

Spousal Support and the Marital Standard of Living in Hawai'i Divorces

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Contrary to what you might expect, there are no “rules of thumb” for spousal support awards in Hawai'i divorce actions. There are no shortcut answers in any individual case regarding whether one party must pay periodic spousal support to the other, and if so, for how long, and how much. Spousal support awards can vary substantially in amount and duration. This variance makes it difficult to accurately predict spousal support outcomes, which in turn makes settlement of spousal support issues difficult, and litigation risky. But there are some ways to help reduce the difficulty and risk of resolving spousal support issues for family law attorneys and their clients in Hawai'i divorces.

There are four discrete parts of a divorce action: (1) the divorce; (2) spousal support; (3) child custody and support; and (4) property division.¹ The amount of child support is set by mandatory guidelines based, for the most part, on the incomes of the parents.² Property division is based on the Hawai'i Marital Partnership Model, which, absent valid and relevant considerations, awards each spouse his or her capital contributions, splits the appreciation of those capital contributions 50-50, and divides the remainder of the marital partnership property equally.³ Unlike child support and property division, however, spousal support does not have set formulas or models by which to predict the amount or duration of the award.⁴ Family Court judges are provided a great deal of discretion to

determine spousal support, along with a long list of factors to consider, but with little guidance for their application.⁵

This article will address: the four most relevant factual circumstances for determining spousal support; the “marital standard of living” as a key component in all four circumstances; and the use of deviations in property division in favor of the lower-earner spouse in lieu of spousal support.⁶

The factors in determining spousal support.

HRS § 580-47(a) provides that, upon granting a divorce, the family court may compel “either party to provide for the support and maintenance of the other party; ...” § 580-47(a) further provides thirteen factors the family court is required to consider in determining whether to award spousal support:

In addition to any other relevant factors considered, the court, in ordering spousal support and maintenance, shall consider the following factors:

- (1) Financial resources of the parties;
- (2) Ability of the party seeking support and maintenance to meet his or her needs independently;
- (3) Duration of the marriage;
- (4) Standard of living established during the marriage;
- (5) Age of the parties;
- (6) Physical and emotional condition of the parties;
- (7) Usual occupation of the parties during the marriage;
- (8) Vocational skills and employability of the party seeking support and maintenance;
- (9) Needs of the parties;

(10) Custodial and child support responsibilities;

(11) Ability of the party from whom support and maintenance is sought to meet his or her own needs while meeting the needs of the party seeking support and maintenance;

(12) Other factors which measure the financial condition in which the parties will be left as the result of the action under which the determination of maintenance is made; and

(13) Probable duration of the need of the party seeking support and maintenance.

The thirteen factors are not ranked in any particular priority, are stated in somewhat general terms, and are unaccompanied by rules for applying them.

Nevertheless, the practitioner should apply the relevant facts to each of the thirteen factors as a helpful analysis for negotiation or trial.

In 1985, the Hawai'i Intermediate Court combined a number of the most relevant statutory factors for determining spousal support, and listed them in sequence as follows:

1. Taking into account the property awarded in the divorce case to the party seeking spousal support, what amount, if any, does he or she need to maintain the standard of living established during the marriage? If there is no need for spousal support, then there is no obligation to pay.

2. Taking into account the income of the party seeking spousal support, or what it should be, and the income producing capability of the property awarded to him or her in the divorce action, what is his or her ability to meet his or her need independently? If the party seeking spousal support can satisfy his or her need independently, then there is no obligation to pay.

3. Taking into account the income of the party from whom spousal support is sought, or what it should be, and the income producing capability of the property awarded to him or her in the divorce action, what is his or her ability to meet his or her own need while meeting the need for spousal support of the party seeking spousal support?

Cassiday v. Cassiday, 6 Haw. App. 207, 215-216 (Haw. Ct. App. 1985).

In 1991, the Hawai'i Intermediate Court added a fourth relevant circumstance to the three-part Cassiday analysis: "[w]hat amount of money does [the payor] need to maintain the standard of living established during the marriage?" Vorfeld v. Vorfeld, 8 Haw. App. 391, 403 (Haw. Ct. App. 1991).

Vorfeld thus re-stated the above relevant circumstances as four factors:

The relevant circumstances are (1) the payee's need (determined by the amount of money needed to maintain the standard of living established during marriage); (2) the payee's ability to meet his or her need without spousal support; (3) the payor's need (again, determined by the amount of money needed to maintain the standard of living established during marriage); and (4) the payor's ability to pay spousal support while meeting his or her own need as well.⁷

By applying each of these four circumstances, the family law practitioner can identify important strengths and weaknesses of a spousal support claim.

