

Broward County Bar Association's Family Law Section Presents

NUTS & BOLTS

We will be addressing all major legislative updates/changes that just happened in Family Law!!!



Friday, October 13, 2023

8:00am – 5:00pm

Broward County Courthouse
Judge Jack Tuter Ceremonial Courtroom
201 SE 6th St. Fort Lauderdale, FL
33301

Senate Bill 1416 Alimony Legislative Update

October 13, 2023

Presented to the Broward County Bar Association's Family Law Section by:

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Florida Senate Bill 1416

ALIMONY REVISIONS TO FLORIDA STATUTE

Revised §61.08

(Initial Actions of Dissolution of Marriage &
Support Unconnected with Dissolution of Marriage)

Revised §61.14

(Supportive Relationships)

Created §61.14 (c)

(Retirement)

Changes to Types of Alimony

Removed Permanent Alimony

Added Temporary Alimony

Bridge-the-gap and
Rehabilitative Alimony remain.

Award Combinations

The court continues to be permitted to award a combination of forms of alimony or forms of payment, including lump sum payments in order to provide greater economic assistance in order to allow the obligee to achieve self-support.

CHANGES TO LENGTHS OF MARRIAGE

Short
Term

Less than 10
YEARS

Moderate
Term

Between
10 – 20 years

Long Term

20+ years

Lump Sum Alimony

Lump sum alimony “is not a type of alimony but rather a method of allocating payments—any form of alimony can be awarded either as a lump sum or as a periodic payment. *Padmore v. Padmore*, 335 So.3d 239 (Fla. 2d DCA 2022).

“Lump sum alimony for support requires a showing of need on the part of the recipient spouse, an ability to pay on the part of the payor spouse, and a justification for the payment.” *Chatten v. Chatten*, 334 So.3d 633 (Fla. 4th DCA 2022).

Nominal Alimony

We find no Florida cases directly in point, but in view of *Canakaris v. Canakaris*, 382 So.2d 1197 (Fla. 1980), and section 61.08, Florida Statutes (1979), and under the facts and circumstances present in this case, we see no reason why the trial court should not be empowered to reserve jurisdiction indefinitely over the parties to make an alimony award to the husband. The award of \$ 1.00 per year alimony to the husband was an obvious device to achieve this result. It is not sustainable literally because the husband failed to prove any present need for alimony. However, we shall interpret the judgment as a reservation of jurisdiction over the issue. *In the future we urge that the trial courts expressly state their reservation of jurisdiction in these cases without resort to "nominal" alimony awards. Moore v. Moore*, 401 So. 2d 841, 842 (Fla. 5th DCA 1981)

Temporary Alimony

TEMPORARY support is available only “during the actual progress of a suit,” *Digiacomo v. Mosquera*, 322 So.3d 734 (Fla. 3d DCA 2021).

“[t]he alimony statutes do not authorize a credit for temporary spousal support ... in its award of durational alimony”. *Ogle v. Ogle*, 334 So.3d 699 (Fla. 1ST DCA 2022)

Temporary awards are interlocutory in nature, such that they are superseded by and merged into the final judgment. *Jackson v. Jackson*, 513 So. 2d 780 (Fla. 1st DCA 1987).

Because temporary awards are interlocutory, a trial court has the discretion to vacate a prior order allowing temporary alimony, even when the order “was originally made by consent of the parties, and pursuant to an agreement between them.” *Duss v. Duss*, 111 So. 382 (Fla. 1926).



