

THE NEW YORK STATE LAW REVISION COMMISSION
FINAL REPORT
ON
MAINTENANCE AWARDS IN DIVORCE PROCEEDINGS

May 15, 2013

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New York State Law Revision Commission
80 New Scotland Avenue
Albany, New York 12208
518 - 472 - 5858

Members of the Commission
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Professor Michael J. Hutter
John E. Ryan, Esq.
John A. Cirando, Esq.
Professor Jay C. Carlisle II

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Commission Staff
Rose Mary Bailly, Esq., Executive Director
Barbara S. Hancock, Esq., Counsel (retired 1/2/2013)

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Executive Summary

New York's current maintenance statutes mirror two approaches to maintenance awards. The temporary maintenance statute requires the application of a formula designed to create consistent and predictable results. The final maintenance statute, based on the application of a series of statutory factors, is designed to promote nuanced treatment of the parties' individualized circumstances.

These two desires, individualized treatment for each marriage on the one hand, and predictability and consistency of awards on the other, are difficult to reconcile because the goals "point the policy makers in different directions. Predictable results follow best from clear, determinate, easily applied rules. Individualized results generally are associated with open-ended standards allowing judges to respond to the infinite variety of individual circumstances that these cases present."¹ Our study was an effort to strike a balance between these two approaches.

We have concluded that this balance can be struck by taking into account the differences between cases with limited assets and income on the one hand, and cases involving substantial assets and income on the other. In the former, the court has fewer options in granting awards and it is less likely that either party is represented by counsel; in the latter, the court has more variables to consider, more options in crafting relief, and both parties are more likely to have counsel.

Thus, the starting point for all parties should be a formula for combined income at or below \$136,000, a level that reflects the income of a majority of New Yorkers and which allows

¹ American Law Institute, *Principles of the Law of Family Dissolution: Analysis and Recommendations* 1-2 (2002).

individuals with income at or below that level to determine their financial obligations to each other and their children upon divorcing in a reasonably inexpensive and expeditious manner. Where the parties' combined income exceeds \$136,000, the court maintains its discretion by applying a set of statutory factors to that excess income. The court also retains discretion when the application of the formula would be unjust or inappropriate given the parties' situation.

Based on our study, the Commission recommends changes to awards of temporary maintenance and final maintenance as described below.

A. Temporary Maintenance Awards under the Domestic Relations Law

The Commission recommends that a mathematical formula be continued in the calculation of a presumptive award of temporary maintenance, that the formula be amended to provide that the formula be applied to the parties' combined adjusted gross income of \$136,000, and that the income guideline be geared to biennial adjustment in the statute.

The application of the formula establishes a presumptive showing of need and an ability to pay. If the parties' combined adjusted gross income exceeds \$136,000, the Commission recommends that the mathematical formula apply to that portion of the parties' combined income which is at or less than \$136,000, and that the court be guided by a set of statutory factors in considering an additional award based on income that exceeds the guideline amount.

The adoption of the income guideline of \$136,000, geared to biennial adjustments, was influenced by the income levels of the majority of New Yorkers, a consideration that also influenced the income guideline adopted in the Child Support Standards Act.

If the court finds that the presumptive award is unjust or inappropriate based on the circumstances of the parties, the court must be able to adjust the presumptive award guided by

certain factors. These factors include any award under current section 236B(8) of the Domestic Relations Law to cover necessities, and any amounts that one party has paid to or on behalf of the other party voluntarily and without court order.

The court should also consider whether parties who have established and maintained separate households prior to the commencement of, or during, the matrimonial action have demonstrated an actual need.

If the court adjusts the presumptive award based on these and other proposed statutory factors, it must provide an explanation in writing or orally on the record.

In all cases, the court must allocate the responsibilities of each party for the family's current expenses during the pendency of the matrimonial action.

The duration of an award of temporary maintenance will generally match the duration of the divorce proceeding. The court must, however, set a date certain for the termination of the award so that the duration of the award does not exceed the length of a short term marriage.

B. Post-Divorce Income Awards under the Domestic Relations Law

1. Relationship between assets and a post-divorce income award

Section 236B(6) currently provides that in awarding final maintenance, the court shall consider, among other things, the property of the respective parties including marital property distributed pursuant to equitable distribution. The Commission recommends the continuation of the requirement that the court consider the parties' assets in making any award of post-divorce income from one party to the other.

Based on a widespread consensus, the Commission recommends, however, that one

party's "increased earning capacity"² no longer be considered as a marital asset in equitable distribution under section 326B(5), and that any spousal contribution to the career or career potential of the other party be addressed in an award of post-divorce income. The concept of an "increased earning capacity" has created much dissatisfaction and litigation because of the asset's intangible nature, the speculative nature of its "value" as well as the costs associated with valuations, and problems of double counting increased earnings in awards of post-divorce income and child support.

2. Calculation of an award of post-divorce income

The Commission recommends that a mathematical formula be used to calculate a presumptive award of post-divorce income from one party to the other based on the parties' combined adjusted gross income of \$136,000.

In awarding post-divorce income, the court can adjust the presumptive award based on a set of statutory factors if it finds that the presumptive award is unjust or inappropriate based on the circumstances of the parties.

If the parties' combined adjusted gross income exceeds \$136,000, the Commission recommends that the mathematical formula apply to that portion of the parties' combined income which is at or less than \$136,000, and that the court be guided by a set of factors in considering whether an additional award is justified based on any excess income.

3. Duration of an award of post-divorce income

The Commission recommends that the duration of any post-divorce income award be based on consideration of the length of the marriage, the length of time necessary for the party

² See O'Brien v. O'Brien, 66 N.Y. 2d 576 (1985).

seeking post-divorce income to acquire sufficient education or training to enable that party to find appropriate employment, the normal retirement age of each party as defined by the Internal Revenue Code and the availability of retirement benefits, and any barriers facing the party seeking post-divorce income with regard to obtaining appropriate employment, such as child care responsibilities, health, or age. The court must state the basis for the duration of the award in its decision granting the award.

C. Support Awards under the Family Court Act

Section 412 of the Family Court Act provides that:

A married person is chargeable with the support of his or her spouse and, if possessed of sufficient means or able to earn such means, may be required to pay for his or her support a fair and reasonable sum, as the court may determine, having due regard to the circumstances of the respective parties.

Professor Merrill Sobie notes in his McKinney's Practice Commentaries to section 412 that the omission of an amendment to section 412 as part of Chapter 371 exacerbated "the illogical dichotomy between the Domestic Relations Law and the Family Court Act."³

We recommend that the provisions of a revised temporary maintenance statute in the Domestic Relations Law be mirrored in section 412 of the Family Court Act governing spousal support awards.

³ Professor Merrill Sobie, 2010 West Supplementary Practice Commentaries to McKinney's Family Court Act §412 (2011 Electronic Update). Laws of 2010, c. 371, among other things, added a new subdivision 5-a to section 236 of the Domestic Relations Law to provide for the calculation of temporary maintenance in accordance with a formula.

I. Introduction

The New York State Law Revision Commission submits this Report concerning the award of maintenance in matrimonial proceedings, as called for by Chapter 371 of the Laws of 2010 which directed the Commission to, among other things:

review the maintenance laws of the state, including the way in which they are administered to determine the impact of these laws on post marital economic disparities and the effectiveness of such laws and their administration in achieving the state's policy goals and objectives of ensuring that the economic consequences of a divorce are fairly and equitably shared by the divorcing couple⁴

Much controversy surrounds the topic of maintenance. Awards of maintenance have been “a source of much inconsistency among trial courts, unhappiness among litigants, and conflict among critics.”⁵ Some commentators have suggested that “a list of factors [for awarding maintenance that is found in virtually all statutes] with no indication of relative weight and no over-arching guideline other than the vague admonition to be fair is virtually the same as providing no factors.”⁶ Most family law attorneys agree that spousal support presents the largest

⁴ Laws of 2010, c. 371 §6-a. Chapter 371 provides that “The law revision commission is hereby directed to: (1) review and assess the economic consequences of divorce on the parties; (2) review the maintenance laws of the state, including the way in which they are administered to determine the impact of these laws on post marital economic disparities, and the effectiveness of such laws and their administration in achieving the state's policy goals and objectives of ensuring that the economic consequences of a divorce are fairly and equitably shared by the divorcing couple; and (3) make recommendations to the legislature, including such proposed revisions of such laws as it determines necessary to achieve these goals and objectives.”

⁵ Megan A. Drefchinski, Comment, Out with the Old and In with the New: An Analysis of Illinois Maintenance Law Under the Uniform Marriage and Divorce Act and a Proposal for Its Replacement, 23 N. Ill. U. L. Rev. 581, 613 (2003).

