N.J.S.A. 2A:34-23: An Analysis of New Jersey Statutory Law and Case-Law Precedent on Alimony

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This article will focus on basic and advanced principles of the New Jersey statute, N.J.S.A. 2A:34-23, and statutory interpretation embodied by relevant case-law precedent. More specifically, this article includes an analysis of the different forms of alimony available to litigants seeking such relief, the duration of an alimony award, the facts and circumstances New Jersey courts have analyzed in determining an appropriate term of alimony, and an overview of circumstances that may warrant a modification to an established alimony obligation. A review of relevant New Jersey case-law precedent entered after the 2014 statutory amendment illustrates various changes, especially as they relate to the duration of alimony and the impact retirement may have on one's obligation. These cases similarly demonstrate that the alimony factors are largely intertwined and, as such, require careful negotiation and language in divorce settlement agreements. Now more than ever, we must carefully consider each statutory factor, as any one factor may become the lynchpin to a successful mediation, negotiation, or outcome at trial. While certain factors may appear to carry more weight than others (whether recognized by law or not), a careful review of every factor should be undertaken because each case is different from the next.

New Jersey alimony law is defined by statute, namely N.J.S.A. 2A:34-23, entitled "Alimony, maintenance." New Jersey alimony law was subject to sweeping reform in September 2014 resulting in changes to the forms of alimony identified and available to litigants incident to

[1] The authors would like to thank Ashley E. Edwards, Esq. for her tremendous contributions to this article.

divorce, and the enumeration of fourteen specified factors for modification and/or termination of the payor's alimony obligation. Despite the modifications made to the statute in 2014, the spirit and intent of alimony reform remain consistent with the previous statute and case-law precedent interpreting same in many respects.

More specifically, pre-Amendment statutory law permitted courts to award four different types of alimony, either solely or in conjunction with one another: (1) permanent alimony; (2) limited duration alimony; (3) rehabilitative alimony; and (4) reimbursement alimony. However, reform brought changes to these statutorily identified types of alimony, and permanent alimony was replaced with open durational alimony. N.J.S.A. 2A:34-23(b) "In all actions brought for divorce . . . the court may award one or more of the following types of alimony: open durational alimony; rehabilitative alimony; limited duration alimony or reimbursement alimony to either party." A court's determination of the type, duration and amount of alimony is now similarly guided by the statutory factors set forth in N.J.S.A. 2A:34-23(b), which, among other factors, requires courts to consider the practical impact of the increase in living expenses associated with the parties' need to live separate and apart. In so deciding, a court must consider the ability of both parties to maintain a standard of living reasonably comparable to that established by them during the marriage or civil union. Id.

The 2014 Amendment also changed the climate of modification and/or termination of a previously established alimony obligation. Specifically, the Amendment adopted a rebuttable presumption for termination of alimony under circumstances where an obligor has retired after having reached full Social Security retirement age. N.J.S.A. 2A:34-23(j)(1): "There shall be a rebuttable presumption that alimony shall terminate upon the obligor spouse . . . attaining full retirement age[.]" Alimony reform also addresses an obligor's early or prospective retirement, and the factors a court must consider when determining whether it warrants modification or termination of his or her alimony obligation. Id. Under these circumstances, the obligor bears the burden of demonstrating, "by a preponderance of the evidence," that early retirement is both reasonable and a request made in good faith. N.J.S.A. 2A:34-23(j)(2). When determining the appropriateness of terminating an alimony obligation made by an obligor seeking early retirement, the court must weigh eight factors, as follows: (1) the age and health of the parties; (2) the obligor's field of employment and generally accepted retirement age; (3) the obligor's full retirement age; (4) the obligor's motivation to retire early; (5) the expectations of the parties regarding the obligor's anticipated early retirement; (6) the obligor's ability, if any, to maintain support payments post-retirement; (7) the financial impact to the obligee; and (8) any other relevant factor(s). Id.

The statute also now identifies certain factors for a court's consideration under circumstances where an obligor has lost his or her employment (or has experienced a substantial decrease in income) and subsequently seeks modification of an established alimony obligation. N.J.S.A. 2A:34-23(k). The statute delineates a ninety-day waiting period for the filing of an application seeking to modify an alimony obligation in the context of income loss but also permits the court to modify alimony retroactive to the date of the obligor's loss of employment or reduction in income. Id. In this context, the court may establish temporary remedies until such time as the issue is fully determined. Temporary remedies may include, but be not limited to, a temporary suspension or decrease in the obligor's alimony payment; providing for a period of review; and/or directing that support be paid from assets. Id. The statute distinguishes between non-self employed and self-employed obligors. N.J.S.A. 2A:34-23(k) and (l), respectively. Under circumstances where an obligor is not employed, the court weighs ten factors in determining his or her request for relief. N.J.S.A. 2A:34-23(k). In situations where an obligor is self-employed, the statute requires the obligor to "include an analysis that sets forth the economic and non-economic benefits the party receives from the business, and which compares these economic and non-economic benefits to those that were in existence at the time of the entry of the order." N.J.S.A. 2A:34-23(l).

The Basics. At its most basic, alimony "relates to support and standard of living; it involves the quality of economic life to which one spouse is entitled, which then becomes the obligation of the other." Gnall v. Gnall, 222 N.J. 414, 429, 119 A.3d 891, 900 (2015); Mahoney v. Mahoney, 91 N.J. 488, 501–02, 453 A.2d 527 (1982); see also Khalaf v. Khalaf, 58 N.J. 63, 67, 275 A.2d 132 (1971). Recent case-law precedent builds upon this definition, noting that alimony is "generally set based on the marital standard of living and contemplates the continued maintenance at the standard of living . . . prior to the separation." Schmitz v. Fairhurst, No. A-2775-21, 2023 N.J. Super. Unpub. LEXIS 2110, at *16 (App. Div. Nov. 21, 2023)[2]. This obligation stems from the principle that "marriage is a shared enterprise, a joint undertaking, that in many ways [] is akin to a partnership." Rothman v. Rothman, 65 N.J. 219, 229, 320 A.2d 496 (1974). Alimony in New Jersey is "primarily governed by statute." Gayet v. Gayet, 92 N.J. 149, 150, 456 A.2d 102 (1983). N.J.S.A. 2A:34-23 provides that

> [p]ending any matrimonial action or action for dissolution of a civil union brought in this State or elsewhere, or after judgment of divorce or dissolution or maintenance, whether obtained in this State or elsewhere, the court may make such order as to the alimony or maintenance of the parties . . . as the circumstances of the parties and the nature of the case

[2] Schmitz is an unreported trial court opinion. Per R. 1:36-3, "[n]o unpublished opinion shall constitute precedent or be binding upon any court . . . [N]o unpublished opinion shall be cited by any court. No unpublished opinion shall be cited to any court by counsel unless the court and all other parties are served with a copy of the opinion and of all contrary unpublished opinions known to counsel."

shall render fit, reasonable and just . . . Orders so made may be revised and altered by the court from time to time as circumstances may require.

The New Jersey Supreme Court has reinforced this prevailing principle, enunciated in the landmark case of Lepis v. Lepis, 83 N.J. 139, 150, 416 A.2d 45 (1980), which emphasizes that "the goal of a proper alimony award is to assist the supported spouse in achieving a lifestyle that is reasonably comparable to the one enjoyed while living with the supporting spouse during the marriage." Crews v. Crews, 164 N.J. 11, 16, 751 A.2d 524 (2000); Innes v. Innes, 117 N.J. 496, 503, 569 A.2d 770 (1990). Notwithstanding the foregoing, alimony reform and case-law precedent interpreting same have addressed the standard of living factor and have clarified and confirmed that neither the supported spouse nor the obligor spouse have a greater entitlement to the marital standard of living than the other. N.J.S.A. 2A:34-23(b). see also Malek v Malek, No. FM-15-1028-16W, 2016 WL 5718240, at *1 (N.J.Super.Ch. Aug. 05, 2016); S.W. v. G.M., 462 N.J. Super. 522 (App. Div. 2020) and Chew v. Chew, No. A-1099-23, 2025 N.J. Super. Unpub. LEXIS 1078 (App.Div. May 5, 2025).[3] Specifically, factor four of N.J.S.A. 2A:34-23(b) requires the court to examine "[t]he standard of living established in the marriage or civil union and the likelihood that **each** party can maintain a reasonably comparable standard of living, with **neither party** having a greater entitlement to that standard of living than the other[.]" (**Emphasis added**). Applying this principle, the trial court in Malek similarly opined that,

> [i]n many divorces, it is mathematically probable that following separation, neither party will be financially able to maintain the former "marital lifestyle" . . . Rather, both parties

[3] Malek and Chew are an unreported trial court opinion. Per R. 1:36-3, "[n]o unpublished opinion shall constitute precedent or be binding upon any court . . . [N]o unpublished opinion shall be cited by any court. No unpublished opinion shall be cited to any court by counsel unless the court and all other parties are served with a copy of the opinion and of all contrary unpublished opinions known to counsel."

> may need to responsibly adjust their expectations and their budgets, as the court may equitably enter a fair . . . support order under which neither party maintains the prior marital standard of living. Id.

An analysis of the marital standard of living remains important and necessary to a court's determination of an appropriate alimony obligation. Indeed, our courts have consistently confirmed that "[t]he importance of establishing that standard of living experienced during the marriage cannot be overstated. It serves as the touchstone for the initial alimony award and for adjudicating later motions for modification of the alimony award when 'changed circumstances' are asserted." Crews, supra, 164 N.J. at 16, 751 A.2d 524. Thus, to determine an appropriate alimony award, one must consider the reasonable needs of the supported spouse as defined by the marital lifestyle, the supporting spouse's income and financial status, and what amount and duration of alimony will allow him/her to maintain that standard of living. This analysis must simultaneously seek to preserve the payor spouse's right to also enjoy a lifestyle comparable to that enjoyed by both parties during the marriage.

N.J.S.A. 2A:34-23(b) defines the distinct, objective standards courts must utilize to determine whether an award of alimony is warranted in any given case. While case-law precedent may indicate that all factors are of equal weight, a brief review of the order of the factors appears to indicate otherwise. For example, the first five factors involve one's need for alimony, one's ability to pay alimony, duration, age and physical health of the litigants, and the parties' standard of living and respective earning capacities. Further, case-law precedent interpreting the statutory factors frequently considers these factors when determining an appropriate award of alimony, whereas other factors may not be addressed. Nonetheless, when alimony is sought, the explicit terms of the statute require that the court consider and make specific findings regarding each of the following factors:

(1) The actual need and ability of the parties to pay;

Per the Court in Miller v. Miller, 160 N.J. 408, 420-21 (1999),

> In an application brought by a supporting spouse for a downward modification in alimony . . . the central issue is the supporting spouse's ability to pay. A supporting spouse's potential to generate income is a significant factor to consider when determining his or her ability to pay alimony . . . Although the supporting spouse's income earned through employment is central to the modification inquiry, it is not the only measure of the supporting spouse's ability to pay that should be considered by a court. Real property, capital assets, investment portfolio, and capacity to earn by "diligent attention to . . . business" are all appropriate factors for a court to consider in the determination of alimony modification.

According to the Miller Court and its progeny, a payor spouse's income is but one source of funds to consider. In addition to income, our courts must also conduct an analysis of investments, assets and other sources from which a payor spouse may pay alimony. Id. See also Mahoney v. Mahoney, 91 N.J. 488, 505, 453 A.2d 527 (1982); Stern v. Stern, 66 N.J. 340, 345, 331 A.2d 257 (1975). Innes v. Innes, 117 N.J. 496, 503, 569 A.2d 770 (1990); Myronova v. Myronova, No. A-2156-21 / A-2787-21, 2025 N.J. Super. Unpub. LEXIS 1581 (App. Div. May 2025).

(2) The duration of the marriage or civil union;

See Richardson-Atwell v. Atwell, No. A-4406-14T1, 2016 N.J. Super. Unpub. LEXIS 2764, at *1, 19 (App. Div. Dec. 22, 2016),[4] wherein the trial court ordered the Defendant-husband to pay

[4] Richardson-Atwell is an unreported trial court opinion. Per R. 1:36-3, "[n]o unpublished opinion shall constitute precedent or be binding upon any court . . . [N]o unpublished opinion shall be cited by any court.

limited duration alimony for a period of five years based, in part, on the parties having been married for a period of six years. The trial court's alimony award also included a credit to the Defendant-husband for *pendente lite* support paid to Plaintiff-wife throughout pendency of the divorce litigation. According to the Appellate Division:

> Plaintiff is entitled to limited duration alimony for six years (April 2011 to April 2017), or seventy-two months, at $2300 per month, or $165,600. From April 2011 to October 2012, she received $2500 per month for nineteen months, or $47,500; from November 2012 to October 2013, she received $1500 per month for twelve months, or $18,000; from November 2013 to April 2015 she received $1250 per month for eighteen months, or $22,500; and from May 2015 to April 2017, she will receive $2300 month for twenty three months, or $52,900. Thus, from April 2011 to April 2017, plaintiff will only receive $140,900, leaving a shortfall of $24,700.
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> In addition, from January 2012 to April 2015, plaintiff was entitled to receive $19,131.20 from defendant's pension, but received nothing. Adding this sum to the $24,700 shortfall leaves a total shortfall of $43,831.20. Limited duration alimony in the amount of $2300 per month should only have been extended for such additional time from the date of the [Final Judgment of Divorce] as was necessary to compensate plaintiff for [the] $43,831.20 shortfall. Accordingly, we remand for recalculation of the appropriate term of limited duration alimony from the date of the [Final Judgment of Divorce] and for entry of an amended [Final Judgment of Divorce].

No unpublished opinion shall be cited to any court by counsel unless the court and all other parties are served with a copy of the opinion and of all contrary unpublished opinions known to counsel."

(3) The age, physical and emotional health of the parties;

See Rivera v. Rivera-Torres, No. A-1158-15T2, 2017 N.J. Super. Unpub. LEXIS 1113, at *4 (App. Div. May 5, 2017)[5], discussing this factor as it relates to a retirement application.

