

DIVORCE AND ATTENDANT ISSUES

_____ v. _____

Docket No. _____ Date of Trial _____

Wife's Attorney _____ Husband's Attorney _____

Procedural Posture:

This case came on to be heard upon the original bill of the _____ for divorce upon the grounds of _____; and the answer thereto; the counterclaim of the _____ upon the grounds of _____; and the answer thereto.

Spousal support for the _____ was/was not sought in his/her bill for divorce, and/but was/was not pursued at trial of the case.

Evidence Proffered and Received:

The case was heard upon the testimony of the parties and other witnesses:

For the Plaintiff

- 1.
- 2.
- 3.
- 4.
- 5.

For the Court

- 1.
- 2.

For the Defendant

- 1.

- 2.
- 3.
- 4.
- 5.

The case was additionally heard upon the exhibits received into evidence:

- | | |
|-----|-----|
| 1. | 11. |
| 2. | 12. |
| 3. | 13. |
| 4. | 14. |
| 5. | 15. |
| 6. | 16. |
| 7. | 17. |
| 8. | 18. |
| 9. | 19. |
| 10. | 20. |

FINDINGS OF FACT:

Date of marriage: _____

Age of Wife: _____

Length of marriage: _____

Age of Husband: _____

This case is a case involving

Number of children:

Names and present ages:

Employment history and income of wife:

Date	Job description	Approximate income
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Employment history and income of husband:

Date	Job description	Approximate income
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Education of wife:

Date	Institution	Area of training
_____	_____	_____
_____	_____	_____
_____	_____	_____

Education of husband:

Date	Institution	Area of training
_____	_____	_____
_____	_____	_____
_____	_____	_____

Health of wife:

Health of husband:

THE DIVORCE:

1. A divorce is awarded today to the _____ upon the grounds of _____.

The original bill/counter-claim of the _____ is dismissed.

2. Findings of fact supporting the award:

3. Injunctive relief (if sought):

PRIMARY RESIDENTIAL PARENT

1. This Court specifically agrees with the findings of Bah v. Bah, 668 S.W. 2d 663 which held when ascertaining the child's best interest, the Court should consider which home will provide the best environment for the physical, emotional and moral welfare of the child. The court shall make residential provisions for each child, consistent with the child's developmental level and the family's social and economic circumstances, which encourage each parent to maintain a loving, stable, and nurturing relationship with the child. The child's residential schedule shall be consistent with this part. If the limitations of § 36-6-406 are not dispositive of the child's residential schedule, the court shall consider the factors found in § 36-6-106(a)(1)–(16):

Factors: _____ Mother _____ Father _____

(1) The strength, nature, and stability of the child's relationship with each parent, including whether one (1) parent has performed the majority of parenting responsibilities relating to the daily needs of the child;		
(2) Each parent's or caregiver's past and potential for future performance of parenting responsibilities,		

including the willingness and ability of each of the parents and caregivers to facilitate and encourage a close and continuing parent-child relationship between the child and both of the child's parents, consistent with the best interest of the child. In determining the willingness of each of the parents and caregivers to facilitate and encourage a close and continuing parent-child relationship between the child and both of the child's parents, the court shall consider the likelihood of each parent and caregiver to honor and facilitate court ordered parenting arrangements and rights, and the court shall further consider any history of either parent or any caregiver denying parenting time to either parent in violation of a court order;		
(3) Refusal to attend a court ordered parent education seminar may be considered by the court as a lack of good faith effort in these proceedings;		
(4) The disposition of each parent to provide the child with food, clothing, medical care, education and other necessary care;		
(5) The degree to which a parent has been the primary caregiver, defined as the parent who has taken the greater responsibility for performing parental responsibilities;		
(6) The love, affection, and emotional ties existing between each parent and the child;		
(7) The emotional needs and developmental level of the child;		
(8) The moral, physical, mental and emotional fitness of each parent as it relates to their ability to parent the child. The court may order an examination of a party under Rule 35 of the Tennessee Rules of Civil Procedure and, if necessary for the conduct of the proceedings, order the disclosure of confidential mental health information of a party under § 33-3-105(3). The court order required by § 33-3-105(3) must contain a qualified protective order that limits the dissemination of confidential protected mental health information to the purpose of the litigation pending before the court and provides for the return or destruction of the confidential protected mental health information at the conclusion of the proceedings;		
(9) The child's interaction and interrelationships with siblings, other relatives and step-relatives, and mentors, as well as the child's involvement with the child's physical surroundings, school, or other significant activities;		
(10) The importance of continuity in the child's life and		