⁶ Marti E. Thurman, Maintenance: a Recognition of the Need for Guidelines, 33 U. Louisville J. Fam. L. 971, 971 (1995)(citing Mary Ann Glendon, Fixed Rules and Discretion in Contemporary Family Law and Succession Law, 60 Tul. L. Rev. 1165, 1196 (1986).

impediment to settling divorces, and support cases are among the cases most appealed.⁷

The unsettled issue of maintenance inconsistency and unpredictability impacts family law by increasing the cost of obtaining a divorce, the emotional strain on the parties and the burden on the court system. The likelihood of settlement is minimal because of the uncertainty of predicting maintenance awards from case to case. Moreover, litigating a divorce case with maintenance as a contested issue is expensive and becomes especially burdensome for low-income families.⁸

The 2010 introduction of a formula to establish a presumptive award of temporary maintenance gave rise to more controversy in New York. Attorneys for middle and low income clients reported that the formula introduced consistency among awards for clients in similar circumstances and resulted in awards in cases where clients would have previously abandoned their claims. On the other hand, attorneys whose clients have substantial assets found themselves involved in expensive litigation seeking relief from the application of the formula. Furthermore, advocates on all sides expressed several concerns about the new statute, among them, the presence of factors irrelevant to a determination of temporary maintenance and the failure of the formula to account for awards for necessities under section 326B(8) of the Domestic Relations Law.

Hence, the significant frustration and dissatisfaction over maintenance awards acknowledged in the 2006 Report of New York State's Matrimonial Commission to Chief Judge Kaye (Miller Commission Report) continued, albeit of a different nature.⁹

⁷ Jennifer L. McCoy, Spousal Support Disorder: an Overview of Problems in Current Alimony Law, 33 Fla. St. U. L. Rev. 501, 502 (2005); Marti E. Thurman, Maintenance: a Recognition of the Need for Guidelines, 33 U. Louisville J. Fam. L. 971, 972 (1995).

⁸ Marti E. Thurman, Maintenance: a Recognition of the Need for Guidelines, 33 U. Louisville J. Fam. L. 971, 972-73 (1995).

⁹ MATRIMONIAL COMMISSION REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 66 (2006), <http://www.courts.state.ny.us/reports/matrimonialcommission>.

The Miller Commission's recommendation that "the issue deserved greater attention, study and research"¹⁰ is understandable in a court system which presides over a large number of divorces. In 2009, the most recent year for which records are available in New York,¹¹ 50,310 marriages ended in dissolution,¹² 49,816 through a divorce proceeding.

II. The Law Revision Commission's Work

Between July 2010 when we were directed to undertake this study and the end of 2012, we held numerous lengthy interviews with judges in New York, representatives from the American Academy of Matrimonial Lawyers, the Family Law Section of the New York State Bar Association, the Post Marital Income Coalition, the Women's Bar Association of the State of New York, and other practitioners representing high income professionals, middle income clients, and W-2 wage earners. Some interested parties also submitted written materials to the Commission.

We hosted a roundtable discussion at Albany Law School on October 25, 2011 at which we heard from all stakeholders about the current law regarding maintenance awards, problems and concerns about the interpretation of the law, and suggestions for change.¹³

¹⁰ *Id.*

¹¹ On its website, the New York State Department of Health maintains records of marriage dissolutions by duration of the marriage, number of children under 18 years of age, type of decree, and county where dissolution was granted. See http://www.health.ny.gov/statistics/vital_statistics/2009/. This information is obtained by the Bureau of Production Systems Management (BPSM) of the New York State Department of Health from dissolution of marriage certificates recorded in county clerks' offices as required by statute. N.Y. Pub. Health L. § 4139.

¹² Vital Statistics, NYS Department of Health, Table 48: Dissolutions of Marriage by County of Decree and Type of Decree New York State - 2009, available at http://www.health.ny.gov/statistics/vital_statistics/2009/table48.htm.

¹³ The minutes of the meeting and a recording of the event are available at the Commission's website: <http://www.lawrevision.state.ny.us/mtgs.php>.

We researched maintenance statutes in other states and Canada, including the use of formulas which have been adopted formally or informally in some states and localities, as well as legislative initiatives in Massachusetts and Florida.¹⁴ We pursued two additional avenues of investigation in New York. The first was the collection and analysis of data on maintenance awards in nine counties around the state: Albany, Bronx, Erie, Jefferson, Kings, Nassau, New York, Onondaga, and Westchester.¹⁵ The second was an analysis of reported appellate court decisions in which the duration of final maintenance awards was described.¹⁶

We considered a wealth of information and many variables in reaching our conclusions, including statistics on the income of New Yorkers maintained by the New York State Tax Department as well as statistics on the income of individuals residing in the nine counties from which we collected data.

A. Data from Nine New York Counties

In collaboration with the Office of Court Administration (OCA), we gathered information about divorces and maintenance awards in the nine counties using a form known as a UCS-111A – a modified version of the UCS-111 questionnaire used statewide to obtain information about child support awards.¹⁷ A total of 7,302 of the collected questionnaires were used for purposes of

¹⁴ Our initial work in this area is discussed in our May 2011 Preliminary Report, available at <http://www.lawrevision.state.ny.us/mas.php>.

¹⁵ See discussion at pp 13-16.

¹⁶ See discussion at pp 26-27.

¹⁷ Copies of the UCS 111 (2001 version) and UCS 111A are attached here as Appendix A. The 2001 version of the UCS 111 was used as the template for the UCS 111A. The UCS 111 was amended in 2011. The information was collected pursuant to an Administrative Order (Appendix B) and is subject to an agreement between the Commission and OCA which protects the personal information provided. The collection began in April 2011 and ended by February 2012.

analysis.

1. The Law Revision Commission's Concerns

The Commission was interested to learn the relationship, if any, between any award of temporary or final maintenance and the parties' length of marriage, the status of their health, their respective incomes, and the presence of un-emancipated children. The Commission was also interested to see the difference, if any, between awards of temporary maintenance before and after the enactment of chapter 371 of the laws of 2010, and what effect the application of a formula like the one for temporary maintenance would have on final maintenance awards. Finally, the Commission was concerned about the relationship between a lack of final maintenance awards and the impoverishment of a spouse after a divorce.

2. The Responses

No statistically significant conclusions could be derived from the responses to the questionnaire. Our personal review of all 7,302 questionnaires revealed that the responses provided varying degrees of information. A small number of responses provided detailed information about the parties' specific jobs with specific salaries, and specific amounts of any awards made. A greater number provided no information. The vast majority of the responses were incomplete in many particulars. However, the following information can be reported.

A. Length of Marriage

The divorces by length of marriage across the responses were relatively evenly divided among categories of fewer than 5 years, 5-10 years, 11-20 years and greater than 20 years.

B. Awards

Temporary maintenance awards were reported in 213 cases. Final maintenance awards

were reported in 468 cases. Awards of both temporary and final maintenance were reported in 124 cases. Two of those cases reported that the husband received both temporary and final maintenance. 107 cases reported that the wife received both temporary and final maintenance. The remaining cases reported awards but not the recipients.

Overall, it appeared that the likelihood of an award was higher when the husband's income was higher, children were present, the husband earned more than his spouse, the parties were married for a longer period of time, the husband's health was good, and the parties lived in Erie, Onondaga, or Westchester counties.¹⁸

C. Pre-2012 and post-2010 Temporary Maintenance Awards

It was difficult to draw any conclusions about the effect of the change in the law. Awards were made in 417 cases where the application of the formula would have created a presumptive award but the data did not indicate whether the formula was used. Awards were made in 51 cases where the application of the formula would not have created a presumptive award.

D. Application of a Formula for Final Maintenance Awards

If a formula similar to the temporary maintenance formula was used to calculate final maintenance, it appeared that a majority of cases where no award was actually made would be entitled to a presumptive award. Of 5,932 cases providing some information about the parties' income but reporting no award, the application of the formula would indicate an award in 3,349 cases (56 percent).

¹⁸ More information about the reported awards is provided at Appendix C.

E. Poverty and a Lack of a Maintenance Award

The information was insufficient to allow any observations about that relationship.

3. Conclusion

Although the data was thoroughly examined, the paucity of information provided in the responses made it difficult to draw conclusions. The one item that seems significant, however, is the fact that 56 percent of cases where no final award was made would have benefitted from an award through the application of the formula.

III. The Law Revision Commission's Recommendations

New York's current maintenance statutes mirror two approaches to maintenance awards. The temporary maintenance statute under section 236B(5-a) of the Domestic Relations Law requires the application of a formula designed to create consistent and predictable results. The final maintenance statute under section 236B(6) of the Domestic Relations Law, which is based on the application of a series of statutory factors, is designed to promote nuanced treatment of the parties' individualized circumstances.

These two desires, individualized treatment for each marriage on the one hand, and predictability and consistency on the other, are difficult to reconcile because the goals "point the policy makers in different directions. Predictable results follow best from clear, determinate, easily applied rules. Individualized results generally are associated with open-ended standards allowing judges to respond to the infinite variety of individual circumstances that these cases present."¹⁹ Our study was an effort to strike a balance between these two approaches.

¹⁹ ALI, Principles of the Law of Family Dissolution: Analysis and Recommendations 1-2 (2002).

Based on the information we gathered, we have concluded that this balance can be struck by taking into account the differences between cases with limited assets and income on the one hand and cases involving substantial assets and income on the other. In the former, the court has fewer options in granting awards and it is less likely that either party is represented by counsel; in the latter, the court has more variables to consider, more options in crafting relief, and both parties are more likely to have counsel.

Thus, the starting point for all parties should be a formula for combined income at or below \$136,000, a level of income that reflects the income of a majority of New Yorkers and which allows individuals with income at or below that level to determine their financial obligations to each other and their children upon divorcing in a reasonably inexpensive and expeditious manner. Where the parties' combined income exceeds \$136,000, the court would apply a set of statutory factors to the income in excess of the guideline giving the court flexibility in considering parties' more abundant resources and individual circumstances.