The payee's need determined by the marital standard of living.

The first circumstance is "the payee's need determined by the amount of money needed to maintain the standard of living established during marriage."

The marital standard of living is a key consideration, because it is the baseline against which spousal support is calculated, and applies to both the payee and the payor. Below are seven tips for addressing the marital standard of living for purposes of spousal support.

First, spousal support needs to be addressed after custody and property division is determined. This is because, in determining an award of the amount of spousal support, the court must take into account custodial responsibilities and

the resources of the payee and the payor, including the property apportioned to him or her in the divorce action.⁸ In the words of the Cassiday decision, the court must take into account “the property awarded in the divorce case to the party seeking spousal support.”

Second, the marital standard of living is essentially the parties’ income minus their expenses during the relevant time of the marriage. The marital income (earnings from all sources) is the horse, the expenses (spending and savings) are the cart, and they should balance out each other. To obtain this all-important information, the Income and Expense and Asset and Debt Statements, which must be filed in Family Court in conjunction with any request for financial or monetary relief,⁹ need to be accurate and complete. The Income and Expense Statement. As its name suggests, lists a party’s income and expenses, and requires an explanation in the event there is any savings or deficiency.

Focusing only on the spousal support payee’s expenses reported in his or her Income & Expense Statement, however, is not sufficient to determine the payee’s reasonable “needs.” A spouse’s “custom of spending” during the marriage should be balanced against marital income during the marriage. Normally the principal consideration in determining the amount of periodic spousal support should be the respective incomes of the parties.¹⁰ In other words, spousal support is income-driven: the horse (income) should come before the cart (expenses).

If expenditures exceed income, the shortfall would ordinarily be explained by an accumulation of debt or an invasion of assets reported on the Asset & Debt

Statement. If there is no corresponding debt or liquidation of assets to explain the shortfall, then there may be hidden income, meaning income from an undisclosed source.¹¹ HRS § 580-47(a) requires the Court to consider a spouse's concealment of or failure to disclose his income in determining spousal support.¹²

Third, the marital standard of living does not include considerations of fault. The personal conduct of a spouse has no bearing on the determination of the amount of spousal support, except where a spouse conceals or fails to disclose his income.¹³ The reasonable need of a payee for future support does not depend on whether the payor was kind or inconsiderate to him or her in the past.¹⁴

Fourth, for most marriages, it is not possible for divorcing parties to continue to live in the same lifestyle enjoyed during the marriage. After separation, there are two households instead of one. Two persons cannot live separately as inexpensively as they can live together, especially given Hawai'i's high housing costs. Practically speaking, in the context of spousal support, the "marital standard of living" necessarily means that each spouse live as close as reasonably possibly to the marital standard, with any shortfall shared by the spouses equitably. "Equitably" does not necessarily mean "equally."¹⁵

Fifth, the relevant time for measuring the marital standard of living is at or near the time of the divorce.¹⁶ The marital standard of living establishes the cap on the amount of spousal support no matter what happens post-divorce. For example, if the payor happened to substantially increase his or her income after

the divorce, this in and of itself would not be sufficient for modification of spousal support, because the standard of living was determined at the time of divorce, not after the divorce. The ability to continue to save and build up one's net worth is not a valid standard of living consideration justifying the award of increased spousal support.¹⁷

The time of the divorce is also when the enforceability of a premarital agreement's spousal support provision is determined. The unconscionability of a spousal support provision in premarital and marital agreements is determined at the time of divorce, not at the time of execution.¹⁸

Sixth, when the parties were living beyond their means, the measure of the marital standard of living may be artificially inflated. If the parties ran up credit card debt, took out excessive loans, and/or invaded assets to spend more than they made, the result is an artificially high and unsustainable standard of living. If this kind of deficit spending were perpetuated by a spousal support award, the court would be ordering the parties to continue to accumulate debt, which could lead to insolvency. In this context, the "marital standard of living" should be measured by an objectively reasonable living standard based on the income the parties actually earned during the marriage, and not upon the artificially high living standard the parties actually enjoyed during the marriage.¹⁹ As stated by the Hawai'i Supreme Court, the appraisal of the marital standard of living involves a consideration of the respective resources and revenues of the parties, their accustomed manner of living, and the manner of living which is appropriate on the basis of such resources and revenues.²⁰ In other words,

reasonable expenses based on actual income is the appropriate marital standard of living where the parties are living beyond their means.

