



MYMODERNLAW.COM

Arizona Spousal Maintenance Guidelines 2023



MODERN LAW
DIVORCE AND FAMILY LAW
SERVING ARIZONA

ARIZONA SPOUSAL MAINTENANCE GUIDELINES

Table of Contents

SECTION I. GENERAL INFORMATION	2
A. EXECUTIVE SUMMARY.....	2
B. PURPOSES	2
C. EFFECTIVE DATE	3
D. APPLICATION.....	3
SECTION II. DETERMINING FAMILY SIZE.....	6
SECTION III. DETERMINING SPOUSAL MAINTENANCE INCOME.....	6
A. DETERMINING THE SPOUSES' ACTUAL INCOMES TO CALCULATE SPOUSAL MAINTENANCE INCOME.....	6
B. PROPERTY AND ASSETS TO INCLUDE WHEN DETERMINING A SPOUSE'S ACTUAL INCOME AND FINANCIAL RESOURCES	11
SECTION IV. DETERMINING THE FAMILY'S AVERAGE MONTHLY MORTGAGE PRINCIPAL.....	13
SECTION V. DETERMINING THE DURATION OF THE AWARD.....	13
SECTION VI. DEVIATIONS IN CONTESTED SPOUSAL MAINTENANCE CASES....	18
SECTION VII. TEMPORARY ORDERS.....	21
SECTION VIII. MODIFICATIONS.....	22

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 [date], the Supreme Court approved these 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 a preliminary target range from which the court determines the appropriate award. Yet if the court finds the amount resulting from applying the preliminary target range is inappropriate or unjust, the court may deviate based on the factors in Section VI of the Guidelines. The Guidelines also establish a duration range for the spousal maintenance award, but the statute does not authorize a deviation from the duration ranges.

The Preliminary Target Range 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.

There are examples throughout these Guidelines using fictitious party names to help understand the Guidelines.

These Guidelines do not comport with Arizona’s Child Support Guidelines. To the extent the child support guidelines differ, the court must apply the spousal maintenance guidelines.

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 statute 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 Petition

For modification petitions relating to a dissolution or legal separation action 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.

For modification petitions relating to a dissolution or legal separation action 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). If a court determines that the requesting spouse is not eligible for spousal maintenance, there is no requirement to use the Preliminary Target Range Calculator. If a court

determines that a party is eligible for spousal maintenance, the court must calculate spousal maintenance under the Guidelines.

Entitlement means that after calculating spousal maintenance under the Guidelines, the court, in its discretion, determines that the party should receive spousal maintenance under A.R.S. § 25-319(B). 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 these Guidelines creates a preliminary target 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 Preliminary Target Range Calculator. Calculating the spousal maintenance award is done using the Preliminary Target Range Calculator found on the Supreme Court's website. [\[URL TBD\]](#) To calculate the preliminary target range, the user inputs 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 Preliminary Target Range 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 the primary marital residence. See Section IV.

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

Step 4: Determine Expenditures

After Steps 1 through 3 are completed, the Preliminary Target Range Calculator automatically generates a preliminary target range that includes expenditures for one adult and one-half of the family's indivisible housing expenditures, excluding the principal on the primary residential mortgage. The Preliminary Target Range Calculator combines these expenditures and the average monthly mortgage principal into a combined expenditure figure. The receiving spouse's share of the combined expenditures is calculated proportionately to that spouse's share of the combined Spousal Maintenance Income. The Preliminary Target Range Calculator is based on expenditure and income data for persons with similar demographic and geographic characteristics.

Step 5: Calculate the Preliminary Target Range

The preliminary target 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 preliminary target range. The court can deviate from the preliminary target range under Section VI.

Step 6: Determine the Duration Range

To determine the duration range, use the criteria in Section V. The court cannot deviate from the duration range 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. Absent a deviation, the court is not required to make additional findings of fact and conclusions of law if the spousal maintenance award is within the preliminary target range calculation. A party, however, may request findings under Rule 82, Arizona Rules of Family Law Procedure, regarding the figures used in the Preliminary Target Range 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. A court order for support of the child is unnecessary.

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 has a legal obligation to support the child.

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 has a legal obligation to support the child.

Pat and Marty are getting divorced. Pat has a child from another relationship. Pat does not have contact with the child and does not pay child support. The parties do not include the child in determining family size.

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 family size.

SECTION III. DETERMINING SPOUSAL MAINTENANCE INCOME

A. DETERMINING THE SPOUSES' ACTUAL INCOMES TO CALCULATE SPOUSAL MAINTENANCE INCOME

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 include 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, recurring gifts, or prizes.
- c. Seasonal or fluctuating Actual Income within a year is annualized. The court also has the discretion to average fluctuating income over periods exceeding one year.
- d. The court has the discretion to consider whether non-continuing or non-recurring income is considered Actual Income.
- e. 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.
- f. 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 these benefits and should also consider whether including them as income would inflate the spouse's Actual Income resulting in an award based on income they do not actually have. In such cases, a deviation may be appropriate. *Hetherington v. Hetherington*, 220 Ariz. 16, 23-24, ¶ 29 (App. 2008).
- g. 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.
- h. If a child not common to the parties is included in the family size in Section II, the annualized child support actually received for that child is included as part of Actual Income.

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. Actual Income does not include the following:

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

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 the \$200 child support as income to Pat. The child is included in the family size, but the \$200 child support award is not included in Actual Income.

Pat files for dissolution. While the divorce is pending, Pat receives \$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.

- ii. 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.
- iii. Reasonable spousal maintenance the payor spouse pays on existing court orders in another case.

b. 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 spousal maintenance expenditure schedules 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.

