

Subject: Re: FLS: Spousal Support Subcommittee

From: Gregory McCullough <greg@sanfordlaw.com>

Date: 10/29/2025, 12:39 PM

To: Joseph Boisvert <joe@boisvertlegal.com>, sms@schultzfamilylawyer.com, kthibodeau@twmmaine.com, cmiller@millerasen.com, jeanette@mainefamilylaw.com, nick@galfamilylaw.me, jsec@vbk.com, eddavid@jdhlawyers.com, mhubbard@ptla.org, Debby.Willis@maine.gov, hwhiting@mpmlaw.com, pamela@holmeslegalgroup.com

I'm sorry I did not have time to respond earlier to this proposed poll questionnaire. I think a poll is needed regarding the theoretical justification for spousal support in the context of no-fault divorce.

I realize that we have had no-fault divorce in Maine since 1973, but spousal support (alimony) dates back centuries if not millennia. According to Wikipedia, it started with the Code of Hammurabi in 1754 BC. (See <https://en.wikipedia.org/wiki/Alimony>.) At that time, it was only available to women who bore children, and, hence, it was more like child support than modern spousal support. (Id.) Spousal support as we know it dates back to the English ecclesiastical courts. "Alimony pendente lite was given until the divorce decree, based on the husband's duty to support the wife during a marriage that still continued. Post-divorce or permanent alimony was also based on the notion that the marriage continued, as ecclesiastical courts could only award a divorce a mensa et thoro, similar to a legal separation today. As divorce did not end the marriage, the husband's duty to support his wife remained intact." (Id.)

The same article states, "Liberalization of divorce laws occurred in the 19th century, but divorce was only possible in cases of marital misconduct. As a result, the requirement to pay alimony became linked to the concept of fault in the divorce." In short, alimony at that time was based on marital fault: "Alimony to wives was paid because it was assumed that the marriage, and the wife's right to support, would have continued but for the misbehavior of the husband. Ending alimony on divorce would have permitted a guilty husband to profit from his own misconduct. In contrast, if the wife committed the misconduct, she was considered to have forfeited any claim to ongoing support."

The quoted language has relevance today, not to divorce lawyers, but to our clients. Just ask them. How many men or women believe that an innocent spouse should have to pay spousal support to a guilty spouse who files and obtains a no-fault divorce?

According to Wikipedia, "The National Organization for Women opposed the introduction of no-fault divorce in New York State because it would allow a party who actually is at fault to obtain a divorce in which 'alimony, maintenance [and] property division' would be determined without the judge considering 'the facts, behavior and circumstances that led to the break-up of the marriage'." (https://en.wikipedia.org/wiki/No-fault_divorce).

Don't get me wrong. I fully support no-fault divorce. And I support spousal support when there is a justification for it based on equitable principles. I do not agree with a presumption in favor of spousal support in the absence of some equitable justification.

How might this concept be reflected in our law? Fortunately, our law has a rich foundation of equitable principles such as promissory estoppel and unjust enrichment that could be easily imported into our divorce law as a theoretical underpinning for spousal support.

Without some theoretical underpinning that is consistent with no-fault divorce and the consensus of public opinion of clients (not divorce lawyers), I believe we will not make progress. I think the last 20 years have shown a continuing dissatisfaction with current laws and practices regarding spousal support. I see no similar dissatisfaction with our laws regarding child support, and I attribute this to the obvious moral or equitable justification for child support.

Gregory O. McCullough, Attorney at Law

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On 10/24/2025 1:32 PM, Joseph Boisvert wrote:

Following up on this initial intro. Catherine and Susan suggested we distribute a poll to FLS members for data collection purposes. The following questions are currently on the poll. Please send me any additional data points you would like collected by EOD.

1. Should income for spousal support purposes consider an individual's net (after tax) income or gross (before tax) income?
 1. Net Income
 2. Gross Income
2. Is 10 years the appropriate length of a marriage for spousal support to be presumed?
 1. Yes
 2. No
3. Should general spousal support increase in amount based upon the length of a marriage?
 1. Yes
 2. No
4. Should general spousal support be awarded in all cases where the marriage is more than 10 years and there is a disparity in earning power or should other factors be considered such as contribution as homemaker or contribution to the other's higher earning capacity?
 1. Spousal support should be awarded in all divorces > 10 years where there is disparity in earning power
 2. Other factors should be considered such as contribution as homemaker or to the higher earner's earning capacity
5. What percentage "difference in income" should the parties have to meet the statutory presumption for spousal support, assuming the marriage has been longer than 10 years?
 1. 10-19%
 2. 20-29%
 3. 30-39%
 4. 40-49%
 5. > 50%
6. Should the allocation of marital debt in the divorce judgment factor into the spousal

support formula?

