



# NJICLE ARTICLE

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AN ANALYSIS OF COX vs. COX:  
HOW TO DETERMINE  
WHETHER PERMANENT OR LIMITED  
DURATION ALIMONY IS APPROPRIATE

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## INTRODUCTION

"Limited duration alimony accommodates the marital partnership by "recognizing in certain marriages that a permanent alimony Order - or no alimony award at all - is an injustice and the law must provide sufficient flexibility to enter Orders fulfilling not only the statutory directives but fundamental purposes of alimony" Frank A. Louis, Limited Duration Alimony, 11 N.J. Fam. Law 133 (1991) cited in Cox v. Cox, 335 N.J. Super. 465 (App. Div. 2000)

This is the fourth article I have written on the issue of alimony being awarded for a fixed period of time, initially known as "term alimony" now Limited Duration but the first since passage of the statute. This article will attempt to provide insight into the development of the Limited Duration Alimony statute, ("LDA") thus assisting in the analysis of when a case warrants a permanent support or alimony for a fixed period. The Limited Duration Alimony statute emanated from the Divorce Study Commission whose report is attached. The ultimate legislation passed contained additional language not recommended by the Commission. This article will also attempt to provide some guidance what that language means and how it became part of the statute. To date, only one case has addressed the concept of limited duration alimony. Appropriately, the article will

commence with an analysis of Judge Carchman's important and well reasoned decision in Cox v. Cox, 335 N.J. Super. 465 (App. Div. 2000).

### THE COX DECISION

In Cox the Appellate Division, for the first time, interpreted the Limited Duration Alimony statute, yet, it's significance extends beyond its interpretation since Judge Carchman broadly discussed alimony and provided insight into what alimony is and why it is awarded. As such, Cox becomes essential reading for any matrimonial practitioner, particularly given the categorization and discussion of the various types of alimony.

The parties in Cox were married in 1977 and had one child who was a college student when the case was decided. In 1996 the parties separated, thus the viable portion of the marriage was approximately 19 years. Mr. Cox was employed as a crane operator earning approximately \$120,000.00 a year. Mrs. Cox was a new lawyer and given that status the trial court found Mrs. Cox's earning capacity to be particularly important, if not determinative. When their child completed first grade, Mrs. Cox had returned to work where she was employed at various part-time jobs earning approximately \$13,000.00 to \$14,000.00 a year. Her employment was motivated by the economic need for additional income. These jobs neither enhanced or created any particular earning capacity for Mrs. Cox.

In 1989 (some 12 years after the marriage) Mrs. Cox returned

to college, obtained her degree in 1995 and graduated law school in 1998. She incurred approximately \$100,000.00 in debt to finance her education. Upon graduation she served as a judicial clerk earning \$30,000.00 a year but was unsuccessful in her first attempt to pass the bar exam. Ultimately, she secured employment at a law firm earning \$33,000.00 a year. While it was not part of the trial court's consideration, by the Appellate argument, Mrs. Cox had failed the bar exam on two occasions and lost her employment with the law firm. While Mr. Cox had a substantial income, the trial testimony was that he worked approximately 80 to 90 hours a week. As a result, he claimed the "mental and physical stress" of his employment was affecting his health.

The trial court factually found that this was a "long term" marriage and that a substantial disparity existed between the parties' income; nonetheless, she ordered limited duration alimony of \$200.00 a week for 5 years reasoning that time period would be sufficient to "enable the plaintiff to establish herself as an attorney". In her findings the court noted Mrs. Cox's "capacity for lucrative employment". Cox at 472. The \$100,000.00 debt was not discussed by the Appellate Division in their summary of the trial court's decision.

Plaintiff appealed arguing the trial court had erred

primarily contending this was a permanent alimony case and LDA was inappropriate. The Appellate Division preliminarily reviewed the concept of alimony but then in very important language, discussed the distinctions between permanent, limited duration and rehabilitative alimony. The court correctly noted rehabilitative alimony was intended to be a "short term award" to enable one spouse "to complete the preparation necessary for economic self-sufficiency" citing Hill v. Hill, 91 N.J. 506, 509 (1982) and Millner v. Millner, 288 N.J. Super. 209, 213 (App. Div. 1996). Judge Carchman then noted that rehabilitative alimony was an appropriate remedy where a spouse gave up or postponed their education to support the household and required either a lump sum or a short term award to achieve economic self sufficiency emphasizing that its purpose was to "enhance and improve the earning capacity of the economically dependent spouse" citing an earlier article. I had written Cox at 475.; Frank A. Louis, Esq. Limited Duration Alimony, 11 N.J. Family Lawyer 133, 135 (1991).

The Court also noted that rehabilitative alimony was not necessarily an exclusive remedy and given its limited purpose might well be coupled with a permanent alimony award citing Hughes v. Hughes, N.J. Super. 15, 31 (App. Div. 1989). This observation is critically important in understanding the purpose