both spouses, including, but not limited to,**

earnings, dividends, and benefits such as medical, retirement, insurance, social security, or others;

(5) The duration of the marriage;

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

(7) The extent to which the earning power, expenses, or financial obligations of a spouse will be affected by reason of serving as the custodian of a minor child;

(8) The standard of living of the spouses established during the marriage;

(9) The relative education of the spouses and the time necessary to acquire sufficient education or training to enable the spouse seeking alimony to find employment to meet his or her reasonable economic needs;

(10) The relative assets and liabilities of the spouses and the relative debt service requirements of the spouses, including legal obligations of support;

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

(12) The contribution of a spouse as homemaker;

(13) The relative needs of the spouses;

(14) The federal, State, and local tax ramifications of the alimony award;

(15) Any other factor relating to the economic circumstances of the parties that the court finds to be just and proper; and

(16) The fact that income received by either party was previously considered by the court in determining the value of a marital or divisible asset in an equitable distribution of the parties' marital or divisible property.

N.C.G.S. §50-16.3A(b).

There is clearly an initial threshold which must be met when pursuing either a PSS or alimony claim (i.e. dependency). As discussed above, the PSS statute lists several factors that must be weighed before making its ultimate decision, but that it is still mostly a financial inquiry. And with respect to the alimony determination, there are even more factors and even more discretion. As such, there are no grounds to PSS or alimony in the sense of automatic entitlement to spousal support. The only exception is in an alimony claim, after dependency has been proven, if the supporting spouse is found to have engaged in uncondoned illicit sexual behavior prior to the date of separation and that the dependent spouse has not, then the court *shall* grant an alimony award. N.C.G.S. §50-16.3A(a).

III. PROVING DEPENDENCY – A closer look at the statute we all know

A. DEFINITION

A dependent spouse is “a spouse, whether husband or wife, who is [either] [1] *actually substantially dependent upon the other spouse for his or her maintenance and support* *or* is [2] *substantially in need of maintenance and support from the other spouse.*”

N.C.G.S. § 50-16.1A(2) (emphasis and numbered paragraphs added).

The numbered paragraphs and emphasis are added to the quote above to highlight the fact that one can prove dependency by either of two separate methods. But while the two methods are slightly different, as will be explained below, they share a common bond in that they both relate to the dependant spouse’s maintenance and support. It may seem obvious as to what “maintenance and support” means, but the North Carolina Supreme Court clarified that it means something more than “mere economic survival”; that it refers to the accustomed standard of living of the parties. *Williams v. Williams*, 299 N.C. 174, 181, 261 S.E.2d 849 (1980).

B. FIRST METHOD: “*actually substantially dependent*”

A dependent spouse is deemed to be “actually substantially dependent” if he or she is in fact unable to maintain, from his or her own means alone, the standard of living he or she was accustomed to during the final years prior to separation. Put different, the dependent spouse must prove that he or she actually and completely depends on the other spouse in order to maintain this accustomed standard of living. *See Talent v. Talent*, 76 N.C. App. 545, 548, 334 S.E.2d 256, 258 (1985), *superceded on other grounds* by N.C. Gen. Stat. § 50-16.3A(a); *Williams* at 180-1.

C. SECOND METHOD: “*substantially in need*”

In *Williams*, the court held that “substantially in need” refers to something less than “actually substantially dependent.” *Williams* at 180. The court held that to prove dependency under this second method, the dependent spouse need only show that he or she “would be unable to maintain his or her accustomed standard of living (established prior to separation) without financial *contribution* from the other.” *Id.* (emphasis added).

*Under either method, the court is to look at the parties’ “incomes and expenses measured by the standard of living of the family as a unit.” *Id.* at 183.

IV. DETERMINING INCOME

A major focal point of any alimony case is the parties' income and if appropriate, their earning capacities. N.C.G.S. §50-16A(b)(2) and (4). Problems usually arise with a self-employed spouse, where you are not dealing with your typical pay stub/W2 situation or when a spouse is trying to suppress his/her income by unemployment/underemployment. Issues of income usually pertain to the supporting spouse, but you can imagine the scenario where it is *dependent spouse* who is trying to minimize his/her income in order to create the illusion of dependency when in fact he or she is not. For ease of discussion, I will usually refer to the supporting spouse as the malfeasor in this context, but the information and arguments could apply to the dependent spouse as well.

Tax returns are a good place to start, but they do not always provide the whole picture and can be misleading if the person is underreporting or misreporting. Also, while an individual tax return will have attached schedules and will reference any business-related income, it is imperative to also review and scrutinize each separate tax return and attachments for any business which spouse in question has an ownership interest in so that you can verify whether the income/losses stated on the individual tax return is truly as high or low as indicated. It is good to look at three years of business tax returns in order to check for consistencies/discrepancies.

