

**IN THE DISTRICT COURT OF APPEALS OF FLORIDA  
FOURTH DISTRICT**

In Re Marriage of	:
WILLIAM A. CABANA	:
Petitioner, Former Husband, pro se	:
	: Case Number: 05-
and	:
	:
SHARON ANN MAYO f/k/a	:
SHARON ANN CABANA	:
Respondent, Former Wife.	:

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**SUGGESTION FOR CERTIFICATION  
TO THE FLORIDA SUPREME COURT**

Comes now the petitioner, *pro se*, pursuant to Fl. R. App. Proc. Rule 9.125

(a) to suggest this Fourth District Court of Appeals certify the constitutional challenges to the alimony statutes of this appeal to the Florida Supreme Court.

(Art. V § 3 (b) (5) Fla. Const.)

The questions presented are,

Whether Chapter 61 “Dissolution of Marriage” Fla. Stat. alimony provisions (§ 61.08 et al Fla. Stat.) impermissibly infringe Art. I § 23, Right of Privacy, Fla. Const.?

Whether Chapter 61 “Dissolution of Marriage” Fla. Stat. alimony provisions (§ 61.08 et al Fla. Stat.) impermissibly infringe Art. II § 3 Separation of Powers, Fla. Const.?

Whether Chapter 61 “Dissolution of Marriage” Fla. Stat. alimony provisions (§ 61.08 et al Fla. Stat.) conflict with the public policy established in *Connor v. Southwest Florida Regional Medical Center, Inc.*, i.e. abrogation of the doctrine of necessities making parties in a marriage economic independents?

The issues are offered by an Applicant who was married for only eleven years, divorced in 1972, had an alimony award of \$25 a week levied against him forever—without any conditions to end payment, has paid alimony for over thirty years, is two years in arrearages, has essentially no assets, lives with an income below the poverty level and is now in court because his former spouse, with considerable assets and income, through over thirty motions is pressing hard for contempt enforcement with incarceration predicated on the challenged statutes.

At the time of the dissolution *Canakaris v. Canakaris*, 383 So.2d (Fla.1980) was not the controlling case law on alimony, Art. I § 23, Right to Privacy, Fla. Const. had not been passed (1980), the doctrine of necessities had not be abrogated by *Connor v. Southwest Florida Regional Medical Center, Inc.*, 668 So. 2d 175 (Fla. 1995), the controlling law on Florida's Right to Privacy had not been effected, *In re T.W., A Minor*, 551 So.2d 1186 (Fla.1989) and *N. Fla. Women's Health & Counseling Servs., Inc. v. State*, 866 So. 2d 612, 635 (Fla. 2003), and divorce had not yet been recognized as within the privacy protected zone of the Right to Privacy *Littlejohn v. Rose*, 768 F. 2d 765, 768 (6<sup>th</sup> Cir. 1985).

If marriage is a contract then the law as it existed at the time of the marriage should control.

If current law controls the issue of alimony then all of the current law should be applied, Art. I § 23, Fla. Const., Right to Privacy, Art. II § 3, Fla. Const.,

Separation of Powers, *North Florida Women's Health* 866 So.2d, *Connor* 668 So.2d, *Littlejohn* 767 F.2d and the plethora of federal and state cases on the Right of Privacy as well as the Separation of Powers.

### **REASON FOR IMMEDIATE RESOLUTION**

The petitioner is in immediate peril of loss of personal liberty, right of privacy and property rights because the challenged alimony statutes are actively being applied and enforced against him without any Florida court ever having rendering a reasoned opinion on their constitutionality on Right of Privacy and Separation of Powers grounds.

Despite over thirteen (13) different legal proceedings by Floridians raising similar constitutional challenges no Florida court has ever rendered a reasoned opinion.<sup>1</sup>

On the contrary, a circuit court and a Fourth District Court of Appeals opinion deemed a constitutional challenge to § 61.08 Fla. Stat. as frivolous and affirmed sanctions against attorneys making the legal argument. *Barna v. Barna*, 850 So.2d 603 (Fla. 4th DCA 2003).

