



BOULDER COUNTY BAR NEWSLETTER

JANUARY 2014

THE NEW COLORADO MAINTENANCE STATUTE

BY ROBERT E. LANHAM AND JOSH E. ANDERSON

Maintenance Guidelines

Colorado's new maintenance statute, C.R.S. 14-10-114, went into effect January 1, 2014. This article is not intended to be a comprehensive review of the new statute but rather a discussion of various areas the authors believe to be of particular interest. The biggest change in the statute is contained in subsection 3(b), which establishes guideline amounts and terms of maintenance. This subsection provides for a maintenance amount equal to 40% of the higher party's monthly adjusted gross income minus 50% of the lower party's income, with the recipient not to receive more than 40% of the combined incomes. This is the same for-

mula used in the previous temporary maintenance statute, with the addition of the 40% cap. The term of maintenance provisions begin at marriages of 3 years and extends to a 20 year marriage. For a 3 year marriage, the guideline term of maintenance is 11 months (31% of the length of the marriage). This percent (months of maintenance) increases up to marriages of 12 ½ years, after that the guideline term is 50% of the length of the marriage. The guidelines state that, for marriages longer than 20 years, the court can award maintenance for a specified term or an indefinite term. If the maintenance is less than maintenance term

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**MARK YOUR CALENDARS
for the 13th ANNUAL
FOOD WINE JAZZ ART
Feb. 27, 2014
The annual fundraiser for
Legal Aid Foundation
of Colorado**

JANUARY 16
Lunch and CLE with the
CBA President,
Terry Ruckriegle
**A Bench View of Survival in the
Legal Profession**
Noon at Oak, 1400 14th Street
CLE (general and ethics)
lunch \$20

JANUARY 23
NEW BAR ADMITTEE
RECEPTION HAPPY HOUR
5:30 PM AT 2060 BROADWAY
2ND FL. ATRIUM

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CALENDAR OF EVENTS

Pre-registration is required for all BCBA CLE programs. Register by e-mailing
 sarah@boulder-bar.org, or pay online with a credit card at www.boulder-bar.org/calendar.

Tuesday, January 7
SOLO/SMALL FIRM
 Safeguarding Client Data and
 Computer/Technology Update
 Presenter: Reba Nance (ethics & general)
 Noon @ Faegre Baker Daniels
 \$20 CLE, \$10 new/young lawyers
 \$11 Lunch

Wednesday, January 8
CRIMINAL
 New Requirements for Intensive
 Supervised Probation, or LS-IP J.
 Presenters: Marcy Becker & Greg Brown
 from Boulder Probation
 Noon @ East Training Center
 \$20 CLE, \$10 new/young lawyers

Thursday, January 9
PARALEGAL
 What's All The Fuss About? The
 Fundamentals of ObamaCare... aka the
 Affordable Care Act
 Presenter: Sharon Caulfield
 Noon @ Caplan & Earnest
 \$20 CLE, \$10 new/young lawyers

Friday, January 10
 Availability of Legal Services
 Lunch Roundtable Noon at BCLS

Wednesday, January 15
FAMILY
 Tracing of Separate Property in Colorado
 Marital Dissolutions
 Presenter: Eric Six
 Noon @ Boulder Justice Center
 Jury Assembly Room
 \$20 CLE, \$10 new/young lawyers

Thursday, January 16
**A Bench View of Survival in
 the Legal Profession**
 CBA Presidential Visit with
 JudgeRuckriegle
 Noon @ Oak on 14th and Pearl
 FREE CLE general/ethics and Lunch \$20

Thursday, January 16
REAL ESTATE
 The Permitting Process for Christo's Over
 the River Project (A Long Run,
 With Many Rapids)
 Presenters: Lori Potter
 Noon @ Caplan & Earnest
 \$20 CLE, \$10 new/young lawyers
 \$11 Lunch

Wednesday, January 22
IN-HOUSE COUNSEL
 Termination without Lawsuits
 Presenter: Chris Leh
 Noon @ UCAR Campus Building 3080
 Center Green Drive, Room 3131
 \$20 CLE, \$10 new/young lawyers

Wednesday, January 22
**TAX, ESTATE PLANNING &
 PROBATE/NATURAL RESOURCES**
 Mineral Interests in the Probate Estate
 Presenter: Peter Schaub
 Noon @ Hutchinson Black & Cook
 \$20 CLE, \$10 new/young lawyers
 \$11 Lunch

Thursday, January 23
BANKRUPTCY
 Lunch Roundtable
 Noon @ Agave

Thursday, January 23
CO-CHAIR MEETING
 4 PM @ Caplan & Earnest

Thursday, January 23
NEW BAR ADMITTEES RECEPTION
 5:30 @ 2060 Broadway, 2nd floor atrium

Friday, January 24
IMMIGRATION
 Breakfast Roundtable
 8:30 AM @ Broadway Suites
 3rd floor conference room

Thursday, January 30
CIVIL LITIGATION
 Discussion with Magistrate Gunning
 regarding Pilot Project on Discovery
 Motions and the implication of recent case
 law on discovery disputes.
 Presenter: Magistrate Gunning
 Noon @ Boulder Justice Center
 East Training Room
 \$20 CLE, \$10 new/young lawyers

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COLORADO MAINTENANCE STATUTE

(continued from page 1)

for a 20 year marriage (10 years of maintenance), the court must make specific findings to support that result.

