

## Temporary Alimony: The Impediment to Arbitration in Family Law Cases

By: Robert Weinberg

With the recent passage of the Family Law Arbitration Act (most recently covered by this publication in the Winter 2024 volume), Pennsylvania has taken a very positive step in allowing family disputes to be resolved in an efficient, effective, humane manner that will, if utilized, help reduce the backlog of divorce and custody cases in the legal system — and save families agony and money.

However, there are certain systemic aspects of the Divorce Code that may impose barriers to the utility of the Arbitration Act. These barriers are in some ways ingrained into the fabric of how lawyers represent clients through the divorce process.

The principal barrier is the interplay between temporary alimony (spousal support/APL) and the one-year waiting period under the Divorce Code that prohibits a matter from moving forward in the absence of both parties' agreement.

Pennsylvania's legislature has articulated its view that "[t]he family is the basic unit in society and the protection and preservation of the family is of paramount public concern."<sup>1</sup> In light of this concern, it is the legislature's stated policy and goal to, on the one hand, "[e]ncourage and effect reconciliation and settlement of differences of spouses..." and, simultaneously (if not on the other hand) to "[e]ffectuate economic justice between parties..." who are separated or are getting divorced.

Superficially, these policies seem harmonious. And the passage of the Arbitration Act seems, on its face, to address the legislature's goal of encouraging the "settlement of differences of spouses."

But, with respect to alimony *pendente lite*, there is an inherent tension between these two stated goals that frequently plays out in the real world of divorce litigation. This tension serves to exacerbate discord between spouses and, as often as not, to prolong and even complicate the resolution of divorces.

This tension will also inhibit voluntary use of the arbitration process.

Every experienced divorce attorney has had this conversation with a client: "unfortunately, given that your husband makes less than you, he can file for APL and make you wait at least a year from your date of separation until you can move the case forward in court, and even then it will take several months to finalize the case, all the while

you will need to pay him roughly 40% of the net difference between your respective net disposable incomes."

Or maybe the conversation went this way: "since your husband makes a lot more than you, but you are young, employable, and the marriage was short, you probably won't receive much alimony, so it makes sense to delay the resolution of your divorce as long as possible all while you collect as much APL as possible."

If a divorce lawyer has spent more than a minute in practice, he or she has been on both sides of this issue a myriad of times.

Why does this matter? Well, the legislature has articulated its public policy goal of encouraging reconciliation (even in the face of marital dissolution). Hence, divorcing parties must wait 90 days to get a divorce if they agree to it, and they must wait a year if one party does not consent, all in ostensible service of promoting reconciliation and, ultimately, attempting to preserve marital relationships.

This mandatory "cooling off period" coupled with an obligation to pay temporary support is quite likely the surest way to deep six any hope of a reconciliation. If you want an angry client, try explaining why he or she must pay support to a spouse when our courts have stated that "APL is based on the need of one party to have equal financial resources *to pursue a divorce proceeding* when, in theory, the other party has major assets which are the financial sinews of domestic warfare."<sup>2</sup>

Stated differently, if APL is, at least in part, intended to allow the financially dependent spouse to *pursue a divorce proceeding*, then why should the payor spouse be required to pay APL during the year "cooling off" period, or longer, if the recipient spouse is not otherwise doing anything to pursue the divorce.

This dynamic is directly in conflict with the legislature's goal of preserving the marriage. In other words, nothing will make a payor spouse want to get divorced faster than telling her or him that he will have to pay support until the divorce is resolved.

This dynamic will also, in all likelihood, stymie any willingness of any party (or attorney representing such a party) who stands to benefit from the prolonged receipt of APL.

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A simple counterpoint is that parties can negotiate around the problem and incorporate the APL issue into the arbitration process. This makes eminent sense in theory; in practice, from a sheer psychological standpoint, most people are not interested in speeding the process along when they have the certainty of a monthly APL check in the alternative. And the benefit of arbitration — speed and efficiency — are anathema to a prolonged stream of APL payments.

The fix is simple. If a spouse requests APL, then that spouse should be required to cooperate with moving the divorce process forward, including giving his or her consent to the entry of a divorce decree after 90 days and upon the resolution of all economic issues.

This “fix” prevents a recipient of APL from having it both ways, which is the most maddening and seemingly inequitable aspect of this dynamic to the payor spouse.

This “fix” will also serve to encourage parties to proceed with resolving their differences sooner, including by utilization of the Arbitration Act.

APL is a critical tool in the Court’s toolbox to prevent unfairness as the divorce process unfolds. But, it should not be a tool that is unfairly weaponized by one spouse while he or she essentially sits on his or her hands and does nothing to resolve the matter. The legislature should thus strongly consider promoting its goal of effectuating economic justice and speedily resolving divorce matters (including by way of the Arbitration Act) by requiring a spouse receiving APL to consent to the divorce process moving along after 90 days.

### Endnotes

<sup>1</sup> 23 Pa. C.S.A. §3102.

<sup>2</sup> Litmans v. Litmans, 673 A.2d 382, 388 (1996) (emphasis added).

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**The PBA Family Law Section has established a Leadership Development Program (LDP) designed to provide emerging leaders with an opportunity to learn about the section while actively participating in key meetings, trainings and events.**

**Participation in the LDP provides numerous opportunities to network with PBA Family Law Section members and leadership and helps build lasting relationships that will serve as an invaluable resource for future success.**

### How it Works

LDP engages future section leaders by providing a variety of opportunities to build leadership skills through a series of bi-monthly virtual programs, participation in section committees and programs and encouraging participation in other important events throughout the year. Each participant will be paired with an experienced and committed mentor. In addition, the committee co-chairs are available to answer any questions or provide advice. Active and engaged participation in the LDP also provides opportunities for professional development and learning.

### Who is Eligible?

PBA Family Law Section members who:

- Are currently licensed to practice law in Pennsylvania
- Are age 40 years or younger or have practiced ten years or less
- Demonstrate leadership ability in some capacity
- Are willing to make the time commitment to the program

### Next Steps

Candidates for the LDP must complete an application and provide one reference. The entire application packet is due to the PBA by May 16, 2025. Selected candidates will be notified in June. The program will run from July 2025 through July 2026. For additional details and program requirements click [here](#)  
Application for interested candidates, click [here](#)  
Reference form, click [here](#)

Please reach out to the LDP co-chairs Darren Holst and Stephanie Winegrad with any questions.

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