



LINCOLN

BAR ASSOCIATION

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Fall 2015

Being Rod Cathcart

by Milissa Johnson-Wiles, LBA President



Lincoln Bar Association Monthly membership meeting, Cornhusker Hotel, circa 1996. As a new lawyer, I am at my first LBA meeting, encouraged to attend by my mentor, Rodney P. Cathcart. I am invited to sit at his table.

Many of you knew Rod Cathcart. For those that didn't, he was a character and a great storyteller. He had a sharp wit and was often the life of the party.

So being invited to sit at his table was an adventure to say the least.

That evening was the first of many evenings that I would sit at Rod's table, listening to his stories. But I was also able to meet others, and share experiences with judges, opposing counsel, clients not following advice. I broke bread with opposing counsel on the eve of Friday morning motions. And I learned.

Rod Cathcart died on February 4, 1998. When I attended my first LBA meeting after he died, I knew I would miss his stories, his wit, his advice.

But thanks to that first meeting in 1996, I knew where to sit.

This LBA membership year 2015, I hope that those of you who are established members will consider being Rod Cathcart. Walk down the hall or pick up the phone and invite a new lawyer to join you at your table. New lawyers, I hope you will accept the invitation. I promise that you will make friends. For me, at that first LBA meeting in 1996, I met friends Joe Badami, Linda Willard, Paul Conley, and Pat O'Brien. I would meet many others in years to come. Thanks, Rod. ■

LBA Field Day Reminder!

Essential details:

HiMark Golf Course

Golf: 12:00 p.m. Shotgun Start

Social Hour: 5:00 p.m.

Dinner: 6:00 p.m.

It is not too late to sign up for the LBA Field Day on October 12, 2015! Whether you want to golf or just attend the social hour and dinner, the LBA would love to see you participate. If you cannot find the form that was mailed to you, find it online at www.lincolnbarassociation.com, or contact Stan Beeder directly:

stantonb@hausmannconstruction.com

(402) 304-4699





LBA Social Media

by Jeff Lapin

Have you viewed the Lincoln Bar Association's website? We post information about upcoming events as well as newsletters and membership forms.

www.lincolnbarassociation.com

Did you know that the Lincoln Bar Association was on social media? Based on the number of likes and followers, it appears not enough attorneys have noticed.

At the current time, LBA is only sharing its blog post on social media. The LBA Board is considering expanding its social media presence as social media has become a part of many people's daily lives. Some people get

the majority of their news from social media.

The Board is examining a number of issues so we can create a social media policy. Issues that we are considering include: whether to like/follow LBA members; whether to post news and information



Facebook: Lincoln Bar Association
(<https://www.facebook.com/lincolnbarassociation>)

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Google+: Lincoln Bar Association
(<https://plus.google.com/+Lincolnbarassociation>)

relevant to LBA members; and using it for polls, surveys or discussions. If you have any thoughts about LBA and social media, please share them with us at the emails listed on the newsletter or via social media.

If you have not already done so, we would appreciate you liking/following/circling the LBA.

Thank you. ■

LAW OFFICE AUCTION:

8600 Executive Woods Drive • Lincoln, NE
Saturday, October 10 (Wisconsin game day)
starting at 10:00 a.m.
A must if hanging shingle or expanding.

Antique walnut desk, antique oak and barrister chairs, antique library tables (clawed feet/five-legged on rollers), like-new conference table and four chairs, small antique desks, credenzas, wing-back chairs, conference room rugs (oriental style), library and smaller book cases, side tables, lamp tables, file cabinets, lamps, decorative items and art (many with nautical theme), pen sets, antique bookends, desktop accessories, leather brief cases, litigation cases, office equipment (staplers, punches, etc.), secretary chairs, all types of office supplies (many new and unopened); Partner 4 phone and Toshiba 5 phone 500 Series System (all modern capabilities). Some items may be sold or withdrawn before auction. Some items viewable at:

www.vandertook.com

Interested in advertising in the LBA Newsletter?

We'd love to help you promote your practice or business or find needed personnel.