the length of time the child has lived in a stable, satisfactory environment;		
(11) Evidence of physical or emotional abuse to the child, to the other parent or to any other person. The court shall, where appropriate, refer any issues of abuse to juvenile court for further proceedings;		
(12) The character and behavior of any other person who resides in or frequents the home of a parent and such person's interactions with the child;		
(13) The reasonable preference of the child if twelve (12) years of age or older. The court may hear the preference of a younger child upon request. The preference of older children should normally be given greater weight than those of younger children;		
(14) Each parent's employment schedule, and the court may make accommodations consistent with those schedules; and		
(15) Any other factors deemed relevant by the court.		
(16) Whether a parent has failed to pay court-ordered child support for a period of three (3) years or more.		

Total _____

The primary residential parent of the child(ren) is _____.

2. Child support will be set at \$ _____ per _____ for _____ wks/mos
and then at \$ _____ per _____ for _____ wks/mos
then until further hearing at \$ _____ per _____ for _____ wks/mos

3(a). Proposed worksheet given to judge _____.

4. The _____ shall maintain medical/hospital insurance on the minor child(ren) and he/she shall provide proof of continuing coverage upon demand, but in any event annually.

5. Uncovered medicals, including deductibles (if any), will be borne by _____.

6. Dentals/orthodontics:

7. Life insurance: The _____ shall insure _____ own life in the minimum amount of _____ whole or term, which may not decrease in face amount during the minority of any child.

The policy shall name the minor child(ren) as primary beneficiaries of the coverage required by the Court. The choice of secondary beneficiaries is up to the policy owner(s).

8. Other child support:

9. Arrearage in support:

10. A wage assignment shall issue (by separate order to be presented by counsel) to _____, the employer of the _____, for the ongoing child support.

11. The dependency exemption(s) shall belong to the _____ in each and every year in which each payment of child support is made fully, without delay, and without any returns for insufficient funds. In years in which those conditions are not met, the _____ shall have the dependency exemption.

12. A lien is imposed upon the following items of marital real property to be awarded to the _____ as security for the payment of all the child support incidents:

13. Presented Court with Proposed Parenting Plan _____.

MARITAL PROPERTY

1. Marital property is defined as: All real and personal property, both tangible and intangible, acquired by either or both spouses during the course of the marriage up to the date of the final divorce hearing and owned by either or both spouses as of the date of the filing of a complaint for divorce, except in the case of fraudulent conveyance in anticipation of filing, and including any property to which a right was acquired up to the date of the final divorce hearing, and valued as of a date as near as reasonably possible to the final divorce hearing date [36-4-121(b)(2)(A)]. The court makes findings as follows on the status of marital property acquired during the marriage.

2. Additionally, marital property in Tennessee includes income from, and any increase in value during the marriage, of property determined to be separate property in accordance with subdivision (b)(2) if each party substantially contributed to its preservation and appreciation, "substantial contribution" may include, but not be limited to, the direct or indirect contribution of a spouse as homemaker, wage earner, parent or family financial manager, together with such other factors as the court having jurisdiction thereof may determine_____

3. Further, marital property includes the value of vested and unvested pension benefits, vested and unvested stock option rights, retirement, and other fringe benefit rights accrued as a result of employment during the marriage. _____

4. In equitably dividing the marital debt, this Court has given consideration to the four factors listed in *Alford v. Alford*, 120 S.W.3d 810, 814 (citing *Mondelli v. Howard*, 780 S.W.2d 769, 773 (Tenn. Ct. App. 1989)):

- (1) the debt's purpose;
- (2) which party incurred the debt;
- (3) which party benefitted from incurring the debt; and
- (4) which party is best able to repay the debt.