However there is a lot more to the new statute than just the maintenance formula. The prior statute, in effect for all cases filed before January 1, 2014, gave little or no guidance for an award of post-decree maintenance, leaving the field to case law, rules of thumb, and individual judicial views as to what constituted an appropriate maintenance award.

The new statute recognizes this deficiency at subsection (1)(b)(I): "Because the statutes provide little guidance to the court concerning maintenance awards, there has been inconsistency in the amount and term of maintenance..." The new statute sets forth very detailed factors to be considered by the court. Both practitioners and the court should be aware of this when dealing with a request for maintenance - the new statute is much more than

just a guideline maintenance formula.

The legislature sets forth its view of how the new guidelines should be considered by the courts, with a legislative declaration at (1)(b)(II) that "*Courts and litigants would benefit from... a more detailed statutory framework that includes advisory guidelines to be considered as a starting point for the determination of fair and equitable maintenance awards.*" (emphasis added.) The statute states at subsection(3)(e) that these guidelines "*do not create a presumptive amount or term of maintenance*", that the court has discretion to determine a fair and equitable maintenance award and that it shall make specific written or oral findings in support of the award. The statute stops short of stating that the court shall consider the guidelines as a starting point but it is clear that the legislature wants the courts to begin its analysis by applying the guidelines.

Maintenance Versus Child Support Statutes

It is informative to compare the new maintenance statute to Colorado's child support statute. Interestingly, the maintenance statute refers to the maintenance formula and the table for the term of maintenance table as a guideline. On the other hand, the child support statute refers to the chart/formula for calculating the initial amount of child support as "the schedule of basic child support obligations." The remainder of the child support statute, which, for the most part, modifies the basic support obligation, is loosely referred to as the guidelines. Whether this somewhat Orwellian use of the term "guideline" in the two statutes was intentional or not is presumably known only to the drafting committee members. In any case, the effect of using the term "guideline" in two different contexts is to make the formula and support charts in the child support statute seem more binding than the equivalent formula and chart in the maintenance statute.

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COLORADO MAINTENANCE STATUTE

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In fact, a close comparison of the two statutes shows that the court has similar discretion for determining both maintenance and child support awards. The child support guidelines permit the court to modify the support schedule. 14-10-115(2) sets forth the factors the court shall consider in determining the amount of child support while 14-10-114(3)(c) sets forth the factors the court shall consider in determining maintenance. 14-10-115(8)(e) states that the guidelines and schedule of basic child support obligations are a rebuttal presumption for the amount of support. The maintenance statute says that the guidelines do not create a presumption regarding maintenance. However, the child support statute also does not say that the equivalent portion of the statute (the support schedule) by itself creates a presumption as to the amount of support. (Also, 14-10-115(8)(e) allows the court to deviate from the child support guidelines and schedule of basic child support obligations by making written or oral findings specifying the reasons for the deviation and the amount of child support with no deviation.) All things considered, the new maintenance statute, which urges the court to use the guidelines as a

starting point and requires specific findings supporting the maintenance award, is not so different from the child support statute, apart from the fact that application of the child support statute creates a statutory rebuttal presumption, application of the maintenance statute does not. Putting these two statutes side by side shows that either the child support statute is actually a lot more flexible as to the amount of support than practitioners or the courts generally assume or else the new maintenance statute ought to be applied almost as rigidly as the courts typically apply the child support statute. As a matter of law, both maintenance and child support awards are made in the sound discretion of the trial court, to be reviewed under an abuse of discretion standard.

Request for Maintenance

Historically, if a party seeking maintenance failed to request it in the divorce petition, he or she was barred from later asking for it (although the courts usually permitted an amended petition to include the request.) IRM Boyd, 643 P.2d 804 (Colo. App. 1982). However, the new version of §14-10-114 at subsection (2) and (3)(a)(I) merely references the court's authority to consider a

maintenance award when made "upon the request of either party". There is no statutory requirement that the request be made in the initial pleadings. As statutes are to be interpreted according to their plain meaning, it could be argued that the new statute overturns existing case law requiring maintenance to be requested in the initial petition for dissolution. In that case, it is possible that the issue of a maintenance request by one spouse may not become apparent until the trial management certificate is prepared, well after the deadline for disclosing a vocational evaluator or other experts who would testify on the issue of maintenance. It is suggested that this is certainly a topic that should be raised at the initial status conference and that the court may want to include this disclosure requirement in its case management order.

