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Florida Family Law Practice Manual

Publication 80643

Release 92

April 2024

HIGHLIGHTS

Legislation

- **1. Alimony** — Milestone legislation eliminates permanent alimony and amends other statutory provisions.
- **2. Modification of Alimony** —
 - ■ Supportive Relationships — Obtaining a reduction in alimony based on a supportive relationship is easier.
 - ■ Retirement — Common law right to seek modification of an existing alimony award based on reasonable retirement of the obligor has been codified.
- **3. Child Support**
 - Dependent Adult Children — Parents have duty to support incapacitated adult child who is not capable of supporting himself or herself, and civil suit may be brought

to establish postmajority support for such child.

- **4. Parental Responsibility and Timesharing**
 - ■ Timesharing Schedule — Equal timesharing is presumed to be in child's best interests; presumption is rebuttable.
 - ■ Findings — Trial court must make specific written findings of fact concerning creation or modification of a timesharing schedule.
 - ■ Sole Parental Responsibility — Court must consider statutory factors in deciding whether detriment to child exists.
 - ■ Natural Guardians — Unwed parents are both natural guardians of child if father has established paternity.
- **5. Modification of Parental Responsibility and Timesharing**
 - Change in Circumstances —

Change that will support modification is no longer required to be unanticipated; change is required only to be substantial and material.

Rules

- Amendments to rule governing financial affidavits allows parties to waive requirement that financial affidavits be filed with court.

Forms

- Two new forms may be used to satisfy requirements for waiver of court filing of financial affidavits.

Legislation

Alimony

Note: The legislation concerning alimony is covered in a Special Alert that may be found preceding Chapter 10, *Alimony*. Revisions to the text of Chapter 10 will appear in a future release. The text of the legislation may be found in Volume 3 of this publication.

In 2023 the Florida Legislature passed, and the Governor signed, milestone revisions to Florida's alimony statutes [*see* 2023 Fla. Stats. ch. 2023-315, § 1]. The amendments must be applied by courts to all initial petitions for dissolution of marriage or support unconnected with dissolution of marriage that are pending or filed on or after July 1, 2023 [Fla. Stat. § 61.08(11)].

Elimination of Permanent Alimony. Importantly, courts are no longer authorized to award permanent alimony. Courts are instead only authorized to award durational, reha-

bitative, or bridge-the-gap alimony in proceedings not involving temporary support. The court may order alimony in one of these forms, and temporary alimony, "as is equitable" [Fla. Stat. § 61.08(1)(a)]. A court may continue to consider the adultery of either spouse in determining the amount of alimony to be awarded. However, the 2023 amendments narrow the scope of the consideration from the "circumstances" of the adultery to "any resulting economic impact" [*see* Fla. Stat. § 61.08(1)(a); *see also* 2023 Fla. Stats. ch. 2023-315, § 1].

Durational Alimony

New Restrictions on Eligibility, Length, and Amount. Durational alimony may not be awarded to the spouse of a marriage that lasted less than three years [Fla. Stat. § 61.08(1)(a)]. The permissible length of an initial award of durational alimony has been reduced from the length of the marriage to 50, 60, or 75 percent of the length of the parties' marriage, depending on whether the marriage is short-, moderate-, or long-term, respectively [Fla. Stat. § 61.08(8)(b)]. The statute defining short-, moderate-, and long-term marriages has been amended to render fewer marriages eligible as long-term marriages, because the required duration is now 20 years or longer rather than 17 years or longer as was required previously. In contrast, the number of marriages qualifying as short-term has been increased, covering marriages up to than 10 years in length rather than

seven years. In accord with the changes to the statutory definitions of long- and short-term marriages, a moderate-term marriage must now exceed 10 years in length instead of seven years as before, and must be less than 20 years long instead of less than 17 years long as before [Fla. Stat. § 61.08(5)].