Per issue rates:
Full Page - \$100
Half-Page - \$60
Quarter Page - \$35

For more information, contact Greg Walklin at gregory.walklin@nebraska.gov

The LBA Newsletter is published four times a year. The LBA Board of Trustees reserves the right to refuse any advertisement it deems inappropriate for publication.



Lincoln Bar Association 2015-2016 Event and Clinic Schedule

All Clinics and Dinners will be held at the
Cornhusker Marriott Hotel, Renaissance Room • 333 S. 13th Street • Lincoln

Thursday, November 19

5:30-6:30 MCLE Credit Program-Ethics

6:30 Social Hour • 6:45 Dinner

Thursday, December 10

5:30 "Meet the Judges" Reception

Thursday, January 14

5:30-6:30 MCLE Credit Program-Criminal topic

6:30 Social Hour • 6:45 Dinner

Thursday, February 11

5:30-6:30 MCLE Credit Program-Civil/Other topic

6:30 Social Hour • 6:45 Dinner

Thursday, March 10

5:30-6:30 MCLE Credit Program-Civil/Other topic

6:30 Social Hour • 6:45 Dinner

Thursday, April 14 Annual Meeting

5:30-6:30 Social Hour, Program • 6:45 Dinner



Dates are firm. Adjustments to topics may occur. Topic updates will be announced via e-mail to our members and on our website, www.lincolnbarassociation.com.

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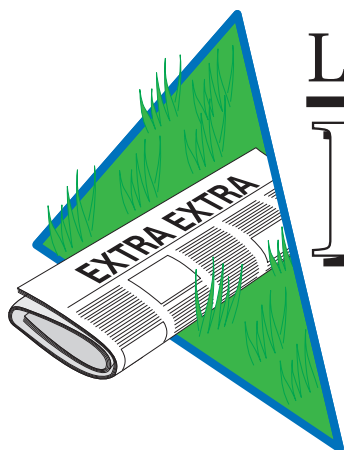
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Injuries/Death

DUI/DWI

Wrongful Discharge



LANCASTER COUNTY ALIMONY REPORTER

Send your contributions to the County Alimony Reporter to: Deanna Lubken, Office Manager/Legal Assistant, University of Nebraska College of Law, Civil Clinical Law Program, 172 Welpton Courtroom, Lincoln, NE 68583-0902

CONTESTED CASES

Hon. Steven D. Burns

Term of alimony: 6 years

Total alimony: \$550/month for 72 months = \$39,600

Term of alimony as a percentage of length of marriage: 50%

Husband's age: unknown; Wife's age: unknown; Length of marriage: 12 years

Husband's income: \$58,450/year approximately; Wife's income: \$17,412/year

Recipient's income as a percentage of payor's income: 30%

No minor children

Judge's reasons for alimony award:
None given

Hon. Steven D. Burns

Term of alimony: 5 years

Total alimony: \$500/month for 60 months = \$30,000

Term of alimony as a percentage of length of marriage: 36%

Husband's age: unknown; Wife's age: unknown; Length of marriage: 14 years

Husband's income: \$120,000/year; Wife's income: \$27,036/year

Recipient's income as a percentage of payor's income: 23%

Two minor children, ages 16 and 13

Judge's reasons for non-award:

- Amount of alimony award was based on Court's determination of Husband's earning capacity;
- Did not find believable the substantial reduction in income Husband claimed occurred or would continue to occur in the future.

Unusual circumstance:

- Husband has filed an appeal with the Court of Appeals.

Honorable Andrew R. Jacobsen

Term of alimony: None

Husband's age: 75; Wife's age: 65; Length of marriage: 25 years

Husband's income: unknown; Wife's income: unknown

No minor children

Judge's reasons for non-award:

- Twenty-five year marriage;
- No children were born of the marriage;
- Wife was 65 years old and Husband was 75 years old;
- Both parties had health issues, Wife more so than Husband;
- Both parties were retired and received Social Security and Medicare;
- Parties' retirement accounts had been divided, as well as their property;

- Both parties were left with substantial assets consisting of investments and real estate;
- Husband's temporary alimony obligation to terminate the first day of the month following the entry of the Decree.

