



NORTH CAROLINA **POSTSEPARATION SUPPORT AND ALIMONY**



The information provided in this document is meant for the sole use of Active Duty service members, retirees, their families, and those individuals eligible for legal assistance. The information is general in nature and meant only to provide a brief overview of various legal matters. Rights and responsibilities vary widely according to the particular set of circumstances in each case. Laws can vary across states, services, and civilian jurisdictions and laws are changed from time to time. Do not rely upon the general restatements of background information presented here without discussing your specific situation with a legal professional.

Only a dependent spouse is eligible to receive postseparation support or alimony in this state. North Carolina law defines a dependent spouse as “a spouse, whether husband or wife, who is actually substantially dependent upon the other spouse for his or her maintenance and support or is substantially in need of maintenance and support from the other spouse.” Without economic dependency, a spouse is not entitled to a judicial award of postseparation support or alimony in North Carolina.

“Postseparation support” is money paid to a dependent spouse by the other spouse until the earlier of either the date specified in the order of postseparation support, or an order awarding or denying alimony. Spouses can also enter into a voluntary agreement regarding postseparation support with any terms and conditions they choose.

Support that is of potentially longer duration is “alimony.” Spouses can also enter into a voluntary agreement regarding the payment of alimony, with any terms and conditions they choose. A dependent spouse can waive or forego either postseparation support and/or alimony by agreement. If alimony is awarded prior to a division of the marital property, a party may request that the alimony award be reconsidered once the property is divided. Both the amount and the duration of alimony can be reevaluated after the property is finally divided.

The tests for postseparation support and alimony are somewhat different in North Carolina. To be eligible for postseparation support, a dependent spouse must show that his or her resources are not adequate to meet his or her reasonable needs, and that the supporting spouse has the financial means to pay postseparation support. In deciding the inadequacy of the dependent spouse’s resources and the supporting spouse’s ability to pay, a court looks at the parties’ needs in light of their accustomed standard of living, their incomes, their income-earning abilities, debt service obligations of each party, and their necessary expenses. By contrast, the language of the alimony statute requires an award of alimony in cases where the court finds an alimony award to be equitable. There are a number of factors, discussed below, the court is to use in making this determination about the equitableness of an award of alimony.

Financial dependency is the primary criterion in setting the amount and duration for alimony. Marital fault, including actions such as abandonment, adultery, indignities, excessive use of alcohol or drugs, reckless spending, and failure to provide for a spouse’s subsistence needs, can be a factor so long as the fault occurred during the marriage and before or on the date of separation. However, a showing of fault is not a pre-condition for an award of postseparation support or alimony.

Unlike child support in North Carolina, there are no recommended guidelines as to the appropriate amounts of postseparation support and alimony to be awarded a dependent spouse. In essence, the test used by the court is two-fold. First, a judge will determine how much money the dependent spouse needs to meet his or her reasonable needs, consistent with the standard of living in the final years of the marriage. The judge makes this determination by measuring a spouse’s reasonable monthly expenses



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against the amount of his or her available income and other financial resources. Second, the judge decides whether the supporting spouse has the financial ability to pay the amount of alimony that would be fair and just. These same standards are, of course, useful guides in settlement negotiations, where parties are trying to predict what would occur were the support case to be litigated.

In determining the amount and duration of alimony, the judge examines anything that relates to a party's alimony claim. In order to view the big picture of what is "equitable," the court is required to consider all relevant factors, including:

- The relative earnings and earning capacities of the spouses
- The ages and the physical, mental and emotional conditions of the spouses
- The duration of the marriage
- The standard of living of the spouses established during the marriage
- The relative needs of the spouses
- The contribution of a spouse as homemaker
- The relative education of the spouses and the time necessary to acquire sufficient education or training to enable the spouse seeking alimony to find employment to meet his or her reasonable economic needs
- The extent to which the earning power, expenses, or financial obligations of a spouse will be affected by reason of serving as the custodian of a minor child
- The amount and sources of earned and unearned income of both spouses, including, but not limited to, earnings, dividends, and benefits such as medical, retirement, insurance, social security, or others
- The marital misconduct of either of the spouses through the date of separation
- The contribution by one spouse to the education, training, or increased earning power of the other spouse
- The relative assets and liabilities of the spouses and the relative debt service requirements of the spouses, including legal obligations of support
- The property brought to the marriage by either spouse
- The federal, state, and local tax ramifications of the alimony award
- Any other factor relating to the economic circumstances that the court finds to be just and proper

Fault plays a role under the alimony statute in North Carolina. The only situation in which a dependent spouse will be absolutely barred from getting spousal support will be in an alimony (not a postseparation support) case in which the supporting spouse can prove the other spouse's uncondoned illicit sexual behavior, with no similar fault having occurred on the part of the supporting spouse. Conversely, if the supporting spouse commits marital misconduct, and the judge has determined that the other spouse is a dependent spouse, then the judge must award alimony to the dependent spouse. The amount of alimony awarded is in the judge's discretion, after considering the statutory factors.

Alimony under court order is payable as either a lump sum or in the form of periodic payments, for a specified or an indefinite term. In settlement negotiations, the parties frequently agree on a fixed-term option, although if they can agree on different termination conditions that is also acceptable.