5. In making the foregoing division of marital property, the Court has given consideration to the thirteen factors set out by the legislature [Tenn. Code Ann. 36-4-121(c)] as bearing upon the equitable division of marital property:

- (1) The duration of the marriage;
- (2) The age, physical and mental health, vocational skills, employability, earning capacity, estate, financial liabilities and financial needs of each of the parties;

- (3) The tangible or intangible contribution by one (1) party to the education, training, or increased earning power of the other party;
- (4) The relative ability of each party for future acquisitions of capital assets and income;
- (5) (A) The contribution of each party to the acquisition, preservation, appreciation or dissipation of the marital or separate property, including the contribution of a party to the marriage as homemaker, wage earner or parent, with the contribution of a party as homemaker or wage earner to be given the same weight if each party has fulfilled its role;

(B) For the purposes of this subdivision (c)(5), dissipation of assets means wasteful expenditures which reduce the marital property available for equitable distributions and which are made for a purpose contrary to the marriage either before or after a complaint for divorce or legal separation has been filed.
- (6) The value of the separate property of each party;
- (7) The estate of each party at the time of the marriage;
- (8) The economic circumstances of each party at the time the division of property is to become effective;
- (9) The tax consequences to each party, costs associated with the reasonably foreseeable sale of the asset, and other reasonably foreseeable expenses associated with the asset;
- (10) In determining the value of an interest in a closely held business or similar asset, all relevant evidence, including valuation methods typically used with regard to such assets without regard to whether the sale of the asset is reasonably foreseeable. Depending on the characteristics of the asset, such considerations could include, but would not be limited to, a lack of marketability discount, a discount for lack of control, and a control premium, if any should be relevant and supported by the evidence;
- (11) The amount of social security benefits available to each spouse;
- (12) Such other factors as are necessary to consider the equities between the parties; and
- (13) The total amount of attorney fees and expenses paid by each party in connection with the proceedings; whether the attorney fees and expenses were paid from marital property, separate property, or funds borrowed by a party; and the reasonableness, under the factors set forth in Rule 1.5 of the Tennessee Rules of Professional Conduct, and necessity of the attorney fees and expenses paid by each party.

5. A lien is imposed upon the following items of marital real property awarded to the _____ as security for the payment pursuant to property division ordered above:

SEPARATE PROPERTY

1. The Court finds the following items constitute separate property of the parties at the commencement of this litigation:
-
-

AND/OR

2. The Court finds the following items are subject to the doctrines of commingling, transmutation and/or substantial contribution:
-
-

- a. Commingling (when separate property is “inextricably mingled with marital property or with the separate property of the other spouse. If the separate property continues to be segregated or can be traced into its product, commingling does not occur.”¹):
-
-

- b. Transmutation (“occurs when separate property is treated in such a way as to give evidence of an intention that it become marital property...”). Factors:
 - i. Use of the property as marital residence;
 - ii. Ongoing maintenance and management of the property by both parties;
 - iii. Placing the title of the property into joint ownership; and
 - iv. Using the credit of the non-owner spouse to improve the property.
-
-

- c. **Substantial contribution** (Tenn. Code Ann. § 36-4-121 (B)(i) states “Marital property” includes income from, and any increase in the value during the marriage of, property determined to be separate property in accordance with subdivision (b)(4) if each party substantially contributed to its preservation and appreciation)²; Determining whether a spouse has made a substantial contribution to the preservation and appreciation of the other spouse’s separate property is a question of fact;³ The

¹ *Langschmidt v. Langschmidt*, 81 S.W.3d 741, 747 (Tenn. 2002).