Gross and Adjusted Gross Income

The new maintenance statute duplicates Colorado's child support statute in defining gross income. Both 14-10-114(8) and 14-10-115(5) set forth identical definitions of what is included in gross income for maintenance and child support. As the maintenance statute now requires the court to make an initial finding of each party's gross income, gross income for both maintenance and for child support are now statutorily mandated to be identical. The definition of adjusted gross income is also essentially the same in the above two statutes.

Required Findings in Considering Maintenance Request

As part of granting or denying a maintenance award, the court is statutorily required to make initial written or oral findings on four dif-



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PRESIDENT'S PAGE

BY JUDSON HITE



What has your local bar association done for you lately? The first of the year is mid-year for the Boulder County Bar and an appropriate time, as with the balance of life, to take stock in where we have gone and are going.

Financially, we are stable, due in no small part to the boon that is DOW 16000 and a diversified portfolio. Our membership income is better than predicted with a very welcomed increase in the number of members. Our CLE

income is slightly off but improving with the diligence of our Section co-chairs to present monthly CLE programs.. On the cost side we have kept expenses in line and are slightly below budget.

With the acquisition of some very affordable digital recording equipment and similarly priced technological support, we hope to reach more members and boost income by streaming CLEs live and making programs available on-demand through our website. The first forays into this era began in mid-December and it all appears promising.

Beyond time-shift, we are hopeful the streaming era affords a spatial-shift that strengthens our member connections in Longmont and other east county locations. The geographical isolation of most of our Boulder-City offerings is a concern the bar continually endeavors to address. Recent and coming efforts include helping establish a Longmont mentor/mentee program, recruiting and adding Section co-chairs from outside the city-island, and delivering at least one CLE per

year per Section in east county locales. Keeping the local bar relevant and responsive to broader-than-Boulder practitioners is a critical mission.

We are redesigning the bar's website to be more user friendly and content laden, and are working on a new format of the monthly newsletter to cover more personal and community issues and to enhance on-line readability. Be ready for that unveiling with the February issue.

Our connections with the CU law school and 20th Judicial District remain strong and vibrant. We support the law school as it develops post-graduation programs (read: getting a job) and enjoy the use of its facilities to host many of our functions. The bench-bar relationship we enjoy not only raises the level of professionalism in our courts, but also appears to create a sense of satisfaction to all litigation participants.

In-house our tireless leader, Christine Hylbert, welcomes a new assistant,

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LAWYER ANNOUNCEMENTS

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has become an Associate of the Firm.
She will focus on litigation and insurance defense matters.

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Robinson Tweedy, P.C. takes great pleasure
in announcing that

John M. Seebom
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and wills, trusts, and business entity formation.
and

Lucy Kennedy Walker
has joined the firm as an Associate.
Welcome, John and Lucy!

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EMERY L. TRACY, Attorney at Law

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Is please to announce his retirement from the practice of law
effective January 1. 2014.

Many thanks and appreciations for several years of referrals and friendships.

PRESIDENTS PAGE *(continued from page 5)*

Laura Zang after the early retirement of Sarah Flinn. Laura is a former Oregon forest firefighter, and will be cool-headed helping Christine fight the several blazes we fuel everyday.

We have also embarked on formalizing our Solo Small Law Firm Practice Section to reach our many members who practice in that fashion with advice on relevant back-office, client development, and professionalism techniques. We also continue to support the informal "section" of the same name in its assembling of local practitioners at local watering holes to share stories of triumph and tragedy.

In the near future there are several events you should calendar: the New Admittees' Happy Hour is going to take place January 23, the second floor atrium of the Siena Square Building at 2060 Broadway, starting at 5:30 PM. All members of the bar are invited to welcome our Boulder County Bar newest members. The Boulder bar's annual fundraiser (13 years now) benefiting the Legal Aid Foundation of Colorado, "Food Wine Jazz Art," is scheduled for February 27, once again at Rembrandt Yard, 1301 Spruce Street, starting at 5:30 PM. As in years past, we will have wine and beer tasting, will showcase local artists and this year, a local distillery, lighter jazz, and some new

culinary surprises. Please plan to attend! Law firm sponsorships are again being solicited and we thank you in advance for your continued support.

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COLORADO MAINTENANCE STATUTE *(continued from page 4)*

ferent matters (C.R.S. 14-10-114) (3)(a)(I):

A. The amount of each party's gross income (defined at 14-10-114(8)(c)).

B. The marital property apportioned to each party.

C. The financial resources of each party, including but not limited to the actual or potential income from separate or marital property; and

D. Reasonable financial need as established during the marriage.

Three of these four topics are somewhat duplicative. For example, actual income from separate or marital property is presumably included in the definition of gross income. Also, the marital property apportioned to each party is presumably part of the financial resources of each party. However, the clarification is helpful.