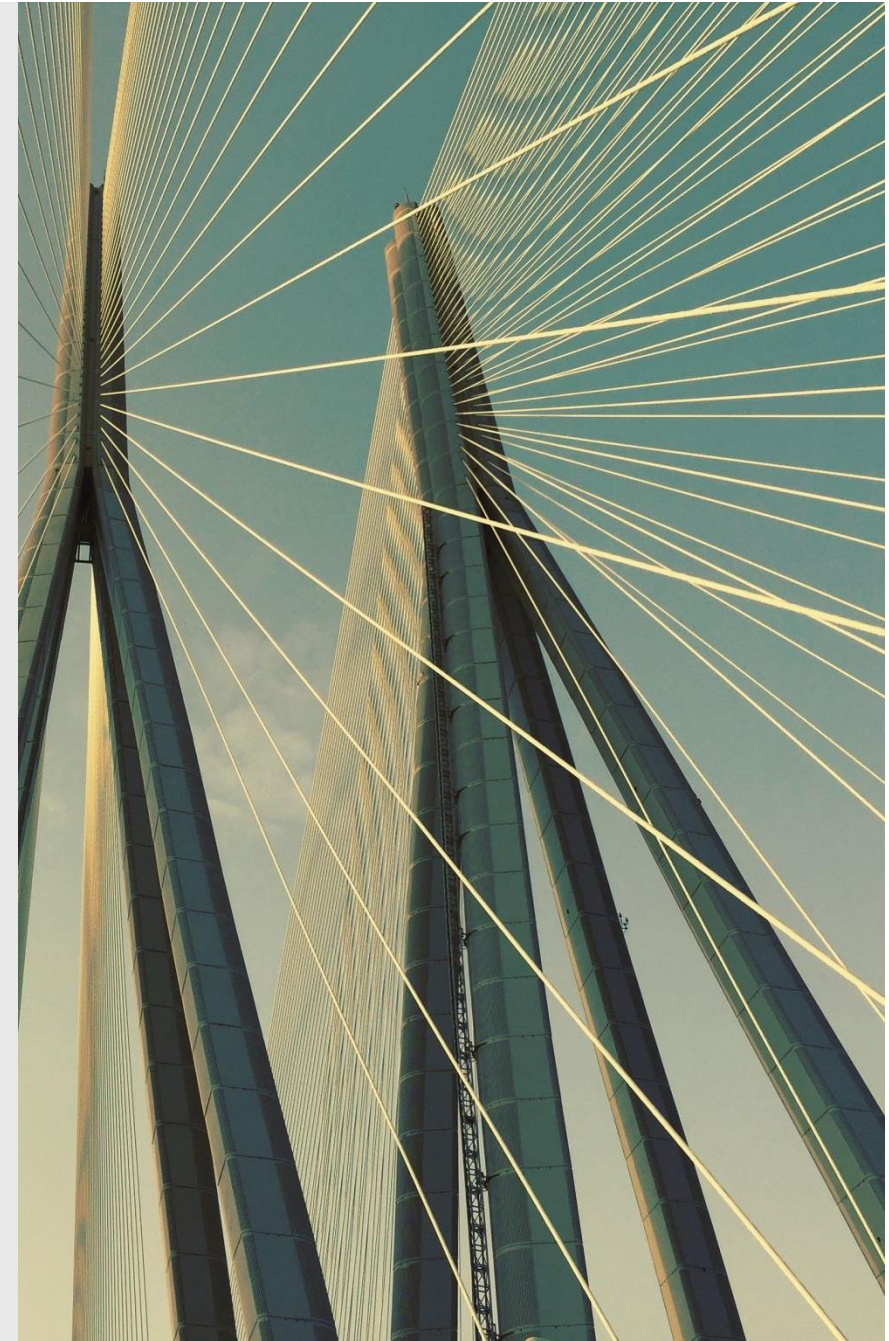
Bridge the Gap Alimony

- Remains non-modifiable in amount and duration.
- Still may not exceed 2 years.
- Does not have a formula or calculation but may not leave the payor with significantly less net income than the net income of the recipient without finding of exceptional circumstances.

Bridge the Gap Alimony

BASICS REMAIN THE SAME

- Bridge-the-gap alimony, is authorized “to assist a party by *providing support to allow the party to make a transition from being married to being single.*” Section 61.08(5).
- It is “to assist a party with legitimate, **identifiable** short-term needs.” (emphasis supplied).
- Bridge-the-gap alimony cannot exceed two years.
- Bridge –the- gap alimony is *not* modifiable in amount or duration.
- Bridge-the-gap terminates upon the death of either party
- Classic identifiable, short-term needs; the subject lump-sum award would assist the transition to single life. *Nugent v. Nugent*, 225 So.3d 994 (Fla. 5th DCA 2017)




Rehabilitative Alimony

Length of award may not exceed 5 years.



Can be modified or terminated if the plan is completed before the length of the award of rehabilitative alimony expires.



Does not have a formula or calculation but still may not leave the payor with significantly less net income than the net income of the recipient without finding of exceptional circumstances.

Rehabilitative Alimony BASICS REMAIN THE SAME



Party must present competent, substantial evidence of a rehabilitative plan supporting such an award. *Bryan v. Bryan*, 765 So.2d 829 (Fla. 1st DCA 2000).

The purpose of rehabilitative alimony is to permit a spouse to obtain a skill, education, or rehabilitation to establish the capacity for self-support. *Campbell v. Campbell*, 685 So.2d 61 (Fla. 1st DCA 1996); *Brock v. Brock*, 682 So.2d 682 (Fla. 5th DCA 1996).

