

THE STEVENSON-KELSEY SPOUSAL SUPPORT CALCULATOR

– A Tool for Computing Suggested Alimony Payments in Divorce Cases –
www.alimonyformula.com

Scott R. Stevenson, Esq.
Stevenson & Lynch, P.C.
62 Derby Street, Suites 4-5
Hingham, Massachusetts 02043-3785
Tel: 781-741-5000
Fax: 781-741-5050
E-Mail: [Click Here to Contact Us](#)
Website: www.stevensonlynch.com

- and -
Justin L. Kelsey, Esq.
Kelsey & Trask, P.C.
154 E. Central Street, Suite 302B
Natick, Massachusetts 01760
Tel: 508-655-5980
Fax: 508-655-5981
E-Mail: [Click Here to Contact Us](#)
Website: www.kelseytrask.com

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I. INTRODUCTION

There is not currently any “formula” for the calculation of the spousal support obligation (also referred to as “**alimony**”) that is endorsed by either the Massachusetts Legislature, a consensus of Massachusetts Probate and Family Court Justices, or even a consensus of Massachusetts family law practitioners. There is a movement toward seeking that consensus, which is discussed in SECTION III - GUIDELINES USED IN MASSACHUSETTS, below, in which the new, *preliminary and draft* MBA-BBA Joint Alimony Task Force recommendations are discussed.

Moreover, there are seemingly as many different opinions in the family law field as there are ways to interpret the broad language of MGL, Chapter 208, § 34, the Massachusetts statute relating to the award of spousal support which provides that, in determining the amount of alimony, if any, to be awarded to any one spouse from the other spouse, the Court shall consider:

the length of the marriage, the conduct of the parties during the marriage, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties, the opportunity of each for future acquisition of capital assets and income, the nature and value of the property to be so assigned, the present and future needs of any dependent children of the marriage;¹

and the Court may also consider:

the contribution of each of the parties in the acquisition, preservation or appreciation in value of their respective estates and the contribution of each of the parties as a homemaker to the family unit.²

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The authors have created a tool – the *Stevenson-Kelsey Spousal Support Calculator* – to enable family law practitioners to better advise their clients regarding the settlement of divorce cases where a primary issue is the proposed alimony payment from one spouse to the other. **NOTE:** To view and use the *Stevenson-Kelsey Spousal Support Calculator* please visit www.alimonyformula.com, or you can use the Calculator at the authors' websites: the Stevenson & Lynch, P.C. Website at www.stevensonlynch.com/spousalsupport.htm or the Kelsey & Trask, P.C. Website at www.kelseytrask.com/spousalsupport.htm. In addition, a Sample worksheet created with the *Stevenson-Kelsey Spousal Support Calculator* is attached to this article as **Appendix A**.

For their assistance and inspiration in creating this tool, we would like first to say “*Thank You*” to **Promethean Software Corporation** – the creators of **TurboLaw[®] Document Software** – as we have modeled our *Stevenson-Kelsey Spousal Support Calculator* after the very user-friendly *Child Support Guidelines Worksheet* calculator which TurboLaw[®] Document Software offers to its subscribers as a template for Microsoft Excel. The *Child Support Guidelines Worksheet* calculator is a tool used daily by almost all Massachusetts family law practitioners to calculate the amount of child support to be paid by one spouse to the other spouse where non-emancipated children are involved in a divorce, paternity or separate support case in the Massachusetts Probate & Family Court. **NOTE:** To obtain your own copy of **TurboLaw[®] Document Software** for use on your own computer, contact Promethean Software Corporation at www.turbolaw.com or call (800) 518-8726.

The purpose of the *Stevenson-Kelsey Spousal Support Calculator* is not to suggest that any one of the formulas presented herein is better than any other at approximating the required evaluation under current Mass. Gen. Laws. Ch. 208 § 34. However, the authors do believe that a more consistent approach to the calculation of the alimony obligation – based on quantifiable factors – can benefit the citizens of the Commonwealth of Massachusetts in coming to agreements more quickly and more fairly, thus ending the stresses and expense of divorce litigation sooner rather than later.

Therefore, while we do not endorse any of the specific alimony guideline formulas described herein, we do hope that reference to these formulas will assist family law practitioners in providing both their clients and the Court with increased guidance on appropriate sums for alimony or spousal support in Divorce Agreements.

Each of the formulas was developed by their respective authors after considered and learned debate, and at the very least, we believe that the family law bar and our clients can both learn from the result of that debate in other forums and apply what has been learned to the resolution of disputes in Massachusetts' divorce litigation. It is in that spirit and with that purpose that we present the following:

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II. SAMPLE FACT PATTERN USED IN THIS MEMORANDUM:

As a practical matter, these formulas are provided as guidelines and should not be substituted for critical analysis of the facts of each individual case by experienced and qualified counsel and Judges.