² A finding of any contribution to the appreciation and preservation of separate property does not automatically result in a finding the contribution was substantial. Instead, the facts must be reviewed to determine: (1) whether the contributions were “real and significant” and (2) whether the real and significant contributions directly or indirectly caused the preservation and appreciation in the value of separate property. *Keyt v. Keyt*, 244 S.W.3d 321 (Tenn. 2007)

³ *Sherrill v. Sherrill*, 831 S.W.2d 293, 295 (Tenn. Ct. App. 1992)

direct or indirect contribution of a spouse as homemaker, wage earner, parent or family financial manager, together with such other factors as the court having jurisdiction thereof may determine.⁴

AND/OR

3. Certain adjustments in the ownership of the separate property of a party will be made in order to serve as security for part of the child support or spousal support pronounced above or to be announced below:

4. Certain adjustments in the ownership of the separate property will be made in order to effect payment pursuant to division of marital property [36-4-121 and 35-4-121(f)]:

SPOUSAL SUPPORT

A. FACTORS FOR CONSIDERATION REGARDING SPOUSAL SUPPORT

The legislature has directed Tennessee courts to consider twelve factors in awarding spousal support § 36-5-121(i)(1)-(12).

YES NO

___ ___ (1) The relative earning capacity, obligations, needs, and financial resources of each party, including income from pension, profit sharing or retirement plans and all other sources;

⁴ *Langschmidt v. Langschmidt*, 81 S.W.3d 741, 747 (Tenn. 2002)

- ___ (2) The relative education and training of each party, the ability and opportunity of each party to secure such education and training, and the necessity of a party to secure further education and training to improve such party's earnings capacity to a reasonable level;
- ___ (3) The duration of the marriage;
- ___ (4) The age and mental condition of each party;
- ___ (5) The physical condition of each party, including, but not limited to, physical disability or incapacity due to a chronic debilitating disease;
- ___ (6) The extent to which it would be undesirable for a party to seek employment outside the home, because such party will be custodian of a minor child of the marriage;
- ___ (7) The separate assets of each party, real and personal, tangible and intangible;
- ___ (8) The provisions made with regard to the marital property as defined in § 36-4-121;
- ___ (9) The standard of living of the parties established during the marriage;
- ___ (10) The extent to which each party has made tangible and intangible contributions to the marriage as monetary and homemaker contributions, and tangible and intangible contributions by a party to the education, training or increased earning power of the other party;
- ___ (11) The relative fault of the parties in cases where the court, in its discretion, deems it appropriate to do so; and
- ___ (12) Such other factors, including the tax consequences to each party, as are necessary to consider the equities between the parties

Alimony is appropriate when one spouse is economically disadvantaged relative to the other spouse.

Aaron v. Aaron, 909 S.W.2d 408 (Tenn. 1995).

The court may consider four types of alimony scenarios when awarding spousal support: transitional alimony, rehabilitative alimony, alimony *in solido* and alimony *in futuro*.

The Tennessee legislature has demonstrated a preference for an award of rehabilitative alimony to rehabilitate an economically disadvantaged spouse. Rehabilitative alimony is intended “to assist an economically disadvantaged spouse in acquiring additional education or training which will enable the spouse to achieve a standard of living comparable to the standard of living that existed during the marriage or the post-divorce standard of living expected to be available to the other spouse.” Gonsewski, 350 S.W.3d 99.. At the time of the decree, a trial court must necessarily find that the recipient of alimony either can or cannot be rehabilitated.

Transitional alimony is a form of short-term support. Transitional alimony “is appropriate when a court finds that rehabilitation is not required but that the economically disadvantaged spouse needs financial assistance in adjusting to the economic consequences of divorce.” Gonsewski 350 S.W.3d 99.

