

HOW TO ARGUE FOR INCREASING OR DECREASING THE AMOUNT OR LENGTH OF ALIMONY PRODUCED BY THE “TONOPAH FORMULA”

Although the Tonopah formula is frequently used by both parties and many judges as a starting point in alimony cases, its use has not been sanctioned by the Nevada Supreme Court and it was never intended to be blindly followed. Instead, an expressly non-exhaustive list of modification factors was set out in section seven of the original proposed statute, by which any court could deviate from the numbers supplied by the formula for good cause, which was to be determined upon consideration of “any relevant factor.” The entire section is reproduced below for reference:

Sec. 7. In granting a divorce, if the court makes a finding that there is good cause, or if the length of the marriage is less than 7 years, the court may deviate from the amount or duration of alimony determined pursuant to the formulas set forth in sections 4, 5, and 6 of this act. In determining whether good cause exists, the court may consider any relevant factor, including, without limitation:

1. The length of the marriage;
2. The age and the life expectancy of each spouse;
3. The physical and mental health of each spouse;
4. The contribution during the marriage of one spouse to the education, training or earning capacity of the other spouse and any increase in the level of education of a spouse obtained during the marriage;
5. The extent to which the present and future earning capacity of one spouse is impaired because that spouse has not worked for an extended period;
6. The extent to which acceptable opportunities for employment are unavailable to a spouse because of his age;
7. The length of time reasonably necessary for a spouse to obtain training or to update his skills;
8. The extent to which a party has achieved a substantially advantageous economic position during the marriage through the combined effort of the spouses;
9. The standard of living established during the marriage;
10. The number of dependents of each spouse and the age, health and any other condition of such dependents;
11. The provisions of any order relating to the custody of any dependents, including, without limitation, the length of time that any obligations for the support of a child will be effective and the impact of the custody provisions of the order on the ability of a spouse to work;
12. The tax liabilities and benefits to each spouse as a result of the divorce, including, without limitation, the tax effect of alimony pursuant to sections 72 and 215 of the Internal Revenue Code (26 U.S.C. §§ 71 and 215), and future amendments to those sections and corresponding provisions of future internal revenue laws;
13. The amount of monthly income after taxes of each spouse after considering the overall financial situation of that spouse, including, without limitation, any outstanding mortgages or legal fees and costs;
14. The anticipated cost of health care for each spouse;
15. The amount and characterization of property that each spouse will receive

- pursuant to NRS 125.150, including, without limitation, separate property;
16. The amount of any future retirement income that each spouse will receive;
 17. The length of time of physical separation of the spouses before the divorce;
 18. Whether it would be more just and equitable to grant a spouse a lump-sum award of alimony; and
 19. The amount and duration of any alimony awarded pursuant to section 8 of this act.

The factors listed were generated from the combined experience of the drafters of the proposed legislation, and reflect considerations in alimony cases in Nevada and elsewhere; they are, of course, legitimately argued as matters of general equity irrespective of the fact that the proposed legislation was never enacted as a statute.