See Friel v. Braun-Friel, No. A-4996-15T3, 2018 N.J. Super. Unpub. LEXIS 501, at *1 (App. Div. Mar. 5, 2018)[6], discussing the impact that a supported spouse's disability may have on the payor's alimony obligation, despite the short duration of the parties' marriage. According to the Appellate Division:

> [A]lthough the court found two of the exceptional circumstances "which may require an adjustment to the duration of alimony," the court did not explain why it was not making such an adjustment. In instances where a trial court finds a party has established exceptional circumstances that may require an adjustment to the duration of alimony, and the court declines to make such adjustment, the court must provide reasons for its decision. Here, we are unable to discern why the court did not adjust the duration of alimony despite defendant establishing exceptional circumstances. Although the statute does not mandate an adjustment, a trial court must provide its reasons for not doing so. Providing reasons demonstrates to the parties that a decision is not arbitrary and permits proper appellate review.
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> Absent further explanation concerning the court's finding defendant had contributed economically to the marriage, the court's consideration of social security disability

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[5] Rivera is an unreported trial court opinion. Per R. 1:36-3, "[n]o unpublished opinion shall constitute precedent or be binding upon any court . . . [N]o unpublished opinion shall be cited by any court. No unpublished opinion shall be cited to any court by counsel unless the court and all other parties are served with a copy of the opinion and of all contrary unpublished opinions known to counsel."

[6] Friel is an unreported trial court opinion. Per R. 1:36-3, "[n]o unpublished opinion shall constitute precedent or be binding upon any court . . . [N]o unpublished opinion shall be cited by any court. No unpublished opinion shall be cited to any court by counsel unless the court and all other parties are served with a copy of the opinion and of all contrary unpublished opinions known to counsel."

payments that had yet to be awarded, and the court's non-adjustment to the duration of alimony despite finding exceptional circumstances that would warrant an adjustment, we cannot determine whether the court misapplied its discretion. For that reason, we remand this matter for the court to specifically address these issues, after giving the parties the opportunity to address them. Id. at 16.

(4) The standard of living established in the marriage or civil union and the likelihood that each party can maintain a reasonably comparable standard of living, with neither party having a greater entitlement to that standard of living than the other;

See Malek v. Malek, 2016 N.J. Super. Unpub. LEXIS 1963, an unpublished Chancery Case authored by the Honorable Lawrence R. Jones, Ret. wherein he opines upon the difficulties inherent in maintaining the marital standard of living post-divorce:

Retention of "Marital Lifestyle": Right vs. Illusion

As noted, the amended alimony statute establishes that the marital standard of living is relevant to both parties. In many pendente lite proceedings, however, the blunt economic reality is that separation and divorce often render impossible the ability of either party to financially maintain the prior marital lifestyle, or the same standard of living to which they formerly became "accustomed" during the marriage.

For example, in the present case, the evidence supplied to date reflects that the parties' marital lifestyle budget cost approximately $6100 per month to maintain. Therefore, the anticipated cost to jointly sustain the parties' "marital lifestyle" and joint "standard of living", if they were in fact still living together, would come to approximately $1,409 per week.

Utilizing the parties' present imputed incomes of $90,000 and $20,000, plaintiff and defendant have an estimated combined gross annual income of approximately $2115 per week, before considering taxes and other applicable mandatory deductions. During the marriage, the parties had little money left over for savings or investment. Even while living together, the parties' "standard of living" and "marital lifestyle" involved an element of living paycheck to paycheck. Therefore, following separation and after deducting anticipated and estimated federal and state taxes and other mandatory deductions, it is clear that presently there is simply not enough money for both parties to maintain the same lifestyle living apart that they were able to afford while living together.

For these two parties, as well as countless other litigants undergoing divorce proceedings while living on economically strained budgets, the "right" to continue the prior marital lifestyle following separation is in reality a fictional mirage and an economically unattainable goal shortly after separation. As a matter of simple mathematics, there may not be enough money to support two separate households at the same financial level or lifestyle that they could jointly afford, and became accustomed to living, while they were pooling their incomes and benefitting from the economies of shared living expenses. See Dudas v. Dudas, supra, 423 N.J. Super 69, 74-75. This reality often exists without even considering the additional fact that both parties may also be incurring new significant costs in restructuring their lives, including but not limited to the burden of ongoing substantial litigation expenses in heavily contested cases. In short, while the joint marital lifestyle may have arguably once temporarily "belonged" to both parties, the ability to actually and separately maintain such lifestyle often functionally and necessarily expires and disappears with separation and the practical end of the marriage itself.

When neither party can reasonably afford to separately maintain the marital lifestyle after separation or divorce, a mutually fair and equitable pendente lite approach often requires that both parties, rather than just one party, will have to adapt to interim lifestyles which are financially lower than that which they both enjoyed together during the marriage. This possibility is especially strong in marriages such as the present one, where the parties were apparently spending most of their available income even before separation and formal institution of divorce proceedings. Under such circumstances, neither party may fairly and realistically expect complete retention of the prior lifestyle, particularly when the only possible way for either party to achieve same is to inequitably insist upon allocation of most or all of the available financial resources to oneself, to the complete exclusion and economic detriment of the other party. Id. at 17-20.

(5) The earning capacities, educational levels, vocational skills, and employability of the parties;

See Feinstein v. Feinstein, No. A-1566-16T2, 2018 N.J. Super. Unpub. LEXIS 1459, (App. Div. June 21, 2018)[7], wherein the Appellate Division opines that,

> In assessing the parties' "earning capacities, educational levels, vocational skills, and employability" under the fifth factor, N.J.S.A. 2A:34-23(b)(5), a trial court "may impute income when a spouse is voluntarily unemployed [or] underemployed," Tannen v. Tannen, 416 N.J. Super. 248, 261, 3 A.3d 1229 (App. Div. 2010), *aff'd o.b.*, 208 N.J. 409, 31 A.3d 621 (2011). "[A] 'court has every right to appraise realistically [a] defendant's potential earning power' and examine 'potential earning capacity' rather than actual income, when imputing the ability to pay support." Elrom v. Elrom, 439 N.J. Super. 424, 435, 110 A.3d 69 (App. Div. 2015) (second alteration in original) (first quoting Lynn v. Lynn, 165 N.J. Super. 328, 341, 398 A.2d 141 (App. Div. 1979); and then quoting Halliwell v. Halliwell, 326 N.J. Super. 442, 448, 741 A.2d 638 (App. Div. 1999)).
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> The Elrom court authorized reliance on the child support guidelines in determining alimony obligations:
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>> This authority is incorporated in the New Jersey Child Support Guidelines . . . . The Guidelines state:

[7] Feinstein is an unreported trial court opinion. Per R. 1:36-3, "[n]o unpublished opinion shall constitute precedent or be binding upon any court . . . [N]o unpublished opinion shall be cited by any court. No unpublished opinion shall be cited to any court by counsel unless the court and all other parties are served with a copy of the opinion and of all contrary unpublished opinions known to counsel."

> [i]f the court finds that either parent is, without just cause, voluntarily underemployed or unemployed, it shall impute income to that parent according to the following priorities:
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> > a. impute income based on potential employment and earning capacity using the parent's work history, occupational qualifications, educational background, and prevailing job opportunities in the region. *The court may impute income based on* the parent's former income at that person's usual or former occupation or *the average earnings for that occupation as reported by the New Jersey Department of Labor (NJDOL)*;
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> *These legal precepts equally apply when establishing a party's obligation to pay alimony*.

(6) The length of absence from the job market of the party seeking maintenance;

The court in J.W. v. W.W., 2018 N.J. Super. Unpub. LEXIS 1057[8] considered the supported spouse's eight-year hiatus from the workforce as one of many factors in ultimately requiring the payor spouse to pay rehabilitative alimony in addition to limited duration alimony.

(7) The parental responsibilities for the children;

See Singh v. Saini, No. A-4382-09T1, 2011 N.J. Super. Unpub. LEXIS 963 (App. Div. Apr. 19, 2011)[9], wherein the supported spouse's receipt of alimony was based, in part, on this factor:

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[8] J.W. is an unreported trial court opinion. Per R. 1:36-3, "[n]o unpublished opinion shall constitute precedent or be binding upon any court . . . [N]o unpublished opinion shall be cited by any court. No unpublished opinion shall be cited to any court by counsel unless the court and all other parties are served with a copy of the opinion and of all contrary unpublished opinions known to counsel."

[9] Singh is an unreported trial court opinion. Per R. 1:36-3, "[n]o unpublished opinion shall constitute precedent or be binding upon any court . . . [N]o unpublished opinion shall be cited by any court. No

We recognize that, "[l]imited duration alimony is to be awarded in recognition of a dependent spouse's contributions to a relatively short-term marriage . . . . All other statutory factors being in equipoise, the duration of the marriage marks the defining distinction between whether permanent or limited duration alimony is warranted and awarded." Cox v. Cox, 335 N.J. Super. 465, 483, 762 A.2d 1040 (App. Div. 2000). Following a mid-term marriage, however, where a relatively young supported spouse has realistic employment prospects that would allow her to achieve financial independence over a period of time, especially at the conclusion of concentrated day-to-day child care obligations, the trial court's finding, after balancing the statutory factors, may include a limited term of spousal support. Here defendant's complaint was not that the court should have awarded permanent alimony, but that the amount and length of the term was excessive. We disagree.

In reaching his determination, the trial judge reiterated that plaintiff set aside her own career trajectory so she could care for the parties' children and that she remains their principal caretaker. Understanding plaintiff's ability for employment may increase concomitant with the parties' youngest child beginning full-day kindergarten in 2011, the court designated that event as a change of circumstances, allowing defendant to file an application seeking to modify alimony.

The judge denied plaintiff's request for permanent alimony, noting her youth, increased availability and future employment prospects mitigated against a permanent award. Additionally, the court actually articulated the triggering events for modification in this rather unique combination of circumstances, as the amount of the awarded limited duration alimony is subject to reduction. N.J.S.A. 2A:34-23; Lepis v. Lepis, 83 N.J. 139, 149, 416 A.2d 45 (1980) (observing "[t]he equitable authority of a court to modify support obligations in response to changed circumstances, regardless of their source, cannot be restricted"). He fashioned a practical and equitable solution, in line with the public policy behind the statute. See N.J.S.A. 2A:34-23 (granting courts the authority to fashion orders

unpublished opinion shall be cited to any court by counsel unless the court and all other parties are served with a copy of the opinion and of all contrary unpublished opinions known to counsel."

for alimony and spousal support "as the circumstances of the parties and the nature of the case shall render fit, reasonable and just").

In weighing the statutory factors the court noted the length of the marriage may have supported an award for permanent alimony, however, the age, education, and employability of plaintiff did not. Plaintiff's situation vis-à-vis these young children arguably requires substantial alimony payable by the parent benefiting from the other's investment in time with the children. The judge fairly balanced these factors.

To reiterate, the court stated the outer limit of defendant's alimony obligation was fourteen years from the date of divorce, when the youngest child would begin his college education. But the judge also indicated that a change of circumstances application could be filed when plaintiff increased her employment once the youngest child began full-time kindergarten. Accordingly, we affirm defendant's obligation to pay alimony, as this decision was a sound exercise of the judge's discretion, taking account relevant statutory factors. See N.J.S.A. 2A:34-23(b).

(8) The time and expense necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment, the availability of the training and employment, and the opportunity for future acquisitions of capital assets and income;

In determining an appropriate alimony award, the court in J.W. v. W.W., 2018 N.J. Super. Unpub. LEXIS 1057, supra, considered and accepted the supported spouse’s representation that she enrolled in a course of study that would ultimately permit her to become a respiratory therapist with the ability to earn $50,000.

> **(9) The history of the financial or non-financial contributions to the marriage or civil union by each party including contributions to the care and education of the children and interruption of personal careers or educational opportunities;**
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> **(10) The equitable distribution of property ordered and any payouts on equitable distribution, directly or indirectly, out of current income, to the extent this consideration is reasonable, just and fair;**

See Berger v. Berger, No. A-4009-14T4, 2016 N.J. Super. Unpub. LEXIS 2603 (App. Div. Dec. 7, 2016)[10]. Per the Appellate Division,

> In awarding alimony, the judge conducted a thorough analysis of the factors set forth in N.J.S.A. 2A:34-23. In his initial decision, the judge noted that one such factor was "[t]he equitable distribution of property ordered and any payouts on equitable distribution, directly or indirectly, and of current income, to the extent its consideration is reasonable, just, and fair." Although in his initial written opinion the judge misstated the precise assets being distributed and their values, earlier in the opinion he noted, "it is abundantly clear that there is about $4 - 5 million at play. This is an important factor to consider."
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> In any event, any misstatement by the court was corrected on reconsideration, when the court noted "plaintiff will receive $1,645,974 in cash not including the unencumbered home ($800,000) or the $403,570 in retirement assets. Whereas the court [previously] referenced her receiving only $500,000 in liquid assets." The court also amplified its prior findings by noting that "the cash component of equitable distribution can be invested to generate additional savings should the need arise." Viewing the record as a whole, we do not conclude that the court improperly or unfairly considered plaintiff's share of equitable distribution in fashioning its alimony award.

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[10] Berger is an unreported trial court opinion. Per R. 1:36-3, "[n]o unpublished opinion shall constitute precedent or be binding upon any court . . . [N]o unpublished opinion shall be cited by any court. No unpublished opinion shall be cited to any court by counsel unless the court and all other parties are served with a copy of the opinion and of all contrary unpublished opinions known to counsel."

(11) The income available to either party through investment of any assets held by that party;

See Starr v. Starr, No. A-5025-12T3, 2015 N.J. Super. Unpub. LEXIS 2377, at *1 (App. Div. Oct. 15, 2015)[11]:

> The statutory factors to be considered in establishing the alimony obligation — initially, or when in circumstances of a change in career or early retirement - apply here as well. See Storey v. Storey, 373 N.J. Super. 464, 470, 862 A.2d 551 (App. Div. 2004). N.J.S.A. 2A:34-23(b)(11) provides that in setting an alimony award, the judge must consider "[t]he income available to either party through investment of any assets held by that party."
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> "[A] supporting spouse cannot insulate his or her assets from the alimony calculus by investing those assets in a non-income producing manner." Miller v. Miller, 160 N.J. 408, 422, 734 A.2d 752 (1999) (quoting Stiffler v. Stiffler, 304 N.J. Super. 96, 102, 698 A.2d 549 (Ch. Div. 1997)). "[I]n determining an appropriate alimony award, the trial judge may impute income when a spouse is voluntarily unemployed, underemployed, or when a spouse's investment decisions cause an asset to generate less income than might be earned via an alternative investment." Tannen v. Tannen, 416 N.J. Super. 248, 261, 3 A.3d 1229 (App. Div. 2010) (emphasis added), aff'd o.b., 208 N.J. 409, 31 A.3d 621 (2011).
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> Defendant's failure to provide adequate financial information regarding the first installment of his severance package essentially forced the judge to attempt to impute a realistic level of income to him. See Tash v. Tash, 353 N.J.Super. 94, 99, 801 A.2d 436 (App. Div. 2002). It was, therefore, "appropriate to impute a reasonable income from plaintiff's investments comparable to a prudent use of his investments." Miller, supra, 160 N.J. at 424. Although either a fixed or variable rate may be used, the Court expressed its preference for a variable rate and concluded the rate of return must bear a reasonable relationship to an established

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[11] Starr is an unreported trial court opinion. Per R. 1:36-3, "[n]o unpublished opinion shall constitute precedent or be binding upon any court . . . [N]o unpublished opinion shall be cited by any court. No unpublished opinion shall be cited to any court by counsel unless the court and all other parties are served with a copy of the opinion and of all contrary unpublished opinions known to counsel."

investment alternative, such as Moody's Composite Index on A-rated corporate bonds or a comparable index from Standard & Poor's. See ibid. Because the record fails to provide a sufficient basis for the choice of a 4% interest rate, we are constrained to reverse the determination that a 4% interest rate applies and remand to the trial court to identify the basis for the interest rate to be applied in imputing income to defendant, whether that is 4% or some other rate of return.