Thus, the Commission recommends the continuation of a formula for awards of temporary maintenance, the adoption of a formula for final maintenance or post-divorce income, and the preservation of the court's flexibility to address situations where the parties' income exceeds the formula's income guideline or the presumptive award is unjust or inappropriate given the parties' situation.

A. The Formula

The formula contained in section 236B(5-a) is based on a recommendation of the

American Academy of Matrimonial Lawyers (AAML).²⁰ In its 2007 Report, *Considerations When Determining Alimony, Maintenance and Support*,²¹ the AAML offered guidelines for determining the *amount* of an award of post-divorce maintenance, and its *duration*.²²

The AAML formula was developed through the collaborative effort of a committee of members of the AAML which endeavored to produce a range of reasonable alimony awards using a variety of incomes.²³

The AAML formula first appeared in New York in a 2008 Assembly Bill as the presumptive method for calculating final or post-divorce maintenance awards based on the payor's income, up to \$1,000,000.²⁴ The judge's discretion to award maintenance based on traditional factors was limited to that portion of the payor's income which exceeded the \$1,000,000 cap or to cases where the court found the formula's result to be unjust or inequitable.²⁵ Under the bill, the death of either party ended the maintenance obligation, but

²⁰ Sponsor's Memorandum, A. 10984B/S. 8390, available at <http://nyslrs.state.ny.us/nyslbdcl/menuget1.cgi>.

²¹ The Report was approved by the AAML Board of Governors on March 9, 2007. The AAML Report is available at <http://www.divorcereformny.org/pdf/AAML.pdf>.

²² AAML Report (emphasis added).

²³ April 25, 2010 Telephone conversation between Arthur Balbirer, Esq. of the AAML and Rose Mary Bailly, Esq., and Barbara Hancock, Esq., Law Revision Commission staff. The participants in the AAML committee were Marlene Eskind Moses, Esq. (Tennessee), Co-Chair; Barbara Ellen Handschu, Esq. (New York), Co-Chair; Michael Albano, Esq. (Missouri); Arthur E. Balbirer, Esq. (Connecticut); Gaetano Ferro, Esq. (Connecticut); James T. McLaren, Esq. (South Carolina); Joanne Ross Wilder, Esq. (Pennsylvania); Thomas Wolfrum, Esq. (California); and Mary Kay Kisthardt, Esq. (Missouri), Reporter. AAML Report.

²⁴ A. 10446 (2008).

²⁵ *Id.* (The court was to consider eighteen specific factors and one catchall factor if income in excess of the cap was considered in a determination of the amount of an award. A written decision setting forth the factors considered and the reasons for its decision was required. If the court found the presumptive award unjust or inappropriate, it could adjust the award based upon consideration of sixteen factors and one catchall factor. A

remarriage of the payee spouse did not.²⁶

The formula appeared again in a 2010 post-divorce maintenance bill pending in both houses.²⁷ Eventually the bill was amended to delete the formula in the post-divorce income awards, and apply it instead to temporary maintenance awards.²⁸ The income cap was reduced to \$500,000, and while consideration of the duration of the award was retained, the formula to calculate duration was eliminated.²⁹ The amended version of the bill passed both houses and was enacted into law as Chapter 371 which became effective on October 13, 2010.

It appears that the formula adopted by the AAML and the modified version in New York were arrived at in much the same way as formulas adopted formally or informally in other states and localities. Attorneys with expertise in the nature and frequency of maintenance awards made in their states used anecdotal evidence as well as reported decisions to craft a formula which would mirror a range of results they presumed would be an appropriate starting point for their clients.

The Commission does not suggest that the formula's methodology be disturbed; however, given both the patterns observed in the collected data about parties' income as well as statistics about the income of the vast majority of New Yorkers, the Commission recommends that the

written order setting forth the presumptive award, the factors considered, and the reasons for adjustment was required.).

²⁶ *Id.*

²⁷ S. 7740-A/A. 10984-A (2010).

²⁸ A. 10984-B (2010).

²⁹ *Id.*

income guideline up to and including \$500,000 of the higher income spouse be reduced.

B. Income Guideline of \$136,000

Both data available on the income of New Yorkers and the consensus of stakeholders suggests that the current income guideline of \$500,000 is set too high.

The Commission proposes a guideline of up to and including \$136,000 of the parties' combined adjusted gross income, adjusted by statute biennially in accordance with the consumer price index for all urban consumers (CPI-U).³⁰ A number of considerations influenced the Commission's proposal: a recognition of the diversity of income levels between upstate and downstate, the current income guideline of the Child Support Standards Act which is based on the parties' combined income, information about New Yorkers' income available from various sources, and a belief that applicable guidelines for maintenance and child support should be consistent with one another to avoid confusion and unnecessary complexity.

The Commission recognized that income levels vary across the state; it concluded, however, that attempting to set variable guidelines based on the parties' location was unworkable. The Commission was therefore guided by the income guideline in the Child Support Standards Act -- \$136,000 adjusted by statute biennially in accordance with the CPI-U, and the approach adopted by the Legislature in setting that guideline -- namely to include the vast majority of New Yorkers and leave "only exceptional income cases to potentially be determined outside of the presumptively correct CSSA percentages."³¹ The Commission looked

³⁰ The guideline would be adjusted every two years based on the product of the average annual percentage changes in the consumer price index for all urban consumers (CPI-U) as published by the United States department of labor bureau of labor statistics for the two year period rounded to the nearest one thousand dollars.

³¹ Memorandum in Support, Laws of 2009, c. 343.

at data collected by the New York State Tax and Finance Department which indicated that in 2008, 94.8% of persons filing individual tax returns in New York, including couples filing joint tax returns, reported income of less than \$200,000.³² In the same year, 14.2% of individual filers reported income of between 100,000 and 199,000.³³ The remaining 80.6% reported income of less than 100,000.³⁴

In 2008, the Fiscal Policy Institute reported that as of 2004-2006, the top fifth percentile of New Yorkers reported income of \$148,192; breaking that percentile down further, the average family income of the 80-95 percentile was \$108,875, and the average family income of the top 5 percentile was \$262,679.³⁵

On a related note, an analysis of 2005 New York tax returns shows that the top 20% of individual filers reported more of their income from dividends, business income and capital gains than they did from wages, and among the top 5%, the amount reported from wages was even less.³⁶

³² See Statistical Tables, Analysis of 2008 Personal Income Tax Returns (April 2011), available at http://www.tax.ny.gov/pdf/stats/stat_pit/pit/analysis_of_2008_personal_income_tax_returns.pdf. Colorado's guideline of \$75,000, for example, is based on "review of Department of Revenue information stating that 80 percent of joint income tax filers in Colorado had adjusted gross income of \$75,000 or less." Albert M. Bonin, *New Temporary Formulaic Spousal Maintenance in Colorado: an Overview*, 30-AUG Colo. Law. 87 (2001).

³³ See Statistical Tables, Analysis of 2009 Personal Income Tax Returns (June 2012), available at http://www.tax.ny.gov/pdf/stats/stat_pit/pit/analysis_of_2009_personal_income_tax_returns.pdf.

³⁴ See Statistical Tables, Analysis of 2009 Personal Income Tax Returns (June 2012), available at http://www.tax.ny.gov/pdf/stats/stat_pit/pit/analysis_of_2009_personal_income_tax_returns.pdf. Colorado's cap of \$75,000, for example, is based on "review of Department of Revenue information stating that 80 percent of joint income tax filers in Colorado had adjusted gross income of \$75,000 or less." Albert M. Bonin, *New Temporary Formulaic Spousal Maintenance in Colorado: an Overview*, 30-AUG Colo. Law. 87 (2001).

³⁵ *Pulling Apart in New York: An Analysis of Income Trends in New York State* 4, 9, 13 (Fiscal Policy Institute 2008), available at http://www.fiscalpolicy.org/PullingApartInNewYork_April2008.pdf.

³⁶ *Pulling Apart in New York: An Analysis of Income Trends in New York State* 17 (Fiscal Policy Institute 2008), available at http://www.fiscalpolicy.org/PullingApartInNewYork_April2008.pdf.

Income information for our 9 counties – the median income,³⁷ per capita personal income,³⁸ and percentage of people below the poverty rate³⁹ – is consistent with the statewide data maintained by the tax department. The income data, as well as other demographic information about the nine counties, including the population,⁴⁰ and number of divorces,⁴¹ is included in this report at Appendix D.

Furthermore, in our review of questionnaires where responses included specific information about employment and salary, we observed that the majority of responses indicated employment in service industry jobs for modest wages, consistent with the income data of those counties.

Thus, the information collected by the Commission suggested that the income of the majority of New Yorkers does not exceed \$200,000 and a large number of individuals have income substantially less than that amount. Because the Commission intended that the guideline cover the incomes of the majority of New Yorkers, and because different conclusions can be

³⁷ The median income data is for the year 2009 collected from the Census Bureau. *See State and County Quick Facts*, <http://quickfacts.census.gov/qfd/states/36/36047.html>.

³⁸ The per capita personal income data is for the year 2006. Personal Income Per Capita by County of Residence, NYS: 1998-2006, 2009 New York State Statistical Yearbook, available at http://www.rockinst.org/nys_statistics/2009/C/.

