

To: New Jersey Law Revision Commission
From: Arshiya Fyazi
Re: Remarriage for Purposes of Alimony (*Sloan v. Sloan* and N.J.S. 2A:34-23)
Date: June 08, 2020

Memorandum

Executive Summary

In September 2018, the New Jersey Law Revision Commission (NJLRC) Staff proposed a project based on the Appellate Division decision in *Sloan v. Sloan*.¹ In that case, the Court considered the effect of remarriage on alimony obligations and the questions of what constituted “remarriage”.

Staff was authorized to contact practitioners of the matrimonial bar and asked to ascertain whether the issue raised in *Sloan* is a reoccurring issue that requires the Commission’s attention.² The results of Staff’s work follows.

Background

In *Sloan*, the trial court terminated the plaintiff’s alimony based on a “remarriage” that did not meet the statutory requirement.³ The trial court noted that the plaintiff’s intentional avoidance of legal marriage solely to avoid losing his money to be inequitable and unjust.⁴ The Appellate Division, however, determined that the trial court erred in terminating the plaintiff’s alimony because the Matrimonial Settlement Agreement (“MSA”) specifically stated alimony was to be terminated on “remarriage,” and that “marriage” requires a license under N.J.S. 37:1-2 and N.J.S. 37:1-10.⁵ The matter was remanded to the trial court to examine the alimony issue in the context of “changed circumstances” and in light of recent amendments to the alimony statute.⁶

The September 10, 2014 amendments to N.J.S. 2A:34-23 added subsections (j) through (n), which address modifications to alimony payments due to retirement, change in income, temporary remedies, and cohabitation.⁷ The amendments to the alimony statute, N.J.S. 2A:34-23, do not explicitly set forth whether they are to be applied retroactively and that the courts appear to be divided on how to interpret the statutory amendments.⁸

¹ *Sloan v. Sloan*, No. A-2620-15T3, 2017 WL 1282764 (App. Div. Apr. 6, 2017); see Memorandum from Wendy Llewellyn, former Legislative Law Clerk on Remarriage in the Alimony Context to the New Jersey Law Revision Commission (Sept. 20, 2018) (on file with the Commission).

² See NEW JERSEY LAW REVISION COMMISSION (2018) ‘Remarriage in the Alimony Context’. *Minutes of NJLRC meeting 20 Sep. 2018*, Newark, New Jersey.

³ *Sloan* at *2.

⁴ *Id.*

⁵ *Id.* at *2-*3. The MSA between the plaintiff and the defendant was incorporated into their Final Judgment of Divorce in June of 2014.

⁶ *Id.* at *4.

⁷ N.J.S. 2A:34-23(j)-(n).

⁸ The amendments to N.J.S. 2A:34-23 took effect on September 10, 2014.

Outreach

Outreach was conducted in late 2018 and early 2019. Request for outreach was sent to twelve individuals, that included attorneys specializing in family law as well as various members of the New Jersey Bar Association – Family Law Section. In response, Staff received one comment.

A member of the Family Law Section of the New Jersey Bar Association provided Staff with insight on this subject. According to the commenter, the judicial opinions on this subject matter vary from court to court even within the same vicinage.⁹ In addition, Staff was informed that there is no universal consensus regarding whether the subject amendments apply retroactively or not.¹⁰ During the 2013 Legislative Session, this stakeholder recalled a fight regarding the inclusion of alimony guidelines,¹¹ and suggested that there may not be an appetite to revise the statute.¹² The commenter concluded by stating that, as the law stands, there will be two classes of litigants; those who get retroactivity and those who do not.¹³

New Jersey Supreme Court

At NJLRC's September 2018 meeting, Commissioner Long said that the Supreme Court in *Quinn v. Quinn*¹⁴ made clear that the amendments to the alimony statute were not to be applied retroactively.¹⁵ She suggested that the fact that some courts are failing to follow the determination of the Supreme Court on this issue does not give rise to a project.¹⁶ Commissioner Bell expressed curiosity about whether the Supreme Court was going to take up this issue to bring clarity to the treatment of the amendments.¹⁷

Research suggests that the New Jersey Supreme Court has not considered any cases since *Quinn*.

“[P]ost - amendment case law has focused primarily on whether the amended statute or pre-amendment case law should apply to a given case, the Judiciary has yet to hold in a published decision what should actually happen to a payor's alimony obligation under the statute in the event of a payee's cohabitation.”¹⁸

⁹ Memo to file prepared by Wendy Llewellyn, former Legislative Law Clerk to the NJLRC (Oct. 12, 2018).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Quinn v. Quinn*, 225 N.J. 34 (2016)

¹⁵ See NEW JERSEY LAW REVISION COMMISSION (2018) ‘Remarriage in the Alimony Context’. *Minutes of NJLRC meeting 20 Sep. 2018*, Newark, New Jersey.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Robert A. Epstein, A REVIEW OF COHABITATION LAW IN A POST-AMENDMENT LANDSCAPE, 310-FEB N.J. Law. 16 (New Jersey Lawyer, the Magazine, 2018).

Pending Legislation

In the current legislative session, five pieces of legislation have been introduced so far that seek to amend N.J.S. 2A:34-23.¹⁹ None address what constitutes “remarriage” for purposes of alimony.

Conclusion

Based on the above, Staff seeks guidance from the Commission regarding whether to proceed with the project or to suspend or conclude its work in this area.

¹⁹ Proposed legislation A.B. 1875, 219th Leg., 1st Sess. (N.J.2020) introduced in the Assembly on Jan. 14, 2020.
Proposed legislation A.B. 1302, 219th Leg., 1st Sess. (N.J.2020) introduced in the Assembly on Jan. 14, 2020.
Proposed legislation A.B. 354, 219th Leg., 1st Sess. (N.J.2020) introduced in the Assembly on Jan. 14, 2020.
Proposed legislation S.B. 930, 219th Leg., 1st Sess. (N.J.2020) introduced in the Senate on Jan. 27, 2020.
Proposed legislation S.B. 1695, 219th Leg., 1st Sess. (N.J.2020) introduced in the Senate on Feb. 13, 2020.