(12) The tax treatment and consequences to both parties of any alimony award, including the designation of all or a portion of the payment as a non-taxable payment;

(13) The nature, amount, and length of pendente lite support paid, if any; and

See Richardson-Atwell v. Atwell, supra, wherein the trial court provided the payor spouse with a credit for *pendente lite* support paid to the supported spouse throughout pendency of the divorce litigation.

(14) Any other factors which the court may deem relevant. N.J.S.A. 2A:34–23(b).

The statute further requires courts to make "specific findings on the evidence" regarding the statutory factors relevant to the particular alimony award. Gnall, supra, 222 N.J. at 429–30, 119 A.3d 891. "Our cases have consistently held that all [] factors must be considered and given due weight . . . Id. at 435.

Both statutory law and case-law precedent provide for a review of an established alimony award, and the potential for modification and/or termination of the award, upon a showing of "changed circumstance." Lepis, supra, 83 N.J. at 146, 416 A.2d 45. Consequently, identifying the marital standard of living incident to divorce is critical to any subsequent analysis of whether or not there exist changed circumstances warranting review of the alimony obligation. Crews, supra, 164 N.J. at 25, 751 A.2d 524. This is so "regardless of whether a maintenance order is entered by the court or a consensual agreement is reached" as to alimony. Id. Thus, an alimony award entered absent an appropriate analysis of the factors delineated in N.J.S.A. 2A:34-23(b), which encompass the marital standard of living, is "inadequate." Id.

Subject to certain exceptions, alimony awards define only the current obligation of a former spouse and are "always subject to review and modification on a showing of changed circumstances." Lepis, supra, 83 N.J. at 146, 416 A.2d 45. However, to be entitled to a hearing to determine whether changed circumstances exist warranting review and modification of an established alimony obligation, the moving party "bears the burden of making a *prima facie* showing of changed circumstances." Miller v. Miller, 160 N.J. 408, 420, 734 A.2d 752 (1999). Further, "the party seeking modification of an alimony award must demonstrate that changed circumstances have substantially impaired [that party's] ability to support himself or herself." Lepis, supra, 83 N.J. at 157, 416 A.2d 45. The Court in Crews further clarified that this showing "must be understood to mean the ability to maintain a standard of living reasonably comparable to the standard enjoyed during the marriage." Crews, supra, 164 N.J. at 28, 751 A.2d 524.

The Crews Court similarly affirmed the process initially prescribed by the Lepis Court, which must be utilized in any determination for modification of alimony. The moving party must make a *prima facie* showing of changed circumstances "before a court will order discovery of an ex-spouse's financial status." Id. Only upon this requisite *prima facie* showing will the responding party's ability to pay be considered by the court. Id. As stated previously, one factor that must be considered by the court upon a showing of changed circumstances involves the level of need demonstrated by the dependent spouse as it relates to his or her ability (or inability) to maintain a lifestyle comparable to the marital standard of living. Id.

Forms of Alimony. Current statutory law identifies four types of alimony: open durational, limited duration, rehabilitative, and reimbursement alimony. N.J.S.A. 2A:34-23(b). New Jersey courts are authorized to establish any one of the above types of alimony alone or in conjunction with another. Id. Open durational alimony is appropriate for longer term marriages or marriages impacted by what the statute identifies as exceptional circumstances. Id. Limited duration alimony is reserved for those situations where an economic need for alimony has been established, but the marriage or civil union was of shorter duration, and absent exceptional circumstances, such that open durational alimony is inappropriate. Id. Rehabilitative alimony applies in situations where it is appropriate to permit one spouse the opportunity to obtain the training and/or education necessary for him or her to return to the workforce. Id. Finally, reimbursement alimony is reserved for those situations where one spouse has made financial contributions to the other spouse's education or professional training. Id. Each of the above-delineated types of alimony is further addressed below.

1. **Open Durational Alimony.** The adoption of open durational alimony constitutes one of the most prominent changes to pre-Amendment statutory law. Specifically, the term open durational alimony replaces the term permanent alimony in the statute. N.J.S.A. 2A:34-23(b). Thus, courts must complete an analysis of all fourteen factors delineated in the statute prior to deciding that an award of open durational alimony is appropriate:

> In each case where the court is asked to make an award of alimony, the court shall consider and assess evidence with respect to all relevant statutory factors. If the court determines that certain factors are more or less relevant than others, the court shall make specific written findings of fact and conclusions of law on the reasons why the court reached that conclusion. No factor shall be elevated in importance over any other factor unless the court finds otherwise, in which case the court shall make specific written findings of fact and conclusions of law in that regard.

N.J.S.A. 2A:34-23(c) further provides that,

> [i]n any case in which there is a request for an award of alimony, the court shall consider and make specific findings on the evidence about all of the statutory factors set forth in subsection b. of this section. For any marriage or civil union less than 20 years in duration, the total duration of alimony shall not, except in exceptional circumstances, exceed the length of the marriage or civil union. Determination of the length and amount of alimony shall be made by the court pursuant to consideration of all of the statutory factors set forth in subsection b. of this section. In addition to those factors, the court shall also consider the practical impact of the parties' need for separate residences and the attendant increase in living expenses on the ability of both parties to maintain a standard of living reasonably comparable to the standard of living established in the marriage or civil union, to which both parties are entitled, with neither party having a greater entitlement thereto.

The “exceptional circumstances” factors delineated by the statute include:

> (1) The ages of the parties at the time of the marriage or civil union and at the time of the alimony award;
>
> (2) The degree and duration of the dependency of one party on the other party during the marriage or civil union;
>
> (3) Whether a spouse or partner has a chronic illness or unusual health circumstance;
>
> (4) Whether a spouse or partner has given up a career or a career opportunity or otherwise supported the career of the other spouse or partner;
>
> (5) Whether a spouse or partner has received a disproportionate share of equitable distribution;
>
> (6) The impact of the marriage or civil union on either party's ability to become self-supporting, including but not limited to either party's responsibility as primary caretaker of a child;
>
> (7) Tax considerations of either party;

(8) Any other factors or circumstances that the court deems equitable, relevant and material.

While the September 2014 Amendment provides courts with a guideline for determining an appropriate alimony term, the permissive language of the statute illustrates that courts are not barred from awarding open durational alimony, or limited duration alimony for a term beyond twenty years, even under circumstances where the marriage lasted for a period of less than twenty years, should an analysis of the above factors support such a decision. Id. This differs from analyses that were made prior to the 2014 Amendment wherein it was not uncommon for marriages enduring fifteen years or more to have been considered "permanent alimony" cases.

In this regard, recent alimony reform affirms the principles set forth in Lepis and its progeny. More specifically, that "[t]he extent of actual economic dependency, not one's status as a wife [or husband], must determine the duration of support as well as its amount." Lepis, supra, 83 N.J. at 155, 416 A.2d 45. The New Jersey Supreme Court further examined this principle, opining that, while "[c]ourts must consider the duration of the marriage in awarding alimony, . . . the length of the marriage and the proper amount or duration of alimony do not correlate in any mathematical formula." Lynn v. Lynn, 91 N.J. 510, 518, 453 A.2d 539, 542 (1982). The parties in Lynn were married for six years and seven months, at which time plaintiff-husband filed a complaint for divorce. Id. at 512-13. The trial court found that defendant-wife had worked the first few years of the parties' marriage so as to allow her husband, who contributed little to no financial support to the household, to complete medical school and obtain his license. Id. The trial court additionally found that defendant had suffered from a pre-marital medical condition that deteriorated substantially throughout the parties' divorce litigation, rendering her unable to work at the time of trial. Id.

With this backdrop, defendant was awarded reimbursement alimony, as well as a "separate continuing alimony obligation." Id. at 518. In affirming the trial court's alimony award, the Supreme Court of New Jersey opined that "[w]here the circumstances of the parties diverge greatly at the end of a relatively short marriage, the more fortunate spouse may fairly be called upon to accept responsibility for the other's misfortune – the fate of their shared enterprise." Id. The Supreme Court in Gnall similarly cautioned lower courts and explicitly advised that they must refrain from creating "bright line rules" regarding both the amount and duration of alimony. Gnall, supra, 222 N.J. at 433, 119 A.3d 891. The parties in Gnall divorced following a fifteen-year marriage. Defendant-husband was the sole wage earner of the family, earning over $1,000,000 annually, while plaintiff-wife fulfilled the role of stay-at-home mother and homemaker. Id. at 419. Resting its decision almost entirely on the term of the parties' marriage, the trial court required defendant to pay limited duration alimony for eleven years. Id. at 420. On appeal, the Appellate Division reversed and remanded the lower court's alimony award, reasoning that a fifteen-year marriage is "not short term," thus precluding consideration of limited duration alimony. Id.

In ultimately remanding the appellate court's decision in this regard, the Supreme Court found that the Appellate Division

> inadvertently created a bright-line rule for distinguishing between a short-term and long-term marriage as it pertains to an award of permanent alimony . . . By not clarifying that the statement reflected only the fifteen-year marriage in this particular case, the Appellate Division made a generally applicable declaration. . . Such a holding removes the other [statutory] factors from consideration for alimony awards once a marriage reaches the fifteen-year mark. Our cases have consistently held that all [] factors must be considered and given due weight, and the duration of marriage is only one factor to be considered.

In Lynn, the Appellate Division affirmed the trial court's award of permanent and reimbursement alimony where the parties had been married for approximately seven years. Both parties were employed full time for the first three years of their marriage. Lynn, supra 91 N.J. at 512-13, 453 A.2d 539. Thereafter, defendant continued to work while plaintiff pursued his medical degree and earned little to no wages. Id. However, at the time of divorce, plaintiff was earning approximately $27,425 annually while defendant's earnings were limited to her social security disability payments totaling approximately $7,663 per year due to illness. Id. at 514. Defendant was diagnosed with Meniere's Disease, and her medical condition deteriorated substantially as nausea, slurred speech, sudden falls and hearing loss, among other symptoms, continued to progress. Id. As a result, defendant left work in 1979 and was unable to return to the workforce as of the time of trial. Id. The Appellate Division ultimately affirmed the lower court's determination:

> We stated in Lepis v. Lepis, 83 N.J. 139, 155, 416 A.2d 45 (1980), that "[t]he extent of actual economic dependency, not one's status as a wife [or husband], must determine the duration of support as well as its amount." Courts must consider the duration of the marriage in awarding alimony[.] However, the length of the marriage and the proper amount or duration of alimony do not correlate in any mathematical formula. Where the circumstances of the parties diverge greatly at the end of a relatively short marriage, the more fortunate spouse may fairly be called upon to accept responsibility for the other's misfortune – the fate of the shared enterprise. Under the facts of this case, both an initial lump-sum award of reimbursement alimony . . . and a separate continuing alimony obligation would be appropriate. Id.

The trial court in Jacobitti v. Jacobitti, 135 N.J. 571, 641 A.2d. 535 (1994), similarly required plaintiff to pay an ongoing alimony obligation where the parties had been married for approximately twelve years. In reaching its decision, the trial court not only considered the actual duration of the parties' marriage, but also defendant's multiple sclerosis diagnosis and plaintiff's concession that he had the "capacity financially to make any payment for support or alimony that the court may reasonably fix." Id. at 573.

An ongoing award of alimony was also ordered by the court in Cerminara v. Cerminara, 286 N.J.Super. 448, 669 A.2d 837 (App.Div. 1996), where the parties had been married for twelve years. On appeal, the lower court's award of permanent alimony was affirmed. According to the Appellate Division, the trial court appropriately analyzed the statutory factors and relevant case-law precedent, including Innes, Mahoney, and Lepis:

> Applying these well-settled and fundamentally sound principles to this case, we are satisfied that the record establishes that defendant is entitled to permanent rather than rehabilitative alimony. First, plaintiff has, in light of his earning capacity and assets, the means by which to meet a modest alimony payment of $200 per month, a figure stipulated by the parties. Second, as the trial court appropriately observed, defendant is 42 years old. In order to raise her children, she has not worked consistently during her 12 year marriage. To now expect defendant to find employment that will afford her a salary comparable to her ex-husband's is impractical and unfair . . . [T]here is no assurance that she will find suitable employment . . . and that if she does find such employment, that she would earn enough to maintain her present lifestyle and economic social status. In sum, we are satisfied that in these circumstances, the trial court did not err in awarding defendant permanent rather than rehabilitative alimony. Id. at 461-2.

The parties in Robertson v. Robertson, 381 N.J.Super. 199, 202, 885 A.2d 470, 472 (App.Div. 2005) were also married for approximately twelve years before plaintiff filed his Complaint for Divorce. On appeal, plaintiff challenged the lower court's award of permanent alimony, arguing that the trial court abused its discretion in awarding permanent alimony and suggesting that the court was limited to ordering a term of limited duration alimony. Id. at 206. The Appellate Division affirmed the lower court's permanent alimony award, finding that (1) defendant, unlike plaintiff, did not obtain a bachelor's degree; (2) defendant left her career as a secretary to care for the parties' children, with the consent of plaintiff; and (3) defendant never made any significant income in part-time employment during the parties' marriage. Id. According to the Appellate Division, defendant was "entitled to compensation for this 'transfer of earning power.'" Id.

