

Rule 26.1. Disclosure and discovery in domestic relations actions.

(a) **Scope.** This rule applies to the following domestic relations actions: divorce; temporary separation; separate maintenance; parentage; custody; child support; and modification. This rule does not apply to adoptions, enforcement of prior orders, cohabitant abuse protective orders, child protective orders, civil stalking injunctions, or grandparent visitation.

(b) **Time for disclosure.** In addition to the disclosures required in Rule 26, in all domestic relations actions, the documents required in this rule shall be disclosed by the petitioner within 14 days after service of the first answer to the complaint and by the respondent within 28 days after the petitioner's first disclosure or 28 days after that respondent's appearance, whichever is later.

(c) **Financial declaration.** Each party shall disclose to all other parties a fully completed court-approved Financial Declaration and attachments. Each party shall attach to the Financial Declaration the following:

(c)(1) For every item and amount listed in the Financial Declaration, excluding monthly expenses, the producing party shall attach copies of statements verifying the amounts listed on the Financial Declaration that are reasonably available to the party.

(c)(2) For the two tax years before the petition was filed, complete federal and state income tax returns, including Form W-2 and supporting tax schedules and attachments, filed by or on behalf of that party or by or on behalf of any entity in which the party has a majority or controlling interest, including, but not limited to, Form 1099 and Form K-1 with respect to that party.

(c)(3) Pay stubs and other evidence of all earned and un-earned income for the 12 months before the petition was filed.

(c)(4) All loan applications and financial statements prepared or used by the party within the 12 months before the petition was filed.

(c)(5) Documents verifying the value of all real estate in which the party has an interest, including, but not limited to, the most recent appraisal, tax valuation and refinance documents.

(c)(6) All statements for the 3 months before the petition was filed for all financial accounts, including, but not limited to checking, savings, money market funds, certificates of deposit, brokerage, investment, retirement, regardless of whether the account has been closed including those held in that party's name, jointly with another person or entity, or as a trustee or guardian, or in someone else's name on that party's behalf.

(c)(7) If the foregoing documents are not reasonably available or are in the possession of the other party, the party disclosing the Financial Declaration shall estimate the amounts entered on the Financial Declaration, the basis for the estimation and an explanation why the documents are not available.

(d) **Certificate of service.** Each party shall file a Certificate of Service with the court certifying that he or she has provided the Financial Declaration and attachments to the other party in compliance with this rule.

(e) **Exempted agencies.** Agencies of the State of Utah are not subject to these disclosure requirements.

(f) **Sanctions.** Failure to fully disclose all assets and income in the Financial Declaration and attachments may subject the non-disclosing party to sanctions under Rule 37 including an award of non-disclosed assets to the other party, attorney's fees or other sanctions deemed appropriate by

the court.

(g) **Failure to comply.** Failure of a party to comply with this rule does not preclude any other party from obtaining a default judgment, proceeding with the case, or seeking other relief from the court.

(h) **Notice of requirements.** Notice of the requirements of this rule shall be served on the Respondent and all joined parties with the initial petition.

Advisory Committee Notes

Rule 102. Motion and order for payment of costs and fees.

(a) In an action under Utah Code Section 30-3-3(1), either party may move the court for an order requiring the other party to provide costs, attorney fees, and witness fees, including expert witness fees, to enable the moving party to prosecute or defend the action. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amount requested. The motion may include a request for costs or fees incurred:

(a)(1) prior to the commencement of the action;

(a)(2) during the action; or

(a)(3) after entry of judgment for the costs of enforcement of the judgment.

(b) The court may grant the motion if the court finds that:

(b)(1) the moving party lacks the financial resources to pay the costs and fees;

(b)(2) the non moving party has the financial resources to pay the costs and fees;

(b)(3) the costs and fees are necessary for the proper prosecution or defense of the action; and

(b)(4) the amount of the costs and fees are reasonable.

(c) The court may deny the motion or award limited payment of costs and fees if the court finds that one or more of the grounds in paragraph (b) is missing or enters in the record the reason for denial of the motion.

(d) The order shall specify the costs and fees to be paid within 30 days of entry of the order or the court shall enter findings of fact that a delay in payment will not create an undue hardship to the moving party and will not impair the ability of the moving party to prosecute or defend the action. The order shall specify the amount to be paid. The court may order the amount to be paid in a lump sum or in periodic payments. The court may order the fees to be paid to the moving party or to the provider of the services for which the fees are awarded.