Unusual circumstance:

- Wife has filed an appeal with the Court of Appeals.

Hon. Andrew R. Jacobsen

Term of alimony: 9.2 years

Total alimony: \$2,500/month for 21 months, then \$3,250/month for 89 months' \$341,750

Term of alimony as a percentage of length of marriage: 42%

Husband's age: 62; Wife's age: 55; Length of marriage: 22 years

Husband's income: \$136,837/year; Wife's income: \$15,000/year (imputed by Court)

Recipient's income as a percentage of payor's income: 11%

One minor child, age 17

Judge's reasons for alimony award:
None given

Unusual circumstance:

- Wife filed an appeal with the Court of Appeals.

(continued)



Court of Appeals' reasons for affirming alimony award:

- Marriage was one of long duration;
- Record reflected the parties were married for approximately 22 years prior to separating and that they raised two children, one to the age of majority, during the marriage;
- Trial evidence revealed that both parties made contributions to the marriage;
- In 1993, Wife quit working and focused on raising the children full-time, and she continued to care for and provide a home for the children after the parties separated;
- During the marriage, Husband was the primary wage earner for the family and helped with the care and maintenance of the home;
- Evidence showed that Husband's monthly income from all sources exceeded \$11,000;
- At the time of trial, Wife was not employed as she had left the workforce with the support of Husband to care for the minor children after the birth of the parties' first child in 1993;
- Wife asserted she made significant contributions to the marriage by putting her career on hold and caring for the children;
- Wife asserted she was not currently capable of earning more than \$8.50 per hour if she returned to work;
- Wife asserted her living expenses were approximately \$6,000 per month, and the alimony awarded was unreasonable and inadequate;
- Upon review of Wife's living expenses exhibit, it was clear that some of the items included in her monthly budget were speculative at best, or for nonessential items;
- Wife also included the cost of food, products, and services which were

attributable to the parties' two children, one of whom had already reached the age of majority;

- Could not say that the District Court's award of alimony to Wife was an abuse of discretion;
- District Court ordered alimony for a total of 110 months, with the amount of alimony to increase after the termination of child support payments to benefit the parties' minor child;
- Appeared that the District Court considered the contributions of the parties to the marriage, as well as the fact that Wife continued to provide a home and care for the parties' children, and planned to do so throughout their college years;
- Stated that the purpose of alimony was not to equalize the income of the parties, but the trial court recognized that Wife had been out of the workforce and would likely not be able to return to a position at the level she left in 1993;
- Wife testified that it would be difficult to regain employment without brushing up on her computer skills, but she did not indicate it would be impossible;
- Parties' minor child would reach the age of majority in April 2015, and Wife would be able to reenter the workforce without interfering with the interests of the minor child, if she so desired;
- Evidence showed that Wife retained possession of the marital home, which was not subject to any mortgage debts or loans;
- Evidence also showed that the parties amassed significant assets during the course of the marriage, and the marital assets were evenly distributed among the parties;
- Wife received an equalization payment from Husband in the amount of \$89,341;

- Wife also would receive a portion of Husband's military pension, and a portion of his social security distributions when they became available;
- After considering all of the factors involved in an award of alimony and the particular facts of this case, could not say that the District Court's award of alimony was an abuse of discretion.

Honorable Paul D. Merritt, Jr.

Term of alimony: 7 years

Total alimony: \$350/month for 84 months' \$29,400

Term of alimony as a percentage of length of marriage: 35%

Husband's age: 57; Wife's age: 55;
Length of marriage: 20 years

Husband's income: \$33,000/year average; Wife's income: \$12,936/year

Recipient's income as a percentage of payor's income: 39%

No minor children

Judge's reasons for alimony award:

- Husband grossed around \$33,000 a year and had a net monthly income of around \$2,239;
- Husband showed monthly expenses totaling \$2,360; however, he testified that his monthly "deficit" was more accurately in the neighborhood of \$500 to \$700;
- The increase in the deficit was primarily due to loans Husband had incurred subsequent to the parties' separation;
- When Husband quit his job with the county in 2006 to devote his full energies to the church, he was earning \$76,000 per year;
- Husband received taxable and tax-free incomes of \$45,816 in 2009, \$51,797 in 2010, and \$33,200 in 2011;

