

**CLIENT ADVISORY – ALIMONY REFORM: DURATIONAL LIMITS OF ALIMONY AWARDS  
 MOVING CLOSER TO “REAL” ALIMONY EXPIRATION DATES**

On November 23, 2016, the Supreme Judicial Court (“SJC”) released the decision of George v. George, wherein it provided divorced and divorcing spouses, attorneys and judges with guidance for extending alimony awards beyond the presumptive termination dates set forth in the Alimony Reform Act. George v. George, - - - Mass. - - - (2016).

As a refresher, the Alimony Reform Act became effective on March 1, 2012. The Alimony Reform Act provides the following presumptive termination dates for alimony awards based upon the length of the parties’ marriage:

| Length of Marriage                  | Presumptive Duration of Alimony                              |
|-------------------------------------|--|
| 5 years or less:                    | No greater than 50% of the number of months of the marriage. |
| More than 5 years, up to 10 years:  | No greater than 60% of the number of months of the marriage. |
| More than 10 years, up to 15 years: | No greater than 70% of the number of months of the marriage. |
| More than 15 years, up to 20 years: | No greater than 80% of the number of months of the marriage. |
| Greater than 20 years:              | Possibly indefinite.   |

See G. L. c. 208, § 49 (b). These presumptive termination dates may be extended only “upon a written finding of the court that deviation beyond the time limits . . . are required in the **interests of justice** . . .” G. L. c. 208, § 49 (b) (emphasis added). As a result, payor spouses with alimony obligations that arose prior to March 1, 2012 and exceed the durational limits need only file a Complaint for Modification seeking to terminate alimony payments based upon the durational limits as grounds to terminate his or her alimony obligation. However, a judge can

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still order the payor spouse to make alimony payments beyond the durational limits if he or she finds that the deviation is “required in the interests of justice.” G. L. c. 208, § 49. The SJC also reiterated that when awarding alimony, the judge must consider the statutory factors set forth in G. L. c. 208, § 53 (e).<sup>1</sup>

**What is in the “interest of justice”?**

Prior to the George decision, the term “interests of justice” was not defined and payor and recipient spouses were left to argue what that term meant, with little guidance from the higher courts. In George, the SJC clarified that the recipient spouse will have the burden of showing by a preponderance of the evidence that deviation beyond the above-listed dates is “in the interests of justice.” Unless relevant factors that existed at the time of the divorce continue to the present, the judge should evaluate the circumstances of the parties as they exist in the present time. In drawing this conclusion, the SJC specifically rejected the argument that had a recipient spouse known his or her alimony payment would presumptively terminate in the future, he or she would have bargained differently.

**To file or not to file – that is the question**

The George decision also gives commentary for the first time as to who’s burden it is to file. For instances where the divorce and thereby the support award predates the alimony reform act it is the payor’s obligation to file and seek relief when they believe the term limits have been met. Conversely for awards issues post reform, the recipient spouse must file to seek an extension of the term limits. This is most significant because it ratifies the payors right to terminate without order of the court.

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<sup>1</sup> G. L. c. 208, § 53 (e) states, in relevant part, that “[i]n setting an alimony order, or in modifying an existing order, the court may deviate from duration and amount limits for general term alimony . . . upon written findings that deviation is necessary. Grounds for deviation may include: (1) advanced age; chronic illness; or unusual health circumstances of either party; (2) tax considerations applicable to the parties; (3) whether the payor spouse is providing health insurance and the cost of health insurance for the recipient spouse; (4) whether the payor spouse has been ordered to secure life insurance for the benefit of the recipient spouse and the cost of such insurance; (5) sources and amounts of unearned income, including capital gains, interest and dividends, annuity and investment income from assets that were not allocated in the parties['] divorce; (6) significant premarital cohabitation that included economic partnership or marital separation of significant duration, each of which the court may consider in determining the length of the marriage; (7) a party's inability to provide for that party's own support by reason of physical or mental abuse by the payor; (8) a party's inability to provide for that party's own support by reason of that party's deficiency of property, maintenance or employment opportunity; and (9) upon written findings, any other factor that the court deems relevant and material.” G. L. c. 208, § 53 (e).

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The George decision is significant because now divorced and divorcing spouses, attorneys and judges have some guidance when arguing for or against an alimony award that exceeds the durational limits set forth in G. L. c. 208, § 49.

Stay tuned. Throughout the George decision, the SJC stated that the presumptive durational limits apply to alimony awards that predate the Alimony Reform Act. However, we expect the Supreme Judicial Court to release an opinion wherein it will address the *constitutionality* of applying presumptive termination dates to alimony awards - thereby shifting the burden of proof to recipient spouses to continue a previously approved alimony award - in cases where the parties divorced prior to March 1, 2012.

*This client advisory was written by **Kirsten Z. Young**. If you wish to inquire further about our family law practice, please contact Kirsten or your attorney at **Conn Kavanaugh Rosenthal Peisch & Ford, LLP**.*

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