For demonstration purposes, each formula is accompanied by a sample calculation to show just how those particular guidelines or formulas would apply to the following sample fact pattern:

- ❑ **Jane and John Loveless** have been **married for 19 years**.
- ❑ They have **no children** together.
- ❑ **Jane earns \$25,000 gross per year** (\$20,000 net) and this is consistent with her earning ability during the marriage.
- ❑ **John earns \$125,000 per year** (\$100,000 net) and this is consistent with his earning ability during the marriage.
- ❑ There are **insufficient other assets to allow for an alimony buyout** (a/k/a no “lump sum alimony payment”)

Based on these facts, we now discuss “*What should John’s periodic alimony payment be and for how long should he pay it?*”

III. GUIDELINES USED IN MASSACHUSETTS:

A. The MBA-BBA Joint Alimony Task Force (preliminary and draft recommendations as of September 24, 2008)

In 2007, the Massachusetts Bar Association and Boston Bar Association created a Joint Alimony Task Force (hereinafter, the “MBA-BBA Joint Task Force”, which focused “on stimulating judicial, academic and legislative discussion in order to foster consistent and predictable alimony awards”.³ The Massachusetts alimony debate centers around a proposal that the Massachusetts legislature add the words “*and duration,*” as an amendment to the Massachusetts Alimony Statute, MGL, Chapter 208 § 34, to clarify the apparent scope and breadth of discretion available to the Probate & Family Court Judges in fixing alimony orders.⁴ The MBA-BBA Joint Task Force began with a goal of recommending standards for reasonableness of amount and duration of alimony awards in Massachusetts.⁵

On September 24, 2008, Massachusetts Continuing Legal Education (“**MCLE**”) presented its “**Alimony Summit 2008**” Seminar, chaired by Attorney Susan A. Huettner of the Law Offices of Susan A. Huettner of Sandwich, and featuring a panel of Massachusetts legal and financial

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experts on the subject of alimony in Massachusetts, including Judge Robert Scandurra, the First Justice of the Barnstable Probate & Family Court and the author of the “Scandurra Formula”, set forth, below.⁶

At the September 24, 2008 MCLE seminar, Judge Scandurra announced that the MBA-BBA Joint Task Force, of which he is a member, had issued a preliminary, draft report to the MBA and to the BBA for review and comment.⁷ Judge Scandurra informed the seminar attendees about its essential recommendations with the caveat that said report is still in the drafting stage.⁸ It is important to note, therefore, that the following section is based on the preliminary presentation of Judge Scandurra at the September 24, 2008 seminar and if, as and when the MBA-BBA Joint Task Force report becomes public, then this Memorandum will be revised to reflect any changes, if any, between Judge Scandurra’s presentation and the content of the final report.

Judge Scandurra reported that one of the goals of the MBA-BBA Joint Task Force was “to achieve some predictability in alimony awards” - similar to the predictability that has now been achieved in setting child support payments by the use of the Massachusetts Child Support Guidelines – in situations where *only* spousal support (i.e. no child support) is being awarded by the Court and “to provide guidelines to the attorneys of the Massachusetts Bar to help them to achieve divorce agreements on the alimony issue”.⁹ In other words, the goal was to give guidance and recommendations “to make the application of the law of alimony be fundamentally fair”.¹⁰

Initially, the MBA-BBA Joint Task Force recommends that alimony be classified into one of 4 groups, each to be treated differently by the Court as to duration and modification.¹¹

Those **Four Classifications of Alimony** and their different treatments and applications are:

1. General Term Alimony – also known as periodic alimony, which consists of weekly payments made for the duration of either a definite term, or which ends upon the occurrence of a specific event, such as death of the Payor, death or remarriage of the Payee, etc. The MBA-BBA Joint Task Force has suggested **Duration Guidelines**, described at further length below, to assist in setting the length of a definite term. This General Term Alimony would be subject to modification in the future if there is a material change of circumstances and would be tied to the issue of the economic dependence of the Payee Spouse to the Obligor Spouse.¹²

2. Rehabilitative Alimony – also known as rehabilitative alimony, which is designed to improve the income-earning capability of the Payee Spouse, if, for example, the Payee Spouse wishes to enroll in school to learn a trade or skill that can increase their income-earning capacity. The costs of such schooling can be ordered to be paid by the Obligor Spouse to the Payee Spouse. However, this finite sum, which can be paid in periodic payments or upon periodic

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events, would be limited in duration to a **maximum payment period of five (5) years**. Rehabilitative Alimony would also be subject to modification if there is a material change of circumstances, such as if the schooling failed to pan out as had been envisioned or planned.¹³

3. Reimbursement Alimony – also known as an equitable balancing under the broad authority of MGL, Chapter 208, § 34, which consists of reimbursing the Payee Spouse for a finite sum determined based on the cost or value of the asset or sacrifice attributed to the Payee Spouse. For example, reimbursement alimony would be paid if the Payee Spouse brings significant assets into the marriage which cannot be repaid, or the Payee Spouse works and supports the household while the Obligor Spouse attends medical school, or the Payee Spouse has cared for an elderly family member in lieu of working, etc. Reimbursement Alimony would be limited in duration to a **maximum payment period of five (5) years**. However this Reimbursement Alimony would *NOT* be subject to modification if there is a material change of circumstances.¹⁴

4. Transitional Alimony – which is designed to assist the Payee Spouse in the transition out of the marriage to independent living and would be based in large part on the real financial needs of the Payee Spouse. For example, transitional alimony would be paid if the Payee Spouse moved to Massachusetts from a small town in Iowa and a short term marriage failed and the Payee Spouse needs funds now to move back to Iowa to be with family or, alternatively, if the Payee Spouse had given up a job and now needs short term payments so that the Payee Spouse can find a replacement job. Transitional Alimony would be limited in duration to a **maximum payment period of three (3) years**; however this Transitional Alimony would *NOT* be subject to modification if there is a material change of circumstances. This would be paid in one payment or in short payments for up to three years.¹⁵

Determining Rehabilitative Alimony, Reimbursement Alimony or Transitional Alimony necessarily depends on the facts specific to that case, and are not easily subject to a formula.