The amount of a durational alimony award is addressed in a new statutory provision that directs it to be the amount of the obligee's reasonable need or an amount not to exceed 35 percent of the difference between the parties' net incomes, whichever is less. For purposes of this provision, net income must be calculated in conformity with the child support statute, Florida Statutes Section 61.30(2)–(3). However, any spousal support paid pursuant to a court order in the action between the parties must be excluded [Fla. Stat. § 61.08(8)(c)].

Longer Extensions. The 2023 amendments provide for extensions of durational alimony past the length of the parties' marriage. Previously, an award of durational alimony could not be modified unless exceptional circumstances were shown, and in any event could not exceed the length of the parties' marriage. Now, exceptional circumstances must still be shown to obtain modification, but extensions are permitted to exceed the length of the parties' marriage if the requesting party shows, by clear and convincing evidence, that such an extension is necessary after application of four new statutory factors

focusing on the obligee's ability to be self-supporting and the general alimony factors [*see* Fla. Stat. § 61.08(8)(a)–(b); *see also* Fla. Stat. § 61.08(3) (general alimony factors), (8)(b)1.-4. (new factors pertaining to need for extension)].

Rehabilitative Alimony. Pursuant to the 2023 amendments, the length of a rehabilitative alimony award may not exceed five years [Fla. Stat. § 61.08(7)(c)].

Burden of Proof. Both before and after the 2023 legislative amendments, a court is required to determine as a threshold matter whether the party requesting alimony possesses a need for it and whether the other party possesses an ability to pay alimony. The 2023 amendments expressly impose the burden of proof on a requesting spouse to establish need and ability to pay [*see* Fla. Stat. § 61.08(2)(a)].

Enumerated Statutory Factors. The 2023 legislation retained a list of enumerated factors that a court must consider after it determines that need and ability to pay have both been established. However, many factors that were in the prior list have been revised in some respect, and a factor requiring consideration of the tax effects of an alimony award has been deleted [*see* Fla. Stat. § 61.08(3)].

Findings. Significantly under the 2023 amendments, a court is expressly required to make written findings of fact regarding its determinations in an alimony case. In addition, the types of findings a court must make have been described in more

detail than previously [Fla. Stat. § 61.081(1)(b), (2)(b)].

A court is still required to make a specific, factual determination regarding need and ability to pay. However, if the court denies alimony based on failure to establish need or ability to pay, then the court is expressly only required to make findings regarding the lack of need or ability to pay [*see* Fla. Stat. § 61.08(2)(b); *see also* 2023 Fla. Stats. ch. 2023-315, § 1 (amending and reorganizing Fla. Stat. § 61.08(2))].

A court is also still expressly required to make factual findings pertaining to the statutory factors, regardless of whether the court awards or denies alimony. However, now a court must specifically make findings regarding the basis for awarding any form of alimony, including the type or types of alimony and the length of time for which alimony is awarded [*see* Fla. Stat. § 61.08(1)(b); *see also* 2023 Fla. Stats. ch. 2023-315, § 1 (amending and reorganizing Fla. Stat. § 61.08(1)-(2))].

Securing Alimony Award. A newly added statutory provision codifies caselaw principles under which (1) special circumstances must be shown to justify an order to purchase or maintain life insurance or a bond to secure an alimony award; and (2) a court must make “specific findings” that such special circumstances exist [Fla. Stat. § 61.08(4); *see, e.g.*, *Sweeny v. Sweeny*, 113 So. 3d 987 (Fla. 5th DCA 2013)]. Another new statutory provision autho-

rizes a court to (1) order either party to assume the cost of the insurance or bond, or (2) apportion the costs of the insurance or bond between the parties. The court’s decision must be based on the ability of each party to pay the costs [*see* Fla. Stat. § 61.08(4)].

Modification of Alimony

Note: The legislation concerning modification of alimony is covered in a Special Alert that may be found preceding Chapter 15, *Modification*. Revisions to the text of Chapter 15 will appear in a future release. The text of the legislation may be found in Volume 3 of this publication.