Seventh, if the parties have children, the marital standard of living should reflect custodial and child support responsibilities. HRS § 580-47(a) provides that in determining spousal support, the family court shall take into consideration “the burdens imposed upon either party for the benefit of the children of the parties,” and specifically “custodial and child support responsibilities.”

There is an interrelationship between custodial and child support responsibilities, on the one hand, and spousal support, on the other hand. For example, the amount of spousal support paid and received impacts the calculation of child support. For the payor, gross income excludes spousal support paid. For the payee, gross income includes spousal support received.²¹

Moreover, the imputation of income is affected by custodial responsibilities. For both child and spousal support purposes, imputed income may be used when a parent/spouse is not employed full-time or is employed below full earning capacity. If a parent has custody, he or she will also normally be awarded child support, but to care for the child adequately, he or she may be unable to work outside the home, at least on a full-time schedule. If a parent’s income is limited in order to care a child who is 3 years of age or younger, then no additional income will be imputed to that parent. If all the children are over 3 years of age, the reasonable needs of the children will be considered with respect to imputing income.²²

Once the reasonable expenses based on the parties' income is determined, compare those expenses with the payee's reported needs, and make the appropriate adjustments. Remember the Cassiday admonition for the first circumstance: If there is no need for spousal support, then there is no obligation to pay.

The payee's ability to meet his or her need without spousal support.

The second circumstance in analyzing spousal support is to calculate the payee's ability to meet his or need without spousal support. The payee's ability includes: (1) the payee's actual income from all sources; (2) the payee's imputed income if he or she is able to work but unemployed or underemployed; and (3) the income from the property apportioned to him or her in the divorce action. The payee's need to care for children, and his or her health, education, work experience, also affect the ability to meet his or need without spousal support.

A party receiving spousal support "is always under a duty to exert reasonable efforts to attain self-sufficiency at the standard of living established during the marriage and will not be allowed to benefit from the consequences of a violation of that duty."²³ A minimal wage job may not constitute "reasonable efforts to attain self-sufficiency" if the payee's actual vocational skills and employability can more readily attain the marital standard of living. For example, a payee working only part-time while studying massage therapy, when the parties' circumstances remained relatively the same since the divorce, constituted a violation of the payee's duty to exert reasonable efforts to attain self-sufficiency.²⁴ Also, where a payee received sufficient spousal support to

successfully obtain her master's degree, but did not then seek employment, choosing instead to pursue a doctorate, an increase in spousal support was unjustified, and the case was remanded to determine whether the current spousal support was still necessary.²⁵

If the payee is able to work, but unemployed or underemployed, the court may impute income to the payee commensurate with his or her reasonable employability. Again, remember Cassiday's tagline for the second circumstance: if the payee can satisfy his or her need independently, then there is no obligation to pay.

The payor's need determined by the marital standard of living.

The third circumstance in analyzing spousal support is to calculate the payor's need determined by the amount of money he or she needs to maintain the marital standard of living. Just as was the case for the payee, the payor's need is measured by an objectively reasonable marital standard of living.²⁶ Similarly, the court must take into account the income producing capability of the property awarded to the payor in the divorce action.²⁷

The payor's ability to pay spousal support while meeting his or her own need.

The fourth circumstance in analyzing spousal support is to calculate the payor's ability to pay spousal support while meeting his or her own need measured by the marital standard of living. As mentioned above, it's not possible for most divorcing parties to continue the same lifestyle enjoyed during the marriage. A strict construction of the fourth circumstance – no spousal support if it lowers the marital standard of the payor – could result in the payor, but not the

payee, continuing the marital standard. One remedy for this imbalance would be to adjust the marital standard downwards by having both parties share the shortfall equitably.

Just as the payee is required to exert reasonable efforts to attain self-sufficiency, the payor is always under a duty to exert reasonable efforts to maintain his or her ability to pay court-ordered spousal support, and will not be allowed to benefit from the consequences of a violation of that duty.²⁸ For example, a payor cannot choose to continue as an uncompensated full-time employee, gambling on the outcome of an employment-related litigation, and thereby suspend spousal support. If the payor does so, the payor's capital must be used to pay monthly spousal support.²⁹

A payor's "income" may include regular and consistent monetary gifts from his parents, where during the marriage, the parents provided the husband and his family with a residence, paid some of their expenses, provided them with the funds to pay their remaining expenses, and the husband's parents continue that family support. The court may impute income to the payor based on the expectancy of such gifts.³⁰

Application of the marital standard of living to spousal support.