It is important to point out, though, that "although the amount of income reported for tax purposes is relevant evidence, this amount is not necessarily equivalent to annual gross income for alimony purposes." *Barham v Barham*, 127 N.C. App. 20, 487 S.E.2d 774 (1997). Further, the North Carolina Court of Appeals held that "there appears to be no good reason to employ a different definition of income for the purposes of a child support award than for an alimony award." *Glass v. Glass*, 131 N.C. App. 784, 788, 509 S.E.2d 236, 239 (1998). As such, it is helpful to look at the broad definition and meaning of income under The North Carolina Child Support Guidelines (as revised in October 2006):

Gross income is income before deductions for federal or state income taxes, Social Security or Medicare taxes, health insurance premiums, retirement contributions, or other amounts withheld from income.

(1) Gross Income. "Income" means a parent's actual gross income from any source, including but not limited to income from employment or self-employment (salaries, wages, commissions, bonuses, dividends, severance pay, etc.), ownership or operation of a business, partnership, or corporation, rental of property, retirement or pensions, interest, trusts, annuities, capital gains, social security benefits, workers compensation benefits, unemployment insurance benefits, disability pay and insurance benefits, gifts,

prizes and alimony or maintenance received from persons other than the parties to the instant action. When income is received on an irregular, non-recurring, or one-time basis, the court may average or pro-rate the income over a specified period of time or require an obligor to pay as child support a percentage of his or her non-recurring income that is equivalent to the percentage of his or her recurring income paid for child support.

(2) *Income from self-employment or operation of a business.* Gross income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, is defined as gross receipts minus ordinary and necessary expenses required for self-employment or business operation. Ordinary and necessary business expenses do not include amounts allowable by the Internal Revenue Service for the accelerated component of depreciation expenses, investment tax credits, or any other business expenses determined by the court to be inappropriate for determining gross income. In general, income and expenses from self-employment or operation of a business should be carefully reviewed to determine an appropriate level of gross income available to the parent to satisfy a child support obligation. In most cases, this amount will differ from a determination of business income for tax purposes. Expense reimbursements or in-kind payments (for example, use of a company car, free housing, or reimbursed meals) received by a parent in the course of employment, self-employment, or operation of a business are counted as income if they are significant and reduce personal living expenses.

V. IMPUTING INCOME

This issue comes about when one spouse alleges that the other spouse has intentionally decreased or ceased his or her income recently such that said income at the time of the alimony trial does not reflect this spouse's full earning capacity. But you must prove more than the mere fact that the other spouse is underemployed or unemployed before the court will consider a spouse's earning capacity, or imputing income. You must also prove *bad faith*; that the circumstances/decisions related to the underemployment or unemployment were a result of the other spouse's "deliberate disregard of his or her marital obligations" to provide reasonable support, including self support. Bad faith can be found when the spouse in question fails to diligently seek new,

gainful employment after quitting, or being terminated from, previous employment, especially if a similar or better position is available. Bad faith has also been found when the spouse has engaged in reckless behavior or acts at work which ultimately led to his or her termination. Again, while imputing income is most often an argument raised by the dependent spouse, it can be raised by the supporting spouse as well.

Once you have met the burden of proving why income should in fact be imputed, the next question becomes *how* exactly is that done? The court looks at the spouse's earning capacity (e.g. what he or she *could* be earning, even though he or she currently is not). This is usually demonstrated by that person's most recent work history, job qualifications, and prevailing job opportunities and salaries in the area. If there is no adequate or complete recent work history, the court will still look at the other aforementioned factors and usually impute an amount equal to at least a forty-hour work week at minimum wage. *But see McKeyer v. McKeyer*, 179 N.C. App. 132, 632 S.E.2d 828 (2006), (Tyson, J., concurring, *disc. rev. denied*, 361 N.C. 356, 646 S.E.2d 115 (2007) (affirming trial court's decision to impute income based on bad faith, but remanding for additional findings on determining the amount, holding that a mere finding that defendant worked minimal hours but could probably work more, absent any findings that his employer would permit additional hours or the availability of other full-time jobs). It may be a good idea to have a vocational expert for this often complicated inquiry, although that could be an expense the parties are not willing or able to front.