The party seeking rehabilitative alimony must present detailed evidence regarding the cost of “the education, the prospects of subsequent employment, and the time it will take the receiving spouse to reach an appropriate income level.” *Campbell*, supra, at 62.



Durational Alimony

- Durational alimony may not exceed:
 - 50% of the length of a short-term marriage
 - Short Term = 0-10 years
 - No Durational Alimony in Marriage less than 3 years
 - 60% of the length of a moderate-term marriage.
 - Moderate Term Marriage = 10 – 20 Years
 - 75% of the length of a long -term marriage.
 - Long Term = 20+

Except.....

Durational Alimony

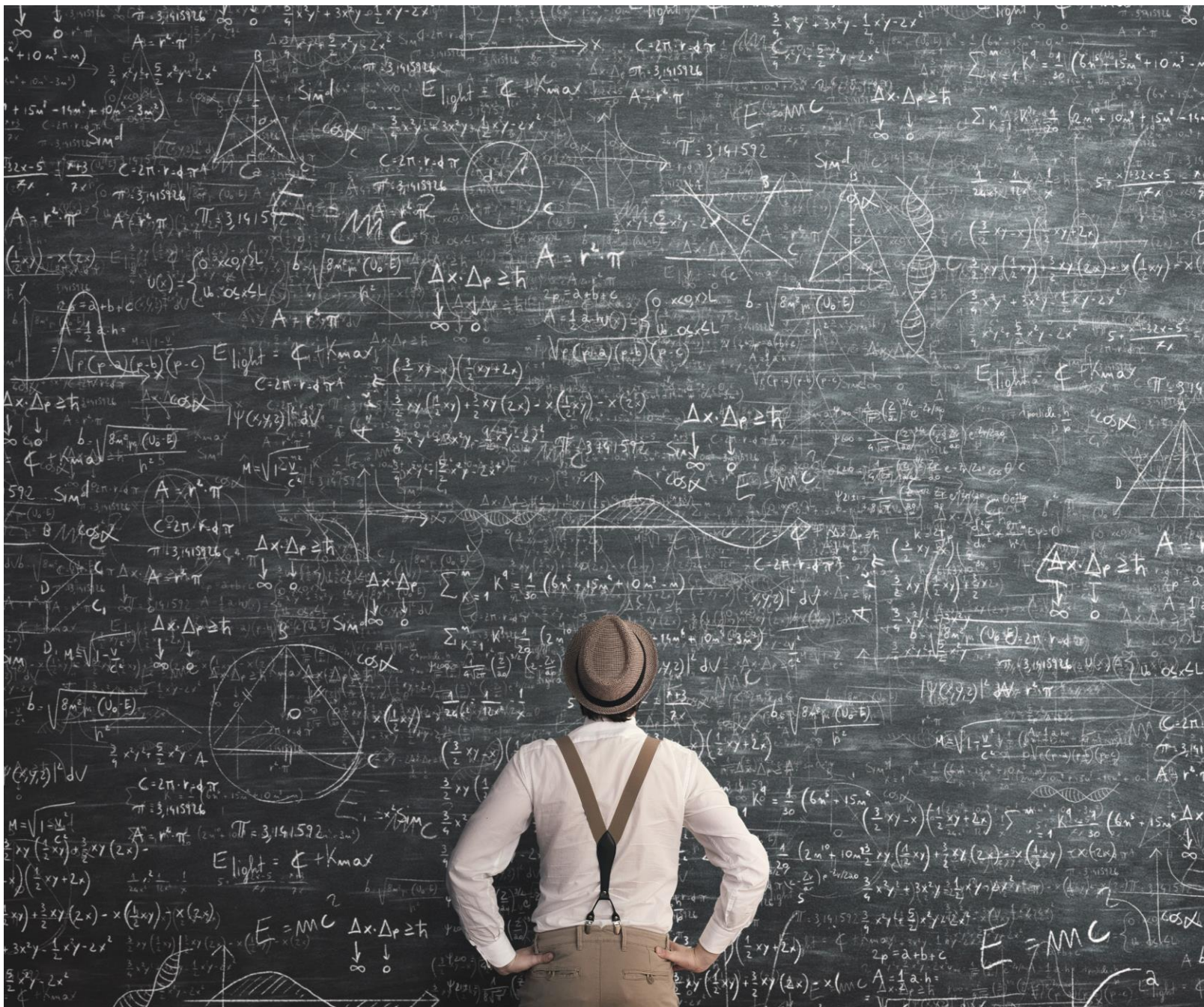
The court may extend the length of a durational award under exceptional circumstances by a showing of clear and convincing evidence that the extension is necessary after the factors in section (3) are applied and upon consideration of additional new factors:

The extent to which...