(continued)



- For a period of one and a half to two years, between sometime in 2009 and 2010 or 2011, Husband had additional income of \$1,083 per month;
- At the time of trial, Wife was receiving disability income of \$1,078 per month, which was her sole source of income;
- Other than being involved in the foster care program, Wife had not sought any employment to supplement her disability income; however, her testimony was that she was unable to work;
- Wife estimated that her monthly expenses were in the neighborhood of \$2,600 per month;
- The parties jointly decided that Husband should leave his employment with the county so the two of them could devote their energies and time to the church;
- In addition to the personal rewards they received from pursuing that endeavor, they believed the income from the church, with some supplemental income, would be sufficient to support them;
- Although it was, barely, they started to develop marital problems that interfered with their involvement with the church and that affected other members of the congregation;
- Once continuation of the church was no longer a viable option, Husband returned to the field in which he was involved prior to January 2006; however, at a much lower income;
- There was no evidence Husband could have jumped into a job for which he was qualified at a higher income;
- Husband argued that there should be no spousal support;
- Husband's position was that any award of spousal support would

"drive him into the ground" and be unfair and unconscionable;

- Wife, on the other hand, believed that she should receive spousal support of between \$1,200 and \$1,500 per month;
- Court found this to be an appropriate case for spousal support; however, the question became what amount, under the circumstances, would be fair and reasonable;
- Court did not doubt that Husband would consider whatever figure determined to be appropriate to be too high and that Wife would consider it to be too low;
- In addition to ordering alimony, Court ordered Husband to annually provide Wife with a copy of his federal income tax return, for so long as spousal support was owed to her, the copy to be provided no later than June 1 of the year following the tax year.

Unusual circumstances as reported by counsel (one counsel reporting):

- Career interruption;
- Wife was found to be disabled during the course of the marriage.

Honorable Paul D. Merritt, Jr.

Term of alimony: 8 years

Total alimony: \$600/month for 18 months, then \$800/month for 48 months, then \$950 for 30 months = \$77,700

Term of alimony as a percentage of length of marriage: 38%

Husband's age: 44; Wife's age: 44;
Length of marriage: 21 years

Husband's income: \$88,704/year;
Wife's income: \$27,456/year

Recipient's income as a percentage of payor's income: 31%

Two minor children, ages 17 and 13

Judge's reasons for alimony award:

- No dispute this was an appropriate case for spousal support;
- Questions were the amount and duration of the spousal support award;
- Parties were married in 1993, and two children were born during the parties' marriage;
- Parties, who were each 44 years old, had been separated since December 2012;
- Under the terms of a temporary order entered in September 2013, Husband, in addition to paying temporary child support of \$1,403 per month, had been paying Wife temporary spousal support of \$500 per month;
- Wife received an Associate Degree in 1984/1985;
- Generally speaking, Wife had been a dental assistant since then, except for a four-month period during the spring of 2013, and short periods of time when she was in between jobs;
- Wife had been working for her current employer for a year at the time of trial, working 32 hours a week at \$16.50 per hour;
- According to Wife, 32 hours a week was a standard workweek for a dental office; however, over the year she had worked there, she had worked around four Fridays;
- Prior to her current job, Wife worked 36 hours per week, earning \$17.50 per hour;
- Prior to that, Wife worked 32 hours per week, earning \$21.25 per hour;
- Before that, Wife worked for the same employer for 17 years earning \$17.25 per hour at 32 hours a week; however, at one point Wife worked on salary for this employer, based upon an hourly rate of \$16 or \$17;

(continued)