Rule 1006. Summaries to Prove Content

The proponent may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court. The proponent must make the originals or duplicates available for examination or copying, or both, by other parties at a reasonable time or place. And the court may order the proponent to produce them in court.

2011 Advisory Committee Note. – The language of this rule has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility. This rule is the federal rule, verbatim.

ADVISORY COMMITTEE NOTE

This rule is the federal rule, verbatim, and is comparable to the substance of Rule 70(f), Utah Rules of Evidence (1971).

U.C.A. 1953 § 30-3-5

§ 30-3-5. Disposition of property--Maintenance and health care of parties and children--Division of debts--Court to have continuing jurisdiction--Custody and parent-time--Determination of alimony--Nonmeritorious petition for modification

* * *

(8)(a) The court shall consider at least the following factors in determining alimony:

- (i) the financial condition and needs of the recipient spouse;
- (ii) the recipient's earning capacity or ability to produce income;
- (iii) the ability of the payor spouse to provide support;
- (iv) the length of the marriage;
- (v) whether the recipient spouse has custody of minor children requiring support;
- (vi) whether the recipient spouse worked in a business owned or operated by the payor spouse; and
- (vii) whether the recipient spouse directly contributed to any increase in the payor spouse's skill by paying for education received by the payor spouse or enabling the payor spouse to attend school during the marriage.

(b) The court may consider the fault of the parties in determining whether to award alimony and the terms thereof.

(c) "Fault" means any of the following wrongful conduct during the marriage that substantially contributed to the breakup of the marriage relationship:

- (i) engaging in sexual relations with a person other than the party's spouse;
- (ii) knowingly and intentionally causing or attempting to cause physical harm to the other party or minor children;
- (iii) knowingly and intentionally causing the other party or minor children to reasonably fear life-threatening harm; or
- (iv) substantially undermining the financial stability of the other party or the minor children.

(d) The court may, when fault is at issue, close the proceedings and seal the court records.

(e) As a general rule, the court should look to the standard of living, existing at the time of separation, in determining alimony in accordance with Subsection (8)(a). However, the court shall consider all relevant facts and equitable principles and may, in its discretion, base alimony on the standard of living that existed at the time of trial. In marriages of short duration, when no children have been conceived or born during the marriage, the court may consider the standard of living that existed at the time of the marriage.

(f) The court may, under appropriate circumstances, attempt to equalize the parties' respective standards of living.

(g) When a marriage of long duration dissolves on the threshold of a major change in the income of one of the spouses due to the collective efforts of both, that change shall be considered in dividing the marital property and in determining the amount of alimony. If one spouse's earning capacity has been greatly enhanced through the efforts of both spouses during the marriage, the court may make a compensating adjustment in dividing the marital property and awarding alimony.

(h) In determining alimony when a marriage of short duration dissolves, and no children have been conceived or born during the marriage, the court may consider restoring each party to the condition which existed at the time of the marriage.

(i)(i) The court has continuing jurisdiction to make substantive changes and new orders regarding alimony based on a substantial material change in circumstances not foreseeable at the time of the divorce.

(ii) The court may not modify alimony or issue a new order for alimony to address needs of the recipient that did not exist at the time the decree was entered, unless the court finds extenuating circumstances that justify that action.

(iii) In determining alimony, the income of any subsequent spouse of the payor may not be considered, except as provided in this Subsection (8).

(A) The court may consider the subsequent spouse's financial ability to share living expenses.

(B) The court may consider the income of a subsequent spouse if the court finds that the payor's improper conduct justifies that consideration.

(j) Alimony may not be ordered for a duration longer than the number of years that the marriage existed unless, at any time prior to termination of alimony, the court finds extenuating circumstances that justify the payment of alimony for a longer period of time.

§ 78B-12-203. Determination of gross income--Imputed income

West's Utah Code Annotated Title 78B, Judicial Code

Part 2 Calculation and Adjustment

Proposed Legislation

U.C.A. 1953 § 78B-12-203
Formerly cited as UT ST § 78-45-7.5

Currentness

(1) As used in the guidelines, "gross income" includes prospective income from any source, including earned and nonearned income sources which may include salaries, wages, commissions, royalties, bonuses, rents, gifts from anyone, prizes, dividends, severance pay, pensions, interest, trust income, alimony from previous marriages, annuities, capital gains, Social Security benefits, workers' compensation benefits, unemployment compensation, income replacement disability insurance benefits, and payments from "nonmeans-tested" government programs.