Regarding General Term Alimony, Judge Scandurra presented the MBA-BBA Joint Tax Force's recommendations relating to the determination of the amount of alimony to be paid in a General Term Alimony case. Judge Scandurra stated that while the MBA-BBA Joint Task Force did consider all of the formulae used in Massachusetts and in other States, as well as the pronouncements of the American Law Institute in its Principles of Family Dissolution ("**ALI**") and the American Academy of Matrimonial Lawyers ("**AAML**"), the MBA-BBA Joint Task Force decided against promulgating an "alimony formula" such as the Ginsburg Formula or the Scandurra Formula or the "Old 1/3 – 1/3 – 1/3 Formula" as had been used in Massachusetts by some Probate & Family Court Judges as starting points for determining the amounts of alimony payments (all described at further length below).¹⁶

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Instead, the MBA-BBA Joint Task Force recommended a **CAP** or “Not-to-Exceed” limitation on the amount of alimony to be paid.¹⁷

- **The MBA-BBA Joint Task Force CAP for alimony payments should be calculated as follows:** Alimony payments should not exceed 33% of the difference between the gross income of the divorced spouses.¹⁸

This **CAP** assumes no child support is being paid, as in our other examples described below. Judge Scandurra, however, did remark that if child support was being paid, then the amount of the alimony to be paid under the MBA-BBA Joint Task Force recommendations would be a “dollar for dollar reduction of the alimony obligation”, including the natural tax consequences of that reduction (alimony payments are deductible to the Payor and are includable as income to the Payee but child support payments are non-deductible to the Payor and are non includable as income to the Payee under current Federal and Massachusetts State tax laws).¹⁹

At a more recent Seminar, on November 3, 2009, Massachusetts Continuing Legal Education (“**MCLE**”) presented the “**Family Court Judicial Forum 2009**”, chaired by Steven E. Gurdin of Sally & Fitch, LLP in Boston and featuring a panel of Massachusetts Family Court Justices discussing hypothetical fact patterns. The panel included Judge Robert Scandurra, the First Justice of the Barnstable Probate & Family Court and Judge James Menno of the Plymouth Probate & Family Court.²⁰ Both Judge Menno and Judge Scandurra indicated that they now use the MBA-BBA Joint Task Force draft recommendations as a starting point for creating alimony orders.²¹

Judge Scandurra also noted that the MBA-BBA Joint Task Force recognizes that situations could exist which would cause or result in the Court finding that deviations from the recommendations may be appropriate.²²

The factors which a Court may consider in making those deviations include, but are not limited to:

1. Advanced age of one or both Spouses;
2. Chronic illness of one or both Spouses;
3. The cost of health insurance and/or uninsured health care expenses;
4. The proximate co-habitation of both spouses before the date of their formal marriage (NOTE: this may make the “length of the marriage” – a critical factor in duration of alimony payments - longer and thus have a direct bearing on the duration of the alimony payment obligation);
5. The lack of fair tax treatment for same-sex marriage couples under Federal Law; and
6. Resources available to one spouse that do not constitute or are measured as “income” but which improve the quality of life of one Spouse and are not available to the other Spouse.²³

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These factors, it should be noted, are very similar to the “**deviation factors**” of the AAML, described below.

The MBA-BBA Joint Task Force also makes recommendations or **Duration Guidelines** for General Term Alimony as follows:

- **The MBA-BBA Joint Task Force’s durational component is calculated as follows:** Alimony shall be paid for a maximum number of years calculated by multiplying the length of the marriage by the following durational factors
 - **For marriages of less than 6 years:** 50%;
 - **For marriages of 6-10 years:** 60%;
 - **For marriages of 11-15 years:** 70%;
 - **For marriages of 16-20:** 80%; or
 - **For marriages of 20 years or more:** permanent/indefinite.²⁴

However, the MBA-BBA Joint Task Force also recommends a **sunset provision**, a time when the alimony payments would end regardless of the length of the marriage, and that recommendation creates a rebuttable presumption that the obligation to pay alimony **ends “upon retirement of the Obligor Spouse at the usual age”**.²⁵

Sample Calculation:

Calculation of *Maximum* Alimony Order:

	John’s Gross Income	\$125,000
-	Jane’s Gross Income	\$ 25,000
<hr/>		
=		\$100,000
x		33%
<hr/>		
	Suggested Annual Alimony CAP:	\$ 33,000 from John to Jane

Calculation of *Maximum* Alimony Duration:

	Length of Marriage	19 years
x		80 %
<hr/>		
=	Suggested Maximum Duration:	15.2 years

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B. The “Rough-Cut 1/3–1/3–1/3 Rule of Thumb” Formula

Many practitioners in Massachusetts – and some Massachusetts Probate Court Judges - have long used a rule of thumb to reference a “quick and dirty” estimate of what would be an appropriate periodic alimony Order.

