PRACTICE FOCUS / FAMILY LAW

# Divorce, family law attorney busts alimony myths

**Commentary by Christopher R. Bruce**

Earlier this year a group known as Florida Alimony Reform led a grass-roots bid to drastically limit alimony in Florida. The special interest group's efforts to enact alimony reform legislation ultimately failed during the 2012 Florida legislative session, but the group is currently holding town hall meetings across the state and contends it "will be back in Tallahassee in March to take another crack at changing Florida's draconian laws."

Bruce

Alan Frisher, a financial advisor who co-chairs Florida Alimony Reform, authored a commentary that appeared in the Sept. 7 edition of the Daily Business Review in support of the group's continuing alimony reform efforts. Although the reform movement platform initially sounds persuasive, a closer analysis reveals much of Mr. Frisher's commentary and many of the special interest reform group's talking points are based on a misunderstanding of the laws pertaining to the establishment, modification and termination of alimony in Florida.

## YOUNG, HEALTHY AND EMPLOYED

The first major alimony myth proactively propagated by the alimony reformers is that Florida law makes it commonplace for healthy, employed women in their 30s and 40s to receive permanent alimony awards.

A cursory review of Florida Statute section 61.08, Florida's alimony statute, shows this is not the case.

Pursuant to section 61.08(2), a family court judge is required to determine that the spouse requesting alimony has an actual need for alimony or maintenance before any form of alimony, even of a brief duration, can be awarded. Additionally, section 61.08(8) requires the judge to determine "no other form of alimony is fair and reasonable under the circumstances of the parties" before awarding permanent alimony.

Moreover, the judge must make "written findings of exceptional circumstances" to award permanent alimony in marriages lasting less than seven years. In marriages lasting less than 17 years, the spouse requesting permanent alimony must show entitlement based on the difficult-to-satisfy clear-and-convincing-evidence standard.

Given the language of section 61.08, common sense logic dictates it not commonplace in Florida for a healthy and employed woman in her 30s or 40s to receive permanent alimony.

If a judge were to find such a healthy and employed woman actually had a need for alimony, the statute is constructed to limit the alimony award to the period of time necessary for the spouse to become self supporting, but not longer than the length of the marriage. There are exceptions in exceptional cases, but such cases typically require the spouse requesting alimony to be permanently disabled — not young, healthy and employed.

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## REMARRIED

Another alimony myth is being advanced by the Florida Second Wives (and Partners) Club. The club is a subsection of the Florida Alimony Reform Group comprised of those "married to, engaged to, living with, or dating a permanent alimony payor."

The primary alimony myth pushed by the club is that assets and income from a new spouse can go towards an ex-spouse's alimony payments.

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This position is largely misplaced. Florida case law is clear that a new spouse's assets are not a source for paying alimony to an ex-spouse. Additionally, a new spouse cannot be required to pay alimony to an ex-spouse with their income.

An alimony payor's remarriage does not in and of itself trigger higher monthly alimony payments. A new spouse's finances typically become relevant only in post-divorce modification of alimony cases where the ex-spouse has a material, previously unforeseen, involuntary and permanent need for an increase in alimony.

In such cases, the new spouse's finances become relevant only when the alimony payor's "ability to pay" more alimony is in dispute. In this scenario, the determination of an alimony payor's "ability to pay" can take into account payments made by a new spouse that reduce the alimony payor's daily living expenses. The new spouse's income or assets are not considered a source for paying an increased alimony payment to the ex-spouse.

## UNTIL DEATH

Another alimony myth advanced by the reform movement is that alimony payors are required to work past retirement age and until their death to continue paying permanent alimony.

This myth was largely debunked two decades ago by the Florida Supreme Court in the case of *Pimm v. Pimm*. According to the Florida Supreme Court's decision and its progeny, most alimony payors can receive a downward reduction in their support obligation upon reaching the age of 65.

Undoubtedly, the push for the elimination of alimony reform will be raised again during the 2013 Florida legislative session, although it remains to be seen if the reform effort will achieve enough momentum to eradicate permanent alimony from Florida law. In the months preceding the next session, hopefully all stakeholders can collaborate to advance sensible updates to Florida's alimony laws instead of merely seeking an eradication of permanent alimony based on a misunderstanding of the law.

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**COURTS** Automaker knew headlights were easy to steal, complaint says

# Judge certifies class action brought by Porsche owners

**by Steve Plunkett**
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Porsche owners, rejoice!

If you were one of the disgruntled hundreds who had to replace stolen "high-intensity discharge" headlights, there's a class-action lawsuit waiting for you in Miami-Dade Circuit Court.

Judge David Miller has granted class certification on the complaint. While cheered, plaintiffs attorney Douglas Eaton, a partner at Eaton & Wolk in Miami, said Porsche already has announced its intention to appeal.

*Peter Diamond v. Porsche Cars North America* alleges the German-made automobiles had a design flaw that made the HID headlights "particularly vulnerable to theft"

SEE PORSCHE, PAGE A4

A class action suit alleges Porsches had a design flaw that made its headlights vulnerable to theft.