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Bar Journal

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Family Limited Partnerships in Estate Tax Planning

**St. Thomas More and the Cranston West
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Central Falls City Hall, by Brian McDonald



Family Court Rehabilitative Support Awards: When and How Much?



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Practices law in California

Where the factors weigh in favor of support, the Rhode Island Supreme Court has not been shy to grant alimony payments...

Amber graduated from college and married Richard in her early twenties.* Shortly thereafter, she chose to leave her roots in Kansas, moving to Maryland so Richard could begin his career. Less than one year later, Amber chose to uproot herself again and moved to Arizona so Richard could pursue an even better employment opportunity. After settling down in Arizona and starting their family, Amber chose to move to Los Angeles so Richard could again better his career. Five years later, Amber chose to move to Rhode Island so Richard could make his ultimate career advancement. Amber made these choices because, she believed, each move supported the best interest of her family.

Along the way, Amber chose to begin a family with Richard. Each time Amber chose to move, she packed up her young family. New homes in Kansas, Maryland, Arizona, California and Rhode Island, new schools, new friends, and new challenges were a part of Amber's life after her marriage. Despite the heavy costs of uprooting herself and the children, each time Richard found a better career opportunity, Amber did what needed to be done so Richard could have a better job and earn more money. Even after Richard filed for divorce, which he later revoked when Amber agreed to move, Amber chose to follow him, ultimately ending up in Newport, Rhode Island.

Amber graduated from the University of Kansas with a Bachelor's degree in marketing. Amber began her marketing career when the couple moved to Phoenix, Arizona where Amber secured work as a sales representative for a large marketing firm. During the years that followed in Phoenix, Amber developed a reputation as a skilled sales representative. She cultivated and maintained a steady client base that supported her full-time work. After the birth of the couple's first child, Amber continued to work part-time, allowing her additional time for her new family.

In 2002, Richard asked Amber to move the family to Los Angeles. Unlike the first two moves, this move proved exceptionally challenging to Amber's career. Not only did Amber have to leave her established client base behind,

she had to start over in an entirely new environment, by this time, with two young children to care for. Nevertheless, Amber was able to find part-time employment for a small company, working only a few days a week, allowing her greater time to care for her family. However, during the five years the family resided in Los Angeles, Amber was never able to re-build a client base or establish herself as a full-time marketing representative. Instead, Richard worked full-time while Amber took care of the family and worked as often as her schedule permitted.

Five years after their move to Los Angeles, Richard was offered employment in Newport, Rhode Island. When confronted with the choice, Amber expressed her concerns about having to establish herself again in another entirely new place and about her ability to earn a reasonable income. With Richard's assurances that his new salary would be more than enough to provide for the family, Amber made the same choice she had made three previous times and the same choice she made every other time Richard had the opportunity to better his career.

In 2009, the couple arrived in Rhode Island. Richard began his new job, earning approximately \$180,000 per year, while Amber worked to establish a new home. A few years later, Richard filed for divorce. Having to raise her young children in Rhode Island without the benefit of any family support, with Richard unavailable at least one weekend per month due to traveling for his new job, confronted with a depressed economy, and having to deal with an aggressive divorce, Amber has been unable to reestablish herself professionally. Amber was left with few other choices than to seek rehabilitative alimony which the Rhode Island Family Court does not grant without a clear showing of need.

The Family Court must consider certain factors when called upon to decide whether and how much rehabilitative alimony to award a spouse seeking assistance from the other spouse. These factors are set out in Rhode Island General Laws § 15-5-16.¹ These factors include: 1) the length of the marriage; 2) the

conduct of the parties during the marriage; 3) the health, age, station, occupation, amount and source of income for each party, the vocational skills of each party, and the employability of the individual parties; and 4) the state, liabilities, and needs of each party.² Additionally, § 15-5-16 encourages the court to consider: 5) the extent to which the parties are unable to support themselves due to: a) absence from employment; b) outdated skills; c) the time and expense required for training and education; d) the probability of becoming self-supporting; e) the standard of living during the marriage; f) the opportunity for either party for future income; and g) the ability of the other spouse to pay.³

Where the factors weigh in favor of support, the Rhode Island Supreme Court has not been shy to grant alimony payments to the party in need of it.⁴ Amber's case, like many before her, is one ripe for rehabilitative alimony. She is a now single-mother left to care for her children, without the support of her family who all reside in her native Kansas, after being a devoted wife for the past fifteen years. During her long marriage, Amber was the

epitome of a faithful and loyal spouse. Amber presently resides in Rhode Island where she has been unable to return to the workforce due to her responsibilities as a full-time mother, her lack of connections to anyone in the state, and confronted with a depressed national economy.

So what makes Amber's request reasonable? Why should she receive rehabilitative alimony in addition to child support and the equitable division of the marital assets?

Amber sacrificed her career so her soon-to-be-ex-husband could pursue his. Amber left the workforce for her husband and her children. She has the potential to be self-supporting, but she needs time, and she needs support to rehabilitate herself to allow her to return to the workforce with a reasonable chance of success.

Rhode Island courts view alimony as temporary relief paid by one spouse to help the other become self-supporting in light of those factors set out above. This financial support was designed for cases just like Amber's where one party is left holding all the cards while the other left her cards on the table while supporting her husband and children. In Amber's

case, the Family Court should award sufficient alimony based on Richard's income, Amber's financial need, and a detailed, workable plan designed to help Amber succeed in the workforce.

**EDITOR'S NOTE: This is a hypothetical case intended to illustrate the authors' points.*

ENDNOTES

1 See R.I. Gen. Laws 1956, § 15-5-16.

2 See R.I. Gen. Laws 1956, § 15-5-16.

3 See R.I. Gen. Laws 1956, § 15-5-16.

4 See *Giammarco v. Giammarco*, 959 A.2d 531, 535 (R.I.2008) (Family Court properly granted alimony in the amount of \$200 a week for a period of three years in addition to the equitable distribution award as well as ongoing social security payments as the defendant did suffer from a variety of medical maladies but was healthy enough to participate in hobbies and therefore would eventually become employable); *Vicario v. Vicario*, 901 A.2d 603, 612 (R.I.2006) (Family Court properly considered all statutory factors in granting rehabilitative alimony in the amount of \$500 a week for a period of three years as that was the amount the husband gave the wife every week during the marriage to pay the bills. This award was granted to help the wife from dissipating all of the marital assets in her attempt to re-enter the workforce). ❖

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