

## GRADER'S GUIDE

### \*\*\* QUESTION NO. 6 \*\*\*

#### SUBJECT: FAMILY LAW

#### 1. Attorney Fees (30 Points)

Alaska law provides that during the pendency of the action, a spouse may, “upon application and in appropriate circumstances, be awarded expenses, including attorney fees and costs that reasonably approximate the actual fees and costs required to prosecute or defend the action.” AS 25.24.140(a). The award of attorney’s fees in divorce actions is within the broad discretion of the trial court. An award of attorney fees will not be reversed unless it is “arbitrary, capricious, or manifestly unreasonable.” *Sloane v. Sloane*, 18 P.3d 60, 64 (Alaska 2001).

An award of costs and attorney’s fees in divorce cases is to be based primarily upon the relative economic situations and earning capacities of the parties. See *Dodson v. Dodson*, 955 P.2d 902, 914 (Alaska 1998); *Kelly v. Kelly*, 926 P.2d 1168, 1170 n. 3 (Alaska 1996). This standard ensures that both spouses have the proper means to litigate the divorce action on a fairly equal plane. See *Lone Wolf v. Lone Wolf*, 741 P.2d 1187, 1192 (Alaska 1987).

Based on the stated facts, the court should award Wanda some interim attorney fees. The facts state that Harry’s take home pay is \$150,000 a year and that Wanda makes \$15.00 per hour. Harry’s earning capacity is much greater than Wanda’s. Wanda has limited education and has been out of the workforce a few years. Her computer skills are not current. The facts do not indicate that Wanda has any money from which to pay attorney fees other than her salary. An attorney fee award to Wanda is necessary to “level the playing field.”

#### 2. Child Support (40 Points)

Based on the facts, Wanda has “primary physical custody” of Carl. See, A.R.C.P. 90.3(f)(2). Examinees should recognize that under Rule 90.3(a)(2), Harry would pay 20% of his “adjusted annual income” to support Carl. The analysis of Harry’s adjusted income does not stop with the statement that take home pay as an employee is \$150,000 but examinees should note that there are no facts given that would indicate Harry’s income is any less than \$150,000.

Under Rule 90.3(a)(1) “adjusted annual income” is a parent’s income from all sources minus mandatory payroll deductions, and voluntary retirement contributions up to 7.5% of gross income, if the parent is not a participant in a mandatory retirement plan. See, A.R.C.P.

90.3(a)(1)(A). Here, no information is given about Harry's retirement contributions, if any.

Child support and alimony payments arising from prior relationships which are required by other court or administrative proceedings are subtracted to determine adjusted annual income. See, A.R.C.P. 90.3(a)(1)(B). The facts state that this is the first marriage for each party and that neither has any other children.

If Harry had work related child care expenses for Carl those expenses could be subtracted from his income under Rule 90.3(a)(1)(D). Here, there are no facts to indicate Harry has those expenses. Also, there are no facts to indicate that Harry will have periods of extended visitation over 27 consecutive days. If he did, his child support might be reduced. See, A.R.C.P. 90.3(a)(3).

After concluding that Harry's adjusted annual income is at least \$150,000, examinees should state that under Rule 90.3(c)(2), the child support percentages of paragraph 90.3(a) do not apply to the extent a parent has adjusted income over \$84,000. See, A.R.C.P. 90.3(c)(2). In such a case the court may make an additional award only if it is just and proper, taking into account the needs of the children, the standard of living of the children and the extent to which that standard should be reflective of the supporting parent's ability to pay. See, *Id.* In this case, unless enhanced child support is awarded, Harry will be ordered to pay 20% of \$84,000 or \$16,800 per year (\$1400 per month).

Wanda can argue that she should get enhanced child support but she will probably not be successful. There is no evidence that the child Carl has any special needs, such as a medical condition that requires more child support. Carl is only a year old and his standard of living will not change appreciably after the divorce. For example, this is not a situation where he has been going to private school or taking private music lessons and will not be able to continue those activities under his new standard of living.

### **3. Rehabilitative Alimony (30 Points)**

Whether Harry will have to pay for Wanda's further schooling is a question concerning rehabilitative alimony. Spousal support is provided for in AS 25.24.160(a)(2). The Alaska Supreme Court has "announced a policy of encouraging trial courts to provide for parties' financial needs by property disposition, rather than by alimony." See, *e.g.*, *Dixon v. Dixon*, 747 P.2d 1169, 1173 (Alaska 1987). However, the policy favoring property division over spousal support does not apply to preclude rehabilitative spousal support. See *Dixon*, 747 P.2d at 1174. Rehabilitative alimony may be awarded for a specific purpose and a short

duration even with an adequate property division. See *Brown v. Brown*, 914 P.2d 206, 211 (Alaska 1996).

The factors trial courts consider in determining whether to award spousal support are essentially identical to those considered in deciding the allocation of marital property. See, *Dixon*, 747 P.2d at 1173. Alaska law requires that alimony awards be "just and necessary." *Id.* (citing [AS 25.24.160\(a\)\(2\)](#)). In addition, a trial court may consider: the respective ages of the parties; their earning ability; the duration and conduct of each during the marriage; their station in life; the circumstances and necessities of each; their health and physical condition; their financial circumstances, including the time and manner of acquisition of the property in question, its value at the time and its income producing capacity if any. See *Id.* (citations omitted).

Here, the amount of marital property is unknown. There are no facts to suggest that either party is in poor health. The parties are both fairly young and the marriage is short-term. However, Wanda clearly has a much lower earning capacity than Harry.

Rehabilitative alimony is limited to job training or other means directly related to entry of advancement within the work force. The party seeking it must intend to use it for such purposes, and absent such intent, rehabilitative alimony ought not to be awarded. See *Brown v. Brown*, 914 P.2d 206, 211 (Alaska 1996) (citations omitted). Vague educational plans do not justify rehabilitative alimony. See *Dixon*, 747 P.2d at 1174. However, a spouse is not required to identify a specific job sought after graduation to justify temporary rehabilitative alimony, if the plan identifies a career goal, a degree program to reach the goal, and a reasonable time frame. See *Myers v. Myers*, 927 P.2d 326, 328 (Alaska 1996).

Here, examinees should note that Wanda needs to develop a definite educational plan targeted toward improving her employability. The more specific she can be the better her chances of getting the court to order Harry to pay for her schooling. The fact that her marriage to Harry is short term, about a year and a half, will weigh against her being awarded rehabilitative alimony to complete two years of college. The court would be more likely to order Harry to pay for her to take some computer classes so that she can bring her secretarial skills up to current standards.