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<sup>1</sup> See e.g. *Barna v. Barna*, 4D02-3332 (Fla.App. 4 Dist. 2003) cert denied Florida Supreme Court; *Blanchard v. Blanchard* (Fla. 4<sup>th</sup> DCA 2002), *Martyak v. Martyak* Case No. 00-730 4<sup>th</sup> DCA, *Case No. 03-2077* 4<sup>th</sup> DCA; *Gogola v. Gogola* Case No. 98-8094 CA C 20th Judicial Circuit Court ,& *Case No. 2D 02 4000* 2<sup>nd</sup> DCA; *Johnson v. Johnson* Case No. 80-1004 CA 15th Judicial Circuit Court; *Alliance for Freedom from Alimony, Inc and Richard Lindsey v. Butterworth, Zingale*, 4D 02-2288, *Greenberg v. Greenberg*, 15th Judicial Circuit Court (CD98-9754 FZ)

Art. V § 3(b)(3) Fla. Const. permits appellate court to simply deny, per curiam or without reasoned opinion, a constitutional challenge to a state statute and thereby foreclose all review of the issue by the Florida Supreme Court. This undesirable effect may have been unrecognized by Floridians when they passed the constitutional amendment in an effort to reduce the workload of the Florida Supreme Court.

The absence of a reasoned opinion on the constitutionality of the alimony statutes and the sanctions against attorneys for making such challenges has had a chilling effect on Floridians access to courts, to find attorneys to represent them on the issues, and to make constitutional challenges to alimony as well as other family law statutes.

### **ISSUES OF GREAT IMPORTANCE**

These questions are of great public importance and will have a great effect on the proper administration of justice throughout the state. In Florida over eighty thousand divorces occur annually. Dissolution proceedings consume over thirty percent of Florida court resources. Innumerable Floridians are jailed annually after alimony arrearage contempt proceedings. The process of alimony litigation consumes vast amounts of limited family financial resources that could be better saved for family use.

“Most of Florida's circuit court judges dislike dealing with family law matters. This attitude can affect the outcome of cases.” (page 6)

Report of the Florida Supreme Court Gender Bias Study Commission (1990),

“As a result of their almost unlimited discretion, trial courts distribute marital assets either as property or alimony with a lack of certainty and consistency. This may lead to inappropriate property settlements between the parties.” (page 7) Report of the Florida Supreme Court Gender Bias Study Commission (1990),

“Apparently, most judges really do not want to hear family law matters and it shows...It cannot be comforting to find that the one who holds the future of your access to your children and your financial future in his or her hands has, at best, little interest in that role, or, at worst, a distaste for it.” (page 54) Report of the Florida Supreme Court Gender Bias Study Commission (1990)

However, it is not clear, based on appellate decisions, whether a trial judge must consider all the statutory factors and give equal weight to all, or just the relevant ones....” (page 7) Gender Bias—Then and Now, Continuing Challenges in the Legal System, The Report of the Gender Bias Study Implementation Commission (1996)

### **PRAYER FOR RELIEF**

WHEREFORE, Appellant, *pro se*, prays this court certify to the Florida Supreme Court these questions as of great importance, having a great effect on the proper administration of justice throughout the state and of need of immediate resolution.

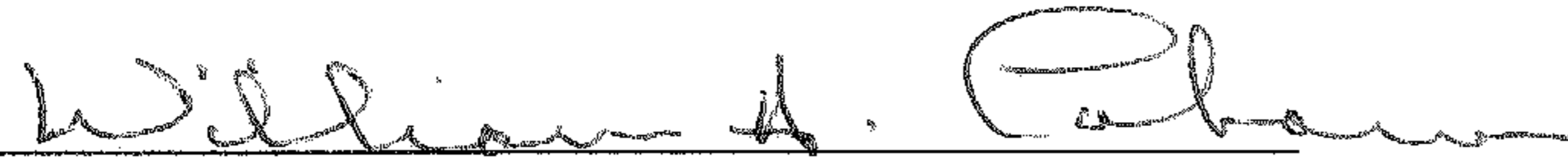
Respectfully submitted, William A. Cabana

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October 5, 2005

## CERTIFICATION OF IMPORTANCE

I express a belief, based on a reasoned and studied professional judgment, that this appeal requires immediate resolution by the Florida Supreme Court, is of great public importance and will have a great effect on the administration of justice throughout the state.



