

Alimony: Modification, Retroactivity

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The etymology of the word “alimony” comes from the 17th century Latin word *alimōnia*, which means nourishment and a means of subsistence. Alimony was created to do exactly what the word itself means: to afford a former wife the ability to support herself at a basic level after being divorced. Today, while alimony laws differ by state, each state’s alimony laws are gender neutral. While alimony obligations set forth in a divorce decree are final, life is subject to change without a moment’s notice. When this happens, a modification of alimony may be necessary. Life-altering events that may necessitate modification of alimony may include, but are not limited to, becoming unemployed, a significant change in employment, remarriage, retirement, disability, and other major events.

Under Florida Statute §61.08, alimony may be modified or terminated so long as the alimony award was set forth in the Final Judgment dissolving the divorce. The statute also provides that the party seeking modification must prove that a substantial change in circumstances exists, that such change was not contemplated at the time of the final judgment, and that such change is sufficient, material, involuntary, and permanent in nature.

When a petition for modification of alimony is filed in Florida, a court may either modify alimony retroactive to the date of filing the petition for modification, or any date subsequent to the filing of the petition. So how does the court decide what date is appropriate?

Like an original award, a modification must be based on both the payee’s needs and the payor’s ability to pay. Alimony may be modified retroactive to the date of filing the supplemental petition when both the payee’s needs and the payor’s ability to pay have been continuously present since the date of filing.

To determine the proper date for retroactive application that is subsequent to filing, courts use the rationale in set forth in *Franz v. Franz*. In *Franz*, the former husband filed a petition to modify alimony based on an increase in the former wife’s income by her receipt of social security benefits. The evidence showed

she did not begin receiving the benefits until after she turned 65 years old, which occurred after the former husband filed his petition for modification. Because he sought modification of alimony based on the former wife’s increased income, the modification should have been retroactive to the date of receipt of her first social security check, rather than the date of filing his petition for modification.

Modification of alimony in Florida requires a careful analysis of specific factors, and thus should be undertaken with the assistance of counsel with the experience and skill required to protect your interest. ❖

EDITOR’S NOTE: K. Dean Kantaras is the managing partner of K. Dean Kantaras, P.A., a firm handling cases in family law and immigration. Mr. Kantaras is board certified in marital and family law by the Florida Bar. He has been practicing for over 25 years and is “AV” rated by Martindale-Hubbell. Joanna Hotalen, Esq. is an associate attorney at the firm and a member of the Florida Bar. She is a graduate of Barry University, Dwayne O. Andreas School of Law. Their offices are located at 3531 Alternate 19, Palm Harbor, 34683, (727) 781-0000 and 1930 East Bay Drive, Largo, 33771, kantaraslaw.com.