³⁹ The number of persons below the poverty rate is for the year 2009, collected from the Census Bureau. *See State and County Quick Facts* <http://quickfacts.census.gov/qfd/states/36/36047.html>. The federal poverty rate for 2009 for a single individual was \$10,830; for two individuals, \$14,750. The 2009 Poverty Guidelines for the 48 Contiguous States and the District of Columbia, available at <http://aspe.hhs.gov/poverty/09poverty.shtml>.

⁴⁰ The population data is for the year 2009 collected from the Census Bureau. *See State and County Quick Facts*, <http://quickfacts.census.gov/qfd/states/36/36047.html>.

⁴¹ The divorce data was obtained for the year 2008. *See* Vital Statistics of New York State 2008, available at http://www.health.state.ny.us/nysdoh/vital_statistics/2008/. This information is obtained by the Bureau of Production Systems Management (BPSM) of the New York State Department of Health from dissolution of marriage certificates recorded in county clerks' offices as required by statute. N.Y. Pub. Health L. § 4139. Notably, the form requires inclusion of information about who commenced the action, the grounds for divorce, the race of the parties and their education. This information is labeled as confidential. A copy of a dissolution of marriage certificate is included in Appendix E. *See* N.Y. Dom. Rel. L. §235(3).

reached about the amount of income a majority of New Yorkers earns,⁴² the Commission chose to adopt the number reflected in the CSSA guideline, the purpose of which is closely analogous to the maintenance award guideline. The Commission also concluded that when income guidelines are to be applied in both maintenance and child support awards, they should be consistent with one another to avoid unnecessary confusion and complexity, and that going forward, that consistent approach should be maintained, ideally at an increased level.⁴³

C. Adjusted Gross Income Subject to the Guideline

States vary as to the use of adjusted gross income or net income after taxes for calculating maintenance. New York currently uses adjusted gross income in its formulas for awards of both temporary maintenance and child support. There was some indication that net income might be more representative of what is available for temporary maintenance after consideration of the payor's tax liability at the time of the award. The Commission concluded, however, that using net income for calculating temporary maintenance would result in inconsistencies in the application of the child support statute, would be potentially burdensome because obtaining accurate numbers could delay the resolution of the proceeding, and that net income was more subject to manipulation, even with the potential for readjustment at the time of the final order and judgment.

⁴² In its 2013 session, the New York State Legislature has considered middle class families to include those whose income exceeds the CSSA guideline of \$136,000, as reflected the new child tax credit of \$350 for families with income between \$40,000 and \$300,000 (*Governor Cuomo and Legislative Leaders Announce early Passage of 2013-14 Budget*, available at <http://www.governor.ny.gov/press/03292013-2013-14-budget>) and the extension of progressive tax relief to families whose incomes are around \$300,000 (*Fair and Equitable Tax Code Extended in 2013-2014 New York State Budget*, News Release Assembly Speaker Sheldon Silver, available at <http://assembly.state.ny.us/Press/20130328b/>).

⁴³ See note 42.

D. The Relationship Between Awards for Temporary Maintenance and Post-Divorce Income and Section 236b(8) Awards⁴⁴

Section 236B(8)(b) of the Domestic Relations Law provides in part that:

In any action where the court has ordered temporary maintenance, maintenance, distributive award or child support, the court may direct that a payment be made directly to the other spouse or a third person for real and personal property and services furnished to the other spouse, or for the rental or mortgage amortization or interest payments, insurances, taxes, repairs or other carrying charges on premises occupied by the other spouse, or for both payments to the other spouse and to such third persons⁴⁵

The Commission proposes that any 236B(8) awards be taken into account when awarding temporary maintenance or post-divorce income to ensure that the recipient of such awards is not receiving a windfall at the expense of the payor, as would otherwise be the case.

The Commission's proposal is consistent with concerns expressed by stakeholders and by the courts.⁴⁶ The Appellate Division's statement in *Khaira v. Khaira* is particularly persuasive,⁴⁷

[I]n the absence of a specific reference to the carrying charges for the marital residence,

⁴⁴ N.Y. Dom. Rel. Law §236(8), "Special Relief in Matrimonial Actions" with respect to all maintenance awards.

⁴⁵ N.Y. Dom. Rel. Law §236(8)(b).

⁴⁶ *Khaira v. Khaira*, 93 A.D.3d 194, 938 N.Y.S.2d 513 (1st Dept. 2012); *A.C. v. D.R.*, 32 Misc.3d 293, 927 N.Y.S.2d 496 (N.Y. Sup. Ct. Nassau Co. 2011). See also *Klein v. Klein*, 296 A.D.2d 533, 745 N.Y.S.2d 569 (2nd Dept. 2002) (To the extent that payments for the upkeep of the marital residence, unreimbursed medical expenses, and automobile expenses can be allocated to child support or maintenance, the husband was held entitled to a credit for these payments as against pendente lite arrears.).

⁴⁷ 93 A.D.3d 194, 938 N.Y.S.2d 513 (1st Dept. 2012).

we consider it reasonable and logical to view the formula adopted by the new maintenance provision as covering all the spouse's basic living expenses, including housing costs as well as the costs of food and clothing and other usual expenses.

It is true that before the enactment of the new maintenance provision, it was a common practice to award spousal support partly in direct cash payments and partly in payments to third parties. This was often not only eminently reasonable, but also the most expedient way of covering payment of the necessities, and protecting the home as a marital asset. However, we believe that the new approach of calculating spousal support payments to the non-monied spouse by means of a formula is intended to arrive at the amount that will cover all the payee's presumptive reasonable expenses. By calculating the guideline amount and then simply adding the direct mortgage payment on top of that, the motion court awarded more than the amount reached by the formula, without providing the required explanation.⁴⁸

E. Duration of Post Divorce Income Awards

Determining how to provide direction for the judiciary regarding the duration of an award for post-divorce income proved to be challenging because neither the case law developed by New York appellate courts nor the statutes of other jurisdictions offered a clear rationale for deciding the duration of an award.

⁴⁸ 93 A.D.3d at 200, 938 N.Y.S.2d at 517.

1. Statutes in Other Jurisdictions and Other Formulas

Duration formulas adopted in other jurisdictions offer a variety of solutions, one of which is to limit the duration of an award based on the length of the marriage.⁴⁹ The AAML proposal⁵⁰ and an informal guideline in New York's Erie County do likewise.⁵¹

One state, Kansas, limits the duration of maintenance to a fixed maximum of 121 months.⁵²

Several jurisdictions define guidelines for a range of duration, on an informal, advisory basis.⁵³ Maricopa County, Arizona did have a range for the duration of an award but discontinued it.⁵⁴ The New Mexico Supreme Court has declined to adopt a durational guideline, because "a durational factor [is] too arbitrary and lacking in consideration of discrete facts. . . [T]he duration of alimony payments should be left open to negotiation."⁵⁵

⁴⁹ Maine: *See* 19-A M.R.S. § 951-A(2)(A)(1) and (2)); Utah: *See* Utah Code Ann. § 30-3-5(8)(h); Delaware: *See* 13 Del. C. § 1512(d).; Texas: *See* Tex. Fam. Code §§ 8.054(a)(1)(A)-(C), 8.054(b); 8.051(2). When the AAML formula first appeared in New York in a 2008 Assembly Bill, A. 10446, the bill contained a separate guideline to determine the duration of an award of final maintenance by applying a percentage to the length of the marriage, beginning at 30% for a marriage of 5 years or less, and increasing to 100% for a marriage of 20 to 25 years. If the marriage was more than 25 years, the award was permanent. The percentages were as follows: 0 to 5 years (30%); 5 to 7.5 years (40%); 7.5 to 10 years (50%); 10 to 12.5 years (60%); 12.5 to 15 years (70%); 15 to 17.5 years (80%); 17.5 to 20 years (90%); 20 to 25 years (100%).

⁵⁰ AAML Report.

⁵¹ A copy of the Erie County guideline is attached as Appendix F.

⁵² *See* K.S.A. § 23-2904.

⁵³ Erie County: *Informal Maintenance Formula*, on file with the Commission; Maricopa County: *see Spousal Support Guidelines*, reprinted at Mark W. Armstrong et al., 12 *Arizona Family Law Rules Handbook* 926 (2012); Canada: Carol Rogerson and Rollie Thompson, *Spousal Support Advisory Guidelines* 60 July 2008. "[G]iven the ages of the parties in the cases covered by the rule of 65, there will likely be significant changes in the amount of support ordered upon the retirement of one or both of the spouses." *Id.* at 62. The Canadian guidelines consider any periods of interim support as part of the duration of maintenance. *Id.* at 60.

⁵⁴ Email from Kathy Sekardi, Senior Court Policy Analyst, Arizona Supreme Court, to Barbara S. Hancock, October 19, 2012. On file with the Commission.

⁵⁵ *See* New Mexico Supreme Court, *In the Matter of the Report of the Alimony Guidelines Statewide Pilot Project Committee and Adoption of Alimony Guidelines for the State Courts of New Mexico*, No. 07-8500, April 16, 2007 (adopting the Statewide Alimony Guidelines and Commentaries), 46 *State Bar of New Mexico Bar Bulletin* 20, at 4 (December 10, 2007), www.nmbar.org/Attorneys/lawpubs/BB/bb2007/BB121007.pdf.

After reviewing the various formulas for duration of final awards in other jurisdictions, we found no discernible theme or pattern, and thus choosing a solution from any one of them would be an arbitrary decision. Given that result, we then turned to reported appellate cases in New York which addressed the duration of awards made, hoping to find a pattern or theme, such as the length of the marriage, that would account for the duration of the award.

