At the conclusion of many divorce proceedings, alimony is calculated by the court to be paid from the supporting spouse to the dependent spouse. The amount of alimony to be paid is calculated based on a variety of factors, including, among others, the length of the marriage and the martial lifestyle of the couples while married. Once calculated, alimony can typically only be modified by showing a “change in circumstances” that would warrant either the increase or decrease in alimony payments to be made. An occurrence that can be considered a “change in circumstance” is when the alimony recipient then cohabitates with another following the divorce while still receiving alimony payments.

Cohabitation situations can be frustrating to the alimony obligor (the spouse making the payments) because the alimony recipient cohabitating with another can mean two things: (1) the recipient may be using the payments to support their new partner, or (2) the recipient may be receiving financial support from their new partner in addition to the alimony received from their former spouse, essentially receiving monies from two different sources and concealing changes in their finances.

How does the law define cohabitation?

In New Jersey, there are both judicial opinions as well as legislation that have defined what constitutes cohabitation. First, in *Konzelman v. Konzelman*, the New Jersey Supreme Court explains that cohabitation involves an intimate, close and enduring relationship, requiring more than a common residence or mere sexual liaison. It involves conduct whereby the couple has undertaken duties and privileges that are commonly associated with marriage. In addition to long-term intimate or romantic involvement, indicators of cohabitation may also include living together, intertwined finances, the sharing of living expenses, and the recognition of a relationship in the new couple’s social and family circle.

Following *Konzelman*, the New Jersey Legislature adopted the Alimony Reform Act in 2014, borrowing some of the factors defining cohabitation from *Konzelman*. The Alimony Reform Act listed the following eight factors as indicators of cohabitation for the purposes of alimony modification:

- Intermingled finances;
- Shared responsibility for living expenses;
- Recognition in the new couple’s family and social circle of a relationship;
- Living together and frequency of contact;
- Shared household chores;
- An enforceable promise of support;
- Relationship’s length; and,
- Any additional relevant evidence.
How does one go about proving cohabitation?

If a recipient spouse is benefiting from cohabitation, it is unlikely they will freely admit that they are essentially “double-dipping” (taking from the former spouse as well as their new partner). Therefore, the supporting spouse, through their attorney, could hire a private investigator to monitor the recipient in an attempt to prove cohabitation. Through the investigator, a variety of evidence could be gathered to show that cohabitation is in fact taking place. While evidence gathered through a private investigator is often circumstantial and only paints an incomplete picture, it could be enough to persuade a judge that alimony modifications are necessary. You should seek a referral from an attorney or another professional when selecting a private investigator as the resulting report and underlying investigation are keys in proving cohabitation.

Once cohabitation is established, the dependent ex-spouse has the burden of proving that they are still dependent on the alimony that they had been receiving even though they are cohabitating with another. When a dependent spouse economically benefits from cohabitation, their support may be reduced or even terminated. A reduction in support is typically appropriate when the dependent spouse shows that they still have some need for support even considering the new support they receive from their new partner.

What are the factors that trigger the termination of alimony versus the reduction of alimony?

In a recent New Jersey Appellate Division case, Reese v. Weis, the court terminated the alimony paid to a dependent spouse due to cohabitation. The factors that the court applied to determine alimony termination was appropriate (instead of reducing alimony) can be summarized as the following:

- When the dependent spouse cannot prove a continued need for support;
- When the dependent spouse is receiving a direct economic benefit from their new partner;
- When the dependent spouse is receiving indirect financial support (such as gifts) that enhance their quality of life; and,
- When the ex-spouse and their new partner have been together for a longer period of time than the previous relationship.

These factors can be critical in a judge deciding to reduce alimony to a dependent spouse versus alimony being completely terminated.

Every cohabitation scenario is different, just like every divorce is different. Your attorney will need to analyze the specific facts of your case to ensure that alimony is modified properly in a cohabitation situation.

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