- For approximately four months in the year prior to trial, Wife had done some home cleaning for a neighbor for which she was paid \$80 every other week;
- Wife was not doing that part-time job at the time of trial (it started when Wife was unemployed and ended when the neighbor moved);
- Husband worked as a delivery driver and had done so for over 20 years;
- Husband was paid \$32.99 per hour;
- Husband received and was expected to work "regular" overtime, for which he was paid time and a half (i.e., \$49.485 per hour);
- Husband also received a "production bonus," which, in effect, was an award for getting deliveries done timely and was earned on an almost daily basis;
- The production bonus was paid at the same rate as overtime;
- At the time of trial, Husband was working an average of 9 hours, 15 minutes to 10 hours a day;
- In addition to hourly wages, Husband received six weeks paid vacation during a calendar year, which, generally speaking, he could take in one-week blocks and single days;
- Husband had the right to sell his one-week blocks; that is, he was able to work when he had vacation time scheduled and was paid for the work he performed and the vacation time he was working through (i.e., he was paid double pay);
- As of the time of trial, Husband had "sold" three weeks of his vacation time for 2014;
- In 2013, Husband "sold" all of his vacation time;
- Prior to 2013, according to Husband, he generally worked one to two days during a vacation week;
- In 2013, Husband received wages of \$93,067;
- Husband was paid weekly and, as of May 17, 2014, had received total wages, consisting of regular pay, overtime, production bonus and vacation, of \$32,730;
- Husband's income for purposes of child support and spousal support was found to be \$7,392 per month and Wife's income was found to be \$2,288 per month;
- After the payment of child support for two children, Wife would have a net income of \$3,363 and Husband a net income of \$3,864;
- After the payment of child support for one child, Wife would have a net income of \$2,946 and Husband a net income of \$4,281;
- The oldest child would turn 19 in March 2016 and the youngest child would turn 19 in March 2020;
- Wife was not considering any further education to open additional doors for herself (e.g., completing education to become a dental hygienist);
- According to Wife, the bare bones monthly expenses for her and the children was \$4,178;
- Wife's monthly expenses included \$263 for cell phone, \$180 for Internet and television services, \$800 for food for herself and the children, \$750 for car-related expenses, which included the oldest child's car, and \$285 for activities for the minor children;
- In addition, Wife estimated that, when it would not be available from Husband, health insurance would cost her \$250 per month;
- Husband filed a Chapter 13 bankruptcy;
- Under his Chapter 13 Plan, he had 25 initial payments of \$495 per month, followed by 35 payments of \$590 per month;
- Husband also had to make a payment of \$4,000 during the first 48 months of the Plan;
- Three hundred dollars of the monthly payments related to a vehicle which Husband had retained;
- Husband claimed monthly expenses totaling \$2,809;
- Husband's monthly expenses included \$970 for rent and utilities for the house he rented; \$400 for food; \$400 for "Miscellaneous," and \$503 for his bankruptcy Plan, although it only called for \$495 at the time of trial;
- At the time of trial, Husband had been staying at the house he was renting only about one time a month; however, he planned to keep renting the house;
- In considering the amount of spousal support, the Court kept in mind that Neb. Ct. R. § 4-213 provides that spousal support is to be determined from income available after child support has been established.

Honorable Jodi L. Nelson

Term of alimony: 2 years

Total alimony: \$300/month for 24 months = \$7,200

Term of alimony as a percentage of length of marriage: 25%

Husband's age: unknown; Wife's age: unknown; Length of marriage: 8 years

Husband's income: \$25,032/year; Wife's income: \$73,056/year

Recipient's income as a percentage of payor's income: 34%

Three minor children, ages 9, 7 and 4

Judge's reasons for alimony award:
None given

(continued)



Unusual circumstances as reported by counsel (one counsel reporting):

- Wife lost the job she had at the time of the dissolution trial and her income substantially decreased;
- Wife has filed a complaint to modify to reduce her child support and reduce or terminate her alimony.

Honorable Robert R. Otte

Alimony: None – Wife's request denied

Husband's age: unknown; Wife's age: unknown; Length of marriage: 7 years

Husband's income: unknown; Wife's income: unknown

No minor children

Judge's reasons for non-award (as reported by counsel – one counsel reporting):

- No disparity of income between the parties; in fact, Wife's earnings were slightly more than Husband's earnings;
- Wife was asking for alimony because she had paid a number of debts that were incurred by both parties;
- The alimony request was denied and both parties were basically given the property in their possessions;
- Husband was ordered to pay a major debt owed by the parties, each party was ordered to pay his or her own attorney's fees, and a judgment was entered in favor of Wife against Husband in the amount of \$400.