2. Appellate Cases

We examined 109 New York appellate cases in which the duration of maintenance was at issue. Of those, only 67 cases provided some information such as the length of the marriage or the age and/or health status of the payee. From those we hoped to understand the reason for the duration of the award.⁵⁶ However, the cases offered no discernible pattern of the duration of the awards established by the courts. The results were clearly driven by the facts of the case but not necessarily by the length of the marriage.

Thus, neither New York appellate cases nor the formulas of other jurisdictions provide clarity in determining the duration of final maintenance. The Commission concluded nevertheless that some guidance in the statute to assist the parties and the courts in resolving the duration of a post-divorce award was preferable to none.

The Commission therefore recommends that duration of any post-divorce income award be based on a consideration of the length of the marriage, the length of time necessary for the party seeking post-divorce income to acquire sufficient education or training to enable that party to find appropriate employment, the normal retirement age of each party as defined by the

⁵⁶ Seventy-nine were from 2007 through 2012; the remaining 30 were from 1983 to 1990. We wanted to see if the older and newer cases showed different approaches to duration.

Internal Revenue Code and the availability of retirement benefits, and any barriers facing the party with regard to obtaining appropriate employment such as child care responsibilities, health, or age. The court must state the basis for the duration of the award in its decision granting the award.

IV. Other Concerns

From our discussions with stakeholders, and our review of the written submissions and case law, the Commission makes the following additional recommendations.

A. Certain provisions should be eliminated from the current temporary maintenance statute:

1. the reference to income from income producing property to be distributed pursuant to equitable distribution, which is not relevant in calculating income for an award of temporary maintenance.⁵⁷
2. the reference to marital property subject to distribution pursuant to section 236(5) as unrelated to a determination of temporary maintenance.⁵⁸
3. consideration of the need to pay for exceptional additional expenses for the child or children, including, but not limited to, schooling, day care and medical treatment, because these child-related expenses are included in the child support

⁵⁷ N.Y. Dom. Rel. Law § 236B(5a)(b)(4)(b).

⁵⁸ N.Y. Dom. Rel. Law § 236B(5a)(e)(n).

as add-ons to the guideline amount, and, if included here as well, would lead to duplicate awards.⁵⁹

4. consideration of marital property subject to distribution pursuant to subdivision five, because evidence of the existence and value of such property is generally not available prior to discovery.⁶⁰

B. Certain additions should be made to the current temporary maintenance statute:

1. the requirement that the court allocate the responsibilities of the respective spouses for the family's current expenses during the pendency of the proceeding.
2. the requirement that the court limit the duration of an award in a short-term marriage to prevent payment of temporary maintenance that continues for a period longer than the marriage.
3. the recalculation of the award of temporary maintenance, with costs and interest at

⁵⁹ N.Y. Dom. Rel. Law § 236B(5a)(2)(xiv).

⁶⁰ N.Y. Dom. Rel. Law § 236B(5a)(2)(xiv).

the time of the final order and judgment if either party provides incorrect information regarding his or her income.

4. the statement that any temporary maintenance order does not prejudice the rights of either party regarding a post-divorce income award.

V. Update Spousal Support in Section 412 of the Family Court Act.

Section 412 of the Family Court Act provides that:

A married person is chargeable with the support of his or her spouse and, if possessed of sufficient means or able to earn such means, may be required to pay for his or her support a fair and reasonable sum, as the court may determine, having due regard to the circumstances of the respective parties.

The statute, unamended, dates back almost one century (with the exception of constitutionally required amendment to render the section gender neutral). The provision has thus become increasingly outdated and inequitable. On the other hand, Domestic Relations Law Section 236, which is limited to dissolution of marriage actions, has been revised on multiple occasions to address contemporary standards and needs, culminating in Chapter 371. As noted by Professor Merrill Sobie in his Practice Commentaries to section 412, the omission of an amendment to section 412 as part of Chapter 371 exacerbated “the illogical dichotomy between

the Domestic Relations Law and the Family Court Act.”⁶¹

A person who needs but is not receiving support from his spouse has two legal options: initiate a divorce proceeding and move for temporary section 236 maintenance or, alternatively, bring a support action in Family Court pursuant to section 412. The plaintiff may choose the section 412 route for many understandable reasons, including religious principles, the hope for a reconciliation, or the practical difficulties of obtaining pro-se litigant matrimonial relief (it is far easier and swifter to prosecute a support case in Family Court than a matrimonial case in Supreme Court). The facts and circumstances of the spouse are identical regardless of the forum, the needed relief is identical, but because one statute provides a specific formula while the companion statute provides only a very incomplete, generalized and highly discretionary remedy, the results may be totally different.

We recommend that the provisions of a revised temporary maintenance statute in the Domestic Relations Law be mirrored in section 412 of the Family Court Act governing spousal support awards and that appropriate amendments be made to section 416 of the Family Court Act relating other requirements when spousal support is ordered consistent with the changes to section 412.

⁶¹ Professor Merrill Sobie, 2010 West Supplementary Practice Commentaries to McKinney's Family Court Act §412 (2011 Electronic Update).

APPENDIX A

**CHILD SUPPORT SUMMARY FORM
SUPREME AND FAMILY COURT**

COMPLETE FORM FOR EACH BASIC CHILD SUPPORT OBLIGATION ORDER¹

A. Court: ☐ Supreme ☐ Family

B. County: _____

C. Index #/Docket #: _____

D. Date Action Commenced:

_____/_____/____

E. Date Judgment/Order Submitted or Signed:

_____/_____/____

F. # Of Children Subject to Child Support Order:

G. Annual Gross Income:

1. Father: \$ _____ Mother: \$ _____

H. Amount of Child Support Payment:

1. By Father: \$ _____ annually
2. By Mother: \$ _____ annually

I. Additional Child Support:
(Circle as many as appropriate)

By Father:

By Mother:

- | | |
|----------------------|----------------------|
| 1. Medical/Med. Ins. | 1. Medical/Med. Ins. |
| 2. Child Care | 2. Child Care |
| 3. Education | 3. Education |
| 4. Other | 4. Other |

J. Did the court make a finding that the child support award varied from the Child Support Standards Act amount? (Circle one)

1. Yes 2. No

K. If answer to "J" was yes, circle court's reason(s):

1. Financial resources of parents/child.
2. Physical/emotional health of child: special needs or aptitudes.
3. Child's expected standard of living had household remained intact.
4. Tax consequences.
5. Non-monetary contribution toward care and well-being of child.
6. Educational needs of either parent.
7. Substantial differences in gross income of parents.
8. Needs of other children of non-custodial parent.
9. Extraordinary visitation expenses of non-custodial parent.
10. Other (specify):

L. Maintenance/Spousal Support: (Circle one)

1. None 2. By Father 3. By Mother

M. Value of Maintenance/Spousal Support:

\$ _____ annually

SUPREME COURT ONLY

N. Allocation of Property:

_____ % To Father _____ % To Mother

¹ Defined by FCA 413(2) and DRL §240(1-b)(b)(2): "Child Support" shall mean a sum to be paid pursuant to court order or decree by either or both parents or pursuant to a valid agreement between the parties for care, maintenance and education of any unemancipated child under the age of twenty-one years.

NEW YORK STATE UNITED COURT SYSTEM
SUPPORT SUMMARY FORM: FAMILY & SUPREME COURT

INSTRUCTION SHEET

Prepare one report for each proposed judgment or final order granted pursuant to Article 4 or 5 of the Family Court Act and DRL §240 and §236 B(9)(b) which includes a provision for child support (including modification of order).

SUBMIT COMPLETED FORM TO:

Office of Court Administration
Office of Court Research
25 Beaver Street, Room 975
New York, New York 10004

GENERAL INSTRUCTIONS: → ALL ITEMS MUST BE ANSWERED

- If a number or amount in dollars is required and the answer is none, write 0.
- If a certain item is not applicable, write NA.
- If the information is unknown or not known to the party filling out the form, write UK.
- "mm/dd/yy" means "month/day/year".

SPECIAL INSTRUCTIONS FOR PARTICULAR ITEMS:

- G. Use gross income figures from the last complete calendar year. Do not include maintenance or child support as income.
- H. If the child support award is calculated weekly, multiply it by 52 for the annual amount; if biweekly, multiply it by 26, if monthly, multiply it by 12.
- M. If the maintenance award is calculated weekly, multiply it by 52 for the annual amount; if biweekly, multiply it by 26; if monthly, multiply it by 12. If the maintenance award calls for decreasing or increasing amounts (for example, a certain amount for five years and half that amount for another three years), then provide the average of the awards (total amount for all years divided by the number of years).

NOTE: THIS INFORMATION IS CONFIDENTIAL AND WILL BE USED FOR STATISTICAL PURPOSES ONLY.
IT WILL NOT BE RETAINED IN THE CASE FILE.

Print name in an Order of the Chief Administrator of the Courts in each of the counties listed below this form UDS-131A must be
 one placed for each final order granted pursuant to Article 6 of the Family Court Act and DRL §§265, 267 and 246. If
 indicated questions require payment to the County Law §265. Additional data is being collected for the New York State Law
 Revision Commission which is studying New York State's maintenance laws pursuant to DRL 208(5-b). Identifying information will
 not be made public; data will be reported in aggregate form only.