Supportive Relationship— Statutory amendments make obtaining a reduction in alimony based on a supportive relationship between the obligee and a third person easier. The amendments took effect July 1, 2023. They are as follows [*see* 2023 Fla. Laws ch. 2023-315, §§ 3, 5 (effective date)]:

- (1) A trial court is *required*—not merely permitted—to reduce or terminate alimony if the obligee is in a supportive relationship [Fla. Stat. § 61.14(b)1.].
- (2) Residence together by the obligee and third person is no longer required for a supportive relationship to be found [*see former* Fla. Stat. § 61.14(b)1.].
- (3) Alimony may be modified not only if a supportive relationship arose *after* the original alimony award, but

also if a supportive relationship existed *within 365 days preceding* the filing of the original petition [Fla. Stat. § 61.14(b)2.].

- (4) If the obligor proves that a supportive relationship exists or has existed within 365 days preceding the filing of the original petition, the burden of proof shifts to the obligee to prove either that the court should not (1) deny or reduce an initial award of alimony, or (2) reduce or terminate an existing award of alimony [Fla. Stat. § 61.14(b)2.].
- (5) In its written findings of fact, the trial court now must specify (1) the nature of the relationship between the obligee and the third person, and (2) the extent to which an award of alimony should be reduced or terminated because of the existence of a supportive relationship [see Fla. Stat. § 61.14(b)2.].
- (6) In determining the nature of the obligee's relationship and whether alimony should be reduced or terminated because of it, the trial court must consider revised statutory factors concerning the residence and financial interdependence of the obligee and the third person, and family support by the obligee and the third person, as well as the alimony pay-

ment history of the obligor.

Retirement—A new law has codified the common law right to seek modification of an existing alimony award based on reasonable retirement of the obligor. The legislation, which took effect July 1, 2023, provides the following [see 2023 Fla. Stats. ch. 2023-315, §§ 3, 5 (effective date)]:

- (1) A court may reduce or terminate an award of alimony based on specific, written findings of fact that the obligor has reached (1) normal retirement age as defined by the Social Security Administration, or (2) the customary retirement age for his or her profession [Fla. Stat. § 61.14(1)(c)1.].
- (2) The court must make specific, written findings that the obligor has taken demonstrative and measurable efforts or actions to retire or has retired [Fla. Stat. § 61.14(1)(c)1.].
- (3) The burden is on the obligor to prove that his or her retirement reduces his or her ability to pay alimony; if the court determines that the obligor's retirement has reduced or will reduce the obligor's ability to pay, then the burden shifts to the obligee to prove that the obligor's alimony obligation should not be terminated or reduced [Fla. Stat. § 61.14(1)(c)1.].
- (4) In determining whether an

award of alimony should be reduced or terminated because of the obligor's voluntary retirement, the court must consider, and make written findings of fact regarding, 10 statutory factors [see Fla. Stat. § 61.14(1)(c)2.].

- (5) In reasonable anticipation of retirement, but not more than six months before retirement, the obligor may file a petition for modification of his or her alimony obligation.
- (6) Alimony may be modified effective on the date of the obligor's reasonable and voluntary retirement, as determined by the court pursuant to the 10 statutory factors [Fla. Stat. § 61.14(1)(c)3.; see Fla. Stat. § 61.14(1)(c)2. (factors)].
- (7) The trial court must make written findings of fact regarding both the statutory retirement factors and the general statutory alimony factors in its order on the petition for modification; with regard to a request pertaining to a date (such as the date of filing of the obligor's petition) the court should grant or deny the request as equity requires, giving due consideration to the changed circumstances or the financial abilities of the parties [Fla. Stat. § 61.14(1)(c)3.;

see Fla. Stat. § 61.08(3) (general alimony factors)].

Child Support

Note: The legislation discussed below concerning child support is covered in Chapter 9. The text of the legislation may be found in Volume 3 of this publication.