1. Yes
2. No

7. When there is child support, should the amount of child support received be considered in assessing the amount of general spousal support awarded?

1. Yes
2. No

8. When there is child support, and one parent has primary residence of the children, should the financial resources be divided:

1. Equally between the parties
2. A higher percentage to the higher earning spouse
3. A higher percentage to the primary residential parent

9. In determining spousal support, when there are no minor children, should the financial resources be divided:

1. Equally between the parties
2. A higher percentage to the higher earning spouse
3. It depends upon other factors

10. Should the allocation of total financial resources be 50/50 for marriages exceeding 20 years

1. Yes
2. No
3. It depends upon other factors


Thank you,



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disseminating, distributing or copying this message is strictly prohibited. If you have received this transmission in error, please notify us immediately by telephone or email and delete this transmission as well as any copies immediately thereafter. Thank you, Boisvert Legal, LLC.

On Oct 24, 2025, at 11:47 AM, Joseph Boisvert <joe@boisvertlegal.com> wrote:

Good morning everyone,

I wanted to first say thank you to each of you for volunteering to join the Family Law Section's subcommittee on spousal support. I know we are all busy but I appreciate you all offering your time and experience to work on this matter. As practitioners we all understand the importance of this. I wanted to cover what I think will be the best methodology to have a productive committee. First, as you will see below I have created a dropbox folder that you all should have access to. This folder contains all of the documentation I have been given relating to the current proposed legislation and other working materials. As I get other materials I will share them to the "resources" subfolder. I encourage each of you to make a folder and store your items there, if you will be referencing them. **If you are going to directly edit the word documents please download a local copy to your device before doing so.**

As for proposed next steps.

1. After today I think everyone should take about a week to review the current materials and either (a) offer your comments on the current proposal or (b) offer an alternative calculation that you would suggest instead. I would ask that you each supply these comments no later than Monday, November 3, 2025.
2. We will circulate those comments and proposals and meet sometime in the week of 11/3 to 11/7 to discuss each of these proposal. Given how much enthusiasm there was at the last FLS meeting, I think we should plan on this being a 1.5 to 2 hour zoom meeting, most likely in the evening that week. I

would suggest November 5, 2025 from 4:00 to 5:30/6:00 unless there are those who cannot make this. I will have an agenda for each subcommittee member given chance to explain their comments or offer their alternative proposals and explain the basis thereof.

3. Based on feedback received we can either amend proposals, being drafting a memo for the FLS or decide on alternative next step if we dont make much headway. I know FLAC is meeting on 11/14 and I would optimally like to give them some actionable working material prior to that date.

Please let me know if you have any other questions. Looking forward to working with you all.

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Spousal Support Subcommittee
dropbox.com


Thank you,



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Gregory McCullough
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LD 2142

I have been practicing divorce and family law for 34 years. For the last 25-plus years, I have complained to my colleagues that our law regarding spousal support is GREAT FOR LAWYERS and TERRIBLE FOR OUR CLIENTS. It's great for lawyers because it promotes litigation. It's terrible for clients because they must pay for lawyers at a time when they can least afford to.

LD 2142 would be a solution if it could be expected to reduce litigation by providing more certainty. For example, our child support guidelines have done this regarding child support. However, a BAD FORMULA IS WORSE THAN NO FORMULA AT ALL.

The problem with LD 2142 is that it fails to recognize that Maine has had no fault divorce for the last 50-plus years, and NO FAULT DIVORCE CONFLICTS WITH A PRESUMPTION IN FAVOR OF ALIMONY. No fault divorce is not the problem. We have it for a reason. Divorce based on fault was also great for lawyers and terrible for clients.

If we are going to have a spousal support formula, it must be one that will not outrage John Q. Public. LD 2142 will outrage John Q. Public because it will result in spousal support awards that are routinely "INEQUITABLE OR JUST." Ironically, this is the standard that LD 2142 uses to rebut the presumption. This will promote litigation, not reduce it.