



COMMENTS ON EQUITABLE AWARDS FOR THE NON-DEGREED SPOUSE PURSUANT TO *POSTEMA*

BY JOSEPH W. CUNNINGHAM, JD, CPA

Background on *Postema*

In 1990, the Court of Appeals set forth the divorce settlement remedy for a non-degreed spouse who made “sacrifices, efforts, and contributions” to enable the other spouse to attain an advanced degree and, often, professional training. *Postema v. Postema*, 189 Mich App 89 (1990) (“*Postema*”).

Prior to the *Postema* decision, there was a split among different Court of Appeals panels on the proper remedy for such a non-degreed spouse in cases in which a divorce prevents such spouse from sharing in the “fruits of the degree” after its attainment.

Some panels had decided that the non-degreed spouse is entitled to part of the “value of the degree” – that is, the present value of the difference between (1) projected earnings of the degreed spouse over his/her work life expectancy with the advanced degree and (2) projected earnings of such spouse without the advanced degree.

Other panels ruled that the non-degreed spouse was entitled to be reimbursed for sacrifices, efforts, and contributions made, but not to a share of the value of the degree.

To resolve the split, the Supreme Court ordered that the next case on the issue would become binding precedent on the appropriate remedy. That case was *Postema*.

The Court ruled in *Postema* that the purpose of an equitable award is to reimburse the “non-degreed” spouse for “sacrifices, efforts, and contributions” made to enable the other spouse to attain a professional degree. However, this does include a share of future incremental earnings attributable to the professional degree.

The Court stated an equitable award applies in situations in which “the degree was the product of a concerted family effort.”

Components of a *Postema* Award

Under *Postema*, there are generally four components to be considered in calculating an equitable award.

1. Lost or Forgone Earnings – The non-degreed spouse’s 50% marital share the difference between (1) what the degreed spouse could have earned, after-tax, during years of education and training and (2) his or her actual after-tax earnings during those years.

- 2. Cost of Education** – The non-degreed spouse’s 50% share the out-of-pocket costs of the education and training paid with marital funds
- 3. Subordination of Career Aspirations** – Compensation to the non-degreed spouse for the cost of either (1) not pursuing career aspirations or (2) delaying such pursuit **solely** due to allowing the degreed spouse to do so. The non-degreed spouse’s share of such “make-up” compensation is 50% for years during the marriage and, possibly, the present value of lost future earnings.
- 4. Intangible Sacrifices, Efforts, and Contributions** – Compensation to a non-degreed spouse for intangible sacrifices, efforts, and contributions such as loss of companionship, and additional time devoted to household/parenting responsibilities in excess of normal time doing so, occasioned solely by the degreed spouse’s time constraints due to pursuit of the advanced degree and training.

The Court also stated that the equitable award should be reduced by the non-degreed spouse’s 50% share of the degreed spouse’s incremental earnings after attaining the degree and training.

All amounts are converted to the value of current dollars, since the award will be paid in current dollars.

Mistakes Periodically Made in Calculating *Postema* Awards

- Including 100% of lost/forgone earnings and/or costs of education paid with marital funds in the award vs. the non-degreed spouse’s 50% share.
- Not tax affecting lost/forgone earnings.
- Including consideration of all household/parenting duties assumed by non-degreed spouse vs. the incremental amount assumed due to the degreed spouse’s time constraints in pursuing professional education and training.
- Failure to take into account time value of money by converting all dollars to current value dollars (e.g., 2015) since the award will be paid in current dollars.

Information Required to Calculate a *Postema* Equitable Award

The components of an equitable *Postema* award are, in the main, fact intensive. Thus, input from both parties is essential. Information required includes a timeline including:

- Date of marriage;
- Time periods of (1) advanced degree education and, if applicable, (2) professional training;
- If applicable, time period working as a professional after attainment of the degree and training; and,
- Dates of birth of children during marriage.

The following is a “*Postema* Information Request List” used by the author when performing a *Postema* award calculation.

Information Required to Determine an Estimated, Equitable Award According to the *Postema* Case

- Date of the marriage; length of “courtship.”
- Detailed chronology (year by year) of attainment of advanced degree and training (e.g., for a doctor - medical school, internship, residency programs, board certified specialty training, etc.) and a current resumé of the advanced degree spouse.
- Earnings of each party during the years of the marriage both during the attainment of the advanced degree as well as afterward.
- Detailed listing of other sources of funds available to the parties, including student loans, loans or gifts from family members, inheritances, etc. Please indicate the party to which the foregoing are attributable.
- The costs of the professional education and training, including tuition, books and fees, travel, etc. Please specify the source of funds used to pay these costs. If financed by student loans, please indicate extent to which loans have been repaid from marital funds.

- An estimate of hours per week devoted by the non-degreed spouse to household and family responsibilities, including parenting, *in excess of* hours he or she would have devoted if the other spouse were *not* pursuing the degree.
- Comments regarding the extent to which the normal companionship that generally prevails between spouses was unavailable due to the pursuit of the advanced degree.
- Comments regarding the degree to which, if any, the non-degreed spouse subordinated his or her career aspirations to allow the degree holder to pursue his or hers. Please be specific and indicate the future plans concerning fulfilling postponed aspirations and the related costs and probable timetable.
- Educational background and employment history, if any, of the degree holder prior to the pursuit of advanced degree. Please specify the annual earnings of any such employment.
- Copies of tax returns and financial statements of the degree holder’s practice for each year since the practice was commenced.
- If the degree holder did not start a practice immediately after becoming licensed, please provide his or her employment history, including annual income, since he or she become licensed.

About the Author

Joe Cunningham has over 25 years of experience specializing in financial and tax aspects of divorce, including business valuation, valuing and dividing retirement benefits, and developing settlement proposals. He has lectured extensively for ICLE, the Family Law Section, and the MACPA. Joe is also the author of numerous journal articles and chapters in family law treatises. His office is in Troy though his practice is statewide.