- The obligee's age and employability limit their ability for self-support either in whole or in part.
- The obligee's available financial resources limit their ability for self-support either in whole or in part.
- The obligee is mentally or physically disabled or have been diagnosed with a mental or physical condition that has or will render him/her incapable of self-support in whole or in part.
- The obligee is the caregiver to a mentally or physically disabled child, whether or not the child has attained the age of majority, who is common to the parties. The extension terminates when the child no longer requires caregiving or the death of the child.



CALCULATIONS FOR AMOUNT OF DURATIONAL AWARD



The obligee's
reasonable need

OR

an amount not to
exceed 35% of the
difference between the
party's net incomes,
whichever amount is
less.

Quick Math

Husband's Net Income = \$10,000

Wife's Net Income = \$3,000

Difference in net incomes = \$7,000

35% Cap = \$2,450

When the
Alimony
Amount Just
Isn't Enough...

Unequal Distribution

Combinations of Alimony

Request to Exceed Duration

Deviation from Child
Support Guidelines



FINAL
JUDGMENTS THAT
LAST

REQUIREMENTS FOR WRITTEN FINDINGS OF FACT ABOUT

- ✓ Need and ability to Pay
- ✓ Lack of need of ability to pay
- ✓ Basis for awarding a form or forms
- ✓ Type and length
- ✓ To determine deviation from form
- ✓ Any other factor necessary to do justice
- ✓ Special circumstances for awarding life ins.
- ✓ Exceptional circumstances to leave payor with significantly less income than the recipient
- ✓ Existence of a supportive relationship
- ✓ Reducing or terminating support awards due to the existence of a supportive relationship
- ✓ That obligor has reached reasonable retirement age
- ✓ When modifying, not modifying or terminating due to reasonable retirement

The Importance of Findings

A motion for rehearing is now mandatory to preserve for appeal a challenge to the sufficiency of a trial court's findings in the final judgment. (Fla. Fam. L.R.P. 12.523(A))

To preserve for appeal a challenge to the sufficiency of a trial court's findings in the final judgment, a party must raise that issue in a motion for rehearing under this rule.

The Upshot: Failure to file a timely motion for rehearing when factual findings do not support the FJDOM may be **summary judgment malpractice:**

Awards of alimony that would otherwise be reversed for lack of factual findings will be affirmed on appeal.

Denial of alimony awards that would otherwise be reversed for lack of factual findings will be affirmed on appeal.



Failure to make factual findings = Reversal

- The failure to make specific findings regarding need and ability to pay precludes meaningful appellate review and mandates reversal and remand. *Adams v. Adams*, 340 So.3d 551 (Fla. 2d DCA 2022).
- Parties married 20 years. 6 children. \$2,000 per month alimony award. Trial court failed to designate type or duration. Trial court failed to make sufficient factual findings of need or ability to pay. Alimony award appeared to be based on husband's unadjusted gross income. Reversed and remanded for failure to make factual findings. *Frank v. Frank*, 314 So.3d 634 (Fla. 3d DCA 2021)

Fla. Stat. 61.08 Factors Revised

- (b) (a) The standard of living established during the marriage and the anticipated needs and necessities of life for each party after the entry of the final judgment.
- (b) The duration of the marriage
- (c) The age, and the physical, mental, and emotional condition of each party, including whether either party is physically or mentally disabled and the resulting impact on either the obligee's ability to provide for his or her own needs or the obligor's ability to pay alimony and whether such conditions are expected to be temporary or permanent.

Fla. Stat. 61.08 Factors Revised

- (d) ~~The financial resources and income of each party, including the income generated from both nonmarital and the marital assets and liabilities distributed to each.~~
- (e) The earning capacities, educational levels, vocational skills, and employability of the parties, including the ability of either party to obtain the necessary skills or education to become self-supporting or to contribute to his or her self-support prior to the termination of the support, maintenance, or alimony award and, when applicable, ~~the time necessary for either party to acquire sufficient education or training to enable such party to find appropriate employment.~~

Fla. Stat. 61.08 Factors Revised

- (f) The contribution of each party to the marriage, including, but not limited to, services rendered in homemaking, child care, education, and career building of the other party.
- (g) The responsibilities each party will have with regard to any minor children whom the parties ~~they~~ have in common, with special consideration given to the need to care for a child with a mental or physical disability

Fla. Stat. 61.08 Factors Revised

◦ (h) 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 nontaxable, nondeductible payment.