The Appellate Division recently upheld a trial court's post-Amendment open durational alimony award where the parties had been married for fourteen years. B.G. v. E.G., No. A-0830-16T1, 2018 N.J.Super. Unpub. LEXIS 2012 (App. Div. August 31, 2018).[12] In arriving at the open durational term, the trial court in B.G. took into consideration the parties' six-year dating relationship prior to marriage, which the court equated to a long-term marriage of over twenty years. Id. The trial court further determined that plaintiff-wife would continue to be primarily responsible for the care of the parties' severely autistic son, who would likely require parental assistance into adulthood, among other considerations. Id. Although the Appellate Division disregarded the trial court's view of the parties' pre-marital romantic relationship as a basis for an award of open durational alimony, the term was nonetheless affirmed: "[T]he parties relationship prior to marriage in itself was not an exceptional circumstance under N.J.S.A. 2A:34-23(c)[. W]e nonetheless agree with the trial judge that exceptional circumstances were demonstrated on this record without consideration of the pre-nuptial relationship." Id.

The Appellate Division similarly affirmed the trial court's award of open durational alimony in yet another unreported decision entered in July 2018. In Milcarsky v. Milcarsky, No.

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[12] B.G. is an unreported trial court opinion. Per R. 1:36-3, "[n]o unpublished opinion shall constitute precedent or be binding upon any court . . . [N]o unpublished opinion shall be cited by any court. No unpublished opinion shall be cited to any court by counsel unless the court and all other parties are served with a copy of the opinion and of all contrary unpublished opinions known to counsel."

A-2998-16T2, 2018 N.J.Super. Unpub. LEXIS 1747 (App. Div. July 20, 2018)[13], the parties were married for approximately nine years before separating. Id. However, no Complaint for Divorce was filed for approximately eleven years post-separation. Id. In ultimately awarding defendant-wife open durational alimony, the trial court opined that "physical separation and the payment of support does not equate to a clear termination of a marital relationship." Id. The Appellate Division affirmed the trial court's award of open durational alimony, finding that the parties were "married for over twenty years, which qualified plaintiff for an award of open durational alimony." Id.

An analysis of relevant case-law demonstrates that both statutory law and case-law precedent provide courts with the requisite guidelines to determine the appropriate duration of an alimony award. As is illustrated in this article the duration of an alimony award is determined on the facts and circumstances of each case. Courts have broad discretion and authority to enter alimony awards for an amount and duration that is both fair and equitable in light of the circumstances presented. Thus, it is the facts and circumstances of any given case that determine the nature of the ultimate alimony award and its duration.

2. Limited Duration Alimony. Limited duration alimony was created to address a dependent spouse's financial needs incident to divorce following a "shorter-term marriage where permanent or rehabilitative alimony would be inappropriate or inapplicable but where, nonetheless, economic assistance for a limited period of time would be just." Gnall, supra, 222 N.J. at 431, 119 A.3d 891. As stated previously, the statute permits modification to a limited

[13] Milcarsky is an unreported trial court opinion. Per R. 1:36-3, "[n]o unpublished opinion shall constitute precedent or be binding upon any court . . . [N]o unpublished opinion shall be cited by any court. No unpublished opinion shall be cited to any court by counsel unless the court and all other parties are served with a copy of the opinion and of all contrary unpublished opinions known to counsel."

duration alimony award upon a showing of changed circumstances, “or upon the nonoccurrence of circumstances that the court found would occur at the time of the award. The court may modify the amount of such an award, but shall not modify the length of the term except in unusual circumstances.” N.J.S.A. 2A:34-23(c). Regarding an appropriate term for limited duration alimony, the statute similarly provides that “the court shall consider the length of time it would reasonably take for the recipient to improve his or her earning capacity to a level where limited duration alimony is no longer appropriate.” Id.

Simply put, an award of limited duration alimony is warranted under circumstances where a court determines that financial need for alimony is established, but the unique facts of the marriage and an analysis of the statutory factors do not support an award of open durational alimony. Cox v. Cox, 335 N.J.Super. 465, 476, 762 A.2d 1040 (App.Div. 2000). For example, in J.E.V. v. K.V., 426 N.J.Super. 475, 480-84, 45 A.3d 1001 (App.Div. 2012), the Appellate Division affirmed the trial court’s award of limited duration alimony for a ten year period under circumstances where the parties were married for approximately nine years prior to the divorce action; they lived an affluent lifestyle due, in large part, to plaintiff-husband’s successful medical practice; and evidence produced at trial supported the court’s findings that defendant-wife’s medical condition did not make her totally disabled such that she could not return to the workforce.

The trial court’s determination was affirmed on appeal:

> Here, the judge found that the parties were married for less than ten years. She correctly considered this marriage to be of intermediate duration. The judge found, and we agree, that such a term merits an alimony award because defendant was economically dependent on plaintiff for most of the marriage . . . Financial dependency, however, does not dictate an award of permanent alimony in all instances.

> In certain circumstances, the inability of the dependent spouse to ever earn enough income to maintain the marital lifestyle on her own may be an appropriate consideration . . . This factor, however, is relevant only in the determination of the length of the limited duration alimony.
>
> Here, the record demonstrates the need to award alimony. During the second half of the marriage, defendant became economically dependent on plaintiff. Plaintiff and defendant also formed a marital partnership, particularly when plaintiff formed his private practice . . . There is also an educational disparity between the parties that permits plaintiff to earn substantial income at levels that defendant's education and existing skills do not permit. Yet, this is still a nine-and-one-half year marriage and defendant's complete economic dependency arose only in the last half of the marriage . . . This marriage is intermediate in length and complete economic dependency existed for a limited time. Id. at 489-90.

The Appellate Division ultimately affirmed the duration of the alimony award, reasoning that the award was a "fair and equitable response to the particular facts of this case." Id. In so deciding, the Appellate Division held that, "given the intermediate term of the marriage, defendant's age, and the limited duration of the very affluent lifestyle defendant wishes to maintain, coupled with the finding that defendant's mental health condition did not render her totally and permanently disabled, the ten-year and generous limited duration award fashioned by [the judge] is an equitable response to the circumstance of both parties." Id. at 490-1.

In Elrom v. Elrom, 439 N.J.Super. 424, 427-8, 110 A.3d 69 (App.Div. 2015), the court entered a three-year limited duration alimony award where the parties had been married for five years. In so deciding, the court not only looked to the five-year term of the parties' marriage, but based its decision "upon the differential in their earnings, Plaintiff's needs and Defendant's ability to pay." Id. at 431. Following a five-day trial, the court found that plaintiff-wife earned approximately $175,000 per year during the parties' marriage but had been laid off from her employment in 2008, just prior to the birth of the parties' first child. Id. at 428. Thereafter, plaintiff was employed intermittently on a part-time basis due in large part to the parties' agreement that she would stay at home with the children. Id. at 429. Plaintiff subsequently obtained employment as an associate attorney earning approximately $80,000 per year. However, her employment was terminated just prior to trial. Defendant-husband earned upwards of $193,000 annually during the marriage and, at the time of trial, had recently obtained employment earning a base salary of $120,000 per year, with the potential to earn $295,000 annually. Id.

The trial court in Elrom not only considered the income and earning potential of the parties, but also recognized that they had enjoyed an "upper middle class, at times, lavish lifestyle." Id. In calculating the amount and duration of alimony, the court imputed plaintiff's income at $80,640 annually, which represented the earnings she received from her last full-time job as an associate attorney. Id. at 432. The court imputed $230,731 to defendant, representing a three-year gross average of his earnings. Id. On appeal, the Appellate Division reversed and remanded certain aspects of the sum of alimony ordered but did not disturb the duration of the award. Id. at 445.

The Appellate Division reversed and remanded the trial court's award of permanent alimony in Schwartz v. Schwartz, No. A-6948-03T5, 2005 N.J.Super. Unpub. LEXIS 355 (App. Div. Nov. 2, 2005)[14], finding that the trial court failed to explain why the parties' nine-year marriage "was considered a sufficiently long-term to warrant permanent alimony in light of plaintiff's relatively young age, college degree and employment history." Id. In so deciding, the

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[14] Schwartz is an unreported trial court opinion. Per R. 1:36-3, "[n]o unpublished opinion shall constitute precedent or be binding upon any court . . . [N]o unpublished opinion shall be cited by any court. No unpublished opinion shall be cited to any court by counsel unless the court and all other parties are served with a copy of the opinion and of all contrary unpublished opinions known to counsel."

appellate court opined that, "[g]enerally, only spouses who are leaving lengthy marriages that involve 'prolonged economic dependence and sustained contribution to [the] marital enterprise' are deemed 'deserving' of permanent alimony." Id.

In Christopher v. Christopher, No. A-6444-06T3, 2009 N.J.Super. Unpub. LEXIS 1761 (App. Div. July 7, 2009)[15], the appellate court reversed and remanded the trial court's permanent alimony award under circumstances where the parties were married for approximately nine years, during which both parties earned wages through employment. According to the appellate court,

> The record shows that, while the parties were married, defendant continued her career as a personal trainer. We are convinced that, under the circumstances, an award of permanent alimony was not appropriate and the court should have instead awarded defendant limited duration alimony.
>
> We therefore reverse the provision of the judgment awarding defendant permanent alimony. We remand the matter to the trial court to determine the appropriate length of time during which limited duration alimony should be paid. Id.

The Appellate Division further stated that, "[a]lthough there is no bright line between marriages of long and short duration, this marriage is more appropriately characterized as having a short rather than a long duration." Id.

The appellate court in Valente v. Valente, No. A-1593-06T1, 2009 N.J.Super. Unpub. LEXIS 331 (App. Div. Jan. 27, 2009)[16] reversed and remanded the trial court's award of permanent

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[15] Christopher is an unreported trial court opinion. Per R. 1:36-3, "[n]o unpublished opinion shall constitute precedent or be binding upon any court . . . [N]o unpublished opinion shall be cited by any court. No unpublished opinion shall be cited to any court by counsel unless the court and all other parties are served with a copy of the opinion and of all contrary unpublished opinions known to counsel."

[16] Valente is an unreported trial court opinion. Per R. 1:36-3, "[n]o unpublished opinion shall constitute precedent or be binding upon any court . . . [N]o unpublished opinion shall be cited by any court. No

alimony for an award of limited duration alimony where the parties had been married for approximately twelve years. According to the appellate court:

> Considering plaintiff's age and intelligence as well as the fact that her children are both of school age, we see no reason why she cannot obtain employment within a reasonable time, and an award of limited duration alimony will give her an incentive to do so. Moreover, at the end of a limited alimony term, plaintiff may seek permanent alimony or an extension of limited alimony if her earnings are insufficient to maintain her lifestyle without alimony.

In sum, and according to the relevant and applicable case-law precedent, the duration of the marriage is often the defining distinction between an award of limited duration and open durational alimony. Id.

3. Rehabilitative Alimony. Rehabilitative alimony was first addressed in the landmark case of Lepis, supra, 83 N.J. at 162, 416 A.2d 45, wherein the Court defined it as a short-term obligation awarded to provide financial support to a dependent spouse while he or she prepares to reenter the workforce, often through training or further education. Rehabilitative alimony is effectively an award "from one party in a divorce [to] enable [a] former spouse to complete the preparation necessary for economic self-sufficiency." Hill v. Hill, 91 N.J. 506, 509, 453 A.2d 537 (1982). Thus, the foundation for an award of rehabilitative alimony rather than an open durational award is the expectation that the dependent spouse will be able to obtain gainful employment at a future date. Shifman v. Shifman, 211 N.J.Super. 189, 194-95, 511 A.2d 687 (App.Div. 1986).[17] Should the supported spouse be unsuccessful in obtaining employment

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unpublished opinion shall be cited to any court by counsel unless the court and all other parties are served with a copy of the opinion and of all contrary unpublished opinions known to counsel."

[17] In Shifman, the Appellate Division affirmed the trial court's refusal to modify or increase defendant-husband's rehabilitative alimony obligation, as set forth in the parties' Marital Settlement Agreement, due

required for his or her financial self-sufficiency as contemplated at the time of the divorce, "this may properly be viewed as a changed circumstance which would justify the continuation of alimony beyond the original termination date." Id. at 195.

In Hill, the New Jersey Supreme Court found that the Appellate Division erred in failing to consider entering an award of rehabilitative (or reimbursement) alimony where plaintiff-wife earned money to support the marital household while defendant-husband obtained his dental degree and license. Hill, supra, 91 N.J. at 508-10, 453 A.2d 537. At the time of the parties' divorce, plaintiff was pursuing her graduate education and required funds to do so; nonetheless, the trial court failed to award alimony. Id. In support of its decision to remand the matter, the Court opined that rehabilitative or reimbursement alimony might be appropriate under the circumstances, especially considering the needs of plaintiff, and taking into account defendant's ability to pay. Id. In so deciding, the Court reinforced the principle established in Lepis and Mahoney:

> In Lepis v. Lepis, [] we approved of the concept of rehabilitative alimony where a short-term or lump-sum award from one party in a divorce will enable his former spouse to complete the preparation necessary for economic self-sufficiency. Today, in Mahoney, we introduced the concept of reimbursement alimony, in cases where fairness requires that one spouse be reimbursed for financial contributions used by the partner in obtaining a professional degree or license where the contributions are made with the expectation that both spouses will derive financial and material benefits. Id. at 509–10.

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to Plaintiff-wife's failure to demonstrate changed circumstances warranting a review. The Appellate Division additionally affirmed that Plaintiff's application to extend the term of alimony, set to terminate in approximately one year, was premature. However, the Appellate Division opined that, contrary to the trial court's decision, a party seeking modification of rehabilitative alimony need not satisfy a higher burden than a party seeking modification of permanent alimony. Id. at 193.

The primary objective of an award of rehabilitative alimony is to provide a remedy for the spouse who postponed his or her own education, training or employment to support the household, and provide him or her with the financial assistance necessary to "enhance and improve the earning capacity of [that] economically dependent spouse." Cox, supra, 335 N.J.Super.at 475, 762 A.2d 1040. See also Mahoney, supra, 91 N.J. at 504, 453 A.2d 527. Further, and as confirmed by the statute, rehabilitative alimony is not an exclusive remedy, as "rehabilitative alimony in addition to permanent alimony is favored, where appropriate." Hughes v. Hughes, 311 N.J. Super. 15, 709 A.2d 261 (App. Div. 1998).