VI. OTHER SOURCES OF INCOME/REDUCTION IN EXPENSES

A. EMPLOYEE BENEFITS

Some spouses have employee benefits or perks, such as reimbursed business travel expenses, life/health insurance premiums, housing expenses, automobile expenses, etc., such that the actual stated income on the W2s and pay stubs may not be telling the whole story. As a result, the spouse's monthly expenses are reduced, which in turn increases the disposable income. If this is the supporting spouse, then the argument would be that there is a reduction of expenses and therefore an increased ability to pay spousal support. If this is the dependent spouse, then the argument would be that there is less or no dependency. I actually had a case recently where the supporting spouse, a co-owner of a very small business, was allowed to have numerous personal monthly expenses run through the company expense account (such as car payments, utility bills, telephone bills, even grocery bills!). Therefore, while he presented proper documentation confirming the amounts of several monthly expenses and bills, he was not the one paying them such that the income disparity between the parties was higher than he was trying to argue.

B. UNREPORTED CASH/HIDDEN INCOME – How to prove

The testimony of a credible [dependent] spouse is a good start, but certainly not enough for obvious reasons. Therefore, prior to any hearing or trial, you will want to obtain all the relevant documents and spend time carefully reviewing them. With respect

to bank statements and similar records, you will want to look for cash flows in excess of reported income and sudden large payoffs of mortgages, loans, other liabilities. Another good source is loan and credit card applications, as they may list figures different than that spouse's reported or stated income. In one of my cases where I represented the dependent spouse, the supporting spouse in his own discovery responses, produced a life insurance application where he listed his income and net worth as much higher than he had been contending since the beginning of the case.

VII. REASONABLE EXPENSES AND STANDARD OF LIVING

Another major focal point of any alimony case (aside from the parties' income and earnings, as detailed above) is the spouses' accustomed standard of living during the final years prior to separation and accordingly, their relative needs and reasonable expenses to maintain said standard of living. N.C.G.S. §50-16A(b)(8) and (13). As discussed at the beginning of this manuscript, this standard of living inquiry helps establish the initial requirement of dependency. If the dependent spouse's income meets his or her expenses, he or she is presumed not to be dependent. For purposes of a PSS claim, this could potentially lead to a dismissal or decreased award, but the dependent spouse could argue that he or she will not be able to maintain this financial balance much longer and/or that it has been possible only as a result of living in dire straits or greatly depleting his or her estate. For purposes of an alimony claim, the dependent spouse could make the same arguments as well as argue that alimony is not only for present financial needs but future financial needs and is an equitable decision after weighing numerous factors.

But one thing is for sure – the same income that was supporting *one* household can only be stretched so much to now cover the expenses of *two* households. Therefore, reasonableness and common sense must be used when arguing what a spouse should be entitled to after separation compared to what he or she was used to prior to separation. The court is not required to accept the stated expenses on a Financial Affidavit and/or via live testimony at face value. Rather, the court has discretion in determining what expenses will be deemed reasonable and therefore what the true, reasonable needs of the parties are.

VIII. SUPPORTING SPOUSE'S ABILITY TO PAY – Cannot be overlooked!

Regardless of how dependent the other spouse is, there must be a showing that the supporting spouse has an *ability to pay*, which is generally recognized as the difference between the supporting spouse's net income and reasonable expenses. As such, a judge may determine that a spouse is dependent but nevertheless rule that it cannot order the supporting spouse to pay the amount of alimony needed because the supporting spouse is simply incapable of providing that total amount of support for any number of reasons. *Williams v. Williams*, 299 N.C. 174, 186, 261 S.E.2d 849, 858 (1980). Further, "a spouse cannot be reduced to poverty in order to comply with an alimony decree." *Quick v. Quick*, 305 N.C. 446, 457, 290 S.E.2d 653, 661 (citing *Beall v. Beall*, 290 N.C. 669, 679, 228 S.E.2d 407, 413 (1976)). Of course, that does not really end the inquiry either; if a

supporting spouse is claiming he or she does not have the ability to pay, the argument then becomes that there may be some improper or suspicious reasons for such circumstances such that there is in fact an ability to pay.

A recent Court of Appeals case has most likely caught the attention of many supporting spouses out there. In *Swain v. Swain*, 179 N.C. App. 795, 635 S.E.2d 504 (2006) (*disc. rev. denied*, 361 S.E.2d 897 (2007)), the court issued an alimony award in the amount of \$3,600.00 per month, which would require the supporting spouse to consistently liquidate his assets and therefore gradually deplete his estate, in order to comply with the order. The rationales for the ruling were that 1) the supporting spouses' estate was worth \$449,000 (three times as much as the dependent spouse's estate); 2) the depletion of the supporting spouse's estate would by no means leave him impoverished and would take close to 12 years; and 3) the dependent spouse would also be required to deplete some of her estate in order to meet the rest of her expenses not covered by the alimony payments. The court therefore found the award to be equitable to both parties.