Applying the above four circumstances to the facts can provide a logical and realistic approach to a spousal support claim. Applying the above seven practice tips can help to provide a reasonably objective "marital standard of living" to measure the parties' respective needs and abilities.

Projected Income and Expense Statements can then be prepared which incorporate the adjustments to the marital standard of living, and illustrate how each spouse shares equitably in any shortfall from the marital standard. The comparison of the projected and actual Income and Expense Statements can help calculate an objectively reasonable amount of spousal support.

Deviations in property division in lieu of spousal support.

The difficulty in accurately predicting spousal support outcomes has led some family law practitioners to consider deviations in property division in favor of the lower-earner spouse in lieu of spousal support.³¹

The Family Court may deviate from Marital Partnership Principles in dividing Marital Partnership Property where there are valid and relevant considerations for doing so.³² HRS § 580-47(a) provides that both in dividing property and determining spousal support, the court shall take into consideration, among other things: “the relative abilities of the parties, the condition in which each party will be left by the divorce, the burdens imposed upon either party for the benefit of the children of the parties, the concealment of or failure to disclose income or an asset, ... and all other circumstances of the case.” These factors are consistent with many of the specific thirteen factors the court must consider for spousal support.

Overall, Hawai'i courts have been reluctant to authorize deviation in the absence of extraordinary circumstances.³³ Nevertheless, it appears that, where appropriate, a deviation in property division based on the ability to earn and receive income after the divorce would be considered.³⁴ In addition,

abandonment of the parties' children may justify a deviation from the partnership model.³⁵

Conclusion.

There are no formulas to precisely predict spousal support outcomes in Hawai'i divorce actions. Nevertheless, careful application of the four most relevant factual considerations in awarding spousal support can provide a logical and realistic approach to a spousal support claim. Applying the above seven practice tips can help to provide a reasonably objective "marital standard of living" to measure the parties' respective needs and abilities, and thereby determine whether spousal support is appropriate in a particular case.

¹ Nakasone v. Nakasone, 102 Haw. 108, 73 P.3d 621 (App. 2002).

² HRS §§ 571-52.5, 576D-7, 576E-15, 580-47(a); 2010 Hawai'i Child Support Guidelines.

³ HRS § 580-47(a); Kakinami v. Kakinami, 127 Haw. 126, 138-142 (Haw. 2012).

⁴ Mary Kay Kisthardt, *Re-thinking Spousal support: The AML's Considerations for Calculating Spousal support, Spousal Support or Maintenance*, 21 Am. Acad. Matrim. Law 61, 64-65 (2008).

⁵ HRS § 580-47(a); Jaylo v. Jaylo, 125 Haw. 369, 262 P.2d 245 (2011).

⁶ This article does not cover such important spousal support issues as the types, duration, and tax consequences of spousal support. For these issues, the authors recommend the following helpful resources: (1) 2013 Hawai'i Divorce Manual, Section 2, ¶ A.11: Alimony (summarizing Hawai'i statutes and caselaw); (2) 2013 Hawai'i Divorce Manual, Section 9: Spousal Support (discussing the current state of spousal support nationwide); (3) 2005 Hawai'i Divorce Manual, Section 6 (Charles T. Kleintop, Esq., and Dyan M. Medeiros, Esq., *A Practical Guide to Effectively Presenting and Defending Against an Alimony Claim*); and (4) 2013 Hawai'i Divorce Manual, Section 24 (Divorce Practitioner's Handbook, Article IV: Alimony).

⁷ Applebaum v. Brooks, 128 Haw. 497 (Haw. Ct. App. 2012).

⁸ Richards v. Richards, 44 Haw. 491, 509 (Haw. 1960); Cassiday v. Cassiday, 6 Haw. App. 207, 215-216 (Haw. Ct. App. 1985).

⁹ Hawai'i Family Court Rule 7(b)(5) requires current Income and Expense and Asset and Debt Statements in support of any request for financial or monetary relief. Hawai'i Family Court Rule 94 requires current Income and Expense and Asset and Debt Statements in conjunction with the Motion to Set contested cases for trial.