The parties in Hughes were married for ten years, the vast majority of which defendant-wife spent as a homemaker while plaintiff-husband earned a significant, six-figure income. Id. at 20-3. The trial court also found that defendant had been induced by plaintiff to give up employment opportunities to raise the parties' child. Id. Nevertheless, the trial court entered an award of rehabilitative alimony. Id. The Appellate Division remanded the trial court's determination finding that an award of rehabilitative and permanent alimony was appropriate based on the record before it. According to the Appellate Division, such an award was appropriate based on defendant's need for support; plaintiff's ability to pay; defendant's age and the reality that she would require additional training based on her extended absence from the workforce; the length of the parties' marriage and the lofty lifestyle enjoyed by the family throughout the marriage; and defendant's responsibility in predominantly caring for the minor child throughout the marriage. Id. at 31. The Appellate Division further addressed the trial court's mischaracterization of the parties' marriage as short-term:

> In this case, the judge stressed that he considered this to be a short-term marriage, justifying the brief and minimal amount of alimony, even considering the even briefer period of slightly increased rehabilitation. First, we take issue with a ten-year marriage being considered a short-term marriage. By today's standards, it is not. We must look to the particular facts of this case. Id. at 31.

> [o]n remand, the trial judge should reconsider [alimony] with a view that defendant is to receive permanent alimony, but perhaps at some reduced rate to reflect a marriage of this medium length. The rehabilitative alimony ordered should be blended into such an award so that once her capacity to earn income is established, defendant's lifestyle can be maintained, perhaps not at the full level of plaintiff's, but somewhat reflective of how the parties lived during their marriage.

In so guiding the trial court, the appellate division confirmed that the "granting of rehabilitative alimony does not mean that permanent alimony must be rejected." Id. at 32.

The Appellate Division in Milner v. Milner, 288 N.J.Super. 209, 211-13, 672 A.2d 206 (App.Div.1996) similarly reversed and remanded the trial court's refusal to convert rehabilitative alimony to an award of permanent alimony under circumstances where the fifty-five-year-old supported spouse demonstrated her inability to achieve financial self-sufficiency, despite her efforts to secure employment post-divorce. The Appellate Division additionally concluded that the parties' marriage was long term, the dependent spouse had remained out of the workforce for a period of twenty years to raise the parties' children, and the supporting spouse had the financial wherewithal to pay permanent alimony and support his new family. Id. at 215.

The Appellate Division in Heinl v. Heinl, 287 N.J. Super. 337, 346 (App. Div. 1996), reversed and remanded a permanent alimony award where the parties enjoyed a "relatively short marital life" of "a period of seven years and eight months" prior to separating. In so deciding, the

Appellate Division opined that, "[a]lthough the judge indicated in his findings that he considered the duration of the marriage in determining that permanent alimony was warranted, the court failed to fully articulate why a relatively short marital life required an award of permanent alimony rather than an award of rehabilitative alimony." Id. According to the appellate court, in light of the facts and circumstances of the case, "rehabilitative alimony should have been seriously considered here." Id.

4. Reimbursement Alimony. Reimbursement alimony is defined within subsection (e) of N.J.S.A. 2A:34-23, which states: "Reimbursement alimony may be awarded under circumstances in which one party supported the other through an advanced education, anticipating participation in the fruits of the earning capacity generated by that education. An award of reimbursement alimony shall not be modified for any reason." The purpose of reimbursement alimony is to effectively compensate a spouse who made financial sacrifices resulting in a realization of a lower marital standard of living, thereby permitting the other spouse to limit or forgo gainful employment to secure an advanced degree or license. N.J.S.A. 2A:34-23(e).

Notably, the impetus behind the implementation of reimbursement alimony was twofold: (1) reimbursement alimony was created to contest the notion that one's professional degrees and/or licenses are "property" subject to equitable distribution; and to (2) recognize the reality that there must be an equitable remedy in situations where one spouse is ultimately supported by the other while he or she pursues an advanced degree or training. Gnall, supra, 222 N.J. at 433, 119 A.3d 891; see also Mahoney, supra, 91 N.J. at 500-01, 453 A.2d 527. Said another way, reimbursement alimony is "awarded appropriately to a spouse who has made financial sacrifices, resulting in a temporarily reduced standard of living, in order to allow the other spouse to secure an advanced degree or professional license to enhance the parties' future standard of living." Mahoney, supra, 91 N.J. at 500-01, 453 A.2d 527. However, an award of reimbursement alimony is limited to those monetary contributions made with “a mutual and shared expectation” that both parties would derive a material benefit, and consequently, greater standard of marital living. Id.

In Mahoney, the Supreme Court of New Jersey ultimately remanded the lower court’s decision and required that the court determine whether reimbursement alimony should be awarded. Mahoney, supra, 91 N.J. at 506, 453 A.2d 527. The parties were married for a period of approximately eight years, and for much of the marriage, were both gainfully employed and sharing in the household expenses. Id. at 492. However, plaintiff-husband returned to school to obtain his M.B.A. and was unemployed for a period of approximately sixteen months. Id. During this time, defendant-wife maintained the parties’ expenses with little to no contribution from plaintiff. Id. In ultimately remanding the matter for further proceedings below, the Mahoney Court opined that

> [w]here a partner to a marriage takes the benefits of his spouse’s support in obtaining a professional degree or license with the understanding that future benefits will accrue and inure to both of them, and the marriage is then terminated without the supported spouse giving anything in return, an unfairness has occurred that calls for a remedy. Id. at 500.

In further support of its determination, the Court explained that, under such circumstances, the supporting spouse made financial contributions and sacrifices to allow the other spouse to obtain an advanced degree with the expectation that both parties would receive the benefit. Id. The Court thus concluded that it would be "patently unfair that the supporting spouse be denied the mutually anticipated benefit while the supported spouse keeps not only the degree, but also all of the financial and material rewards flowing from it.” Id.

Similar to rehabilitative alimony, reimbursement alimony may be awarded in conjunction with limited duration or open durational alimony. N.J.S.A. 2A:34-23. Thus, there will be circumstances where it is equitable for a supporting spouse to be reimbursed for the financial contributions and sacrifices he or she made while the other spouse obtained his or her advanced degree or training. "Such reimbursement alimony should cover *all* financial contributions towards the former spouse's education, including household expenses, educational costs, school travel expenses and any other contributions used by the supported spouse in obtaining his or her degree or license." Mahoney, supra, 91 N.J. at 534, 453 A.2d 527.

Post-Judgment Modification. Orders entered as to alimony, whether entered by a court or pursuant to agreement of the parties, "may be revised and altered by the court from time to time as circumstances may require." N.J.S.A. 2A:34-23. As stated previously, courts have the statutory authority to both establish and revise such orders as circumstances may require. Lepis, supra, 83 N.J. at 145, 416 A.2d 45. See also Crews, supra, 164 N.J. at 17, 751 A.2d 524. "As a result of this judicial authority, alimony and support orders define only the present obligations of the former spouses. Those duties are always subject to review and modification on a showing of 'changed circumstances.'" Lepis, supra, 83 N.J. at 146, 416 A.2d 45. See also Landau v. Landau, 461 N.J.Super. 107, 218 A.3d 823 (App. Div. 2019). Courts employ a two-step process, first enunciated in Lepis, to determine whether there exists a change in circumstance warranting review and modification of a pre-existing alimony award. Notably, the party seeking modification bears the burden of proving that such changed circumstances exist, and that the relief sought is warranted. Lepis, supra, 83 N.J. at 157, 416 A.2d 45. The two-prong test is as follows:

> A prima facie showing of changed circumstances must be made before a court will order discovery of an ex-spouse's financial status. When the movant is seeking modification of an alimony award, that party must demonstrate that changed circumstances have substantially impaired the ability to support himself or herself. This requires full disclosure of the dependent spouse's financial status, including tax returns . . . Only after the movant has made this prima facie showing should the respondent's ability to pay become a factor for the court to consider.

Thus, a court must review the level of need of the dependent spouse in relation to the marital standard of living, amongst other factors, when modification to an alimony award is sought. Crews, supra, 164 N.J. at 29, 751 A.2d 524. To the extent that need is met by the alimony award in effect and there exist no other changed circumstances, modification is inappropriate, and the current level of support should be maintained. Id.

Naturally, there exists no exhaustive list of "changed circumstances" that would warrant a court's review and modification of alimony. However, one's decrease in earnings, loss of employment, retirement, illness and/or disability, cohabitation, and remarriage are those topics frequently addressed by courts relative to requests for modification of alimony. Lepis, supra, 83 N.J. at 151, 416 A.2d 45. Indeed, while the statute explicitly identifies retirement (actual and prospective), loss of income, and cohabitation as potential life events that may warrant a review and modification of alimony, it too recognizes that these explicitly referenced categories do not qualify as a comprehensive list. N.J.S.A. 2A:34-23. This article will address post-judgment modification of alimony in the context of unemployment and/or diminished earnings, retirement, and cohabitation.

1. Unemployment, Diminished Earnings, and Income Imputation. N.J.S.A. 2A:34-23(k) requires courts to consider a list of ten factors when determining whether changed circumstances exist warranting review and modification of a supporting spouse’s alimony obligation incident to his or her unemployment or diminished earnings:

> (1) The reasons for any loss of income;
>
> (2) Under circumstances where there has been a loss of employment, the obligor's documented efforts to obtain replacement employment or to pursue an alternative occupation;
>
> (3) Under circumstances where there has been a loss of employment, whether the obligor is making a good faith effort to find remunerative employment at any level and in any field;
>
> (4) The income of the obligee; the obligee's circumstances; and the obligee's reasonable efforts to obtain employment in view of those circumstances and existing opportunities;
>
> (5) The impact of the parties' health on their ability to obtain employment;
>
> (6) Any severance compensation or award made in connection with any loss of employment;
>
> (7) Any changes in the respective financial circumstances of the parties that have occurred since the date of the order from which modification is sought;
>
> (8) The reasons for any change in either party's financial circumstances since the date of the order from which modification is sought, including, but not limited to, assessment of the extent to which either party's financial circumstances at the time of the application are attributable to enhanced earnings or financial benefits received from any source since the date of the order;
>
> (9) Whether a temporary remedy should be fashioned to provide adjustment of the support award from which modification is sought, and the terms of any such adjustment, pending continuing employment investigations by the unemployed spouse or partner; and
>
> (10) Any other factor the court deems relevant to fairly and equitably decide the application.

> Under circumstances where the changed circumstances arise from the loss of employment, the length of time a party has been involuntarily unemployed or has had an involuntary reduction in income shall not be the only factor considered by the court when an application is filed by a non-self-employed party to reduce alimony because of involuntary loss of employment. The court shall determine the application based upon all of the enumerated factors, however, no application shall be filed until a party has been unemployed, or has not been able to return to or attain employment at prior income levels, or both, for a period of 90 days. The court shall have discretion to make any relief granted retroactive to the date of the loss of employment or reduction of income.

In the matter of Clarke v. Clarke, 349 N.J.Super. 55, 57, 793 A.2d 34 (App.Div. 2002) the court appropriately decreased plaintiff-husband's alimony obligation where the trial judge found that the amount of overtime available to plaintiff had been significantly diminished due to job-related changes that were out of his control. The trial court further acknowledged that the availability of overtime to plaintiff was likely to remain diminished, and in fact may lessen in the future based upon evidence submitted at the time of trial. Id.

Courts are also authorized to impute income to parties deemed to be voluntarily unemployed or underemployed. Dorfman v. Dorfman, 315 N.J.Super. 511, 516, 719 A.2d 178 (App.Div. 1998). Before considering imputation of income, a court must find that the litigant is voluntarily unemployed or underemployed. Id. In Dorfman, the appellate court reversed and remanded the trial court's decision to impute income to the payor spouse under circumstances where defendant-husband filed an application seeking relief from his support obligation after having been terminated from his employment of seventeen years. Id. Defendant obtained subsequent employment, however, his earnings were reduced from approximately $100,000 to $60,000 as a result of same. Id. The trial court denied defendant's request to reduce his support obligations, finding that there existed no substantial change in circumstances warranting such relief. According to the trial court,

> I find that there is no substantial change in circumstance. He has earned between $90,000 and $120,000 in the past 5 years. According to the guidelines there can be an imputation of income at this point, and that would be about $100,000 a year, and I'm doing that. Even with his loss of car allowance and insurance provided by his former firm, his circumstances have not changed because he has less support to pay. His original support obligation, alimony and child support have decreased 37 percent, and his income has decreased 38 percent. There's also money due from his partnership buy out, and with all of that I find under the totality of the circumstances, I don't find that you've proven to me that there is a substantial change in circumstances. Id.

The appellate court ultimately reversed and remanded the trial court's decision to impute income to defendant for additional discovery and further proceedings. Id. Per the appellate court,

> All the information then before the court leads to the conclusion he was not underemployed. Defendant was involuntarily terminated from his employment of the seventeen preceding years in September 1996. There was nothing in the record to suggest his termination was induced by misconduct, or that it was voluntary. He immediately sent out resumes, followed through with telephone calls, and arranged for interviews. He received one offer in the $40,0000 range and eventually accepted employment at the $60,000 per annum rate in October 1996. This was a significant salary reduction, clearly constituting changed circumstances. Defendant also lost the benefit of employer-supplied automobile expenses allowance, health insurance, and life and disability insurance. Id.

Thus, imputation of income for purposes of determining alimony is appropriate under circumstances where the facts and circumstances illustrate that a litigant is voluntarily unemployed or underemployed. Id.

Courts are also called upon to examine assets in determining an appropriate alimony obligation. Although some assets may be exempt from those considered in a calculation of alimony, including inheritances and those assets previously distributed incident to divorce, even income derived from exempt assets may be considered in a court's initial alimony award, or modification of same, when appropriate. Aronson v. Aronson, 254 N.J.Super. 354, 363-64, 585 A.2d 956 (App.Div.1991). In Aronson, the court determined that it was appropriate to consider income generated by defendant-husband's exempt inheritance for purposes of determining whether to modify alimony. Id. Specifically, defendant sought a post-divorce reduction to his alimony obligation, claiming that his financial situation deteriorated since the parties' divorce. Id. On remand, the appellate court directed the trial court to make a thorough analysis of the parties' financial circumstances, including the income generated from defendant's inheritance. According to the court, "there is nothing about [] inheritance income which entitles it to insulation from a Lepis motion. Although the inheritance itself is exempt from . . . the income generated by it is no different from income generated by any other asset, exempt or otherwise, for an alimony analysis. Id.

The New Jersey Supreme Court case of Miller, supra, 160 N.J. at 408, is instructive on the issue of imputation of income. The parties in Miller were married for twenty-one years prior to their divorce. Id. at 413-14. Throughout the marriage, defendant-husband worked full-time earning significant wages, while plaintiff-wife fulfilled the role of homemaker. Id. At the time of divorce, defendant earned in excess of $1,000,000 annually. Id. at 414. The parties entered into a Marital Settlement Agreement which provided for, amongst other items of settlement, defendant's alimony obligation to plaintiff. Id. Defendant subsequently became ill and was terminated from his employment as a result. The trial court determined that defendant's loss of employment, and thus diminished income, was involuntary, constituting a change in circumstance under Lepis. Id. at 415. In ultimately decreasing defendant's alimony obligation, the trial court considered both parties' investment income, among other factors, in arriving at a modified award. Id. The Appellate Division affirmed the trial court's consideration of the parties' investment income, relying on principles enunciated in Innes and Aronson. Id. at 422.

