

**To: New Jersey Law Revision Commission**  
**From: Renee Wilson**  
**Re: Alimony Statute – Modification in Anticipation of Prospective Retirement N.J.S. 2A:34-23(j) (*Mueller v. Mueller*, 446 N.J. Super. 582 (2016))**  
**Date: November 6, 2017**

## MEMORANDUM

### Executive Summary

In *Mueller v. Mueller*, the Court considered an application to terminate alimony based on the applicant's prospective retirement. The Court held that as the obligor submitted his application to terminate alimony five years before actually retiring, it was too far in advance of his anticipated retirement date.<sup>1</sup> The issue to be addressed is the fact that although the recently-amended alimony statute permits an application for modification of alimony in advance of retirement, it does not prescribe a time period for filing such an application.

### Background

The Plaintiff in *Mueller v. Mueller* had agreed to pay Defendant \$300 per week, pursuant to their matrimonial settlement agreement.<sup>2</sup> There were no provisions in the agreement addressing retirement, and or its relationship to plaintiff's ongoing permanent alimony support obligation.<sup>3</sup> Plaintiff filed a post-judgment motion under New Jersey's recently amended alimony statute, asserting that he is fifty-seven years old and intends to retire in five years at age sixty-two, at which point he would be entitled to retire and receive his full employment-related benefits.<sup>4</sup> He specifically sought a court order which would prospectively hold that his alimony would terminate upon his retirement in five years because he explained that if alimony does not end at that time, he would be unable to retire as planned.<sup>5</sup>

The Court found Plaintiff's application to be premature and noted that it would have been more suitable if brought approximately twelve to eighteen months before his prospective retirement.<sup>6</sup> The statute in question is the recently amended alimony statute, N.J.S.A. 2A:34-23(j)(2), which states in pertinent part:

j. Alimony may be modified or terminated upon *the prospective* or actual retirement of the obligor.

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<sup>1</sup> *Mueller v. Mueller*, 446 N.J. Super. 582 (Ch. Div. 2016).

<sup>2</sup> *Id.* at 586.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 593.

(2) Where the obligor seeks to retire prior to attaining the full retirement age as defined in this section, the obligor shall have the burden of demonstrating by a preponderance of the evidence that the prospective or actual retirement is reasonable and made in good faith. Both the obligor's application to the court for modification or termination of alimony and the obligee's response to the application shall be accompanied by current Case Information Statements or other relevant documents as required by the Rules of Court, as well as the Case Information Statements or other documents from the date of entry of the original alimony award and from the date of any subsequent modification. [emphasis added]<sup>7</sup>

The Court noted that the statute authorizes a court to consider an obligor's application for termination or modification of alimony "not only upon an actual retirement, but upon a prospective retirement as well."<sup>8</sup> The Court suggested that this consideration was designed to avoid placing an obligor in what it referred to as a "Catch 22" financial situation.<sup>9</sup> An obligor who anticipates retirement will benefit from knowing in advance whether they should retire, based on whether or not their existing alimony obligation will terminate or be reduced following retirement.<sup>10</sup> Otherwise, if the obligor were to retire before having such information, they may be placed in a financial bind if in fact a court decides not to terminate or reduce their alimony obligation upon retirement.<sup>11</sup>

The Court stated that "the statute does not establish or address specific time periods for filing an advance motion based upon a prospective retirement."<sup>12</sup> The Court also indicated that since the statute is relatively new, there was no post-amendment guidance available regarding the analysis of a litigant's application to terminate alimony based on prospective rather than actual retirement.<sup>13</sup>

In an effort to interpret the statute's intent, the Court said that the "New Jersey Supreme Court has held that courts should strive to construe written statutes, rules and laws in a manner that avoids an absurd or illogical result, even when same appears to be dictated by a literal interpretation of the language."<sup>14</sup> In addition, the Court indicated that, in instances in which there is ambiguity over Legislative intent, it is appropriate for the Court to presume that the Legislature "at all times intended and desired to act fairly, equitably, and reasonably."<sup>15</sup> The Court determined that a reasonable interpretation of the statute is

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<sup>7</sup> N.J.S.A. 2A:34-23(j).

<sup>8</sup> *Mueller v. Mueller*, 446 N.J. Super. 582, 588 (2016).

<sup>9</sup> *Id.* at 589.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 589.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 591.

<sup>15</sup> *Id.*

one that allows the court to order a prospective termination or modification of alimony based upon future, prospective retirement, when (a) the prospective retirement will take place in the near future, rather than many years after the actual application, and (b) the applicant presents a specifically detailed, proposed plan for an actual retirement, as opposed to a non-specific, general desire to someday retire. A detailed plan may include...not only a proposed specific date of retirement, but details in terms of the obligor's plan for economic self-support following retirement as well."<sup>16</sup>

According to the Court, the Plaintiff did not meet the above criteria, as his application was filed five years before his prospective retirement and he did not submit a specific detailed plan with regard to his future retirement. "The five-year gap between the application and the prospective retirement severely restricts the court's ability to effectively consider the request, and/or to fashion any specific conditions for termination or modification of alimony as contemplated under the amended statute."<sup>17</sup>

While the amended alimony statute permits a degree of reasonable prospective adjudication by the court for a prospective rather than actual retirement, an attempt to engage in the necessary statutory analysis several years in advance of such retirement would likely be replete with long-term guesswork. Further, any such effort would essentially ignore the practical reality that the parties' economic situations, health, and other relevant factors may radically change over such a lengthy period of time, before an actual retirement ever actually takes place.<sup>18</sup>

"[T]he amended statute does not set forth any specific minimum or maximum time frames for the filing of such an application, and the court does not interpret the statute so as to imply a definite bright line period, akin to a reverse statute of limitations."<sup>19</sup>

It is noted, however, that leaving the issue of when one may file an application for modification or termination of alimony completely open, without providing any guidance, may allow obligors to use this amendment as a vehicle to modify their existing alimony agreements, rather than plan for retirement.

While most courts may agree that filing an advance motion to terminate alimony five years prior to retirement is not reasonable, the absence of guidance could lead to significantly

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 592.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 593.

disparate results. Each court reviewing such an application could have its own definition of reasonable.

### **Conclusion**

Staff seeks authorization to conduct additional research and outreach in light of the issue identified in *Mueller v. Mueller* to determine if any modification to the statute could be of use in achieving predictable and consistent outcomes in the cases that arise moving forward. To this time, no other cases have addressed this specific issue with regard to the newly amended alimony statute.