4. When to Attribute Income

- a. 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.
- b. In deciding whether to attribute income, the factors the court considers include the following:
 - i. The receiving party's plan, efforts, and opportunity to achieve self-sufficiency;
 - ii. Whether the expectation of employment of the receiving party will interfere with achieving the plan to become self-sufficient;
 - iii. 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;
 - iv. 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;
 - v. 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
 - vi. The reasons a party is unemployed or underemployed, whether voluntarily or involuntarily.
 - a) If involuntary, whether it is reasonable for that party to find replacement income above actual earnings.
 - b) 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.

- c) If the party complaining of a voluntary reduction in income acquiesced in the other party's conduct and the reasons behind the acquiescence.
 - d) 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.
 - e) If voluntary and without good cause, whether income attribution is appropriate.
- c. If the court attributes income to calculate the combined Spousal Maintenance Income, the court must note the amount attributed in the worksheet.
 - d. As explained in Section III(B)(5), income from dissipated income-producing property may be attributed.
- 5. When is income not attributed in calculating combined Spousal Maintenance Income?**

The court may decline to attribute income to either party. Examples of cases in which 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 unusual emotional or physical needs of a natural or adopted child.
- 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 a person who is incarcerated, but the court may establish or modify spousal maintenance based on the ability to pay.

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.

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

1. What are property and assets?

- a. Property includes all assets that are capable of providing, in their current or converted form, for the reasonable needs of the spouse seeking maintenance. *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 and assets available to a party, including sole and separate property and assets.
- c. In considering the income potential of property and assets and unless rebutted, the court must attribute a rate of return of four percent.
- d. The first \$100,000 of a party's assets are not subject to a rate of return. Assets subject to a rate of return include, but are not limited to, the following:
 - i. A passive 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, and real estate, and an interest in entities where the owner is not an active participant);
 - ii. An active asset that a party actively works regularly, leading to the asset's growth or appreciation (e.g., a business or professional practice);
 - iii. An asset, such as a business, that is not divided in the dissolution and for which the Actual Income is determined by the income or distributions available to the asset owner;

- iv. Income or distributions from retirement assets, but for retirement assets not currently received or available, the court must include an amount for income or distributions as of the spouse's full retirement age as defined by 42 U.S.C. §416(l);
- v. Income or distributions from trusts and annuities available to the beneficiary or to be received within a reasonable time;
- vi. Interest paid on any property equalizing payments; and
- vii. 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 or an asset?

The court does not consider how marital property is distributed between the spouses except to the extent such property generates Actual Income for a spouse.

3. What is double counting of property and assets?

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

- a. The community owns a 100 percent interest in a business. Where the value of that business is established using the income approach, 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 preliminary target range. However, because 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 preliminary target range. 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; and

- 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 preliminary target range. 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 and assets?

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 attribute any reduction in that income to the 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 accumulation of equity in certain assets, such as the principal payment of a mortgage. Other components of a housing payment, such as interest, taxes, insurance, interest on a Home Equity Line of Credit and other expenditures are accounted for in the calculator. The mortgage principal for all residences used by the family 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 right before the action is filed is divided by 12. Unlike the other numbers in this calculation, 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. This policy has also been expressed in caselaw. The award's purpose and its duration are aimed at a party achieving financial independence through diligent efforts in procuring training and skills necessary to become self-sustaining. 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 duration range for the spousal maintenance award is:

- a. For marriages less than 24 months, a duration range of up to 12 months of spousal maintenance;
- b. For marriages of 24 months but less than 60 months, a duration range of up to 36 months of spousal maintenance;
- c. For marriages of 60 months but less than 120 months, a duration range of up to 48 months of spousal maintenance;
- d. For marriages of 120 months but less than 192 months, a duration range of up to 60 months; and
- e. For marriages of 192 months or more a duration range of up to 96 months, subject to the Rule of 65.

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 up to 48 months.

f. The Rule of 65.

When the age of the party seeking an award of 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 the cases that qualify, 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.

g. Disability of Receiving Spouse

i. Indefinite Disability

The court must set a fixed-term award under the duration range in a case in which 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). The burden of proof is placed on the receiving spouse to file a modification petition showing that 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.

C. How is the specific duration of the award determined from the defined duration ranges?

For determining the specific duration of the award within the applicable range in section V(B)(2), 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. Any temporary spousal maintenance award is not part of the final award duration unless ordered by the court. *See* Rule 47(j)(1).

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

E. "Lifetime" awards not permitted.

Historically, indefinite spousal maintenance awards were mischaracterized as "lifetime" awards. Under Arizona law, there are no 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 versus indefinite 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 preliminary target 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 preliminary target range is inappropriate or unjust in the particular case;
2. What the preliminary target range would have been without the deviation; and
3. What the order is with the deviation.

C. In considering whether to deviate from the preliminary target 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 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 Preliminary Target Range Calculator as grounds for deviating from the presumptive range. Still, the following expenses are already included in the Preliminary Target Range 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 (excludes mortgage principal);
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 preliminary target range.
2. Round off the monthly spousal maintenance amount for ease of accounting.
3. Compromise on any individual figure incorporated in the preliminary target range calculation.
4. Adopt an agreement of the parties to an amount or a duration of spousal maintenance outside the preliminary target range or the duration range determined under these 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.

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 preliminary target range under the Guidelines applies.

The court must consider the allocation of expenses in making the temporary order, because the Preliminary Target Range Calculator presumes the expenses are equally divided.

A temporary order does not prejudice the rights of the parties that are to be adjudicated at subsequent 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

SECTION VIII. MODIFICATIONS

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 award of spousal maintenance. *See* A.R.S. § 25-327(A). Except for cases involving indefinite or permanent disability, 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 duration range.

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. For purposes of establishing 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).