Incapacitated Adult Child—In a codification and clarification of common law, a new statute enacted in 2023 established that the parents of an unmarried adult who is incapable of self-support as the result of a physical or mental incapacity that began before the person reached the age of 18 have an obligation to support their incapacitated adult child [see 2023 Fla. Laws ch. 2023-213, § 1, creating Fla. Stat. § 61.1255(1)(a), (2)(a)]. The new statute also authorizes a civil suit to establish postmajority support for an incapacitated adult child, designating persons who have standing to bring such a suit and persons to whom the support may be paid [see 2023 Fla. Laws ch. 2023-213, § 1, creating Fla. Stat. § 61.1255(2)]. Another new statute sets forth factors a court must consider in determining the amount of support, and requires the court to not order support that will render the adult child ineligible for state or federal programs as to which the adult child would otherwise be eligible [see 2023 Fla. Laws ch. 2023-213, § 5, creating Fla. Stat. § 61.31].

Parental Responsibility and Time-sharing

Note: The legislation discussed be-

low concerning parental responsibility and timesharing is covered in Chapter 8. The text of the legislation may be found in Volume 3 of this publication.

Timesharing Schedule—

Legislation enacted in 2023 establishes a rebuttable presumption favoring equal timesharing. Specifically, unless the parties agree otherwise, there is a rebuttable presumption that equal timesharing is in a child's best interests. To rebut the presumption, a party must prove that equal timesharing is not in the child's best interests [see Fla. Stat. § 61.13(2)(c)1.; see also 2023 Fla. Laws, ch. 2023-301, § 1].

Findings—In creating or modifying a timesharing schedule, a court must make specific written findings of fact after evaluating all the best-interest factors set forth in Florida Statutes Section 61.13(3). However, this requirement is not applicable if the parties have agreed to a timesharing schedule and the court has approved it [see Fla. Stat. § 61.13(2)(c)1.; see also 2023 Fla. Laws, ch. 2023-301, § 1].

Sole Parental Responsibility—

The statute requiring a court to order shared parental responsibility unless the court finds that shared responsibility would be detrimental to the child now contains a list of factors for a court to consider in determining whether detriment to the child exists [see Fla. Stat. § 61.13(2)(c)2.; see also 2023 Fla. Laws, ch. 2023-112].

Natural Guardians—A statutory provision enacted in 2023 establishes

that both the mother of a child born out of wedlock and a father who has established paternity under Florida Statutes Section 742.011 or 742.10(1) are natural guardians of their child, and both are entitled to the rights and responsibilities of parents. If a father has not established paternity under Section 742.011 or 742.10(1), the mother is the child's natural guardian and is entitled to primary residential care and custody of the child unless the court orders otherwise [see Fla. Stat. § 744.301(1); see also 2023 Fla. Laws, ch. 2023-209, § 3].

Modification of Parental Responsibility and Timesharing

Note: The legislation discussed below concerning modification of parental responsibility and timesharing is covered in Chapter 15. The text of the legislation may be found in Volume 3 of this publication.

Change in Circumstances—A change that will support modification is no longer required to be unanticipated. Now the change is required only to be substantial and material [see Fla. Stat. § 61.13(2)(c), (3); see also 2023 Fla. Laws, chs. 2023-301, § 1, 2023-315, § 2].

In addition, if the parents of a child are residing greater than 50 miles apart at the time of the entry of the last order establishing timesharing and a parent moves within 50 miles of the other parent, that move may be considered a substantial and material change in circumstances for purposes of timesharing, so long as there is a determination that the modification is

in the best interests of the child [*see* Fla. Stat. § 61.13(3); *see also* 2023 Fla. Laws, ch. 2023-301, § 1].

Rules

Financial Affidavits

Note: Amendments to Rule 12.285 regarding financial affidavits are discussed in Chapter 7, *Discovery*. Additionally, the text of the new rule may be found in Volume 3 of this publication.