Please answer all questions.
 Do not use pens or markers with ink that soaks through the paper.
 Use a No. 2 pencil or blue or black ink.
 Do not fold, tear or mutilate this form.
 Make solid marks that fill the circle completely.
 Make no stray marks on this form.

DO NOT WRITE IN THESE SPACES

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County ☐ Albany ☐ Erie ☐ Kings ☐ New York ☐ Westchester
☐ Broome ☐ Hamilton ☐ Lewis ☐ Oneida ☐ Sullivan

Index Number	Date Matter Commenced	Date of Final Order	Date of Marriage
1	MO DAY YEAR	MO DAY YEAR	MO DAY YEAR
2	MO DAY YEAR	MO DAY YEAR	MO DAY YEAR
3	MO DAY YEAR	MO DAY YEAR	MO DAY YEAR
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99	MO DAY YEAR	MO DAY YEAR	MO DAY YEAR
100	MO DAY YEAR	MO DAY YEAR	MO DAY YEAR

1. Please indicate whether this divorce was ☐ Contested ☐ Uncontested

MAINTENANCE:	2. Temporary Maintenance	3. Final Maintenance
a. Was maintenance awarded?	2a. <input type="radio"/> Yes <input type="radio"/> No	3a. <input type="radio"/> Yes <input type="radio"/> No
b. Awarded to	2b. <input type="radio"/> Wife <input type="radio"/> Husband	3b. <input type="radio"/> Wife <input type="radio"/> Husband
c. Amount Determined by	2c. <input type="radio"/> Settlement <input type="radio"/> Judge	3c. <input type="radio"/> Settlement <input type="radio"/> Judge
d. Was former used to determine award?	2d. <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't Know	3d. <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't Know
e. If former was used, was it correct?	2e. <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't Know	3e. <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't Know
f. Amount awarded per month	2f. \$ _____	3f. \$ _____
g. Most current annual gross income	2g. <input type="radio"/> Less than \$15,000	3g. <input type="radio"/> Less than \$15,000
h. Award varies, mark average annual amount	2h. <input type="radio"/> \$15,000 - \$24,999	3h. <input type="radio"/> \$15,000 - \$24,999
	2h. <input type="radio"/> \$25,000 - \$34,999	3h. <input type="radio"/> \$25,000 - \$34,999
	2h. <input type="radio"/> \$35,000 - \$44,999	3h. <input type="radio"/> \$35,000 - \$44,999
	2h. <input type="radio"/> \$45,000 - \$54,999	3h. <input type="radio"/> \$45,000 - \$54,999
	2h. <input type="radio"/> \$55,000 - \$64,999	3h. <input type="radio"/> \$55,000 - \$64,999
	2h. <input type="radio"/> \$65,000 - \$74,999	3h. <input type="radio"/> \$65,000 - \$74,999
	2h. <input type="radio"/> \$75,000 - \$84,999	3h. <input type="radio"/> \$75,000 - \$84,999
	2h. <input type="radio"/> \$85,000 - \$94,999	3h. <input type="radio"/> \$85,000 - \$94,999
	2h. <input type="radio"/> \$95,000 or more	3h. <input type="radio"/> \$95,000 or more



UDS-131A (Rev. 12/78)

4. For Final Maintenance Awards Only

A. Date of birth

MO	DAY	YEAR
01	01	01
02	02	02
03	03	03
04	04	04
05	05	05
06	06	06
07	07	07
08	08	08
09	09	09
10	10	10
11	11	11
12	12	12

B. Place and date (if any)

MO	DAY	YEAR
01	01	01
02	02	02
03	03	03
04	04	04
05	05	05
06	06	06
07	07	07
08	08	08
09	09	09
10	10	10
11	11	11
12	12	12

C. When does your independence terminate?

- ☐ Remarriage
☐ Death
☐ Other explain: _____

STATUS OF SPOUSES

5. Is husband currently employed?

☐ Yes - Specify On line _____

☐ No - Years not employed: ☐ Less than 1 ☐ 1-5 ☐ 6-10 ☐ More than 10

6. Is wife currently employed?

☐ Yes - Specify On line _____

☐ No - Years not employed: ☐ Less than 1 ☐ 1-5 ☐ 6-10 ☐ More than 10

7. Current health status of husband:

☐ Good ☐ Fair ☐ Poor

8. Current health status of wife:

☐ Good ☐ Fair ☐ Poor

CHILDREN AND CHILD SUPPORT

9. Are there un-emancipated children either born to or adopted by both parents before or during the marriage?

☐ Yes - Specify in 10a

☐ No - Skip to 11

10a. How many children are there?

☐ 0 ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ More than 5

10b. How many live with both parents?

☐ 0 ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ More than 5

10c. How many live with one parent?

☐ 0 ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ More than 5

10. Annual child support obligation:

☐ By law

☐ By order

☐ Other (see questions 11-13)

10a. Annual child support amount \$

Write appropriate response below

☐ Less than \$ 15,000

☐ \$ 15,000 - \$ 24,999

☐ \$ 25,000 - \$ 49,999

☐ \$50,000 + over

☐ \$ 15,000 - \$ 24,999

☐ \$ 25,000 - \$ 49,999

☐ \$ 50,000 - \$ 99,999

10b. Total no. of children subject to the child support order

☐ 0 ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ More than 5

10c. Explain why child support obligation should not apply

☐ None
☐ Other (see questions 11-13)
☐ Ineligible child relationship

☐ Childless
☐ Other

10d. Did the court make a finding that the child support order cannot be enforced by the child support award enforcement agency?

☐ Yes - mark all that apply

☐ No - skip to 11

☐ Financial resources of parent(s)

☐ Financial resources of child

☐ Child's needs or condition

☐ Child's physical condition of living with household member

☐ Tax consequences

☐ Non-regulatory contribution toward child's well-being

☐ Educational needs of child

☐ Educational needs of parent(s)

☐ Health of child or parent

☐ Educational needs of parent(s)

☐ Educational needs of child

☐ Other (specify)

PROPERTY, DEBT, FINANCIAL OBLIGATIONS AT TIME OF FINAL ORDER

For questions 11, 12, 13 and 14a write in the dollar amount and also mark the correct summary category. If the item does not apply or there was no value mark 0.

0. Zero/None

a. \$ 1 - \$ 14,999

b. \$ 15,000 - \$ 24,999

c. \$ 25,000 - \$ 49,999

d. \$ 50,000 - \$ 74,999

e. \$ 75,000 - \$ 99,999

f. \$100,000 - \$149,999

g. \$150,000 - \$500,000

h. More than \$500,000

11. Individual Income and Property:

11a. Individual income

Answer

\$

\$

Answer

\$

\$

11b. Value of property not divided

Answer

\$

\$

Answer

\$

\$

12. Divided Property and Debt Not including marital home.

12a. Value of divided property

Answer

\$

\$

Answer

\$

\$

12b. Value of divided debt

Answer

\$

\$

Answer

\$

\$

0. Zero/None

a. \$ 1 - \$ 14,999

b. \$ 15,000 - \$ 24,999

c. \$ 25,000 - \$ 49,999

d. \$ 50,000 - \$ 74,999

e. \$ 75,000 - \$ 99,999

f. \$100,000 - \$149,999

g. \$150,000 - \$500,000

h. More than \$500,000

13. Other financial obligations. Mark all that apply.

☐ Husband to wife

\$

(0)(1)(2)(3)(4)(5)(6)(7)(8)(9)

☐ Wife to husband

\$

(0)(1)(2)(3)(4)(5)(6)(7)(8)(9)

☐ Husband - child support other children

\$

(0)(1)(2)(3)(4)(5)(6)(7)(8)(9)

☐ Wife - child support other children

\$

(0)(1)(2)(3)(4)(5)(6)(7)(8)(9)

14. Was marital home

☐ Owned - Continue to 15a

☐ Rented - Skip to 15

14a. Credit in the home in debt of acquisition or retention

\$

(0)(1)(2)(3)(4)(5)(6)(7)(8)(9)

14b. If home was sold, what percentage

% to husband

% to wife

14c. If home sold after
separation, what is the
duration of separation?

☐ up to 2 years

☐ 2 to 4 years

☐ 4 to 6 years

☐ Other, state number of years or the number

14d. If not sold, how was marital home divided?

Husband

Wife

Joint

Jointly

Exchange of property

Costs of purchase maintenance covered by

separation

15. Was a professional license or degree divided?

☐ Yes - Continue to 15a

☐ No

15a. Type of license

☐ Medical

☐ Attorney

☐ Other

15b. Value of license

\$

MAIL COMPLETED FORM TO:
Office of Court Administration
Office of Court Research
25 Beaver Street, Room 975
New York, NY 10004

PLEASE DO NOT FOLD, STAPLE, FAX OR SCAN THIS FORM



DO NOT WRITE IN THIS AREA

13727

APPENDIX B

**ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS**

Pursuant to the authority vested in me by, inter alia, sections 212 of the Judiciary Law and 214 of the Family Court Act, and consistent with the legislative design, set forth in L. 2010, c. 371, §3, to undertake a comprehensive review of our State's maintenance laws, I hereby direct that the attached form Special UCS-111A be completed for each judgment of divorce granted pursuant to Domestic Relations Law §§236B, 240, and 246, in Supreme Court proceedings in the following counties:

Albany, Bronx, Erie, Jefferson, Kings, Nassau, New York, Onondaga, and Westchester.