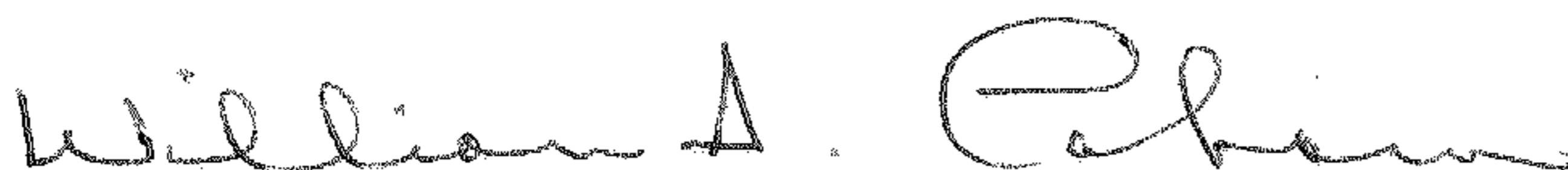
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## CERTIFICATE OF SERVICE

I hereby certify that on this 5<sup>th</sup> day of October, 2005, I caused a true and accurate copy of this Notice to Clerk of Appeals to be send by U.S. mail to:

Cathy L. Kamber, Esq.  
Attorney For Sharon Ann Mayo:  
1675 Palm Beach Lakes Boulevard  
The Forum, Tower A, Suite 700  
West Palm Beach, FL 33401

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## Appendix

1. Declaratory Judgment Motion to Challenge the Constitutionality of the Permanent Alimony Statute
2. Petitioner's Motion To Deny Contempt and To Terminate Alimony

IN THE CIRCUIT COURT OF THE 15<sup>TH</sup> JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

IN RE: THE MARRIAGE OF

CASE NO: 501971DR004137XXDIFD

WILLIAM A. CABANA,  
Petitioner/Former Husband,

FAMILY DIVISION

and

SHARON ANN MAYO f/k/a  
SHARON ANN CABANA  
Respondent/Former Wife.

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**ORDER ON DECLARATORY JUDGMENT MOTION TO CHALLENGE THE  
CONSTITUTIONALITY OF THE PERMANENT ALIMONY STATUTE**

**THIS CAUSE** came before the Court on August 29, 2005 on Former Husband's Declaratory Judgment Motion to Challenge the Constitutionality of the Permanent Alimony Statute (D.E. 104). The Court, having considered the motion, argument, and being otherwise fully advised in the premises,

**ORDERS AND ADJUDGES** as follows:

1. Former Husband's Declaratory Judgment Motion to Challenge the Constitutionality of the Permanent Alimony Statute is hereby denied.

**DONE AND ORDERED** at West Palm Beach, Palm Beach County, Florida, this

\_\_\_\_\_ day of September, 2005.

**SIGNED & DATED**

SEP - 7 2005

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CIRCUIT COURT JUDGE  
JUDGE MARTIN H. COLIN

Cathy L. Kamber, Esq., 1675 Palm Beach Lakes Blvd., Suite 700, West Palm Beach, FL  
33401

William A. Cabana, 1050 Capri Isles Blvd., #F105, Venice, FL 34292



IN THE CIRCUIT COURT OF THE 15<sup>TH</sup> JUDICIAL CIRCUIT  
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Respondent/Former Wife.

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**ORDER DENYING PETITIONER'S MOTION AND MEMORANDUM OF LAW  
TO TERMINATE ALIMONY**

THIS CAUSE came before the Court on August 29, 2005 on Petitioner's Motion and Memorandum of Law to Terminate Alimony bearing certificate of service dated July 25, 2005. The Court, having considered the motion, legal argument and being otherwise fully advised in the premises,

**ORDERED AND ADJUDGED** as follows:

1. To the extent that Petitioner's Motion and Memorandum of Law to Terminate Alimony seeks a non evidentiary legal determination that the alimony provisions contained in Florida Statutes Chapter 61 are unconstitutional, or otherwise seeks a declaratory judgment that Florida Statutes Chapter 61 is violative of either the Florida or Federal Constitution, or otherwise seeks an injunction prohibiting enforcement of this Court's prior award of alimony to Former Wife, the motion is denied with prejudice. Former Husband is specifically enjoined from refileing any pleading seeking the relief sought by him in the subject Motion

*Cabana v. Mayo*

*CASE NO: 501971DR004137XXDIFD*

*Order Denying Petitioner's Motion and Memorandum of Law to Terminate Alimony*

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and Memorandum of Law to Terminate Alimony.

2. The foregoing ruling shall not preclude an independent consideration of Former Husband's Supplemental Petition for Modification of Alimony upon a proper evidentiary hearing.

**DONE AND ORDERED** at West Palm Beach, Palm Beach County, Florida, this

\_\_\_\_\_ day of September, 2005.

**SIGNED & DATED**

**SEP - 7 2005**

\_\_\_\_\_  
**CIRCUIT COURT JUDGE JUDGE MARTIN H. COLIN**

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