WEST VIRGINIA CODE CHAPTER 48 ARTICLE 8

WV Legislature

§48-8-101. General provisions regarding spousal support.

(a) An obligation that compels a person to pay spousal support may arise from the terms of a court order, an antenuptial agreement or a separation agreement. In an order or agreement, a provision that has the support of a spouse or former spouse as its sole purpose is to be regarded as an allowance for spousal support whether expressly designated as such or not, unless the provisions of this chapter specifically require the particular type of allowance to be treated as child support or a division of marital property. Spousal support may be paid as a lump sum or as periodic installments without affecting its character as spousal support.

(b) Spousal support is divided into four classes which are: (1) Permanent spousal support; (2) temporary spousal support, otherwise known as spousal support pendente lite; (3) rehabilitative spousal support; and (4) spousal support in gross.

(c) An award of spousal support cannot be ordered unless the parties are actually living separate and apart from each other.

WV Legislature

§48-8-102. Jurisdiction to award spousal support.

The family courts and circuit courts, as provided in this chapter, have jurisdiction to award spousal support. A court may provide for the maintenance of a spouse during the pendency of an appeal to the circuit court or to the Supreme Court of Appeals.

WV Legislature

§48-8-103. Payment of spousal support.

(a) Upon ordering a divorce or granting a decree of separate maintenance, the court may require either party to pay spousal support in the form of periodic installments, or a lump sum, or both, for the maintenance of the other party. Payments of spousal support are to be ordinarily made from a party's income, but when the income is not sufficient to adequately provide for those payments, the court may, upon specific findings set forth in the order, order the party required to make those payments to make them from the corpus of his or her separate estate. An award of spousal support shall not be disproportionate to a party's ability to pay as disclosed by the evidence before the court.

(b) At any time after the entry of an order pursuant to the provisions of this article, the court may, upon motion of either party, revise or alter the order concerning the maintenance of the parties, or either of them, and make a new order concerning the same, issuing it forthwith, as the altered circumstances or needs of the parties may render necessary to meet the ends of justice. (c)(1) For the purposes of subsection (b) of this section, "altered circumstances" includes evidence in the form of genetic testing that establishes that a child conceived during the marriage of the parties is not the child of the former husband, or that a child was born to a woman other than the former wife because of the adultery of the former husband.

(2) Prior to admitting evidence of genetic testing, the court shall preliminarily determine whether genetic testing evidence should be admitted for the purpose of disproving or establishing paternity. The facts that may be considered by the court at this hearing include the following:

(A) The length of time that has elapsed since the party was first placed on notice that a child conceived during the marriage of the parties is not the child of the former husband, or that a child was born to a woman other than the former wife because of the adultery of the former husband;

(B) The length of time during which the individual desiring to challenge paternity assumed the role of parent to the child;

(C) The facts surrounding the party's discovery of nonpaternity;

(D) The nature of the parent/child relationship;

(E) The age of the child;

(F) The harm which may result to the child if paternity were successfully disproved;

(G) The extent to which the passage of time reduced the chances of establishing paternity in favor of the child; and

(H) All other factors which may affect the equities involved in the potential disruption of the

WV Legislature

parent/child relationship or the chances of undeniable harm to the child.

(d) For the purposes of subsection (c), genetic testing must be performed pursuant to the following guidelines:

(1) The tests show that the inherited characteristics including, but not limited to, blood types, have been determined by appropriate testing procedures at a hospital, independent medical institution or independent medical laboratory duly licensed under the laws of this state, or any other state, and an expert qualified as an examiner of genetic markers has analyzed, interpreted and reported on the results; and

(2) The genetic test results exclude the former husband as the father of the child.

WV Legislature

§48-8-104. Effect of fault or misconduct on award of spousal support.

In determining whether spousal support is to be awarded, or in determining the amount of spousal support, if any, to be awarded, the court shall consider and compare the fault or misconduct of either or both of the parties and the effect of the fault or misconduct as a contributing factor to the deterioration of the marital relationship.

WV Legislature

§48-8-105. Rehabilitative spousal support.

(a) The court may award rehabilitative spousal support for a limited period of time to allow the recipient spouse, through reasonable efforts, to become gainfully employed. When awarding rehabilitative spousal support, the court shall make specific findings of fact to explain the basis for the award, giving due consideration to the factors set forth in §48-6-301 of this code. An award of rehabilitative spousal support is appropriate when the dependent spouse evidences a potential for self-support that could be developed through rehabilitation, training, or academic study.

(b) The court may modify an award of rehabilitative spousal support if a substantial change in the circumstances under which rehabilitative spousal support was granted warrants terminating, extending, or modifying the award or replacing it with an award of permanent spousal support. In determining whether a substantial change of circumstances exists which would warrant a modification of a rehabilitative spousal support award, the court may consider a reassessment of the dependent spouse's potential work skills and the availability of a relevant job market, the dependent spouse's age, health and skills, the dependent spouse's ability or inability to meet the terms of the rehabilitative plan and other relevant factors as provided for in §48-6-301 of this code.

WV Legislature

§48-8-106. Payments out of disposable retired or retainer pay.

Whenever the court enters an order requiring the payment of spousal support, if the court anticipates the payment or any portion thereof is to be paid out of "disposable retired or retainer pay" as that term is defined in 10 U.S.C. §1408, relating to members or former members of the uniformed services of the United States, the court shall specifically provide for the payment of an amount, expressed in dollars or as a percentage of disposable retired or retainer pay, from the disposable retired or retainer pay of the payor party to the payee party.

WV Legislature