According to the Miller Court, "[r]eal property, capital assets, investment portfolio[s], and capacity to earn by 'diligent attention to . . . business' are all appropriate factors for a court to consider in the determination of alimony modification." Id. at 420-21. The Court further opined that, because "both income earned through employment and investment income may be considered in a court's calculation of an alimony award, it follows that there is no functional difference between imputing income to the supporting spouse earned from employment versus that earned from investment." Id. at 423. However, no bright-line or universal rule should be imposed by courts when imputing a reasonable rate of return on assets for purposes of imputing income to a party. Overbay v. Overbay, 376 N.J.Super. 99, 111, 869 A.2d 435 (App.Div. 2005).

In Overbay, the Appellate Division reversed and remanded the lower court's imputation of income to defendant-wife under circumstances where the trial court erroneously attributed a 7.4% return rate on her inheritance assets. Id. at 105. According to the Appellate Division, "[i]f the trial court determines that defendant's investments provide a prudent balance between investment risk and investment return, then additional income should not be imputed even though a more aggressive investment strategy might provide additional earnings. Defendant is not required to put her capital at risk . . . by pursuing an investment strategy that is neither reasonable nor prudent." Id. at 112-13.

The principle of income imputation applies similarly in the context of loss of employment. The court in Innes held that both the income and assets of both parties are to be considered in any alimony determination. Innes, supra, 117 N.J. at 246, 569 A.2d 770. There, the parties entered into an agreement resolving, among other issues, plaintiff-husband's alimony obligation to defendant-wife. Id. Plaintiff sought termination of his alimony obligation when he was laid off from work, asserting that he no longer earned income. Id. The trial court decreased plaintiff's alimony obligation; however, in so doing, the trial court focused exclusively upon the income received by plaintiff from his Social Security benefits, pension payments, and annuity. Id.

The Appellate Division remanded the matter to the trial court for further proceedings, requiring that the judge consider all assets available to both parties for purposes of determining alimony, as well as a determination of the parties' respective financial circumstances. Id. at 248. In guiding the judge, the Innes court further opined that "a judge generally would consider the availability of liquid assets such as life-time pension and annuity payments before considering the availability of a home in which a spouse is living with children. Id. Thus, a supporting spouse's income earned from investments should be considered in the calculus to determine his or her ability to pay alimony. Miller, supra, 160 N.J. at 421, 734 A.2d 752.

The Golian court analyzed alimony modification in the context of alleged disability. Golian v. Golian, 344 N.J.Super. 337, 781 A.2d 1112 (App.Div. 2001). In Golian, plaintiff-wife challenged the alimony award set forth in the parties' Final Judgment of Divorce, arguing that the court erred in imputing income to her. Id. at 338. Plaintiff argued that, while the trial court acknowledged she had been receiving Social Security disability benefits, the judge determined that plaintiff had the burden of demonstrating her inability to work. Id. On appeal, the Appellate

Division reversed and remanded the matter, holding that an adjudication of disability from the Social Security Administration constituted the requisite *prima facie* showing that plaintiff was disabled and therefore, unable to be gainfully employed for purposes of imputation of income. Id. at 341. The court further opined that the burden shifted to defendant-husband to refute the presumption. Id. at 342-33.

The court in Gilligan v. Gilligan, 428 N.J.Super. 69, 50 A.3d 110 (App.Div. 2012) was similarly confronted with a situation in which a party sought to terminate his post-divorce child support obligation and in support, submitted his Social Security Disability award letter to the court for review. In ultimately denying his application, the Gilligan court addressed the principles set forth in Golian, as well as its parameters, in determining that: (1) Golian does not stand for the proposition that a Social Security Disability award itself is sufficient to terminate one's support obligation; (2) a party alleging inability to work based on a post-divorce disability must provide more evidence to the court than the Social Security Disability award letter itself, and must provide the other party with an opportunity to review relevant medical reports; (3) a Social Security Disability award "cannot, without further inquiry, automatically be considered tantamount to a finding by the [Social Security Administration] that the person cannot work or earn *any money at all.* To the contrary, under the [Social Security Administration's] own definitions and regulations, a disabled person may work and earn up to a maximum amount of income each year . . .;" (4) a Social Security Disability award letter itself does not mean that the recipient cannot work at all, and it is the recipient's burden of proof to produce documentation supporting the inability to work; and (5) a court may consider the ability to earn additional income under the Social Security Administration's regulations in determining the level of his or her ongoing support obligation. Id. at 73-74.

2. **Retirement.** Modification of one's alimony obligation incident to an obligor's retirement is governed by N.J.S.A. 2A:34-23(j). Pursuant to N.J.S.A. 2A:34-23(j), alimony may be modified or terminated "upon the prospective or actual retirement of the obligor." N.J.S.A. 2A:34-23(j)(1) applies to termination or modification of an alimony obligation established after the effective date of alimony reform, September 10, 2014. Landers v. Landers, 444 N.J.Super. 315, 133 A.3d 637 (App.Div.2016). The amended statute now provides for a rebuttable presumption that alimony terminates upon the payor reaching full retirement age, or the age at which one is eligible to receive full Social Security benefits. However, N.J.S.A. 2A:34-23(j) is not the "Happy Birthday" statute, as one's alimony obligation does not automatically terminate upon an obligor having reached full Social Security retirement age. Conversely, the obligor must reach full Social Security age and retire to seek relief under the amended statute.

N.J.S.A. 2A:34-23(j)(1). N.J.S.A. 2A:34-23(j)(1) states in pertinent part: "There shall be a rebuttable presumption that alimony shall terminate upon the obligor spouse or partner attaining full retirement age, except that any arrearages that have accrued prior to the termination date shall not be vacated or annulled. The court may set a different alimony termination date for good cause shown. . ." N.J.S.A. 2A:34-23(j)(1) further provides that the rebuttable presumption may be overcome if, upon consideration of certain statutory factors, the court determines that the obligor should continue to pay alimony. These factors are delineated within the statute as follows:

(a) The ages of the parties at the time of the application for retirement;

(b) The ages of the parties at the time of the marriage or civil union and their ages at the time of entry of the alimony award;

(c) The degree and duration of the economic dependency of the recipient upon the payor during the marriage or civil union;

(d) Whether the recipient has foregone or relinquished or otherwise sacrificed claims, rights or property in exchange for a more substantial or longer alimony award;

(e) The duration or amount of alimony already paid;

(f) The health of the parties at the time of the retirement application;

(g) Assets of the parties at the time of the retirement application;

(h) Whether the recipient has reached full retirement age as defined in this section

(i) Sources of income, both earned and unearned, of the parties;

(j) The ability of the recipient to have saved adequately for retirement; and

(k) Any other factors that the court may deem relevant.

Notably, should the court determine that the statutory presumption has been overcome, the court must then analyze and apply the factors as set forth in N.J.S.A. 2A:34-23(b) to determine whether modification or termination of alimony is appropriate under the circumstances of the case. Further, "[i]f the obligor intends to retire but has not yet retired, the court shall establish the conditions under which the modification or termination of alimony will be effective." N.J.S.A. 2A:34-23(j)(1).

Perhaps one of the most significant aspects of alimony reform involves applications for modification and/or termination of one's alimony obligation in the context of early retirement, be it actual or prospective. N.J.S.A. 2A:34-23(j)(2) covers termination of alimony where the payor seeks relief based on his or her early retirement. Landers, supra, 444 N.J.Super. at 322, 133 A.3d 637. Specifically, under such circumstances, the statute prescribes that the moving party now has the burden of proving, by a preponderance of the evidence, that his or her prospective or actual early retirement is both reasonable and sought in good faith. N.J.S.A. 2A:34-23(j)(2). In any application for early retirement, both parties must submit their respective current and prior Case Information Statements for the court's review. Id. Further, the statute sets forth eight factors for courts to analyze in determining whether or not the payor has met his or her burden as set forth above; namely, that the payor's prospective or actual early retirement is reasonable and sought in good faith:

> (a) The age and health of the parties at the time of the application;
>
> (b) The obligor's field of employment and the generally accepted age of retirement for those in that field;
>
> (c) The age when the obligor becomes eligible for retirement at the obligor's place of employment, including mandatory retirement dates or the dates upon which continued employment would no longer increase retirement benefits;
>
> (d) The obligor's motives in retiring, including any pressures to retire applied by the obligor's employer or incentive plans offered by the obligor's employer;
>
> (e) The reasonable expectations of the parties regarding retirement during the marriage or civil union and at the time of the divorce or dissolution;
>
> (f) The ability of the obligor to maintain support payments following retirement, including whether the obligor will continue to be employed part-time or work reduced hours;
>
> (g) The obligee's level of financial independence and the financial impact of the obligor's retirement upon the obligee; and
>
> (h) Any other relevant factors affecting the obligor's decision to retire and the parties' respective financial positions. N.J.S.A. 2A:34-23(j)(2).

Similar to the terms of N.J.S.A. 2A:34-23(j)(1), "[i]f the obligor intends to retire but has not yet retired, the court shall establish the conditions under which the modification or termination of alimony will be effective." Id.

Notably, the court in Mueller v. Mueller, 446 N.J.Super. 582, 144 A.3d 916 (App.Div.2016), was tasked with analyzing and resolving an application wherein the payor sought the future termination of his alimony obligation based on his prospective retirement five years in the future. In denying his application as premature, the Mueller court enunciated a series of guidelines for courts to follow when faced with similar prospective retirement applications. Id. Specifically, (1) while the statute does not set specific minimum or maximum time tables for obtaining a prospective retirement determination, the statute "inherently contemplates that the prospective retirement will take effect within reasonable proximity to the application itself, rather than several years in advance of same;" (2) in making such a determination, courts must be afforded a reasonable opportunity to review current information, "relative to the time period of proposed retirement itself," to analyze the requisite factors and equities required by the statute; and (3) should a payor seeking termination or modification of alimony based on having reached full retirement age or pursuant to his or her prospective retirement, fail to retire, the statutory provisions "triggering termination or modification of alimony are inapplicable until such time as the [payor] actually retires or submits an application regarding a prospective retirement in the near future . . ." Id. at 586. Thus, while the Mueller court ultimately determined that an application for prospective retirement brought five years in advance of same was premature, the court opined that such an application may be appropriate and ripe for judicial review a period of twelve to eighteen months prior to a payor's desired retirement date. Id. at 592.

Finally, N.J.S.A. 2A:34-23(j)(3) is applicable in situations where an alimony obligation or order was established prior to the effective date of alimony reform. Landers, supra, 444 N.J.Super. at 323, 133 A.3d 637. Notably, parties in this category seeking review of their alimony obligations do not receive the benefit of the rebuttable presumption provided in subsection (j)(1). Conversely, the payor's reaching full retirement age is instead considered "a good faith retirement age." N.J.S.A. 2A:34-23(j)(3). Both parties are statutorily required to submit their current and prior Case Information Statements to the court for review. Id. In making its determination, the court must consider, in addition to the following statutorily defined factors, the ability of the supported spouse to have saved for retirement:

> (a) The age and health of the parties at the time of the application;
>
> (b) The obligor's field of employment and the generally accepted age of retirement for those in that field;
>
> (c) The age when the obligor becomes eligible for retirement at the obligor's place of employment, including mandatory retirement dates or the dates upon which continued employment would no longer increase retirement benefits;
>
> (d) The obligor's motives in retiring, including any pressures to retire applied by the obligor's employer or incentive plans offered by the obligor's employer;
>
> (e) The reasonable expectations of the parties regarding retirement during the marriage or civil union and at the time of the divorce or dissolution;
>
> (f) The ability of the obligor to maintain support payments following retirement, including whether the obligor will continue to be employed part-time or work reduced hours;
>
> (g) The obligee's level of financial independence and the financial impact of the obligor's retirement upon the obligee; and
>
> (h) Any other relevant factors affecting the parties' respective financial positions.

Further, any assets that were distributed amongst the parties at the time of divorce or dissolution are ineligible and must not be considered by the court for purposes of determining a payor's ability to pay alimony upon retirement. Id.

The Appellate Division in Voynick v. Voynick, 481 N.J.Super. 207, 333 A.3d 272 (App.Div. 2025) opined that an obligor seeking to terminate or modify an alimony obligation under N.J.S.A. 2A:34-23(j)(3) must first achieve full retirement age as defined by the Social Security Act. Once full retirement age is established, the obligor must file a current Case Information Statement and a Case Information Statement from the date of entry of the original alimony award. Id. If applicable, the obligor must also submit Case Information Statement(s) from the date of any subsequent Order which modified the award. Id. The same financial documents must also be filed by the obligee. Id. See also N.J.S.A. 2A:34-23(j)(3). The court must then determine whether an obligor has made a *prima facie* showing of changed circumstances entitling him or her to alimony relief or whether discovery and a hearing is warranted under the facts of the individual case. Id.

In Voynick, it was undisputed that the obligor reached full retirement age and that his retirement was considered "a good faith retirement age" under the statute. Id. However, the Appellate Division disagreed with the obligor’s argument that merely because he reached a good faith retirement age and no longer had an "earned income" that he was entitled to a termination of his alimony obligation or a reduction to the same. Id. By way of background, the parties entered into a Property Settlement Agreement in September 2003 wherein Defendant-husband agreed to pay “permanent alimony” to Plaintiff-wife until such time as the death of the husband or the remarriage of the wife. Id. Also included in the Property Settlement Agreement was a provision stating that “The parties specifically recognize that this agreement does not include an anti-Lepis clause.” Id. Husband was an owner of a veterinary practice, which he sold post-divorce (in September 2020), but continued to work part-time until he fully retired in May 2021. Id. At the time husband filed his application to the Court, at full Social Security Retirement age, husband asserted assets totaling approximately $8 million. Id. In response, wife asserted assets totaling approximately $1.6 million and the continued need for support asserting that she (1) lived a "relatively humble lifestyle"; (2) incurred "significant medical expenses"; and (3) could not endure the loss of alimony without taking "significant withdrawals from her retirement assets." Id.

