

## Courtney Denning

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**From:** Courtney Denning  
**Sent:** Wednesday, November 05, 2008 9:44 AM  
**To:** Courtney Denning  
**Subject:** FW: Proposed amendment to statute regarding alimony and postseparation support waiver

-----Original Message-----

**From:** Chas Coltrane [mailto:coltrane@caolaw.com]  
**Sent:** Wednesday, October 01, 2008 1:12 PM  
**To:** 'kcrouch@ncbar.org'  
**Cc:** 'Charles Montgomery'; 'Barbara Morgenstern'; 'Michelle D. Reingold'; Patrick McCroskey (patrick@gumandhillier.com); 'Ray Grantham'  
**Subject:** Proposed amendment to statute regarding alimony and postseparation support waiver

October 1, 2008

VIA E-MAIL: [kcrouch@ncbar.org](mailto:kcrouch@ncbar.org)

Ms. Kim Crouch  
Director of Governmental Affairs  
North Carolina Bar Association  
Post Office Box 3688  
Cary, North Carolina 27519

Re: Proposed amendment to statute regarding alimony and postseparation support waiver

Dear Kim:

Attached please find proposed legislation to modify the existing statute concerning contracts between spouses, whereby a waiver of alimony and postseparation support would be allowed during the spouses' marital coverture. This statutory change was proposed and approved by the Family Law Council of the Family Law Section of the North Carolina Bar Association.

Currently, the statute to be amended allows spouses to waive rights to alimony and postseparation support in a separation agreement once they are separated, and the Uniform Premarital Agreement Act as adopted in North Carolina allows persons to waive rights to alimony and postseparation support prior to marrying; however, there is no authority for spouses to waive rights to alimony and postseparation support during their marital coverture, under North Carolina law at this time.

11/5/2008

The Family Law Council proffers that there is no valid reason to prevent spouses from waiving their possible rights to alimony and postseparation support during the marital coverture, when such rights can be waived before marriage and after separation. Moreover, rights to equitable may be waived during the marital coverture, and such rights can be much more significant than those of spousal support. The Family Law Council believes that to bar the waiver of such rights during the marital coverture may prevent reconciliation efforts or facilitate separations in many cases and that the proposed statutory change is a great improvement to existing law.

The Family Law Council assigned the task of drafting the attached proposed legislation to its Alimony Committee; and the names, addresses and telephone numbers of the Alimony Committee members are as follows:

Charles W. Coltrane, Esq., Chair  
Coltrane, Aycock & Overfield, PLLC  
106 North Elm Street, Suite 300  
Greensboro, North Carolina 27401  
(336) 279-8707

Barbara R. Morgenstern, Esq.  
Morgenstern & Bonuomo, P.L.L.C.  
419 North Edgeworth Street  
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Michelle D. Reingold, Esq.  
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101 North Cherry Street, Suite 720  
Winston-Salem, North Carolina 27101  
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Patrick S. McCroskey, Esq.  
Gum, Hillier & McCroskey, P.A.  
47 North Market Street  
Asheville, North Carolina 28801  
(828) 258-3368

The proposed change poses no constitutional problems and should have no impact in areas of the law other than in the family law arena. To our knowledge, this change has not been previously proposed; and the North Carolina Bar Association has not previously taken a position on this matter. It is unknown as to whether any group outside of the Family Law Section or outside of the North Carolina Bar Association would be interested in this proposal; and we cannot speculate that any other group outside of the Family Law Section would support or oppose this proposal.

On behalf of the Family Law Section and its Council and for the benefit of the citizens of this state, we would greatly appreciate the support of the North Carolina Bar Association in sponsoring the attached proposed legislation.

Very truly yours,

Charles W. Coltrane  
Chair, Family Law Council Alimony

Committee

Attachment

cc: Charles Montgomery ([Charles@montylaw.com](mailto:Charles@montylaw.com))  
Barbara Morgenstern ([Barbara@barkimlaw.com](mailto:Barbara@barkimlaw.com))  
Michelle Reingold ([mreingold@robinsonlawing.com](mailto:mreingold@robinsonlawing.com))  
Patrick McCroskey ([patrick@gumandhillier.com](mailto:patrick@gumandhillier.com))  
Ray Grantham ([rgrantham@robinsonlawing.com](mailto:rgrantham@robinsonlawing.com))

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11/5/2008

PROPOSED STATUTORY AMENDMENT

N.C. Gen. Stat. § 52-10 **Contracts between husband and wife generally; releases.**

(a1) A contract between husband and wife to waive and release all rights and obligations to postseparation support, alimony and spousal support is valid and not inconsistent with public policy, with or without valuable consideration, if such contract is in writing and is acknowledged by both parties before a certifying officer; and such release may be pleaded in bar of any action or proceeding for the recovery of the rights so released.