Alimony *in futuro* and alimony *in solido* are two forms of a long-term or more open-ended support. Burlew v. Burlew, *supra*. Whether the spousal support is to be alimony *in futuro* or alimony *in solido* is determined by either the definiteness (*in solido*) or indefiniteness (*in futuro*) of the sum of alimony ordered to be paid at the time of the award. Burlew v. Burlew, *supra*, (citing Waddey v. Waddey, 6 S.W.3d 230, 232 (Tenn.1999). McKee v. McKee, 655 S.W.2d 164, 165 (Tenn.Ct.App.1983)).

While the trial court should consider all factors listed in section 36-5-121(i), the two factors considered the most important are:

- (1) The disadvantaged spouse’s need and
- (2) The obligor spouse’s ability to pay.

Gonsewski v. Gonsewski, 350 S.W.3d 99, 110 (Tenn. 2011) (citing Riggs v. Riggs, 250 S.W.3d 453, 457 (Tenn. Ct. App. 2007)). In its award of alimony, a trial court should make findings of fact with regard to the factors listed in section 36-5-121(i)(1)-(12).

The cost of health care is a proper expense item to consider when awarding alimony. The court may

order one party to obtain or maintain health insurance on the other spouse and may order payment of the premiums and health costs not covered. T.C.A. § 36-5-101 (f). Storey v. Storey, 835 S.W. 2d 593 (Tenn. App. W.S. 1992).

One way to guarantee alimony payments is with life insurance on the life of the obligor. The court may order one party to designate the other party as beneficiary under existing policies. T.C.A. § 36-5-101 (i). The Court can also order the acquisition and maintenance of such policies.

B. THIS IS A CASE FOR TRANSITIONAL ALIMONY

Yes No

This type of alimony was created by T.C.A. 36-5-121(g). It is to be used when rehabilitation is not necessary but one party needs assistance due to the economic consequence of a divorce.

1. Payable for a determinate period of time.
2. Terminates upon the death of the recipient.
3. Terminates on the death of payor (unless specifically stated) or upon some occurrence of other specifically stated conditions such as but not limited to cohabitation or remarriage of the party.
4. Unmodifiable except by agreement of the parties in an initial order or by the court in an initial order.
5. Can be awarded with other types of alimony, except rehabilitative alimony.

Elements

- a) One spouse is temporarily economically disadvantaged relative to the other spouse (T.C.A. 36-5-121(g)(1)).
- b) One spouse needs funds to help “bridge the gap” from the time of the divorce to a certain time in the future.
- c) Used to soften the “economic blow” of divorce.

Checklist for Transitional Alimony

YES NO

_____ _____ (1) The amount pre month \$ _____;

_____ _____ (2) The rationale for the amount (must be read into the record)

 _____;

____ (3) The duration of the amount and rationale for duration

 _____;

____ (4) The transitional alimony shall terminate upon the death of the recipient;

____ (5) This transitional alimony shall terminate upon the

_____ death of the payor

_____ cohabitation of the payee

_____ remarriage of payee

____ (6) This transitional alimony shall _____ or shall not _____ be modified.

C. THIS IS A CASE FOR REHABILITATIVE ALIMONY

YES NO

The question is whether, in light of all the circumstances, can the spouse rehabilitate themselves to achieve, with a reasonable effort, an earning capacity that will permit the economically disadvantaged spouse's standard of living after the divorce to be reasonably comparable to the standard of living during the marriage or to the post divorce standard of living expected to be available to the other spouse. T.C.A. 36-5-121 (d)(2). If the answer to the foregoing question is negative, the court should award alimony *in futuro* unless the dependent spouse already has job security, in which case an award of alimony *in solido* may be more appropriate.

(1) Rehabilitative alimony is designed to temporarily support the disadvantaged spouse for the amount of time it will take to rehabilitate the recipient to such an extent that he or she can achieve, with a reasonable effort, an earning capacity that will permit that spouses standard of living after the divorce to be reasonably comparable to the standard of living or to the post divorce standard of living expected to be available to the other spouse.

(2) Rehabilitative alimony terminates upon the death of the recipient. Rehabilitative alimony shall also terminate upon the death of the payor unless otherwise specifically stated. T.C.A. § 36-5-121(e).