Although financial affidavits must still be exchanged by the parties with each other, new subdivision (c)(2) allows them to waive the requirement that financial affidavits be filed with the court if (1) both agree to the waiver, and (2) they file a notice of joint verified waiver of filing financial affidavits with the court. New subdivision (c)(2) also requires that in the notice, both parties acknowledge agreement with certain legal and factual conditions set forth in subdivision (c)(2). Subdivisions (a)(1), (d)(1), and (e)(1) are amended to reflect new subdivision (c)(2) and eliminate broad requirements that financial affidavits be filed with the court [*see* In re Amendments to Fla. Fam. Law Rules of Proc. 12.285, & Forms 12.902(k) & 12.902(l), 369 So. 3d 223 (Fla. 2023)].

Forms

Financial Affidavits

Note: The two new forms discussed below may be found in Volume 4 of this publication.

Amendments to Florida Family Law Rule 12.285 allow parties to waive the requirement that financial affidavits be filed with the court. Under amended Rule 12.285, parties who desire to waive the filing requirement must file a notice of joint verified waiver of filing financial affidavits with the court [*see* In re Amendments to Fla. Fam. Law Rules of Proc. 12.285, & Forms 12.902(k) & 12.902(l), 369 So. 3d 223 (Fla. 2023)].

New Florida Supreme Court Approved Family Law Form 12.902(k) may be used to comply with the notice requirement for a waiver of court filing of financial affidavits [*see* In re Amendments to Fla. Sup. Court Approved Fam. Law Forms 12.902(k) & 12.902(l), 373 So. 3d 283 (Fla. 2023); *see also* Fla. Fam. L. R. P. 12.285(2)(c)].

Another new form, Florida Supreme Court Approved Family Law Form 12.902(l), may be used by parties who have waived the filing requirement in a matter in which child support is requested. The new form serves as an affidavit of income that will satisfy the income affidavit requirement of the child support guidelines statute [*see* In re Amendments to Fla. Sup. Court Approved Fam. Law Forms 12.902(k) & 12.902(l), 373 So. 3d 283 (Fla. 2023); *see also* Fla. Stat. § 61.30(14)].

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April 2024

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| <input type="checkbox"/> | Title page thru ix | Title page thru ix |
| <input type="checkbox"/> | 7-47 thru 7-57 | 7-47 thru 7-57 |
| <input type="checkbox"/> | 8-1 thru 8-149 | 8-1 thru 8-209 |
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Revision

- | | | |
|--------------------------|-------------------------------|--|
| <input type="checkbox"/> | Title page thru vii | Title page thru vii |
| <input type="checkbox"/> | No Material removed | 15SA-1 thru 15SA-5 (file preceding 15-1) |
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VOLUME 3

Revision

- | | | |
|--------------------------|-----------------------------------|-----------------------|
| <input type="checkbox"/> | Title page thru vii | Title page thru vii |
| <input type="checkbox"/> | 1 thru 4.15 | 1 thru 4.15 |
| <input type="checkbox"/> | 49 thru 62.12(3). | 49 thru 62.12(7) |
| <input type="checkbox"/> | 85 thru 93 | 85 thru 94.1 |
| <input type="checkbox"/> | 116.5 thru 116.7. | 116.5 thru 116.8(1) |
| <input type="checkbox"/> | 116.21 thru 116.22(1) | 116.21 thru 116.22(1) |
| <input type="checkbox"/> | 116.24(35) thru 116.103 | 116.25 thru 116.109 |
| <input type="checkbox"/> | 165 thru 168.3 | 165 thru 168.3 |
| <input type="checkbox"/> | 190.13 thru 208.3 | 191 thru 208.17 |
| <input type="checkbox"/> | 51 thru 57 | 51 thru 58.1 |
| <input type="checkbox"/> | TC-1 thru TC-85 | TC-1 thru TC-83 |
| <input type="checkbox"/> | TS-1 thru TS-31 | TS-1 thru TS-33 |
| <input type="checkbox"/> | I-1 thru I-29 | I-1 thru I-29 |

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