

HCBA: LAWYER MAGAZINE ARTICLE

TITLE: SO YOUR “EX” IS RESIDING WITH SOMEONE - DO I STILL HAVE TO PAY ALIMONY?

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ARTICLE:

Well, it depends on the facts of your case. Specifically, the “*nature and extent of the relationship in question*” as statutorily defined by eleven (11) factors. In determining whether a “*supportive relationship*” exists, this non-exclusive list includes such circumstances as “*holding themselves out as a married couple*”, “*whether the parties have pooled their assets or income*”, “*jointly purchased real or personal property*”, and “*payment of child support (regardless of whether arrearages exist (See §61.14(4), Fla. Stat.))*.”

Pursuant to §61.14 (1)(b)1, Fla. Stat., the Court “*may reduce or terminate an award of alimony upon specific written findings by the Court that since the granting of a divorce and the award of alimony a supportive relationship has existed between the obligee and a person with whom the obligee resides.*”

If your client contacts you with regard to an action to pursue a “reduction and/or termination” of their alimony obligations, you will need to think in terms of having to prove that a “substantial change in circumstances” has taken place. The Second District in Baumann v. Baumann, 22 So.3d 719, 721, (Fla. 2nd DCA 2009), has held that once a supportive relationship has been found to exist, the burden then shifts to the payee/obligee to demonstrate that the financial need as originally established upon dissolution (*make sure you list that “financial need” amount in the Agreement*) continues to exist despite

the existence of the supportive relationship. However, conflict with the Fourth DCA in French v. French, 4. So.3d 5, (Fla. 4th DCA 2009), has been certified. Interestingly, the Fourth DCA said that once the supportive relationship is found to exist, the Court must modify or terminate alimony.

In conclusion, the Court must give consideration, without limitation, to each of the eleven (11) factors contained in the statute. Therefore, it seems that these types of cases will be very fact-intensive. Early depositions or Requests for Admissions would be critical to establishing the facts of your case in order to shift the burden. There may also be a need to depose the “other person” or conduct surveillance as needed. Once the “supportive relationship” is established, the financial needs of the obligee will come into play.