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◦ (i) All sources of income available to either party, including income available to either party through investments of any asset held by that party.

Fla. Stat. 61.08 Factors Revised

- **(j) Any other factor necessary for to do equity and justice between the parties, which shall be specifically identified in the written findings of fact. This may include a finding of a supportive relationship as provided for in s. 61.14(1)(b) or a reasonable retirement as provided for in s. 61.14(1)(c)1.**

Life Insurance

Requires specific findings of “special circumstances”.

Allows the court to apportion the cost amongst the parties.

Life Insurance

Trial court must include “specific evidentiary findings regarding the availability and cost of insurance, the obligor's ability to pay, and the *special circumstances* that warrant the requirement for security of the obligation.” *Foster v. Foster*, 83 So.3d 747 (Fla. 5th DCA 2011); *Barrett v. Barrett*, 313 So.3d 224 (Fla. 5th DCA 2021).



Revisions to Fla. Stat. 61.14

Enforcement and modification of support,
maintenance, or alimony agreements or orders

Supportive Relationships

- The Court is now required to reduce or terminate an award of alimony if it finds that a supportive relationship exists (changed “may” to “must”)
- Expands the relationship from “a person with whom the obligee resides” to “a person who is not related to the obligee by consanguinity or affinity”
- Requires the court to make written findings of fact in determining the nature of the relationship between the obligee and another person

Supportive Relationships

A background image showing two hands holding a stack of US dollar bills. The hands are positioned as if they are about to hand the money over or are holding it together. The image is slightly blurred and has a dark, semi-transparent overlay.

Look Back Provision & Burden of Proof

The obligor is still required to prove by a preponderance of the evidence, that a supportive relationship exists or existed in the 365 days prior to filing of a petition.

Burden Shift

If a supportive relationship is proven to exist or to have existed, the burden shifts to the obligee to prove by a preponderance of the evidence that the court should not deny or reduce an initial award or reduce or terminate an existing award.

Supportive Relationship Factors Revised

- (b) Strikes “~~permanent place of abode~~”
- (c) Includes consideration of the acquisition or maintenance of joint bank or other financial accounts
- (d) includes consideration of the extent to which the obligee and other person supported each other financially, including a consideration of the payment of the other’s debts, expenses and liabilities.
- (g) Includes consideration of the extent to which the obligee and other person worked together to acquire any assets or to enhance the value of assets.
- (i) Includes consideration of implied agreements and financial support.
- (j) Includes consideration of the extent to which the obligor has paid or failed to pay the existing award and the amount of arrearage.
- (k) Expands the consideration of support provided to the other parties’ children, to consideration of support provided to their other family members as well.
- Factors a, e, f & h remain the same.

61.14 (C) (I)... RETIREMENT CASE LAW MEETS STATUTE

For the first time, retirement case law is
codified in Florida Statute



Factors the court shall consider

In determining whether an award of support, should be reduced or terminated because of the obligor's voluntary retirement, the court shall consider, and make written findings of fact regarding the following factors:

Retirement Factors

a) The age and health of the obligor.

b) The nature and type of work performed by the obligor.

c) The customary age of retirement in the obligor's profession.

d) The obligor's motivation for retirement and likelihood of returning to work.

e) The needs of the obligee and the ability of the obligee to contribute toward his or her own basic needs.

f) The economic impact that a termination or reduction of alimony would have on the obligee.

Retirement Factors

h) The income of the obligee and the obligor earned during the marriage or following the entry of the final judgment.

i) The social security benefits, retirement plan benefits, or pension benefits payable to the obligor and the obligee following the final judgment of dissolution..

j) The obligor's compliance, in whole or in part, with the existing alimony obligation..

DO THE MATH

Income After Retirement

- Consider not only the continuing need of the Recipient Spouse but also the needs of the Payor Spouse



Filing Modification in Anticipation of Retirement

Authorizes the obligor to file a petition to modify or terminate support in anticipation of retirement, but not more than 6 months before retirement.

Effective Date of Fla. Stat. 61.08



This section applies to all initial petitions for dissolution of marriage or support unconnected with dissolution of marriage pending or filed after July 1, 2023.



Effective Date **of Fla. Stat. 61.14**

- This act shall take effect July 1, 2023



With Gratitude to.....

The Broward County Bar Association's Family
Law Practice

David Manz, Esq.

The 2022 – 2023 Florida Bar Family Law
Legislation Committee