



## CALCULATION OF AN EQUITABLE AWARD FOR THE NON-DEGREED SPOUSE UNDER THE *POSTEMA* DECISION

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### Background on *Postema*

In 1991, 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 (1991) (“*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 of 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 of 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, 100% of 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 the normal time spent 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.

### 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 marriage; length of “courtship”
- Birthdates of children of the marriage.
- Detailed chronology (year by year) of attainment of advanced degree and professional training (e.g., for a doctor – medical school; internship; residency; board certification training; etc.)
- Current résumé of the professional
- Educational background and employment history of the degreed spouse prior to pursuit of the advanced degree. Provide his or her annual earnings from such employment.
- Annual earnings of each party during years of the marriage – both before attainment of the advanced degree and professional training, and afterward.
- Other sources of funds such as student loans, loans or cash gifts from family, inheritances, etc. Please indicate (1) the year in which such funds became available and (2) the party to which the funds are attributable.
- The costs of the advanced degree and professional training, including tuition, books, fees, travel, additional housing, etc. Please specify the source of funds used to pay these costs. If financed by loans, please indicate the extent to which such loans have been repaid with marital funds.
- An estimate of hours per week the non-degreed spouse devoted to household and other family responsibilities, including parenting, **in excess of** the hours such spouse would have devoted to such responsibilities if the other spouse were **not** pursuing the advanced degree and professional training.
- Comments on the extent to which the normal companionship generally existing between spouses was unavailable due to pursuit of advanced degree and professional training.
- Extent to which, if any, the non-degreed spouse subordinated his or her career aspirations to allow the other to pursue his or hers. Please specify the future plans regarding such postponed career aspirations, including the timetable for same.
- Copies of federal income tax returns of the degreed spouse’s practice for each year since commencement of the practice.
- If the degreed spouse did not start a practice immediately on being licensed to so, please provide his or her employment history, including annual income, since he or she became licensed to practice.

### 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.

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