Though the Appellate Division held that the anti-Lepis clause included in the Property Settlement Agreement permitted the husband to seek relief from the court, it ultimately concurred with the trial court, finding that the husband did not meet his *prima facie* burden for relief. Id. Specifically, the Appellate Division rejected the husband's argument that achieving "good faith retirement" alone overcomes the *prima facie* burden and agreed with the trial court that his "failure to show a decrease in financial circumstances after reaching good faith retirement age was not a *prima facie* change in circumstance under N.J.S.A. 2:34-23(j)(3). Id.

As is demonstrated above, sweeping statutory reform in the context of retirement and its effect on the payor's alimony obligation has effectuated significant change in both the law and the way matrimonial attorneys must now address these issues. The few cases that address alimony reform in the context of retirement unequivocally caution both courts and counsel to analyze and apply the appropriate statutory subsection, which depend entirely upon the type of relief sought and the date of entry of the alimony award sought to be modified and/or terminated.

3. Cohabitation. The Superior Court of New Jersey has opined that statutory provisions relevant to cohabitation do not apply to post-judgment orders or agreements finalized before enactment of the amended statute under circumstances where the order or agreement (1) contains an express contractual stipulation regarding the effect of cohabitation on alimony; (2) affirmatively asserts that the principles enunciated in Gayet, supra, 92 N.J. at 149, 456 A.2d 102 apply; and/or (3) was already the subject of "subsequent, post-judgment litigation that addressed and adjudicated the issue of alimony and cohabitation prior to the enactment of the statutory amendments." See Landers, supra, 444 N.J.Super. at 315, 133 A.3d 637; Spangenberg v. Kolakowski, 442 N.J.Super. 529, 125 A.3d 739 (App.Div. 2015); and Mills v. Mills, 447 N.J.Super. 78, 95, 145 A.3d 1105 (Ch.Div. 2016), respectively. Litigants with pre-amendment orders or marital agreements that fall within one of the three categories set forth above continue to confront these issues. Id.

I. Analysis of Cohabitation for Pre-Amendment Orders and Agreements that Explicitly Require Application of Pre-Amendment Law

For those matters that fall outside the scope of statutory reform, the cohabitation of a recipient spouse constitutes changed circumstances requiring further review of the economic consequences of the new relationship and its impact on the previously imposed support obligation. Gayet, supra, 92 N.J. at 149. See Lepis, supra, 83 N.J. at 151. See also Boardman v. Boardman, 314 N.J.Super. 340, 347 (App. Div. 1998) (explaining "cohabitation constitute[s] changed circumstances...justifying discovery and a hearing"). The court in Konzelman v. Konzelman defined cohabitation as "an intimate relationship in which the couple has undertaken duties and privileges that are commonly associated with marriage. These can include, but are not limited to, living together, intertwined finances . . ., sharing living expenses and household chores, and recognition of the relationship in the couple's social and family circle." Konzelman v. Konzelman, 158 N.J. 185, 202, 729 A.2d 7, 10 (1999).

In Konzelman, the court found that the evidence provided was sufficient to find that plaintiff-wife was cohabiting with her boyfriend as defined by the parties' mutually executed Marital Settlement Agreement. Id. According to the court, plaintiff and her boyfriend lived together the majority of the time;[18] plaintiff's boyfriend paid for improvements made to her residence; plaintiff shared a joint bank account with her boyfriend; and plaintiff's boyfriend paid for their joint vacations. Id.

To constitute cohabitation under Konzelman, the relationship "must be shown to be serious and lasting." Id. at 203. Under no circumstances, however, is a "mere romantic, casual or social relationship" considered sufficient to justify termination of alimony under New Jersey law. Id. at 202. Conversely, cohabitation involves an "intimate[,]" "close and enduring" relationship, requiring "more than a common residence" or mere sexual liaison, and is comprised of conduct whereby "the couple has undertaken duties and privileges that are commonly associated with marriage." Id. In addition to long-term intimate or romantic involvement, indicia of cohabitation may "include, but are not limited to, living together, intertwined finances such as joint bank accounts, sharing living expenses and household chores, and recognition of the relationship in the couple's social and family circle." Id. The couple's relationship "bears the generic character of a family unit as a relatively permanent household[,]" is "serious and lasting[,]" and reflects the "stability, permanency and mutual interdependence" of a single household. See Gayet, supra, 92 N.J. at 155 and Konzelman, supra, 158 N.J. at 202–03, respectively.

In Ozolins, the Appellate Division held that "a showing of cohabitation creates a rebuttable presumption of changed circumstances shifting the burden to the dependent spouse to show that there is no actual economic benefit to the spouse or the cohabitant." Ozolins v. Ozolins, 308

[18] Although the actual length of time that plaintiff and her boyfriend actually resided together is unknown, defendant undertook surveillance of plaintiff's residence "seven days a week for 127 days, mostly in the evening, nighttime, and early morning hours." Id. at 191. Surveillance demonstrated that plaintiff's boyfriend returned to her residence "most evenings" and he left the residence "most mornings to go to work." Id.

N.J.Super. 243, 245, 705 A.2d 1230 (App.Div. 1998). See Conlon v. Conlon, 335 N.J.Super. 638, 650 (Ch. Div. 2000) (holding that the dependent spouse has the burden of proof "to address the economic consequence of the [new] relationship in order for the [c]ourt to make an appropriate assessment regarding a modification or termination of alimony"). The trial court ultimately terminated defendant-husband's alimony obligation retroactively based on plaintiff-wife's cohabitation and defendant-husband's deteriorating medical condition. Id. at 247. In so deciding, the trial court determined that plaintiff received a minimal financial benefit from cohabiting with her boyfriend. Id. The Appellate Division agreed with the judge's finding that defendant made a *prima facie* showing of cohabitation, thus shifting the burden of proof to plaintiff to demonstrate her need, if any, for continuing support. Id. However, the Appellate Division remanded the matter to the trial court, finding that the court erred in terminating, rather than modifying, defendant's alimony obligation. Id.

When faced with the circumstance of cohabitation of a recipient spouse under circumstances where pre-reform law applies, the court must focus on the economic relationship of the cohabitants to discern whether one cohabitant "subsidizes the other[.]" Boardman, supra, 314 N.J.Super. at 347. Modification of alimony is warranted when the cohabitant either contributes to the dependent spouse's support or lives with the dependent spouse without contributing. Garlinger v. Garlinger, 137 N.J.Super. 56, 64 (App.Div. 1975). When a dependent spouse economically benefits from cohabitation, his or her support payments may be reduced or terminated. Gayet, supra, 92 N.J. at 155. See Melletz v. Melletz, 271 N.J.Super. 359, 363 (App.Div. 1994) (stating "the test for determining whether cohabitation by the dependent spouse should reduce an alimony award has always been based on a theory of economic contribution"), certif. denied, 137 N.J. 307 (1994). "The inquiry regarding whether an economic benefit arises in the context of cohabitation must consider not only the actual financial assistance resulting from the new relationship, but also should weigh other enhancements to the dependent spouse's standard of living that directly result from cohabitation." Reese v. Weiss, 430 N.J.Super. 552, 557-58 (App.Div. 2013).

In Reese, the court found that defendant-wife not only cohabited with her paramour, but received a substantial economic benefit from cohabitation warranting termination of plaintiff-husband's alimony obligation. Id. Specifically, the court determined that plaintiff's paramour contributed to the mortgage and taxes; paid a large portion of their joint expenses; paid defendant's credit card bills; provided defendant with cars and necessary insurances; and provided defendant with extravagant luxuries beyond those that defendant and plaintiff experienced during the marriage. Id. In so deciding, the trial court appropriately applied the principles established in Gayet and its progeny, specifically that "[t]he extent of actual economic dependency, not one's conduct as a cohabitant, must determine duration of support as well as its amount." Gayet, supra, 92 N.J. at 154. In order to rebut the presumption that the living arrangement is tantamount to marriage and has reduced or ended the need for alimony, a dependent spouse must prove he or she remains dependent on the former spouse's support. Id. at 154–55.

The Supreme Court has described what constitutes cohabitation. Konzelman, supra, 158 N.J. at 202. See also Gayet, supra, 92 N.J. at 155. In so doing, the Court has explained the respective burdens of the parties when claimed cohabitation serves as a basis to modify an alimony obligation. Ozolins, supra, 308 N.J.Super. at 248. These cases hold a supporting spouse's obligation may be modified or terminated when a dependent spouse economically benefits from cohabiting. Gayet, supra, 92 N.J. at 155.

Decades ago, the Appellate Division explained:

We have no doubt, however, that where a former wife chooses to cohabit with a paramour,

> whether in her abode or his ... the issue may well raise whether ... she has further need for the alimony. If it is shown that the wife is being supported in whole or in part by a paramour, the former husband may come into court for a determination of whether the alimony should be *terminated or reduced.* ... In short, the inquiry is whether the former wife's ... relationship with another man ... has produced a change of circumstances sufficient to entitle the former husband to relief. Garlinger, supra, 137 N.J. Super. at 64. See Wertlake v. Wertlake, 137 N.J. Super. 476, 487 (App. Div. 1975).

When examining the cohabiting household, a trial judge starts with a review of the parties' financial arrangements to discern whether the cohabitant actually pays or contributes toward the dependent spouse's necessary expenses, such as housing, food, clothing, transportation, or insurance. Reese, supra, 430 N.J.Super. 552, 576 (App.Div. 2013). If so, the cohabitant provides the dependent spouse with a direct economic benefit. Id. Further, indirect economic benefits, which benefit the dependent spouse, must be considered, including the cohabitant's payment of his or her own expenses. Id. When the parties' financial obligation arrangements are comingled, blurring the demarcation of economic responsibility, subsidization of expenses by one party for the benefit of the other may occur, and the ability to prove economic independence may diminish or possibly disappear. Boardman, supra, 314 N.J.Super. at 347.

The Appellate Division in Temple v. Temple, 468 N.J.Super. 364, A.3d 1109 (App.Div. 2021) opined that a litigant need not produce evidence relevant to all six factors identified by the Konzelman court when seeking relief under the theory of cohabitation: "[W]e are mindful the Legislature mandates a court's consideration of six factors in ultimately determining whether cohabitation is or has been occurring . . . But we reject the argument that evidence of *all* these circumstances must be presented for a movant to establish a prima facie case of cohabitation." _ In Temple, the Appellate Division reversed and remanded the trial court's denial of Plaintiff-husband's motion to terminate alimony based on Defendant-wife's alleged cohabitation. The Appellate Division opined that the trial court's extensive reliance on Landau v. Landau, 461 N.J.Super. 107 (App.Div. 2019) "was misplaced. In Landau, we held that a movant must present a prima facie case of cohabitation before obtaining discovery, but we did not define what constitutes a prima facie case of cohabitation." Id. The Appellate Division held that the trial court erred in accepting wife's explanation of facts as true:

> [T]he judge [] mistakenly weighed the parties' competing sworn statements and accepted as true [Wife's] explanation of the facts demonstrated by [Husband's] moving papers In fact, the opposite approach should have been taken; [Husband] was entitled to an assumption of the truth of his allegations and the benefit of all reasonable inferences to be drawn from the evidence he had marshaled. Id.

The Appellate Division further opined that if litigants seeking to prove cohabitation were required to produce evidence on all six (6) factors to establish a prima facie case, "then we wonder whether any movant could ever clear that obstacle." Id. By way of specific example, the Appellate Division in Temple noted the difficulty, if not impossibility, of producing documentation which would confirm a former spouse is intertwining finances with another. Per the court,

> People tend to treat financial information as confidential and do not normally volunteer it to others, let alone former spouses obligated to pay them alimony. Information that would be helpful in demonstrating intertwined finances is also not available from financial institutions on a stranger's request. Demonstrating that a former spouse and a paramour are 'sharing' or bearing 'joint responsibility' for their living expenses is also something a movant is not likely able to present without a right to compulsory discovery. Absent an

opponent's voluntary turnover, a movant will never be able to offer evidence about the financial aspects of N.J.S.A. 2A:34-23(n) And so, if, as the judge's decision suggests, a movant must check off all six boxes to meet the burden of presenting a prima facie case, a finding of cohabitation will be as rare as a unicorn. Id.

Building on the tenants enunciated in Temple, the Supreme Court in Cardali v. Cardali, 255 N.J. 85 (2023) considered the prima facie showing of cohabitation a movant must present to obtain an order of discovery when seeking relief based on alleged cohabitation. The Court confirmed the holding of the Temple court, opining that a movant need not present evidence on all the cohabitation factors identified by Konzelman or N.J.S.A. 2A:3423(n) to make a prima facie showing in post-amendment cases. Id. Specifically,

> [i]f the movant's certification addresses some of the relevant factors and is supported by competent evidence, and if that evidence would warrant a finding of cohabitation if unrebutted, the trial court should find that the movant has presented prima facie evidence of cohabitation and should grant limited discovery tailored to the issues contested in the motion, subject to any protective order necessary to safeguard confidential information.

It is well settled that once a *prima facie* showing of cohabitation is made out by the supporting spouse, there is a rebuttable presumption that shifts the burden of proof to the alleged cohabiting spouse to show that they are not cohabiting, or that there is no economic benefit from the cohabitation. Rose v. Csapo, 359 N.J.Super. 53, 61 (Ch. Div. 2002). See Ozolins, 308 N.J.Super. 243, 248-49 (App.Div. 1998). See also Frantz v. Frantz, 256 N.J.Super. 90, 93 (Ch.Div. 1992). See also Grossman v. Grossman, 128 N.J.Super. 193, 197 (Ch.Div. 1974). The reason the burden shifts to the dependent spouse after a *prima facie* case is established is that the dependent spouse and their "paramour hold all the resources, as well as the, financial and social/sexual information necessary for the court to make a finding regarding cohabitation…" Rose, supra, 359 N.J.Super. at 61. Indeed, as our courts have noted, "it would be unreasonable to place the burden of proof on a party not having access to the evidence necessary to support that burden of proof." Frantz, supra, 256 N.J. Super. at 93. However, while there exists a voluminous body of case-law precedent applicable to pre-Amendment matters, the foregoing analysis illustrates that the criteria set forth in Konzelman and its progeny effectively create a formidable barrier for a payor spouse to overcome in situations where the recipient spouse is, for all intents and purposes, living in a relationship tantamount to marriage with another individual while continuing to receive alimony.