¹⁰ Richards v. Richards, 44 Haw. 491, 516-517 (Haw. 1960) (“We think that normally the principal consideration in determining the amount of periodic spousal support should be the respective income of the parties. There may be situations which require consideration of factors other than income in arriving at a just result, such as where a substantial portion of the capital of either party is kept in non-productive form, or where either party, though in good health, malingers or otherwise fails to use his or her talent in income-producing endeavors. Also, ill health of either party may require extraordinary medical expenses which justify an invasion of capital.”)

¹¹ Ferreira v. Ferreira, 2009 Haw. App. LEXIS 741 (Haw. Ct. App. Nov. 18, 2009) (The family court abused its discretion in relying on Ferreira's reported income in calculating the spousal support award because the court found that Ferreira failed to report rental income).

¹² HRS § 580-47(a) provides that the court shall consider concealment of or failure to disclose income as a factor when determining spousal support:

Upon granting a divorce ... the court may make any further orders as shall appear just and equitable ... (2) compelling either party to provide for the support and maintenance of the other party; ... In making these further orders, the court shall take into consideration: ... the concealment of or failure to disclose income or an asset, or violation of a restraining order issued under section 580-10(a) or (b), if any, by either party ...

¹³ Id. Fiscal irresponsibility, including non-marital expenditures during the period of divorce, may be the basis for equitable deviation from the Marital Partnership Property Model. SEE: Higashi v. Higashi, 106 Haw. 228, 241-242 (Haw. Ct. App. 2004); Schiller v. Schiller, 120 Hawai'i 283, 287-88, 205 P.3d 548, 552-53 (App. 2009); Mynatt v. Mynatt, 2009 Haw. App. LEXIS 459 (Haw. Ct. App. July 21, 2009).

¹⁴ Richards v. Richards, 44 Haw. 491, 509 (Haw. 1960) (The personal conduct of a husband toward his wife should have no bearing on the determination of the

amount of spousal support. Spousal support is not awarded as reward for virtue and punishment for wrongdoing. Under the statute, it is a "reasonable allowance for the wife, for her support." The reasonable need of a wife for her future support does not depend on whether her husband was kind or inconsiderate to her in the past). SEE ALSO: Hatayama v. Hatayama, 9 Haw. App. 1, 11-12 (Haw. Ct. App. 1991) (Divorce is not a vehicle by which one spouse is compensated for having given more than he or she received during the marriage or for having had to suffer during the marriage from the other spouse's inadvertent, negligent, or intentional inadequacies, failures, or wrongdoings, financial or otherwise. Allowing it to be such a vehicle would be contrary to the public policy in favor of loving, trusting, harmonious marriages and no-fault divorces.)

¹⁵ "Equitably" does not necessarily mean "equally." Ferreira v. Ferreira, 2009 Haw. App. LEXIS 741, 40-53 (Haw. Ct. App. Nov. 18, 2009) ("Rehabilitative periodic spousal support' is not intended as an equalizer between the parties but is for the purpose of allowing the less able party to start anew without being destitute in the interim').

¹⁶ Richards v. Richards, 44 Haw. 491, 516-517 (Haw. 1960) ("The amount of spousal support is to be determined upon a realistic appraisal of the situation of the parties at the time of the divorce. Such appraisal involves a consideration of the respective resources and revenues of the parties, their accustomed manner of living, and the manner of living which is appropriate on the basis of such resources and revenues"). There may be situations which require consideration of factors other than income in arriving at a just result, such as where a substantial portion of the capital of either party is kept in non-productive form, or where either party, though in good health, malingers or otherwise fails to use his or her talent in income-producing endeavors. Also, ill health of either party may require extraordinary medical expenses which justify an invasion of capital.

¹⁷ Kuroda v. Kuroda, 87 Haw. 419, 429-430 (Haw. Ct. App. 1998) (The ability to continue to save and build up one's net worth is not a valid standard of living consideration justifying the award of increased spousal support/spousal support).

¹⁸ Prell v. Silverstein, 114 Haw. 286, 297 (Haw. Ct. App. 2007) (The unconscionability of a spousal support provision can only be determined at the time of divorce by reviewing and considering all relevant factors and circumstances occurring after the execution of the premarital agreement. To enforce a spousal support provision of a premarital agreement because it was reasonable at the time of execution of the agreement can result in unforeseen economic hardship to a spouse that may shock the conscience of the court due to relevant changes in the circumstances of the marriage by the time of divorce. SEE ALSO: HRS § 572D-6(b) (If a provision of a premarital agreement modifies or eliminates spousal support and that modification or elimination causes one party to the agreement to be eligible for support under a program of public

assistance at the time of separation or marital dissolution, a court, notwithstanding the terms of the agreement, may require the other party to provide support to the extent necessary to avoid eligibility for public assistance. in determining whether a support provision of a premarital agreement is unconscionable).