(2) Income from earned income sources is limited to the equivalent of one full-time 40-hour job. If and only if during the time prior to the original support order, the parent normally and consistently worked more than 40 hours at the parent's job, the court may consider this extra time as a pattern in calculating the parent's ability to provide child support.

(3) Notwithstanding Subsection (1), specifically excluded from gross income are:

(a) cash assistance provided under Title 35A, Chapter 3, Part 3, Family Employment Program;

(b) benefits received under a housing subsidy program, the Job Training Partnership Act, Supplemental Security Income, Social Security Disability Insurance, Medicaid, SNAP benefits, or General Assistance; and

(c) other similar means-tested welfare benefits received by a parent.

(4)(a) Gross income from self-employment or operation of a business shall be calculated by subtracting necessary expenses required for self-employment or business operation from gross receipts. The income and expenses from self-employment or operation of a business shall be reviewed to determine an appropriate level of gross income available to the parent to satisfy a child support award. Only those expenses necessary to allow the business to operate at a reasonable level may be deducted from gross receipts.

(b) Gross income determined under this subsection may differ from the amount of business income determined for tax purposes.

(5)(a) When possible, gross income should first be computed on an annual basis and then recalculated to determine the average gross monthly income.

(b) Each parent shall provide verification of current income. Each parent shall provide year-to-date pay stubs or employer statements and complete copies of tax returns from at least the most recent year unless the court finds the verification is not reasonably available. Verification of income from records maintained by the Department of Workforce Services may be substituted for pay stubs, employer statements, and income tax returns.

(c) Historical and current earnings shall be used to determine whether an underemployment or overemployment situation exists.

(6) Gross income includes income imputed to the parent under Subsection (7).

(7)(a) Income may not be imputed to a parent unless the parent stipulates to the amount

NOTES OF DECISIONS (57)

In general
Change in circumstances
Credits and offsets
Deduction of expenses, self-employed income
Determination of income, generally
Discretion of court
Enrollment in school, imputed income
Findings
Imputed income
Overtime pay
Second source of income

Offsets
Supplemental security income, credits and offsets
Voluntary underemployment, imputed income

imputed, the parent defaults, or, in contested cases, a hearing is held and the judge in a judicial proceeding or the presiding officer in an administrative proceeding enters findings of fact as to the evidentiary basis for the imputation.

(b) If income is imputed to a parent, the income shall be based upon employment potential and probable earnings as derived from employment opportunities, work history, occupation qualifications, and prevailing earnings for persons of similar backgrounds in the community, or the median earning for persons in the same occupation in the same geographical area as found in the statistics maintained by the Bureau of Labor Statistics.

(c) If a parent has no recent work history or a parent's occupation is unknown, income shall be imputed at least at the federal minimum wage for a 40-hour work week. To impute a greater income, the judge in a judicial proceeding or the presiding officer in an administrative proceeding shall enter specific findings of fact as to the evidentiary basis for the imputation.

(d) Income may not be imputed if any of the following conditions exist and the condition is not of a temporary nature:

(i) the reasonable costs of child care for the parents' minor children approach or equal the amount of income the custodial parent can earn;

(ii) a parent is physically or mentally unable to earn minimum wage;

(iii) a parent is engaged in career or occupational training to establish basic job skills;
or

(iv) unusual emotional or physical needs of a child require the custodial parent's presence in the home.

(8)(a) Gross income may not include the earnings of a minor child who is the subject of a child support award nor benefits to a minor child in the child's own right such as Supplemental Security Income.

(b) Social Security benefits received by a child due to the earnings of a parent shall be credited as child support to the parent upon whose earning record it is based, by crediting the amount against the potential obligation of that parent. Other unearned income of a child may be considered as income to a parent depending upon the circumstances of each case.

Credits

Laws 2008 c 3 § 1245, eff. Feb. 7, 2008; Laws 2012 c 41, § 13, eff. May 9, 2012

Notes of Decisions (57)

U.C.A. 1953 § 78B-12-203, UT ST § 78B-12-203
Current through 2013 Second Special Session.