II. Analysis of Cohabitation for Post-Amendment Orders, Post-Amendment Agreements, and Pre-Amendment Orders and Agreements that Fail to Define or Otherwise Address Cohabitation

To prove cohabitation under New Jersey's new alimony reform, a payor spouse need not prove that the recipient spouse is residing with another individual. This fact is confirmed in two separate sentences within subsection (n) of the statute. N.J.S.A. 2A:34-23(n). Cohabitation is now statutorily defined in N.J.S.A. 2A:34-32(n), which states, "alimony may be suspended or terminated if the payee cohabits with another person. Cohabitation involves a 'mutually supportive, intimate personal relationship in which a couple has undertaken duties and privileges that are commonly associated with marriage or civil union but does not necessarily maintain a common household.'" Id. (emphasis added). In assessing whether or not cohabitation is occurring in any given case, a court must analyze the following seven factors:

(1) Intertwined finances such as joint bank accounts and other joint holdings or liabilities;

(2) Sharing or joint responsibility for living expenses;

(3) Recognition of the relationship in the couple's social and family circle;

(4) Living together, the frequency of contact, the duration of the relationship, and other indicia of a mutually supportive intimate personal relationship;

(5) Sharing household chores;

(6) Whether the recipient of alimony has received an enforceable promise of support from another person within the meaning of subsection h. of R.S.25:1-5; and

(7) All other relevant evidence.

N.J.S.A. 2A:34-32(n) further provides that, "[i]n evaluating whether cohabitation is occurring and whether alimony should be suspended or terminated, the court shall also consider the length of the relationship. A court may not find an absence of cohabitation solely on grounds that the couple does not live together on a full-time basis." Id. (emphasis added).

While the Legislature borrowed language from the Konzelman court in defining cohabitation as a "mutually supportive, intimate personal relationship in which a couple has undertaken duties and privileges that are commonly associated with marriage or civil union," the statute clarifies that cohabitation does not require the alimony recipient to actually live with another person. Id. Consequently, the barrier that once seemed insurmountable has become more attainable for the payor spouse to overcome.

Notably, the terms of the statute as set forth above explicitly allow a court to suspend or terminate alimony upon proof of cohabitation. However, the authority of the court is not strictly limited to these two options, as the statutory language does not preclude a court from modifying alimony if deemed appropriate under the circumstances:

> Pending any matrimonial action or action for dissolution of a civil union brought in this State or elsewhere, or after judgment of divorce or dissolution or maintenance, whether obtained in this State or elsewhere, the court may make such order as to the alimony or maintenance of the parties . . . as the circumstances of the parties and the nature of the case shall render fit, reasonable and just . . . Id. (emphasis added).

The permissive language employed by the Legislature permeates the statute and allows courts to suspend, terminate, or modify alimony upon cohabitation based on the specific facts of the case, application of the law, and principles of equity. This interpretation is further supported by the court's analysis of the amended statute in Spangenberg:

> Recently, the Legislature adopted amendments to N.J.S.A. 2A:34-23, designed to more clearly quantify considerations examined when faced with a request to establish or modify alimony . . . Apt to this matter, the amendments include provisions regarding modification of alimony and the effect of a dependent spouse's cohabitation . . . Spangenberg, supra, 442 N.J. Super. at 536-37. (emphasis added).

The statutory language and case-law precedent interpreting the amended statute clearly support the position that our courts have the authority to terminate, suspend, or modify the payor spouse's alimony obligation once cohabitation has been proven. This principle is supported by the long-established case-law precedent that has been analyzed above. Specifically, an award of alimony remains subject to review and, if warranted, modification, when either party experiences a substantial change in financial circumstances. Lepis, supra, 83 N.J. at 146 (citation omitted). See also N.J.S.A. 2A:34–23 (stating alimony orders "may be revised and altered by the court from time to time as circumstances may require").

The parameters of alimony reform and its effect on cohabitation continue to evolve. Our courts have similarly begun to interpret the statute and its practical application to matters involving the enforcement of cohabitation settlement provisions. The New Jersey Supreme Court's decision in Quinn is particularly instructive on this issue. Quinn v. Quinn, 225 N.J. 34, 137 A.3d 423, 425 (2016). In Quinn, the parties entered into a Marital Settlement Agreement providing that alimony would terminate if the supported spouse cohabited with another. Id. at 38. Although the trial court determined that the supported spouse cohabited for a period of twenty-eight months, the court suspended the payor spouse's alimony obligation for the period of cohabitation in lieu of terminating it. Id. at 38-39. In reversing the lower court's decision, the New Jersey Supreme Court held that once cohabitation is proven, the inquiry ends and the terms of a marital settlement agreement providing for termination or modification of alimony are enforceable. Id. at 53-4. According to the Court,

> [i]t is irrelevant that the cohabitation ceased during the trial when that relationship existed for a considerable period of time. Under those circumstances, when a judge finds that the spouse receiving alimony has cohabited, the obligor spouse is entitled to full enforcement of the parties' agreement. When a court alters an agreement in the absence of a compelling reason, the court eviscerates the certitude the parties thought they had secured, and in the long run undermines this Court's preference for settlement at all, including marital [] disputes. Id.at 55. (emphasis added).

The Quinn court further stated that,

> [w]hen parties to a matrimonial settlement agreement have agreed to permit termination of alimony on remarriage or cohabitation, they have recognized that each are equivalent events. In each situation the couple has formed an enduring and committed relationship. In each situation, the couple has combined forces to mutually comfort and assist the other. The only distinction between remarriage and cohabitation is a license and the recitation of vows in the presence of others. When the facts support no conclusion other than that the relationship has all the hallmarks of a marriage, the lack of official recognition offers no

principled basis to treat cohabitation differently from an alimony terminating event. Id. (emphasis added).

Clarification of cohabitation from the Legislature and the practical application of the statute by the courts have made it easier for a payor spouse to prove he or she is entitled to terminate alimony through enforcement of a marital settlement agreement. However, notwithstanding the objective factors set forth within the reformed statute, pursuing termination of alimony based on cohabitation continues to be a difficult burden to overcome, especially under circumstances where the recipient spouse is actively concealing cohabitation.

The Appellate Division in J.S. v. J.E.S., No. A-3987-22, 2025 N.J. Super. Unpub. LEXIS 1067 (App.Div. June 16, 2025)[19] affirmed the trial court's Order modifying, but not terminating, an obligor's alimony obligation, finding no abuse of discretion under the facts provided. Specifically, the parties entered into a Marital Settlement Agreement in 2018 terminating the Husband's alimony obligation upon (1) payment of the agreed upon term; (2) death of the Husband or Wife; and (3) remarriage of the Wife. Id. The Agreement also addressed cohabitation: "Cohabitation of wife, pursuant to the case law set forth in Garlinger and Gayet, shall serve as a triggering event to review the alimony obligation." Id. The trial court conducted a two-day plenary hearing on the issue of cohabitation and, following the hearing, reduced Husband's alimony obligation, finding that Wife "had cohabitated with a male in an intimate, exclusive relationship and had derived an economic benefit from living with this cohabitant." Id. The judge further opined

[19] J.S. is an unreported trial court opinion. Per R. 1:36-3, "[n]o unpublished opinion shall constitute precedent or be binding upon any court . . . [N]o unpublished opinion shall be cited by any court. No unpublished opinion shall be cited to any court by counsel unless the court and all other parties are served with a copy of the opinion and of all contrary unpublished opinions known to counsel."

that the relationship was "short-term" and "suspended [Husband's] alimony obligation during the period when [Wife] was residing with her cohabitant." Id.

An analysis of case-law illustrates that statutory law and relevant case-law precedent provide courts with the requisite guidelines to determine an appropriate term of alimony, as well as circumstances that may require courts to terminate or otherwise modify a previously ordered or agreed-upon alimony award. However, these cases similarly demonstrate that the duration of alimony awarded will be decided based on the facts and circumstances of each case, which courts rely upon when determining an appropriate term of alimony. New Jersey statutory and case-law precedent are clear; courts have exceptional authority to enter alimony awards that are fair and equitable. Thus, it is the facts and circumstances of any given case that drive its outcome, not any particular statutory factor or law.

Enforcement. Regardless of whether alimony awards are reached by amicable resolution of the parties or via order of the court, they are enforceable as a matter of law. New Jersey public policy unequivocally supports the amicable settlement of disputes between litigants. Konzelman, supra, 158 N.J. at 193, 729 A.2d 7. Courts have long held that there exists a "strong public policy favoring stability of arrangements in matrimonial matters." Id. In further support of this policy, the court in Quinn opined that it is "shortsighted and unwise for courts to reject out of hand consensual solutions to vexatious personal matrimonial problems that have been advanced by the parties themselves." Quinn, supra, 225 N.J. at 34, 137 A.3d 423 (quoting Petersen v. Petersen, 85 N.J. 638, 645, 428 A.2d 1301 (1981)). According to the Quinn court, "fair and definitive arrangements arrived at by mutual consent should not be unnecessarily or lightly disturbed." Id. at 193–94, 729 A.2d 7.

It is a well-established principle and general rule that settlement agreements are governed by basic contract principles. J.B. v. W.B., 215 N.J. 305, 326, 73 A.3d 405 (2013). Thus, it is not the function or responsibility of the court to rewrite a settlement agreement in circumstances where the intent of the parties is clear. Miller, supra, 160 N.J. 408, 419, 734 A.2d 752 (1999)). Consequently, when the intent of the parties and the language of the agreement are clear and unambiguous, "a court must enforce the agreement as written, unless doing so would lead to an absurd result." Quinn, supra, 225 N.J. 34, 137 A.3d 423 (citing Sachau v. Sachau, 206 N.J. 1, 5–6, 17 A.3d 793 (2011) ("A court's role is to consider what is written in the context of the circumstances at the time of drafting and to apply a rational meaning in keeping with the expressed general purpose."). Moreover, an agreement that resolves a matrimonial dispute such as alimony is "no less a contract than an agreement to resolve a business dispute." Sachau, supra, 206 N.J. at 5, 17 A.3d 793. Although there exists a narrowly construed exception to the general rule of enforcing marital settlement agreements which permits a court to reform a settlement agreement due to "unconscionability, fraud, or overreaching in the negotiations of the settlement," agreements must be examined by the court on a case by case basis. Miller, supra, 160 N.J. at 419, 734 A.2d 752.

Conclusion. Sweeping reform in the context of New Jersey alimony law has resulted in significant changes not only to the forms of alimony identified and available to litigants in divorce, but also to the procedures and burdens associated with seeking termination and/or modification to established alimony awards. While the statutory provisions and case-law precedent analyzed here encompass all forms of alimony currently recognized by the State of New Jersey, case-law precedent continues to evolve as courts are confronted with new facts and circumstances requiring adjudication. Judicial interpretation of the N.J.S.A. 2A:34-23 and the language of the statute itself illustrate that the court has exceptional authority to enter alimony awards that are fair and equitable. Thus, it remains the facts and circumstances of any given case that drive its outcome, not any particular statutory factor or law.

APPENDIX A
N.J.S.A. 2A:34-23(b)

In all actions brought for divorce, dissolution of a civil union, divorce from bed and board, legal separation from a partner in a civil union couple or nullity the court may award one or more of the following types of alimony: open durational alimony; rehabilitative alimony; limited duration alimony or reimbursement alimony to either party. In so doing the court shall consider, but not be limited to, the following factors:

(1) The actual need and ability of the parties to pay;

(2) The duration of the marriage or civil union;

(3) The age, physical and emotional health of the parties;

(4) The standard of living established in the marriage or civil union and the likelihood that each party can maintain a reasonably comparable standard of living, with neither party having a greater entitlement to that standard of living than the other;

(5) The earning capacities, educational levels, vocational skills, and employability of the parties;

(6) The length of absence from the job market of the party seeking maintenance;

(7) The parental responsibilities for the children;

(8) The time and expense necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment, the availability of the training and employment, and the opportunity for future acquisitions of capital assets and income;

(9) The history of the financial or non-financial contributions to the marriage or civil union by each party including contributions to the care and education of the children and interruption of personal careers or educational opportunities;

(10) The equitable distribution of property ordered and any payouts on equitable distribution, directly or indirectly, out of current income, to the extent this consideration is reasonable, just and fair;

(11) The income available to either party through investment of any assets held by that party;

(12) The tax treatment and consequences to both parties of any alimony award, including the designation of all or a portion of the payment as a non-taxable payment;

(13) The nature, amount, and length of pendente lite support paid, if any; and

(14) Any other factors which the court may deem relevant.

In each case where the court is asked to make an award of alimony, the court shall consider and assess evidence with respect to all relevant statutory factors. If the court determines that certain factors are more or less relevant than others, the court shall make specific written findings of fact and conclusions of law on the reasons why the court reached that conclusion. No factor shall be elevated in importance over any other factor unless the court finds otherwise, in which case the court shall make specific written findings of fact and conclusions of law in that regard.

When a share of a retirement benefit is treated as an asset for purposes of equitable distribution, the court shall not consider income generated thereafter by that share for purposes of determining alimony.

Factors	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**	**11**	**12**	**13**	**14**	**Term**
Gnall	X	X ~15 years	X	X	X	X	X	X	X	X	X	X	X		Remanded
Khalaf	X	X 26 years		X	X	X	X		X						Permanent
McGee	X	X 3 years	X	X	X	X			X	X	X			X	Remanded
Elrom	X	X 5 years	X	X	X	X	X		X	X	X				Limited Duration
J.E.V.	X	X ~9.5 years	X	X	X	X	X	X	X	X	X				Limited Duration
Hughes	X	X 10 years	X	X	X	X	X	X	X	X	X		X		Remanded
Cox	X	X 22 years		X	X										Remanded
Jacobitti	X	X ~16 years	X	X		X			X	X	X				Permanent
Cerminara	X	X 12 years	X		X	X	X		X						Permanent
Robertson	X	X ~12 years	X		X	X	X		X						Permanent

Case/Year	**Marriage**	**Alimony Duration**
B.G. (2018)	14 Years	Open Durational
Milcarsky (2018)	9 Years	Open Durational
Elrom (2015)	5 Years	3 Years
J.E.V. (2012)	9.5 Years	10 Years
Valente (2009)	12 Years	Permanent/Open Durational Alimony Reversed and Remanded with Instructions to Trial Court (Limited Duration Alimony)
Christopher (2008)	9 Years	Permanent/Open Durational Alimony Reversed and Remanded to Trial Court
Robertson (2005)	12 Years	Permanent/Open Durational
Schwartz (2005)	9 Years	Permanent/Open Durational Reversed and Remanded to Trial Court
Hughes (1998)	10 Years	Permanent/Open Durational
Heinl (1996)	~8 Years	Permanent/Open Durational Reversed and Remanded to Trial Court
Cerminara (1996)	12 Years	Permanent/Open Durational
Jacobitti (1994)	12 Years	Permanent/Open Durational
Lynn (1982)	7 Years	Permanent/Open Durational and Reimbursement Alimony