¹⁹ Campbell v. Campbell, 120 Idaho 394, 816 P.2d 350 (Ct. App. 1991) (The parties' actual standard of living need not be maintained, where they lived beyond their means, consuming their assets as well as their incomes); Kohut v. Kohut, 164 Vt. 40, 663 A.2d 942, 944 (1995) (The court correctly did not base a maintenance award on the actual standard of living established during the marriage, where the parties lived beyond their means and were constantly borrowing money and receiving substantial assistance from defendant's parents); In re Weinstein, 4 Cal. App. 4th 555, 5 Cal. Rptr. 2d 558, 563 (1991) ("[T]he court was not required to maintain an over-extended lifestyle based heavily on borrowing"); Baldwin v. Baldwin, 905 S.W.2d 521, 525 (Mo. Ct. App. 1995) ("[A]n excessive standard of living does not equate to reasonable needs under the statute").

²⁰ Richards v. Richards, 44 Haw. 491, 516-517 (Haw. 1960) ("[Spousal support] involves a consideration of the respective resources and revenues of the parties, their accustomed manner of living, and the manner of living which is appropriate on the basis of such resources and revenues.").

²¹ 2010 Hawai'i Child Support Guidelines, Section IV.I.1 at 22 and 23.

²² HRS § 576D-7(a)(9); 2010 Hawai'i Child Support Guidelines, Section IV.I.1 at 23.

²³ Saromines v. Saromines, 3 Haw. App. 20, 28, 641 P.2d 1342, 1348 (1982). Jarrell v. Jarrell, 129 Haw. 29 (Haw. Ct. App. 2013).

²⁴ Doe v. Doe, 130 Haw. 346 (Haw. Ct. App. 2011).

²⁵ Lumsden v. Lumsden, 61 Haw. 338, 343-345 (Haw. 1979).

²⁶ Vorfeld v. Vorfeld, 8 Haw. App. 391, 403 (Haw. Ct. App. 1991) (The payor's need is determined by the amount of money needed to maintain the standard of living established during marriage).

²⁷ Cassiday v. Cassiday, 6 Haw. App. 207, 215-216 (Haw. Ct. App. 1985) (The court must take into account the income producing capability of the property awarded to the payor in the divorce action).

²⁸ Vorfeld v. Vorfeld, 8 Haw. App. 391, 403 (Haw. Ct. App. 1991); Saromines v. Saromines, 3 Haw. App. 20, 641 P.2d 1342 (1982) ("A party paying court-

ordered spousal support is always under a duty to exert reasonable efforts to maintain his or her ability to pay what he or she has been required to pay and will not be allowed to benefit from the consequences of a violation of that duty.

²⁹ Kremkow v. Kremkow, 7 Haw. App. 286, 288-289 (Haw. Ct. App. 1988).

³⁰ Sussman v. Sussman, 112 Haw. 437, 146 P.3d 597, 2006 Haw. App. LEXIS 400 (2006).

³¹ Charles T. Kleintop, Esq., and Dyan M. Medeiros, Esq., *A Practical Guide to Effectively Presenting and Defending Against an Alimony Claim*, 2005 Hawai'i Divorce Manual, Section 6 at 10.

³² Kakinami v. Kakinami, 127 Hawai'i 126 (Haw. 2012).

³³ Hatayama v. Hatayama, 9 Haw. App. 1, 11-12 (1991) (In the absence of extraordinary circumstances, a spouse's financial errors two years prior to the DOFSICOD do not authorize a deviation).

³⁴ Jones v. Jones, 7 Haw. App. 496 (Haw. Ct. App. 1989) (Neither Hawaii's rule that a party's time-of-divorce right to receive disability pay post-divorce is not property divisible in a divorce case nor federal law precludes the family court, when dividing property and debts in a divorce case, from considering as one of the relevant circumstances of the case under HRS § 580-47(a) a party's time-of-divorce right to receive veterans' and military disability pay post-divorce in the same way that the family court considers each party's ability or lack of ability to earn and receive income post-divorce).

³⁵ Mynatt v. Mynatt, 2009 Haw. App. LEXIS 459 (Haw. Ct. App. 2009).