Although not containing any reference to the many factors listed in the Massachusetts statute, the 1/3–1/3–1/3 formula often approximates an appropriate Order by essentially estimating a rough equalization of net income: One third for the payor, one third for the payee, and one third for the Federal and State government (i.e. taxes).

- ❑ **The 1/3-1/3-1/3 formula suggests that alimony should be calculated as follows:** Alimony equals one third of the total of the payor’s gross income plus the payee’s gross income, minus the payee’s gross income.²⁶

Sample Calculation:

Calculation of *Suggested* Alimony Order:

	John’s Gross Income	\$125,000
+	Jane’s Gross Income	\$ 25,000
<hr/>		
=		\$150,000
÷		3
<hr/>		
		\$ 50,000
-	Jane’s Gross Income	\$ 25,000
<hr/>		
=	Suggested Annual Alimony Order:	\$ 25,000 from John to Jane

Calculation of *Suggested* Alimony Duration:

Suggested Duration: none suggested

C. The “Ginsburg” Formula

The Honorable Edward M. Ginsburg, retired Justice of the Middlesex Probate & Family Court, wrote an article, published in the Massachusetts Family Law Journal in 1997, that has probably been referred to in every alimony conference, seminar or debate in Massachusetts since it was written.²⁷

- ❑ **Judge Ginsburg’s formula suggests that alimony should be calculated as follows:** The payor’s income after the payment of alimony should equal the total

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of the payor’s income and the payee’s income divided by 1.8.²⁸ Or, in other words, alimony equals the payor’s income minus that amount.

Judge Ginsburg’s article also suggests a durational component for how long should John pay alimony to Jane?²⁹

□ **Judge Ginsburg’s durational component is calculated as follows:**

- **For marriages of less than 5 years** (a “short term marriage”) there is normally no alimony Order;
- **For marriages of 5-15 years** (an “intermediate-term marriage”), the number of years that alimony should be ordered is at most the number of years of the marriage, i.e., for an 8-year marriage, alimony should end after no later than 8 years; or
- **For marriages of 15 years or more** (a “long-term marriage), alimony should be “permanent” or of an “indefinite” length.³⁰ It is important to note that when the authors refer to “permanent” alimony, this suggested duration is still subject to the typical restrictions on alimony that it ends upon the death of either spouse or the remarriage of the payee.

Judge Ginsburg explains that these suggested durations are subject to adjustment if there are “countervailing equities” relating to such factors as the health or age of the parties.³¹ In addition, Judge Ginsburg notes that even “permanent” alimony is subject to modification when circumstances change, as is often the case upon the retirement of the payor.³²

Sample Calculation:

Calculation of *Suggested* Alimony Order:

	John’s Gross Income	\$125,000
+	Jane’s Gross Income	\$ 25,000
<hr/>		
=		\$150,000
÷		1.8
<hr/>		
	John’s after payment Income	\$ 83,333
	John’s Gross Income	\$125,000
-	John’s after payment Income	\$ 83,333
<hr/>		
=	Suggested Annual Alimony Order:	\$ 41,667 from John to Jane

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Calculation of *Suggested* Alimony Duration:

	Length of the Marriage	19 years
>		15 years (long-term)
=	Suggested Duration:	Permanent

D. The “Scandurra” Formula

The Honorable Robert A. Scandurra, First Justice of the Barnstable Probate & Family Court, has presented at many of the conferences in which Judge Ginsburg’s formula has since been discussed and has expressed his own informed and researched opinion about that formula.³³

Judge Scandurra conducted his own independent research in approximately 2002 in which he reviewed approximately 2 years worth of actual divorce agreements that litigants had reached in his Court relating to the payment of alimony from one spouse to the other. After examining the Rule 401 Financial Statements of the parties in those cases, upon which these alimony settlements were reached, he found that, on average, the alimony agreements reached by represented parties in divorce litigation were equal to approximately 15-20% less than the alimony Order as would be suggested by the application of Judge Ginsburg’s formula.³⁴

Until recently, therefore, Judge Scandurra recommended the use of the following formula, which we have nicknamed the “Scandurra” Formula.

- **Judge Scandurra’s formula suggests that alimony should be calculated as follows:** Judge Ginsburg’s formula less 15%.³⁵

In addition, Judge Scandurra expressed his opinions on a maximum appropriate durational component, similarly limited by the countervailing equities described by Judge Ginsburg.

- **Judge Scandurra’s durational component is calculated as follows:** Alimony shall be paid for a maximum number of years calculated by multiplying the length of the marriage by the following durational factors
 - **For marriages of less than 10 years:** 50%;
 - **For marriages of 10-15 years:** 60%;
 - **For marriages of 15-20 years:** 80%; or
 - **For marriages of 20 years or more:** permanent.