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CASE LAW

1. Imputation of Income.

- a. Hall v. Hall, 858 P.2d 1018 (Utah App. 1993). The determination of imputation of income for purposes of alimony is a two step process. First, the court must determine whether a party is voluntarily unemployed or underemployment. Then, once findings have been made in this regard, the court must determine an appropriate amount to impute.
- b. Fish v. Fish, 242 P.3d 787 (Utah App. 2010). Although not expressly applicable to alimony, imputation of income pursuant to Utah Code Ann. Section 78B-12-203 is appropriate in an alimony analysis to determine the payee spouse's ability to provide for his or her own financial needs and the payor's spouse ability to pay alimony.
- c. Busche v. Busche, 272 P.3d 748 (Utah App. 2012). Termination for cause does not necessarily constitute voluntary unemployment, even when the payor spouse has been put on notice that certain behavior will result in termination and the spouse continues with that behavior. The issue is whether a subsequently-reduced income is attributable to post termination conduct and whether a spouse could be earning more in his or her new job with reasonable effort. Thus, for the first prong of the imputation test, the court must determine whether there are jobs reasonably available to someone with the party's qualifications and experience. If the answer is yes, then a party is voluntarily under employed or unemployed and the court moves on to the second prong of test, that of determining the amount to be imputed.
- d. Raynor v. Raynor, 316 P.3d 455 (Utah App. 2013). As in Busche, the Raynor court discusses the situation where a spouse is terminated for cause, stating that a court must consider what a spouse has done after being terminated to determine whether he or she has made reasonable efforts to obtain employment at a rate comparable to that of the lost employment. The Raynor court went

on to quote Utah Code Ann. Section 78B-12-203(7)(b): “if income is imputed to a [spouse], the income shall be based upon employment potential and probable earnings as derived from employment opportunities, work history, occupation qualifications, and prevailing earnings for persons of similar backgrounds in the community, or the median earning for persons in the same occupation in the same geographical area as found in the statistics maintained by the Bureau of Labor Statistics.”

2. Financial Need.

- a. Dobson v. Dobson, 294 P.3d 591 (Utah App. 2012). 1) It is within the court’s discretion to consider child support as income for purposes of computing alimony if the child’s expenses are included in the expenses claimed for financial need; 2) It is an abuse of discretion to award a payee spouse more than his or her need, which need can be based upon the standard of living enjoyed by the parties; 3) It is an abuse of discretion to equalize the parties’ incomes unless neither party has enough income to meet their respective financial needs.
- b. Bakanowski v. Bakanowski, 80 P.3d 153 (Utah App. 2003). The general rule is that a party may not include the funding of savings accounts, investments and retirement accounts as expenses for purposes of determining alimony. However, the critical question is whether the parties engaged in the standard practice of funding these types of expenses during their marriage. If so, it is appropriate to consider allowing such expenses as the funding was part of the parties’ standard of living.
- c. Farnsworth v. Farnsworth, 288 P.3d 298 (Utah App. 2012). Expenses relating to a child’s extracurricular activities may not be considered an expense for determining alimony. The issue is one of whether a party should be ordered to pay child support in excess of the guidelines.

3. Use of Net Income. McPherson v. McPherson, 265 P.3d 839 (Utah App. 2011). Alimony is to be determined based upon the parties’ net income, not gross income.

4. Increasing Alimony as Child Support Terminates. Richardson v. Richardson, 201 P.3d 942 (Utah App. 2008). It is within the court's discretion to automatically increase alimony as child support terminates upon the emancipation of minors.
5. Rehabilitative Alimony. Boyer v. Boyer, 259 P.3d 1063 (Utah App. 2011). "The purpose of rehabilitative alimony is in the short run to close the gap between actual expenses and actual income to enable the receiving spouse to then be better able to support him or herself when the rehabilitative period ends." Id. @ 1069. It is appropriate in short term marriages where the payee spouse is of an employable age and has significant marketable skills.
6. Cohabitation. Levin v. Carlton-Levin, 318 P.3d 1177 (Utah App. 2014). The burden of establishing cohabitation is on the payor spouse. The general hallmarks of cohabitation include a shared residence, an intimate relationship, and a common household involving shared expenses, shared decisions, shared space, and shared meals. Other factors include the length and continuity of the relationship, the amount of time the couple spends together, the nature of the activities the couple engages in and whether they spend vacations and holidays together and with their respective families. In this case, evidence was collected by a private investigator over fifty two days. The court further held that this period of time was not too short to determine cohabitation as the trial court made sufficient findings that the time period was representative of a longer trend.