IX. DOCUMENTS, DOCUMENTS, DOCUMENTS!

A. USUAL DOCUMENTS RELEVANT TO ALIMONY CLAIMS

1. Pay stubs or other evidence of wage income (several months)
2. About three years of income tax returns (personal and business), including all schedules and attachments
3. Relevant documentation regarding debts and liabilities (e.g. statements for credit cards, mortgages, equity lines, school loans, car loans, other promissory notes, etc.)
4. Business credit card statements, if relevant
5. Documentation regarding monthly expenses not already listed above
6. Recent bank statements for all types of accounts and associated receipt books and bank ledgers
7. Recent statements for retirement, pension, stocks, stock options, mutual funds, bonds, dividends, etc.
8. Employee benefit statements
9. Profit and Loss Statements and Financial Statements for businesses

****For any documents that are to be filed with the court (e.g. because they are attached to a Financial Affidavit), remember to go through the documents very carefully to redact any confidential information, such as SSN, phone numbers, email address, etc.***

B. MANDATORY AND VOLUNTARY DISCLOSURES

Some counties have mandatory disclosure requirements of documents and information such as those listed above to assist the parties in getting to the heart of the matter sooner rather than later. This often cuts down on the contentiousness and elevated

attorney's fees associated with formal discovery requests, depositions, subpoenas, etc., but not always. Even if there are no mandatory disclosures in your county, prior to serving a formal discovery request, counsel for both parties may consider engaging in voluntary disclosures of such documents and information for the same reasons.

C. DISCOVERY REQUESTS, SUBPOENAS

If there are no mandatory disclosure requirements and the parties have not agreed to voluntary disclosures, then you may need to do a formal discovery request (usually Request for Interrogatories, Request for Production of Documents, and/or Request for Admissions). This can delay things a bit, since the other side can always get an automatic 30-day extension. But note that when you are representing the plaintiff, you can serve discovery requests along with the initial complaint and summons for expedited discovery responses. The defendant has 45 days from the date of service to respond to said discovery and can still get an automatic 30-day extension, but by serving the discovery requests right from the beginning, you are at least speeding things up a bit. You can also subpoena documents from a third party, requiring production at a deposition or directly do your office.

D. FINANCIAL AFFIDAVITS – The biggie!

Most counties have a particular local form, but if not, you can usually just use another county's form and change the caption at the top. What is important is that the form is a complete and detailed accounting of a party's gross income, deductions, net income, itemized expenses, and monthly debt payments.

Review the affidavit carefully before submitting to the opposing side and especially before filing with the court. You will want to not only make sure the calculations are correct and but also that your client has not inflated or underreported anything, as that will only hurt you and your client if pointed out later in court. Tell the client to be prepared to back up any expense listed with specific documentation (e.g. utility bills, credit card statements, invoices, etc.). I had a case one time where I was representing the supporting spouse and the dependent spouse listed in her Financial Affidavit that she spent upwards of \$600 a month in clothing, hair, and nails! When I challenged the other side and asked them to produce receipts, credit card statements, and any anything else documenting these exorbitant figures, she could only prove that she spent about \$375 a month. I actually still argued that was fairly high for such expenses. But the point is that the other side clearly had not reviewed his client's Financial Affidavit before submitting it to me. If he had, he would have hopefully prescreened and questioned some of his client's high figures and found out prior to the hearing that some of those figures could not be supported and should therefore be reduced. It can also look suspicious or otherwise detract from your client's credibility if you have to file an amended Financial Affidavit, so try your best efforts to get it right the first time.

Also, if you have a client who is not financially savvy and/or is not too computer literate, chances are he or she is relying on you to prepare, review, decipher, and calculate

all the numbers on the Financial Affidavit (based on the information and documents you are provided, of course). There is nothing wrong with that if that is the case, but make sure the client is familiar with how the figures were calculated and the overall flow of the document and location of key items and sections for testimonial purposes.

X. ATTORNEY'S FEES

A. ENTITLEMENT

At any time that a dependent spouse would be entitled to alimony pursuant to G.S. 50-16.3A, or postseparation support pursuant to G.S. 50-16.2A, the court *may*, upon application of such spouse, enter an order for *reasonable counsel fees* for the benefit of such spouse, to be paid and secured by the supporting spouse in the same manner as alimony.

N.C.G.S §50-16.4 (emphasis added).