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Sample Calculation:

Calculation of *Suggested* Alimony Order:

	John's Gross Income	\$125,000
+	Jane's Gross Income	\$ 25,000
<hr/>		
=		\$150,000
÷		1.8
<hr/>		
	John's after payment Income	\$ 83,333
	John's Gross Income	\$125,000
-	John's after payment Income	\$ 83,333
<hr/>		
=	Suggested Alimony Order (Ginsburg)	\$ 41,667 per year
x		85 %
<hr/>		
=	Suggested Annual Alimony Order:	\$ 35,417 from John to Jane

Calculation of *Maximum* Alimony Duration:

	Length of Marriage	19 years
x		80 %
<hr/>		
=	Suggested Maximum Duration:	15.2 years

As discussed above, Judge Scandurra now recommends use of the MBA-BBA Joint Task Force draft recommendations as a starting point for creating alimony orders, rather than the "Scandurra" formula.³⁶ These two approaches yield remarkably similar results anyway. In our example the "Scandurra" formula recommends an alimony award of \$35,417 per year for 15.2 years, whereas the MBA-BBA Joint Task Force recommendation is for \$33,000 for 15.2 years. Of course, this shouldn't come as a surprise since Judge Scandurra is a member of the MBA-BBA Joint Task Force.

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IV. GUIDELINES USED IN JURISDICTIONS OTHER THAN MASSACHUSETTS:

The following guidelines are presented in alphabetical order of their source.

A. The American Academy of Matrimonial Lawyers Formula

The American Academy of Matrimonial Lawyers (“**AAML**”) assigned a commission to review the approaches used by other jurisdictions in determining spousal support.³⁷ After reviewing those approaches, the AAML commission designed a formula that reaches results comparable to the majority of jurisdictions.

- **The AAML formula suggests that alimony should be calculated as follows:** Alimony equals 30% of the payor’s gross income minus 20% of the payee’s gross income (with the payee’s total income including alimony not to exceed 40% of the combined gross income of the parties).³⁸

This figure is then subject to adjustment if any of the following **deviation factors** apply:

1. A spouse is the primary caretaker of a dependent minor or a disabled adult child;
2. A spouse has pre-existing court-ordered support obligations;
3. A spouse is complying with court-ordered payment of debts or other obligations (including uninsured or unreimbursed medical expenses);
4. A spouse has unusual needs;
5. A spouses’ age or health;
6. A spouse has given up a career, a career opportunity or otherwise supported the career of the other spouse;
7. A spouse has received a disproportionate share of the marital estate;
8. There are unusual tax consequences;
9. Other circumstances that make application of these considerations inequitable; or
10. The parties have agreed otherwise.³⁹

In addition, the AAML guidelines have a durational component computed subject to the deviation factors.

- **The AAML durational component is calculated as follows:** Alimony shall be paid for a number of years calculated by multiplying the length of the marriage by the following durational factors
 - **For marriages of 0-3 years:** 30%;
 - **For marriages of 3-10 years:** 50%;
 - **For marriages of 10-20 years:** 75%; or

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- **For marriages of 20 years or more:** permanent.⁴⁰

Sample Calculation:

Calculation of *Suggested* Alimony Order:

	John's Gross Income x 30%	\$ 37,500
-	Jane's Gross Income x 20%	\$ 5,000
=	Suggested Alimony Order	\$ 32,500

Required Comparison to Maximum Order:

	John's Gross Income	\$125,000
+	Jane's Gross Income	\$ 25,000
=		\$150,000
x		40 %
=		\$ 60,000
-	Jane's Gross Income	\$ 25,000
	Maximum Alimony Order	\$ 35,000
>	Suggested Alimony Order	\$ 32,500
=	Suggested Annual Alimony Order:	\$ 32,500 from John to Jane

Calculation of *Suggested* Alimony Duration:

	Length of Marriage	19 years
x		75 %
=	Suggested Duration:	14.25 years

B. Arizona - Maricopa County Spousal Maintenance Formula

The Arizona statute contains a list of thirteen factors to be considered in determining appropriate spousal maintenance similar to that of the Massachusetts statute.⁴¹ The Maricopa County Superior Court, however, has recommended a more specific formula in cases when spousal support is appropriate.⁴²

- **The Maricopa County formula suggests that alimony should be calculated as follows:** Alimony equals the difference between the parties' income multiplied by the "marital duration factor". The "marital duration factor" equals 0.015 multiplied by the number of years of the marriage with a maximum value of 0.5, with the exception that there is **no alimony** in marriages less than five years or when the payee's income is more than 75% of the obligor's income.⁴³

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Sample Calculation:

Calculation of *Suggested* Alimony Order:

Threshold Evaluations:

Length of Marriage	19 years
>	5 years
=	Pass
John's Gross Income	\$125,000
>	75 %
=	\$ 93,750
>	Jane's Gross Income
	\$ 25,000
	Pass

Continue on to Calculation of Alimony Order:

Length of Marriage	19 years
x	0.015
=	Marital Duration Factor: 0.285
John's Gross Income	\$125,000
-	Jane's Gross Income
	\$ 25,000
=	\$100,000
x	Marital Duration Factor
	0.285
=	Suggested Annual Alimony Order: \$ 28,500 from John to Jane

Calculation of *Suggested* Alimony Duration:

Suggested Duration: none suggested

C. California - Santa Clara County Formula

Similar to Arizona, there is not a statutorily mandated alimony formula in California, but this has not stopped many of their Courts from using a guideline created in Santa Clara County.⁴⁴

- **The Santa Clara County formula suggests that alimony should be calculated as follows:** Alimony equals the payor's net income multiplied by 40% minus the payee's net income multiplied by 50%. The net income is derived by taking the

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payor's gross monthly income and deducting income tax and Social Security payments.⁴⁵

In addition, the Santa Clara County formula has a durational component.