(3) Rehabilitative alimony is subject to modification for the duration of the award upon a showing of substantial and material change in circumstances. T.C.A. § 36-5-121.

(4) Rehabilitative alimony can be awarded with other types of alimony with the exception of Transitional alimony.

ELEMENTS

(a) One spouse is economically disadvantaged relative to the other spouse. T.C.A. § 36-5-101(d)(1).

(b) After a limited amount of time through additional training or education, the disadvantaged spouse is likely to increase appreciably his or her earning power or ability to accumulate capital assets so as to remedy the existing economic disadvantage, relative to the other spouse. Smith v. Smith, 912 S.W.2d 155 (Tenn. App. 1995), appeal denied.

(c) If rehabilitation of the disadvantaged spouse is feasible, then temporary, rehabilitative alimony should be awarded. T.C.A. § 36-5-101(d)(1).

(d) To be rehabilitated means to achieve, with reasonable effort, an earning capacity that will permit the economically disadvantaged spouse's standard of living after the divorce to be reasonably comparable to the standard of living enjoyed during the marriage, or to the post-divorce standard of living expected to be available to the other spouse, considering the relevant statutory factors and the equities between the parties. Tenn. Code Ann. § 36-5-121(e)(1).

CHECK LIST FOR REHABILITATIVE ALIMONY

(1) The amount per month \$ _____

(2) The rationale for amount (*read into the record*)

(Describe the standard of living the parties enjoyed during the marriage or the post divorce standard of living expected to be available to the spouse.)

(3) The duration _____.

(4) The rationale for duration (*read into the record*)

_____.

(5) The rehabilitative alimony shall _____ or shall not _____ terminate upon the death of the obligor _____ (*check one*)

D. THIS IS A CASE FOR ALIMONY *IN SOLIDO* (LUMP-SUM ALIMONY)

YES NO

(1) Alimony *in solido* is designed to accomplish a stated result within a limited time and not be modifiable.

2) It is a definite, fixed amount, payable in either lump sum or periodic payments.

(3) Can be awarded with other types of alimony, when there is property of which to award this alimony.

T.C.A. § 36-6-121(h).

ELEMENTS

(a) One spouse is economically disadvantaged relative to the other spouse. T.C.A. § 36-5-121(d)(2).

(1) After a limited amount of time the disadvantaged spouse will no longer be in need of support from the former spouse.

(2) The disadvantaged spouse has already attained job security and only needs support temporarily.

Brown v. Brown, 913 S.W.2d 163 (Tenn. App. 1994), *appeal denied*.

CHECKLIST FOR ALIMONY *IN SOLIDO*

(1) The amount awarded _____.

(2) The payment schedule _____.

(3) The property awarded _____

_____.

(4) The rationale for the award _____

_____.

**E. THIS IS A CASE FOR SUPPORT ON A LONG-TERM BASIS
 (*IN FUTURO OR PERIODIC ALIMONY*)**

YES NO

The purpose of alimony *in futuro* is to provide financial support to a spouse who cannot be rehabilitated. Burlew v. Burlew, 40 S.W.3d 465, 468 (Tenn. 2000).

(1) Alimony *in futuro* is designed to continue the support that was incident to the marriage relationship, and is appropriate when the spouse cannot be rehabilitated. Rehabilitated means to

achieve, with a reasonable effort a comparable standard of living to that during the marriage or which the other spouse will enjoy after the divorce.

(2) It is for an indefinite amount, payable in future periodic installments, and contingent upon the death or remarriage of the recipient and possibly on the death of the obligor or other contingencies as imposed by the court or statute.

(3) The recipient shall notify the obligor of the remarriage timely upon the remarriage. Failure to give notice will allow the obligor to recover all payments made after the date of the remarriage.

(4) Although the total amount is indefinite, the periodic payments should be of a definite amount and are subject to modification (both as to arrearages and future payments), based on a showing of a substantial and material change of circumstances arising after the divorce and not foreseen at the time of the divorce. T.C.A. § 36-5-121(f)(1); Franklin v. Franklin, 746 S.W.2d 715 (Tenn. App.1987), *appeal denied*.