Determining Maintenance

14-10-115 (3)(a)(II) states that, *after making the above initial findings, the court shall determine the amount and term of the maintenance award, if any, that is fair and equitable to both parties after considering:*

(A) *The guideline amount and term of maintenance set forth in paragraph (b) of this subsection(3), if applicable, based upon the duration of the marriage and the combined gross incomes of the parties;* Listing this as the first item to consider mirrors the legislative declaration that the guidelines be considered as the starting point in determining maintenance.

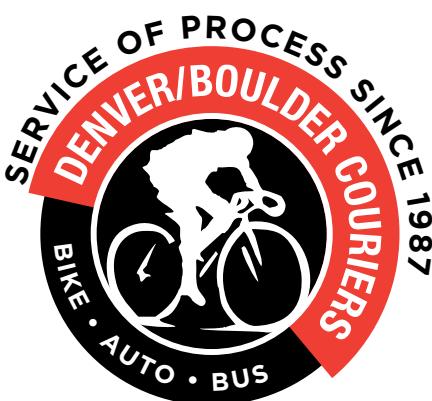
(B) *The factors relating to the amount and term of maintenance set forth in paragraph (c) of this subsection (3).* This section sets forth eleven different factors the court shall consider in a maintenance proceeding, in addition to "any other factor that the court deems relevant." It codifies factors that the court has always been able to consider in a maintenance case and is very helpful in clarifying several areas that have always been somewhat murky in the past. The first three factors are the same as three of the four findings the court must initially make in considering a maintenance request. The first of these required findings, gross income, is incorporated into the

maintenance guidelines and thus is not listed as a factor here, although income is included as an element of factor (V), along with other elements. Factor (X) is particularly useful, discussing economic and noneconomic contributions by a spouse, including education, payment of the other spouse's separate debts and enhancement of property. Factor (XI) codifies the ability of the court to award nominal maintenance to preserve a future maintenance claim. (Also subsection 3(g) gives the court the power to reserve jurisdiction for a future maintenance award – all the more reason to attempt to settle for contractual, non-modifiable maintenance.)

(C) *Whether the party seeking maintenance has met the requirement for a maintenance award pursuant to paragraph (d) of this subsection (3).*

(D) *Whether the party seeking maintenance has met the requirement for a maintenance award pursuant to paragraph (d) of this subsection (d).* Paragraph (d) reiterates prior law

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PRO BONO PAGE

Pro Bono Referrals

Eleven cases were referred during the month of November. Thank you to the following attorneys:

Susan Bryant
Matthew James
Roseann Murray
Richard Romeo
Rick Samson
Craig Small

Thank you to the following attorneys who accepted a mediation case in November:

Kim Gent
Lauren Ivison
Steven Meyrich
Michael Morphew

Pro Se Program Volunteers
Josh Anderson
Lauren Ivison
Craig Small
Michelle Stoll
Leonard Tanis

BCAP Volunteers

There were no requests for pro bono referrals for the Boulder County AIDS Project in November.

Pro Bono Corner

Interested in a Pro Bono case? Please call Erika at 303-449-2197. CLE credits available for pro bono service.

Boulder County Bar Association Professionalism Committee On-Call Schedule

Jan. 6 Todd Stahly 303.797.2900

Jan. 13 Anton Dworak 303.776.9900

Jan. 20 Steve Meyrich 303.440.8238

Jan. 27 Helen Stone 303.442.0802

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COLORADO MAINTENANCE STATUTE

(continued from page 4)

that the court must find that the spouse seeking maintenance lacks sufficient property to provide for his or her reasonable needs and is unable to support himself or herself through appropriate employment. It also includes a provision that maintenance may be appropriate if the party is the custodian of a child whose condition or circumstances make it inappropriate for the spouse to be required to seek employment outside the home. Query -- does that include caring for a child younger than 36 months, similar to the child support statute?

Conclusion

It remains to be seen how the courts will deal with the new maintenance guideline amount and term of maintenance in coming years. Certainly the guideline is not binding on the court, but neither is the equivalent portion of the child support statute, the schedule of basic child support obligations. The structure for determining awards under both statutes is very similar and both are made in the discretion of the court. Therefore, there is a sound argument that the courts should apply the new maintenance guidelines, as modified by the listed factors to be considered, almost as strictly as they apply the child support schedule, as modified by the

child support guidelines. This may become the norm as newer judicial officers who do not have the history of dealing with the old highly discretionary maintenance statute apply the new statute.

Bob Lanham is a sole practitioner at Robert E. Lanham, P.C. Josh Anderson is an associate at Dietze & Davis, P.C. They are the co-chairs of the BCBA Family Law Section.



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