Completion of this form shall satisfy any requirement to otherwise complete Form UCS-111 (Child Support Summary Form; Supreme and Family Court) in the proceeding.

This order shall take effect on April 1, 2011, and shall remain in effect until further order.



Chief Administrative Judge of the Courts

Dated: March 22, 2011

AO/ 446 /11

APPENDIX C

Appendix C

1. Length of Marriage

Of the 7,302 questionnaires, 6,411 had usable data on the number of years of marriage. The divorces by length of marriage across the responses were relatively evenly divided among categories of fewer than 5 years, 5 - 10 years, 11 - 20 years and greater than 20 years. 1,809 divorces were reported in marriages of fewer than 5 years; 1,827 divorces in marriages between 5 and 10 years; 1,757 divorces in marriages of between 11 and 20 years; and 1,018 divorces in marriages of more than 20 years. The fact that responses included the length of marriage did not necessarily mean, as noted above, that all responses reported on whether or not they received temporary or final maintenance awards.

2. Total Awards

Temporary maintenance awards were reported in 213 cases. Final maintenance awards were reported in 468 cases.

Awards of both temporary and final maintenance were reported in 124 cases. Two of these cases reported that the husband received both temporary and final maintenance. 107 cases reported that the wife received both temporary and final maintenance. The remainder reported awards but not the recipients.

A. Temporary maintenance awards

Of the 213 awards, 9 cases reported an award was made to the husband and 188 awards were made to the wife. A greater share of temporary awards were made in marriages of 11 to 20 years and 20 plus years.

(i) Awards to the husband

a. Income of the parties

In the 9 awards made to husbands, 2 cases reported the husband's income in the range of \$1 to \$14,999, 2 cases reported the husband's income in the range of \$15,000 to \$24,999; and 2 cases reported the husband's income in the range of \$25,000 to \$49,000; in all of these cases, wife's income was reported in the range of \$50,000 to \$74,999 or higher.

One husband reported income in the range of \$150,000 to \$500,000 and the wife's income was reported in the same range. The remainder did not report the parties' income.

b. Health of the husband

In 7 cases reporting awards, the husband's health was reported as "good"; in these same cases, the wife's health was also reported as "good". In 2 cases, the husband's health was reported as "fair" but the wife's health was reported as "good". The remainder did not report on the parties' health.

c. Presence of children

In 6 cases where the husband received an award, no children were involved; in 1 case, the children lived with the husband. In 2 cases, the children live with the wife. The remainder did not report on the presence of children.

(ii) Awards to the wife

a. Income of the parties

In the 188 awards made to the wife, 25 cases reported the wife's income in the range of \$1 to \$14,999; 22 cases reported her income in the range of \$15,000 to \$24,999, and 21 cases reported her income in the range of \$25,000 to \$49,000. In all of these cases, the husband's income was reported in the range of \$25,000 to \$49,999 or higher.¹

Four cases reported the wife's income in the range of \$50,000 to 74,999; 1 case reported the wife's income at a range of \$75,000 to \$99,999, and 1 case reported income at a range of \$150,000 to 500,000. In all these cases, the husband's income was reported to be of \$75,000 to \$99,999 or higher.²

b. Health of the wife

In 156 cases reporting awards, the wife's health was reported as good; in 9 of these awards, the husband's health was reported as worse than the wife's health. In 25 awards, the wife's health was reported as fair or poor and in each instance, the husband's health was reported as the same as the wife's health. The remainder did not report on the parties' health.

c. Presence of children and child support

In 61 cases no children were involved; in 15 cases, the children live with the husband; in 24 cases, the children shared equal time with each parent. In 99 cases, the children live with the wife. The remainder did not report on the presence of children.

25 cases reported no child support; 120 cases reported child support by the father; 7 cases reported child support by the mother. 25 cases reported child support by both parents. The remainder did not report on child support.

(iii) Settlement or judgment

127 cases reported that the awards were settlements; 67 cases reported that they were judicial decisions; 16 cases reported that they did not know how the award was reached. The remainder did not respond to this question.

73 cases reported that the divorce was contested; 40 reported that the divorce was uncontested. The remainder did not report on that question. 25 cases reported that the awards were determined by formula; 113 cases reported that the awards were not determined by formula; 48 cases reported not knowing how the award was determined. The remainder did not respond.

¹ Ten cases reported income in the range of \$25,000 to 49,000; 19 cases reported income in the range of \$50,000 to \$74,999; 9 cases reported income in the range of \$75,000 to 99,999; 15 cases reported income in the range of \$100,000 to \$149,999; 12 cases reported income in the range of \$150,000 to \$499,999; 3 cases reported income at more than \$500,000.

² 1 case reported the husband's income to be in the range of \$75,000 to \$99,999; 1 case reported the husband's income to be in the range of 100,000 to \$149,999; 3 cases reported income in the range of \$150,000 to \$499,999; 1 case reported the husband's income to be more than \$500,000.

B. Final maintenance awards

Final maintenance was awarded 469 times, mainly in marriages of 10 to 20 years, and marriages of 20 years or more.

(i) Awards to the husband

Of the 469 awards, 22 awards were made to the husband.

a. Income of the parties

In the 22 awards made to husbands, 8 cases reported the husband's income in the range of \$1 to \$14,999, 2 cases reported the husband's income in the range of \$15,000 to \$24,999; and 1 case reported the husband's income in the range of \$25,000 to \$49,999; in all of these cases, the wife's income was reported in the range of \$25,000 to \$49,999 or higher.

One case reported the husband's income in the range of \$50,000 to \$74,999; 1 case reported the husband's income in the range of \$100,000 - \$149,999; 2 cases reported the husband's income in the range of \$150,000 - \$500,000. In 3 of these cases, wife's income was reported either in the range of \$150,000 - \$500,000, or over \$500,000. One case did not report the wife's income.

b. Health of the husband

18 cases reported the husband's health as good and in all but 1 case reported the wife's health as also good. In that one case, the wife's health was reported as poor. Two cases reported the husband's health as fair while reporting the wife's health as good. 2 cases reported the husband's health as poor while reporting that the wife's health was good.

c. Presence of children

In 8 cases, there were no unemancipated children. One case reported that the children lived with the husband. 8 cases reported that the children live with the wife. 5 cases reported that the children spent equal time with both parents.

(ii) Awards to the wife

441 awards were reported as made to the wife.

a. Income of the parties

In the 441 awards made to the wife, 85 cases reported the wife's income to be in the range of \$1 to \$14,999, and in all of those cases the husband's income was reported to be in the range of \$1 to \$14,999 or higher.

71 cases reported the wife's income to be in the range of \$15,000 to \$24,999, and in all of those cases the husband's income was reported to be in the range of \$25,000 to \$49,999 or higher.

85 cases reported the wife's income to be the range of \$25,000 to \$49,999 and in all of these cases except one, the husband's income was reported in the range of \$25,000 to \$49,999 or higher. The exception reported that the husband's income was lower, in the range of \$15,000 to \$24,999.

Of the remaining cases, 26 reported the wife's income to be in the range of \$50,000 to \$74,999; 7 reported the wife's income to be in the range of \$75,000 to 99,999; 2 reported the wife's income to be in the range of \$100,000 to \$149,999; 4 reported the wife's income to be in the range of \$150,000 to \$500,000; 1 reported the wife's income to be greater than \$500,000.

In one of the awards where the wife's income was reported to be in the range of \$50,000 to \$74,999, the husband's income was also reported to be in that range. In the other cases, the husband's income was reported to be in the range of \$75,000 to \$99,999 or higher.³

b. Health of the wife

In 370 awards, the wife's health was reported as good; in 9 of these awards, the husband's health was reported as worse than the wife's health; in all the rest of those cases, the husband's health was reported to be the same as the wife's health. In 54 awards, the wife's health was reported as fair or poor and in each instance, the husband's health was reported as the same as the wife's health. In one case, the husband's health was reported as worse than the wife's health; in the remaining 53 case, the husband's health was reported as the same or better than the wife's

c. Presence of children

In 113 cases, there were no unemancipated children. 38 cases reported that the children lived with the husband. 247 cases reported that the children live with the wife. 67 cases reported that the children spent equal time with both parents.

(iii) Settlement or Judgment

431 cases reported that they were determined by settlement; 23 cases reported that they were arrived at by a judge and 5 cases did not know how the award was reached.

149 cases reported that the divorce was contested; 142 cases reported that the divorce was uncontested. 32 cases reported that the awards were determined by formula; 340 cases reported that the awards were not determined by formula; 76 cases reported not knowing how the award was determined.

56 cases reported no child support; 295 cases reported child support by the father; 18 cases reported child support by mother. 56 cases reported child support by both parents.

3. Monetary Amount of Award

Only 142 questionnaires reported the size of the award. The average amount of the awards reported was \$29,119.

³ Five cases reported the husband's income to be in the range of \$75,000 to \$99,999; 10 cases reported the husband's income to be in the range of 100,000 to \$149,999; 18 cases reported the husband's income in the range of \$150,000 to \$499,999; 6 cases reported the husband's income to be more than \$500,000.