B. ADVISING THE DEPENDENT SPOUSE

Just like the underling PSS and alimony determination, an attorney's fees award for the same is discretionary. While the statute allows a dependent spouse who has prevailed in a PSS or alimony claim to *seek* attorney's fees, the statute leaves the court with discretion as to whether to even grant such request and if so, in what amount. I have seen awards as low as zero, to 50%, to some random number the judge believes is reasonable after looking at numerous factors, namely the financial status of the parties and the amount of PSS or alimony just awarded. Also, since supporting spouses are only required to pay attorney's fees if the matter is decided by court and many cases end up in settlement where the supporting spouse will most likely not agree to a provision that he pay any portion of the dependent spouse's attorney's fees, the dependent spouse will often be faced with paying his or her entire legal bill.

Therefore, it is not wise to advise dependent spouse clients that all or even most of their legal bill will be paid for by the supporting spouse and it is certainly not in the attorney's best interest not to collect any or enough up front monies in the hopes that he or she will just get paid later through an award of attorney's fees. Instead, an attorney fee award should be treated more as a potential reimbursement after-the-fact, such that the client needs to pay the required initial retainers to get the case started and maintained.

C. ADVISING THE SUPPORTING SPOUSE

Because the potential of an attorney fee award is always there, when representing the supporting spouse, it is important to take the necessary steps to reduce attorney's fees wherever possible (e.g. advising your client to make voluntary PSS payments and child support payments if applicable to hopefully avoid the need for hearings on the same;

advising your client to transfer income-producing assets to the dependent spouse; and striving for out-of-court settlement).

D. ATTORNEY FEE AFFIDAVIT

An Attorney Fee Affidavit is required in order to support the claim for attorney's fees. The affidavit should include the standard language detailing how long the attorney has been practice, the hourly rate, that said hourly rate is reasonable and comparable, how the firm bills his or her time, the total amount of attorney's fees being sought, and any third-party expenses being sought to be reimbursed. In addition, you should attach to the affidavit all detailed invoices itemizing the time spent by the attorney on the file pertaining to the PSS or alimony claim (depending on which hearing you are submitting the affidavit for). The procedure in most counties is to make sure the claim for attorney's fees has been properly pled and noticed before the court to be heard at the time of the PSS/alimony hearing and then to submit the affidavit to the court at the hearing or preferably shortly after the hearing (so as to include all the time spent at the hearing and any associated travel time).

XI. CONCLUSION OF ALIMONY MATTER

A. COURT ORDERS

As with most orders, the prevailing party in an alimony trial will usually offer, or be called upon by the court, to draft the alimony order. Regardless of whether your side is drafting the order, or you are on the side that will be reviewing/revising a draft presented to you, it will be critical that you take excellent notes during the trial regarding key testimony, exhibits, arguments, etc. so as to ensure that the order properly reflects the facts presented and most importantly, the complete ruling handed down by the judge. Depending on how you and your supervising attorney handle trials, it may be you in particular who is being relied upon for these detailed, concise notes. Most counties will have the proceedings somehow recorded, but it would involve additional fees and time to get that transcribed or otherwise reproduced. Therefore, in the interest of time and money, you will want to be able to refer to such notes when preparing and reviewing the order.

N.C.G.S. §50-16.3A(c) states that "the court shall set forth the reasons for its award or denial of alimony and, if making an award, the reasons for its amount, duration, and manner of payment . . . [and] the court shall make a specific finding of fact on each of the factors in subsection (b) of this section if evidence is offered on that factor." It would seem obvious that all key facts, conclusions, and orders of the court should be included in an order, but certain language and provisions can be inadvertently omitted for one reason or another, which may cause enforcement issues in the future or potential for reversible error if the matter is ever appealed.

Some key things to make sure are included in the order:

1. That one spouse has been found to be a dependent spouse and specifically, whether the dependency was determined by “actual dependence” or “substantially in need of maintenance and support” (as discussed in the beginning of this manuscript).
2. That the other spouse is a supporting spouse.
3. Detail the applicable standard of living during the final years prior to separation.
4. Besides just reciting the parties’ incomes, provide the details as to whether these are gross or net figures and how the amount was calculated (especially important in self-employed, business income, or imputed income cases). Also, be wary of using vague terms such as “in excess of X dollars”, as that could mean a couple hundred dollars, a couple thousand, or something much larger.
5. Indicate the method and duration of the alimony payments.
6. Indicate the terminating events of the alimony payments.
7. If there was a recent ED order or agreement, do not just reference it by its existence and date. Rather, list the relevant provisions of the ED order or agreement which were considered and weighed by the judge in the alimony trial, if any.
8. If evidence is offered for a particular factor listed in N.C.G.S. §50-16.3A(b), then that needs to be referenced in the findings of fact and what weight the court gave to said factor.

B. CONSENT ORDERS

C. SEPARATION AGREEMENTS