- **The Santa Clara County durational component is calculated as follows:** Alimony shall be paid for a minimum number of years calculated by using the following formulas depending on the length of the marriage.
 - **For marriages of 0-10 years:** 50% multiplied by the length of the marriage;
 - **For marriages of 10-20 years:** the number of months multiplied by the number of months again and then divided by 240; or
 - **For marriages of 20 years or more:** equal to length of the marriage.⁴⁶

Sample Calculation:

Calculation of *Suggested* Alimony Order:

	John's Net Income x 40%	\$ 40,000
-	Jane's Net Income x 50%	\$ 10,000
=	Suggested Annual Alimony Order:	\$ 30,000 from John to Jane

Calculation of *Maximum* Alimony Duration:

	Length of Marriage	19 years
x		12 months/year
=		228 months
x		228 months
÷		240
=		216.6 months
÷		12 months/year
=	Suggested Minimum Duration:	18.05 years

D. Kansas - The Johnson County Bar Association Formula

Kansas law limits alimony to 121 months with a one-time potential extension of up to a further 121 months.⁴⁷ The Johnson County Bar Association has developed non-binding guidelines for the purpose of calculating spousal support and has recommended them for use by both Judges and practitioners in Johnson County.⁴⁸

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- **The Johnson County Bar Association formula suggests that alimony should be calculated as follows:** Alimony equals 25% multiplied by the difference of the parties' gross income up to a difference of \$50,000 per year. If the difference exceeds \$50,000, then alimony equals \$12,500 per year plus 22% multiplied by the excess difference.⁴⁹

In addition, the Johnson County guidelines have a durational component.

- **The Johnson County Bar Association durational component is calculated as follows:** Alimony shall be paid for a maximum number of years calculated by using the following formulas depending on the length of the marriage.
 - **For marriages of 0-5 years:** length of the marriage divided by 2.5; or
 - **For marriages of 5 years or more:** 2 years plus the length of the marriage divided by 3.⁵⁰

Sample Calculation:

Calculation of *Suggested* Alimony Order:

John's Gross Income	\$125,000
- Jane's Gross Income	\$ 25,000
=	\$100,000
-	\$ 50,000
=	\$ 50,000
First \$50,000 x 25%	\$ 12,500
+ Excess Difference (\$50,000) x 22%	\$ 11,000
= Suggested Annual Alimony Order:	\$ 23,500 from John to Jane

Calculation of *Maximum* Alimony Duration:

Length of Marriage	19 years
-	5 years
=	14 years
÷	3
=	4.67 years
+	2 years
= Suggested Maximum Duration:	6.67 years

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E. The Pennsylvania Formula

Under Pennsylvania law, the amount of support to be awarded is determined by a formula outlined in the Pennsylvania Code.⁵¹

- **The Pennsylvania formula suggests that alimony should be calculated as follows:** Alimony equals 40% of the difference in the parties' net incomes (after subtracting other support orders, if any, from the payor's income).⁵² Adjustments can be made for other expenses such as health insurance, day care and extracurricular expenses, medical expenses, and mortgage payments.⁵³

Sample Calculation:

Calculation of *Suggested* Alimony Order:

	John's Net Income	\$100,000
-	Jane's Net Income	\$ 20,000
<hr/>		
=		\$ 80,000
x		40 %
<hr/>		
=	Suggested Annual Alimony Order:	\$ 32,000 from John to Jane

Calculation of *Maximum* Alimony Duration:

Suggested Duration: none suggested

F. Virginia - The Fairfax County Formula

The Fairfax County Virginia Courts use temporary spousal support guidelines, which were adopted by a committee of attorneys and Judges and have become commonly used in other counties in Virginia as well.⁵⁴

The guidelines are not binding and are adjustable by factors such as fault (*e.g.*, did the payee cause the divorce by being unfaithful?), payment of other expenses such as a mortgage, or where the gross income of the parties is relatively high (over \$10,000 per month).⁵⁵ The guidelines, although technically only intended for temporary support orders, have become commonly used as a starting point for final orders.⁵⁶

- **The Fairfax County formula suggests that alimony should be calculated as follows:** Alimony equals 30% of the gross income of the payor minus 50% of the gross income of the payee.⁵⁷

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Sample Calculation:

Calculation of *Suggested* Alimony Order:

	John's Gross Income x 30%	\$ 37,500
-	Jane's Gross Income x 50%	\$ 12,500
=	Suggested Annual Alimony Order	\$ 25,000 from John to Jane

Calculation of *Maximum* Alimony Duration:

Suggested Duration: none suggested

V. COMPARATIVE RESULTS:

Although the formulas suggested by these sources differ in their application, the results are relatively consistent and provide a way “objectively” to help divorce litigants compromise on the question of “*What should the alimony Order be in my case and how long should it be paid?*”

At a minimum, the use of these formulas should help the parties and their counsel to agree on a reasonable range of alimony and thereby enable constructive dialogue to proceed.

In the sample fact pattern provided, above, the suggested alimony Order for John to pay to Jane under these different approaches ranges **from a low of \$23,500** (Johnson County Bar Association, Kansas) **to a high of \$41,667** (Judge Ginsburg).