APPENDIX D

DEMOGRAPHICS
for
Selected Counties in New York State

County ¹	Population ²	Divorces ³	MHI ⁴	PPCF ⁵	% Below Poverty ⁶
Albany ⁷	298,284	732	\$59,245	\$42,228	12.3
Bronx ⁸	1,397,287	2,415	\$35,108	\$24,631	27.3
Erie ⁹	909,247	2,164	\$48,427	\$34,786	14
Jefferson ¹⁰	118,719	515	\$44,263	\$33,463	14.6
Kings ¹¹	2,567,098	5,394	\$43,172	\$30,023	21.1
Nassau ¹²	1,357,429	2,421	\$94,856	\$62,278	4.9
New York ¹³	1,629,054	10,375	\$68,402	\$110,292	16.9
Onondaga ¹⁴	454,753	1,186	\$50,586	\$35,751	11.7
Westchester ¹⁵	955,962	2,307	\$79,195	\$70,519	8.4

¹ A map of New York State Counties from the 2009 New York State Statistical Yearbook is attached hereto.

² U.S. Census Bureau, State and County Quick Facts 2009, available at <http://quickfacts.census.gov/qfd/states/36/36001.html>.

³ Table 48: Dissolutions of Marriage by County of Decree and Type of Decree, New York State 2009, Vital Statistics of New York State 2009, available at http://www.health.state.ny.us/nysdoh/vital_statistics/2009/table48.htm.

⁴ Median Household Income, U.S. Census Bureau, State and County Quick Facts 2009, available at <http://quickfacts.census.gov/qfd/states/36/36001.html>.

⁵ Personal Per Capita Income 2006, Personal Income Per Capita by County of Residence, NYS: 1998-2006, 2009 New York State Statistical Yearbook, available at http://www.rockinst.org/nys_statistics/2009/C/.

⁶ U.S. Census Bureau, State and County Quick Facts <http://quickfacts.census.gov/qfd/states/36/36047.html>. As of 2009, in New York State, 14.2% of the population fell below the poverty line.

⁷ A metropolitan area.

⁸ A borough of New York City.

⁹ A metropolitan area in western New York with 4 correction facilities operated by the Department of Corrections.

¹⁰ A rural area in western New York with 2 correction facilities operated by the Department of Corrections and a US Army base, Fort Drum.

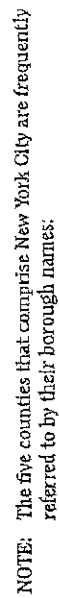
¹¹ A borough of New York City.

¹² A suburb of New York City.

¹³ A borough of New York City also known as Manhattan.

¹⁴ Includes the metropolitan area of Syracuse.

¹⁵ A suburb of New York City with 3 correctional facilities operated by the NYS Department of Corrections.



Bronx
Brooklyn
Manhattan
Queens
Staten Island

LOCAL INDEX NUMBER

STATE FILE NUMBER

New York State
Department of Health

CERTIFICATE OF DISSOLUTION OF MARRIAGE

TYPE, OR
PRINT IN
PERMANENT
BLACK INK

4	HUSBAND	1. HUSBAND - NAME FIRST MIDDLE LAST				1A. SOCIAL SECURITY NUMBER	
		2. DATE OF BIRTH Month Day Year		3. STATE OF BIRTH (COUNTRY IF NOT USA)		4A. RESIDENCE: STATE	
		4B. COUNTY		4C. LOCALITY (CHECK ONE AND SPECIFY) <input type="checkbox"/> CITY OF <input type="checkbox"/> TOWN OF <input type="checkbox"/> VILLAGE OF			
		4D. STREET AND NUMBER OF RESIDENCE (INCLUDE ZIP CODE)		4E. IF CITY OR VILLAGE, IS RESIDENCE WITHIN CITY OR VILLAGE LIMITS? YES <input type="checkbox"/> NO <input type="checkbox"/> IF NO, SPECIFY TOWN:			
8	WIFE	5A. ATTORNEY - NAME				5B. ADDRESS (INCLUDE ZIP CODE)	
		6A. WIFE - NAME FIRST MIDDLE LAST				6B. MAIDEN	
		7. DATE OF BIRTH Month Day Year		8. STATE OF BIRTH (COUNTRY IF NOT USA)		9A. RESIDENCE: STATE	
		9B. COUNTY		9C. LOCALITY (CHECK ONE AND SPECIFY) <input type="checkbox"/> CITY OF <input type="checkbox"/> TOWN OF <input type="checkbox"/> VILLAGE OF			
11		9D. STREET AND NUMBER OF RESIDENCE (INCLUDE ZIP CODE)		9E. IF CITY OR VILLAGE, IS RESIDENCE WITHIN CITY OR VILLAGE LIMITS? YES <input type="checkbox"/> NO <input type="checkbox"/> IF NO, SPECIFY TOWN:		9F. ADDRESS (INCLUDE ZIP CODE)	
		11A. PLACE OF THIS MARRIAGE - CITY, TOWN OR VILLAGE				11B. COUNTY	
		11C. STATE (COUNTRY IF NOT USA)					
		12A. DATE OF THIS MARRIAGE Month Day Year		12B. APPROXIMATE DATE COUPLE SEPARATED Month Year		13A. NUMBER OF CHILDREN EVER BORN ALIVE OF THIS MARRIAGE (SPECIFY)	
15	DECREE	14A. CERTIFY THAT A DECREE OF DISSOLUTION OF THE ABOVE MARRIAGE WAS RENDERED ON		14B. DATE OF ENTRY Month Day Year		14C. TYPE OF DECREE - DIVORCE, ANNULMENT, OTHER DISSOLUTION (SPECIFY)	
		14D. COUNTY OF DECREE		14E. TITLE OF COURT			
		14F. SIGNATURE OF COUNTY CLERK					
		23					

CONFIDENTIAL INFORMATION

24	HUSBAND	15. RACE: WHITE, BLACK, AMERICAN INDIAN, OTHER (SPECIFY)		16. NUMBER OF THIS MARRIAGE - FIRST, SECOND, ETC. (SPECIFY)		17. IF PREVIOUSLY MARRIED HOW MANY ENDED BY: A. DEATH NUMBER _____ NONE <input type="checkbox"/> B. DIVORCE OR ANNULMENT NUMBER _____ NONE <input type="checkbox"/>		18. EDUCATION: INDICATE HIGHEST GRADE COMPLETED ONLY ELEMENTARY: 0 1 2 3 4 5 6 7 8 HIGH SCHOOL: 9 10 11 12 COLLEGE: 1 2 3 4 5+	
		19. RACE: WHITE, BLACK, AMERICAN INDIAN, OTHER (SPECIFY)		20. NUMBER OF THIS MARRIAGE - FIRST, SECOND, ETC. (SPECIFY)		21. IF PREVIOUSLY MARRIED HOW MANY ENDED BY: A. DEATH NUMBER _____ NONE <input type="checkbox"/> B. DIVORCE OR ANNULMENT NUMBER _____ NONE <input type="checkbox"/>		22. EDUCATION: INDICATE HIGHEST GRADE COMPLETED ONLY ELEMENTARY: 0 1 2 3 4 5 6 7 8 HIGH SCHOOL: 9 10 11 12 COLLEGE: 1 2 3 4 5+	
QR		23. PLAINTIFF - HUSBAND, WIFE, OTHER (SPECIFY)		24. DECREE GRANTED TO HUSBAND, WIFE, OTHER (SPECIFY)		25. LEGAL GROUNDS FOR DECREE (SPECIFY)			
QS		26. SIGNATURE OF PERSON PREPARING CERTIFICATE							
		ATTORNEY AT LAW							

NOTE: Social Security Numbers of the husband and wife are mandatory. They are required by New York State Public Health Law Section 4139 and 42 U.S.C. 666(a). They may be used for child support enforcement purposes.

DOH-2186 (5/2000)

APPENDIX F

ERIE COUNTY

INFORMAL MAINTENANCE FORMULA

LENGTH OF MARRIAGE	% INCOME DIFFERENTIAL	DURATION OF MAINTENANCE
1 - 5 Years	15 %	$\frac{1}{4}$ - $\frac{1}{2}$ Term of Marriage
6 - 11 Years	20 - 25 %	$\frac{1}{4}$ - $\frac{1}{2}$ Term of Marriage
12 - 25 Years	30 %	$\frac{1}{4}$ - $\frac{1}{2}$ Term of Marriage
25 + Years	35 - 40 %	Until S. S. or Pension

Using the Formula:

1. Determine the number of years in the Marriage (Column I)
2. Multiply the Income Differential of the Marriage Partners by the percentage in Column II to give the dollar amount of Maintenance
3. Use the proportions in Column III to Determine the Number of Years Maintenance Required to be Paid

EXAMPLE:

H & W married for 7 years; W earns \$60,000 per year and H earns \$20,000 per year; H is seeking maintenance

1. The term of the marriage is 7 years and the income differential is \$40,000; multiply that differential (\$40,000) by the percentage from column II (20 - 25 %) to arrive at maintenance, i.e. \$8,000 - \$10,000
2. The duration of maintenance is the product of the term of the marriage in Column I (1 - 5 years) multiplied by the percentage set forth in Column III ($\frac{1}{4}$ - $\frac{1}{2}$ term) to arrive at the number of years, i.e. $1\frac{1}{4}$ - $2\frac{1}{2}$ years
3. Therefore, for this example, the total amount of maintenance is \$8,000 - 10,000 per year for a term of $1\frac{1}{4}$ - $2\frac{1}{2}$ years