Honorable Robert R. Otte

Term of alimony: 9 years

Total alimony: \$1,000/month for 36 months, then \$500/month for 72 months = \$72,000

Term of alimony as a percentage of length of marriage: 26%

Husband's age: unknown; Wife's age: 57; Length of marriage: 35 years

Husband's income: \$83,512/year; Wife's income: \$45,614/year

Recipient's income as a percentage of payor's income: 55%

One minor child, age 17

Judge's reasons for alimony award:

- Parties were married more than 35 years;
- Both parties were well educated;
- Neither party sacrificed a career for the benefit of the marriage;
- Wife was 57 years old;
- Appeared that each party had the opportunity to continue suitable employment;
- Wife's pay stub showed she earned an hourly rate of \$21.93;
- Wife had a small amount of income from a family farm;
- Husband's pay stub showed he earned an hourly rate of \$40.15;
- Appeared from the testimony that both of the parties had made substantial contributions to the marriage over time;
- There was little disparity in the award of property in the proceeding;
- Each party would have approximately \$500,000 as a result of the property division;
- There did not appear to be any debt to be divided;

- Wife testified that she had been working in Beatrice for some period of time;
- Wife testified that her job was relatively difficult and would become increasingly difficult as she got older;
- Wife commuted from Lincoln for quite a while and then after the parties' separation;
- Wife moved to Beatrice for reasons that were not quite clear;
- Wife did not like living in Beatrice and wanted to move to Omaha to be near her children and for additional employment opportunities;
- At the time of trial, Wife was living in a basement apartment;
- Wife had no family, no connections and no real sense of community in Beatrice;
- Wife claimed living in Beatrice was very stressful and hard on her anxiety issues;
- Wife was interested in moving to Omaha but could not maintain her job from Omaha;
- Wife had not been successful in finding a job in Omaha and believed it would take some time to do so after she moved to Omaha;
- Wife had an anxiety disorder and had seen a counselor for decades;
- Wife took medication for her anxiety and expected to continue her counseling and medications well into the future;
- Wife claimed to be in overall good physical health;
- Wife testified that her living expenses would increase when she moved to Omaha;
- Wife requested a continuation of the \$750 per month temporary alimony award and attorney fees;

(continued)



- The evidence reflected that an award of alimony was appropriate;
- Court anticipated that Wife would need additional support initially to allow her to move to Omaha and find employment.

Honorable Stephanie F. Stacy

Term of alimony: None

Husband's age: unknown; Wife's age: unknown; Length of marriage: 8 years

Husband's income: \$110,628/year;
Wife's income: \$28,584/year

One minor child, age 9

Judge's reasons for non-award:

- At the time of the marriage, and
- Throughout the marriage, Husband worked as an over-the-road trucker, and Wife worked as a team leader in retail;
- Evidence was that Wife worked in the same capacity from 2001 (well before the marriage) through 2014 (after the divorce action was filed);
- While the evidence showed an income disparity between the parties, that disparity existed before the marriage and continued throughout the marriage;
- There was no evidence that either party interrupted their career or declined to pursue educational or employment opportunities during the marriage;
- After the parties separated and the dissolution action had been filed, Wife quit her job to operate a home daycare;
- Wife estimated that once her daycare was at the full capacity of six or seven children (which she had expected to occur in the next month or so), she would be earning substantially more from her home daycare, and would have more reasonable work hours which she expected would increase her ability to parent, and attend school and extracurricular activities;
- The marriage was of a relatively short duration;
- Neither party interrupted a career or missed educational or employment opportunities to raise the parties' child;
- As a result of Wife's decision to open a home daycare, her earnings increased considerably, as did her future earning capacity;
- Weighing all the factors, Court concluded on balance this was not an appropriate case for an award of alimony.



Mary Kay Hansen
Law & Mediation, PC LLO



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Lincoln Bar Association Newsletter

Gregory J. Walklin, Editor

Lincoln Bar Association

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