Although this range appears to be a wide gap, a \$18,167 difference between the high and the low alimony payment calculation, **the simple average** of all of the suggested Orders is **\$30,398**, which is **within \$2,000 of the results yielded by the application of four of these formulas** (and the average deviation overall was only \$4,442). When experienced family law practitioners come within \$2,000 on almost any issue, compromise is expected and usually occurs.

If one were to apply the four (4) “Massachusetts formulas” only, then the average would yield **John making an alimony payment of \$33,854 to Jane**, a bit higher than the average of all of the formula results but not unreasonable, especially since the cost of living is higher in Massachusetts than in other parts of the United States.

The length of time that alimony should be paid by John to Jane, based on the 19-year length of their marriage and their respective incomes, ranges **from a minimum cap of 6.67 years** (Johnson County Bar Association, Kansas) **to a permanent order** (Judge Ginsburg). Excluding the Johnson County Bar Association durational component, however, the remaining suggested durations range from 14.25 years to a permanent order. Again there is considerable similarity

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shown by these formulas which we believe can assist practitioners and litigants in reaching settlements.

VI. CONCLUSIONS (FOR NOW):

While these formulas, guidelines and recommendations do not take into account the many other factors required for consideration in each individual case, there is arguably some value to both consistency and predictability – a point stressed by Judge Ginsburg for over a decade now.

This “value to consistency and predictability” has worked well in the creation and the uniform application of the Massachusetts Child Support Guidelines. The sums that a non-custodial parent is to pay to the custodial parent for child support are seldom argued anymore before the Courts or among the parties and their counsel. The calculation of the child support sum has become a simple “given” and used in the majority of all divorces with a high degree of acceptance by the Justices of the Probate and Family Court, the divorce parties and their experienced family law counsel as basically fair.

The use of the Child Support Guidelines formula and the tool of the *Child Support Guidelines Worksheet* calculator for computing child support payments using a relatively small number of significant data inputs has, simply put, been a big help in Massachusetts divorce litigation. As a result, the *Child Support Guidelines Worksheet* calculator acts as a great aid and tool in helping experienced family law counsel advise their clients and end their disputes by way of settlement so that those divorce litigants can move on with their lives.

As the Child Support Guidelines have assisted practitioners and the Courts in reducing the length and expense of litigation, we hope that the use of the *Stevenson-Kelsey Spousal Support Calculator*, by providing a range of reasonable alimony orders to experienced family law counsel in Massachusetts and in other States, will assist practitioners in advising their clients to narrow their disputes and settle the alimony components of divorce cases. We hope that no divorce trial ever again has to take place in Massachusetts simply because the parties cannot agree on the issue of alimony or spousal support.

Of course, we are not alone in our efforts to effectuate a reduction of inconsistencies in alimony awards by the Justices of our Probate & Family Court in current and future divorce litigation. The Massachusetts Bar Association and the Boston Bar Association have worked diligently together through their MBA-BBA Joint Alimony Task Force to determine and make recommendations for standards in Massachusetts on calculating the amount and duration of alimony.⁵⁸ The Task Force members, including the current Co-Chairs, David H. Lee, Esq. and Denise Squillante, Esq., have expressed their concern in a recent MBA Lawyer’s Journal article that Massachusetts Appellate Court decisions are actually discouraging marriage due to their

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inconsistency and case-by-case approach toward the calculation of the amount and duration of alimony.⁵⁹

As this debate continues in Massachusetts, it is being addressed in other states as well, resulting in proposed legislation, ballot initiatives and lawsuits.⁶⁰ The formulas, guidelines and recommendations contained herein are therefore simply a “snapshot” of the current state of this on-going discussion and we expect that many states, including Massachusetts, are now moving toward a more formulaic approach to alimony in order to approach that goal of consistency and predictability.

Until such time as a statute or appellate Courts shall tell us all clearly what the proper way to calculate alimony shall be under Massachusetts law, it is in the spirit of helping end each divorce case where the open question is “***What should the alimony payment be and for how long should it be paid?***” that the use of the formulas referenced in the *Stevenson-Kelsey Spousal Support Calculator* is offered. Understanding the quantity and quality of thought that has gone into the creation of these various formulas, guidelines and recommendations is, of course, important but each family law practitioner should input the data into the Calculator and use the results with the understanding that those results are just guidelines.

However, if the use of the *Stevenson-Kelsey Spousal Support Calculator*, while promoting consistency but sacrificing some flexibility, helps divorce litigants end their cases by assisting them to come to agreements on the issue of alimony or spousal support, then we will have fulfilled our purpose in creating the Calculator. It is our goal to improve the predictability of our legal justice system by the creative use of these formulas for the settlement of divorce cases and thereby improve judicial efficiency and the lives of each divorce litigant, taking to heart the old adage that justice delayed is justice denied.

APPENDIX A

Case Name John Loveless v. Jane Loveless

Date Prepared January 10, 2010

Docket Number PL 10 D 0000 DV1

Name of Preparer Justin L. Kelsey, Esq.