(5) If the recipient lives with a third person, a rebuttable presumption arises that the third person is contributing to the support of, or receiving support from, the recipient and, therefore, the court should suspend all alimony obligation.

(6) Alimony in futuro can be awarded with other types of alimony, even Rehabilitative or Transitional.

T.C.A. 36-5-121(f).

ELEMENTS

(a) One spouse is economically disadvantaged relative to the other spouse. T.C.A. § 36-5-101(d)(1).

(b) Rehabilitation of the disadvantaged spouse is not feasible. T.C.A. § 36-5-101(d)(1).

CHECKLIST FOR ALIMONY IN FUTURO:

(1) The amount of the award \$_____ per month;

(2) This award does ____ or does not ____ terminate upon the death of the obligor; (*check one*)

(3) Alimony shall terminate upon death or remarriage of the recipient [additional contingencies] (or _____, whichever occurs first);

(4) The court foresees the following at the time of this award, which facts will not justify a sufficient change of circumstances to support a petition to modify the current alimony award (i.e., retirement of obligor, earnings or increased earnings of recipient, adult child living in recipient's home, etc.)_____.

F. ISSUES OF TAX DEDUCTION AND BANKRUPTCY

YES NO

The court should make specific findings of fact indicating: (1) whether the alimony payments will be includible as income to the recipient and deductible as alimony to the payor pursuant to IRS § 71(b); (2) that the alimony is necessary for the support and maintenance of the spouse, and thus, not dischargeable in bankruptcy court; and (3) whether the award of attorney fees as alimony *in solido* is includible as income to the recipient and deductible as alimony to the payor pursuant to IRS § 71(b).

Alimony is considered taxable income to the recipient under the provisions of the Internal Revenue Code. Conversely, the payor of alimony is permitted to claim a tax deduction under I.R.C. § 215 in an amount equal to the alimony or separate maintenance payments paid during the taxable year. However, in order for alimony payments to be deductible, the eight requirements of I.R.C. § 71 must be satisfied:

YES NO

- | | | |
|-------|-------|--|
| _____ | _____ | (1) Payments must be made in cash; |
| _____ | _____ | (2) Payments must be to a spouse or on behalf of a spouse; |
| _____ | _____ | (3) Payments must be made pursuant to a divorce or separation instrument; |
| _____ | _____ | (4) Payments may not be designated as non-qualifying alimony; |
| _____ | _____ | (5) Spouses may not be members of the same household; |
| _____ | _____ | (6) The payments must terminate upon the recipient's death; (typically alimony <i>in solido</i> does not terminate on death and is not subject to be includible as income to the recipient and deductible by the payor); |
| _____ | _____ | (7) Spouses may not file a joint return; and, |
| _____ | _____ | (8) Payments must not constitute child support. |

G. ADDITIONAL ORDERS

(1) A lien is imposed upon the following items of marital real property of the _____ as security for the payment of the spousal support _____

_____.

(2) As additional alimony necessary for the support and maintenance of spouse, the _____ shall pay the health insurance premiums for the _____ for a period of _____ months.

(3) As additional alimony necessary for the support and maintenance of spouse, the _____

shall pay the attorney fees of \$_____ in the amount of \$_____ as the court finds that the amount of attorneys fees are both reasonable and necessary. The amount of alimony is not dischargeable in bankruptcy.

(4) The obligor shall obtain and maintenance life insurance in the amount of \$_____, naming the other spouse as beneficiary until the alimony is paid in full.

(5) The life insurance policy insuring the obligor's life shall be owned by the payee so that the premiums paid by the obligor is deductible as income for the payor.

(6) The alimony payment shall be made by wage assignment. T.C.A. 36-5-501.

ATTORNEY FEES

[Local rule affidavit may be waived by opposing counsel]

COURT COSTS