

# Documenting Marital Lifestyle - In Light of the Crews Alimony Decision



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Last year, I wrote about New Jersey Crews decision. One of my clients had gone recently through a "Crews Hearing" regarding marital lifestyle, even though hers was a mediated case, and even though there were no contested issues. It appeared inevitable that the court was going to require lifestyle documentation where alimony was appropriate, even when alimony was waived, and that the court felt that lifestyle documentation was equally important in uncontested cases.

As a result of the Crews decision, attorney and mediator, Suzanne Jorgensen (Brick, NJ) and I spearheaded an effort by New Jersey Association of Professional Mediators (NJAPM) to provide our membership with some guidance in their efforts to document marital standard of living in the memoranda of understanding (MOU). These recommendations are included below and may also be useful to attorneys and pro se litigants.

My primary concern regarding Crews was its implications for mediated settlements. One of the primary principles for mediators is the concept of self-determination: clients have the right to make their own decisions. In reading the Crews case, it seemed possible that the court may start questioning mediated spousal support settlements. I am relieved to report that although they are asking for documentation regarding lifestyle, they do not appear to be imposing decisions in these uncontested cases.

*The NJAPM recommendations are a work in progress, and I will update the article if any additional changes are made. I am finding that the attorneys I work with are using the descriptions and exhibits, verbatim from the MOU, and the courts are currently finding this documentation sufficient.*

**New Jersey Association of Professional Mediators  
(NJAPM) Recommendations for Drafting Memoranda of Understanding  
(MOU) in Light of The Crews Decision**

**Version 3.1; Prepared on August 31, 2000; Revised on January 18, 2001**

On May 31, 2000, the New Jersey Supreme Court ruled on a request for a change in rehabilitative alimony in the case of Robert B. Crews vs. Barbara D. Crews (A-20-99), by stating that the parties must go back and establish the

marital standard of living experienced during the marriage. In light of the Crews decision, the New Jersey Association of Professional Mediators (NJAPM), the leading statewide mediation organization, has prepared the following recommendations for its membership regarding the drafting of MOU.

By definition, the MOU is not a legal document, but is prepared by the mediator to summarize the agreements reached in mediation by the parties. Mediators recommend that each party to the mediation have the MOU reviewed by their separate attorney. In the case of a divorcing couple, one of the attorneys will then draft the final settlement agreement based on the MOU, which is subject to review by the other attorney.

In any case in which alimony is appropriate, even where alimony is waived, the mediator should include in the MOU facts, which establish the statutory factors for alimony according to N.J.S. 2A:34-23 (b). For convenience, these are listed at the conclusion of this document.

In Crews, the Supreme Court reiterated the importance of courts establishing findings as to the standard of living during the marriage, one of the statutory factors. The marital standard of living is the "touchstone" for the initial level of alimony and for reviewing any later motions for modification based on changed circumstances. The Court noted that these findings are "equally important" in uncontested cases.

The following are some recommendations for mediators in attempting to quantify and describe the marital standard of living in memoranda of understanding (MOU):

- ***Have the parties complete Case Information Statements (CIS) (Appendix V to the Rules of Court) reflecting their current finances.***
- ***In addition, have the parties complete a CIS that reflects their income and expenses while living together during the marriage - a "marital CIS" or "marital lifestyle statement" as it has been called. Both should be attached to the MOU.***
- ***If correct, indicate that the parties agree that the marital CIS correctly reflects their expenditures during the marriage. An acceptable substitution to the CIS would be to attach recent paystubs, a budget, and a balance sheet.***
- ***Include an analysis of the supported spouse's ability to contribute to his or her own support.***

In addition to the marital CIS, ask the parties to describe in their own words various aspects of their marital lifestyle that may include a description of the

following items. Attach the parties' narrative description of the marital lifestyle to the MOU.

- ***Description of Marital Lifestyle***
- ***Marital Home***
- ***Furnishings and Contents***
- ***Household Help***
- ***Landscaping/Gardening***
- ***Accounting/Financial Planning Services***
- ***Telephones***
- ***Automobiles***
- ***Clothing***
- ***Furs***
- ***Jewelry***
- ***Collections***
- ***Schools and Camps for Children***
- ***Children's Allowances***
- ***Children's Activities***
- ***Expenditures for Holidays***
- ***Medical and Dental Expenses***
- ***Entertainment at Home***
- ***Country Club***
- ***Dining Out***
- ***Sports and Hobbies***
- ***Entertainment***
- ***Gambling***
- ***Travel and Vacations***
- ***Gifts***
- ***Donations/Charitable Giving***
- ***Savings and Investments***
- ***Business Assuming Family Costs***
- ***Loans and Debt***

Ask the parties, and state in the MOU, whether the spousal and child support agreed upon will enable both of the parties to live in a manner reasonably comparable to the standard of living they enjoyed during the marriage. The MOU should specifically state if they agree that they are not currently able to maintain a standard of living reasonably comparable to the marital lifestyle. It is recommended that separate budgets that show each parties income and expenses for their separate households going forward be prepared to support these assertions.

Additionally, the Crews case indicated that if the original spousal support is not consistent with the standard of living established during the marriage but that is all the paying spouse can afford at the time, then there should be some

provisions to modify the award upwards when the paying spouse's financial condition improves. Therefore, based on the statutory factors in establishing the level of support, the MOU may also need to make provisions for an upward modification of support.

**Statutory Factors for Spousal Support (Alimony) according to N.J.S. 2A:34-23 (b):**

- *Actual need and ability of the parties to pay;*
- *The duration of the marriage;*
- *The age, physical and emotional health of the parties;*
- *The standard of living established in the marriage and the likelihood that each party can maintain a reasonably comparable standard of living;*
- *The earning capacities, educational levels, vocational skills, and employability of the parties;*
- *The length of absence from the job market of the party seeking maintenance.*
- *The parental responsibilities for the children;*
- *The time and expense necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment, the availability of the training and employment, and the opportunity for future acquisitions of capital assets and income;*
- *The history of the financial or non-financial contributions to the marriage by each party including contributions to the care and education of the children and interruption of personal careers or educational opportunities;*
- *The equitable distribution of property ordered and any payouts on equitable distribution, directly or indirectly, out of current income, to the extent this consideration is reasonable, just and fair;*
- *The income available to either party through investment of any assets held by that party;*
- *The tax treatment and consequences to both parties of any alimony award, including the designation of all or a portion of the payment as a non-taxable payment; and*
- *Any other factors which the court may deem relevant.*



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