STEVENSON-KELSEY SPOUSAL SUPPORT CALCULATOR WORKSHEET

All amounts are \$ / week, rounded to the nearest dollar
Click Calculate to view results of the various formulas below

Enter length of marriage in years	19
Enter payor spouse's gross annual income	\$125,000
Enter payee spouse's gross annual income	\$25,000
Enter payor spouse's net annual income ¹	\$100,000
Enter payee spouse's net annual income ¹	\$20,000

Support Formula:	Suggested Order		Post Gross Income	
	Annually:	Weekly:	Payor:	Payee:
MBA-BBA Jt Task Force (max)	\$33,000	\$635	\$92,000	\$58,000
Old 1/3 - 1/3 - 1/3	\$25,000	\$481	\$100,000	\$50,000
Ginsburg Formula	\$41,667	\$801	\$83,333	\$66,667
Scandurra Formula	\$35,417	\$681	\$89,583	\$60,417
AAML	\$32,500	\$625	\$92,500	\$57,500
AZ - Maricopa County	\$28,500	\$548	\$96,500	\$53,500
CA - Santa Clara County ¹	\$30,000	\$577	\$95,000	\$55,000
KS - Johnson County	\$23,500	\$452	\$101,500	\$48,500
Pennsylvania ¹	\$32,000	\$615	\$93,000	\$57,000
VA - Fairfax County	\$25,000	\$481	\$100,000	\$50,000

Support Formula:	Months:	Years:
MBA-BBA Joint Task Force (MA) (maximum)	182.4	15.2
Ginsburg Formula (maximum)	permanent	permanent
Scandurra Formula (maximum)	182.4	15.2
AAML	171	14.25
CA - Santa Clara County (minimum)	216.6	18.05
Kansas - Johnson County (maximum)	80	6.7

ENDNOTES

¹ Mass. Gen. Laws. Ch. 208 § 34 (Mar. 31, 2008).

² *Id.*

³ Presentation of Judge Robert A. Scandurra to MCLE Alimony Summit 2008, Boston, Massachusetts, Sept. 24, 2008.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*; See Barbara Rabinovitz, *Task Force Calls for Limits on Amount, Duration of Alimony*, Mass. Law. Wkly. (November 10, 2008).

¹⁹ *Id.*

²⁰ Presentation of Judge James V. Menno and Judge Robert A. Scandurra to MCLE Family Court Judicial Forum 2009, Taunton, Massachusetts, Nov. 3, 2009.

²¹ *Id.*

²² MCLE Alimony Summit 2008, *supra* n. 3.

²³ *Id.*

²⁴ *Id.* See Rabinovitz, *supra* n. 18.

²⁵ Scandurra, *supra* n. 3.

²⁶ Presentation of Linda Fidnick, Esq. to MCLE Family Law Conference, Boston, Massachusetts, March 14, 2008; See also James McCaskey, *Parsing Alimony: Deciphering the 1/3, 1/3, 1/3 Metric*, 5 Fam. Mediation Q. 6 (Fall 2006).

²⁷ Ginsburg Formula for Alimony: Ginsburg, Edward M. Hon. "*The Place of Alimony in the Scheme of Things*", 14 Mass. Fam. L. J. 107 (Jan. 1997).

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ Presentation of Linda Fidnick, Esq., *supra* n. 3.

³⁴ *Id.* and Presentation of Judge Robert A. Scandurra to 13th Annual MBA Family Law Conference, Nantucket, Massachusetts, Oct. 18, 2003.

³⁵ *Id.*

³⁶ Family Court Judicial Forum 2009, *supra* n. 20.

³⁷ *Report of the American Academy of Matrimonial Lawyers on Considerations when Determining Alimony, Spousal Support or Maintenance*, Approved by Board of Governors <<http://www.aaml.org/i4a/pages/index.cfm?pageid=3739>> (Mar. 9, 2007).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ See Ariz. Rev. Stat. § 25-319(B) (January 1, 2008).

⁴² *Id.*

⁴³ *Spousal Support* <<http://www.azdivorceattorney.com/spousalsupport.htm>> (accessed May 13, 2008), referencing *Cullum v. Cullum*, 160 P.3d 231 (2007); and see Ira Mark Ellman, *The Maturing Law of Divorce Finances: Toward Rules and Guidelines*, 33 Fam. L.Q. 801, 812 (1999).

⁴⁴ Robert E. Gaston, *Alimony: You are the Weakest Link!*, 10-NOV Nev. Law. 36, 38 (2002).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Kan. Stat. Ann § 60-1610 (2007).

⁴⁸ *Id.*

⁴⁹ Johnson County Bar Association, Family Law Bench Bar Committee, *Family Law Guidelines for Family Law Practice in Johnson County, Kansas*, Section 5.5 <www.jocobar.org/pdf/guidelines2005.pdf > (Revised Dec. 2005).

⁵⁰ *Id.* at Section 5.8.

⁵¹ Pa. Code tit. 1910 § 16-4 (Apr. 19, 2008).

⁵² *Id.*

⁵³ Pa. Code tit. 1910 § 16-6 (Apr. 19, 2008).

⁵⁴ Jeff Krause; *Virginia Spousal Support Issues* <<http://www.divorcesource.com/VA/ARTICLES/krause11.html>> (accessed May 21, 2008).

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Kelsey Sadoff, *MBA-BBA task force debates future and fairness of alimony awards*, 15-4 MBA Law. J. 7 (Dec. 2007).

⁵⁹ *Id.*

⁶⁰ Tresa Baldas, *States Challenge Traditional Alimony* <<http://www.law.com/jsp/law/LawArticleFriendly.jsp?id=900005560195>> (Feb. 15, 2008).

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