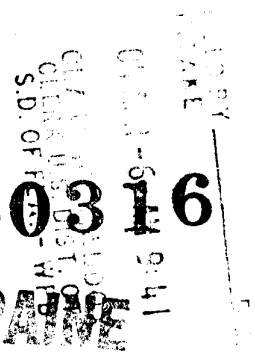
IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA



WILLIAM A. CABANA
Former Husband, pro se

Civil Case No. 04-80316

SHARON ANN MAYO f/k/a
SHARON ANN CABANA
Former wife, Respondent

Assigned To: CIV-PAINE

MAGISTRATE JUDGE
JOHNSON

And

Third Party Defendants,

The HONORABLE SANDRA MCSORLEY,
Fifteenth Judicial Circuit Court of Florida,
in her official capacity and,

FIFTEENTH JUDICAL CIRCUIT COURT OF FLORIDA
The Honorable Edward Fine, Chief Judge, in his Official Capacity, and,

JAMES ZINGALE, Chairman, Executive Director
Florida Department of Revenue,
in his official capacity and,

FLORIDA DEPARTMENT OF REVENUE,

VERIFIED COMPLAINT

FLORIDA STATUES CHAPTER 61 "DISSOLUTION OF MARRIAGE" ALIMONY PROVISIONS IMPERMISSIBLY INFRINGE THE FEDERAL RIGHT TO PRIVACY, INTER ALIA

"...it is clear that among the decisions that an individual may make without unjustified government interference are personal decisions relating to marriage..." *Carey v. Population Serv. Int'l.,* 431 U.S. 678, 684-685 (1977)

INTRODUCTORY STATEMENT

1) Now comes the Plaintiff, WILLIAM A. CABANA, who asserts, pursuant to 42 U.S.C. 1983, that Florida Statutes Chapter 61 "Dissolution of Marriage" alimony provisions (§ 61.08 et al)

   a. impermissibly infringe the U.S. Constitution, Fourteenth Amendment Due Process Clause, Section 2, fundamental Federal Right to Privacy in the Privacy Protected Zone of "Personal Decisions Relating to Marriage," i.e. dissolution of marriage;

   b. impermissibly infringe the U. S. Constitution, Fourteenth Amendment, Section 2, fundamental U.S. Constitution Equal Protection Clause;

   c. impermissibly infringe U.S. Constitution, Thirteenth Amendment as state imposed legal coercion to effect involuntary servitude;

   d. impermissibly infringe the Florida Constitution Article I Section 23, Privacy Amendment in the Privacy Protected Zone of "Personal Decisions Relating to Marriage," i.e. dissolution of marriage;

   e. impermissibly infringe Florida Constitution Article I Section 2, Equal Protection Clause;

   f. impermissibly infringe Florida Constitution Article I Section 2 inalienable Basic Rights to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry;

   g. conflict with Florida Supreme Court ruling in *Connor v. Southwest Florida Regional Medical Center, Inc*., 668 So. 2d 175 (Fla. 1995) (abrogating the doctrine of necessaries) and are contrary to the public policy effected therein.

2. The Plaintiff seeks a only declaratory judgment under 28 USC 2201 from this court on the above Federal and State question issues as well as a declaratory judgment against Third Party Defendants under 42 USC 1983.
3. This action arises because the Plaintiff has suffered an injury in fact; i.e., his titled property and monies have been assigned to his former spouse by the State of Florida, because of the challenged "Dissolution of Marriage" statute alimony provisions § 61.08 inter alia.

   Further, because of the challenged statutes, he has been held in contempt, with threat of imprisonment, by the State of Florida for failure to fully comply with the challenged statutes.

   He has been deprived of his fundamental Right to Privacy, Property Rights, and Equal Protection Rights under the Fourteenth Amendment of the U.S. Constitution, his Thirteenth Amendment right to be free of involuntary servitude, and his Florida Constitution Right to Privacy, Equal Protection and Inalienable Rights to enjoy life and liberty, pursue happiness, and to enjoy the rewards of his industry.
4. The United States Supreme Court has long held that "personal decisions relating to marriage" are fundamental rights (Right to Privacy) protected by the U.S. Constitution, Fourteenth Amendment.
5. The decision of a Floridian to dissolve his marriage (Dissolution of Marriage) is a personal decision relating to marriage.
6. The Plaintiff asserts that by exercising his fundamental Right to Privacy to dissolve his marriage, i.e. a "personal decision relating to marriage" Florida 's "Dissolution of Marriage" statute alimony provisions denies him his property rights and permanently enslaves him to labor for the benefit of his former spouse or be held in contempt and imprisoned contrary to the U.S. Constitution Fourteenth Amendment and Thirteenth Amendment, Florida

Constitution Article I Section 23 (Right to Privacy), Article I Section 2 Equal Protection and Inalienable Basic Rights.

7. The State of Florida is not permitted to intrude upon these fundamental Federal and State Constitutional Rights without proving a compelling state interest is applied in the least intrusive manner and that the interest is substantially furthered by the legislation, i.e. strict scrutiny analysis.
8. Florida Statues § 61.08 mandate that the State has wide discretionary power through its judiciary, with only a judicial standard of equity, to forever strip WILLIAM A. CABANA of his property rights in his earnings and deny him his here enumerated Federal and State Constitutional Rights. (Attached Relevant Statutes)
9. The State of Florida does not mandate that all Floridians who exercise their fundamental Right to Privacy of a "personal decision relating to marriage', i.e. to dissolve their marriage, be mandated forever to support their former spouses nor does it require married spouses to support their spouses to the "lifestyle of the marriage" as it mandates spouses dissolving their marriage.
10. A "personal decision relating to marriage", i.e. to get married, stay married or to dissolve a marriage, is a recognized Federal and State Liberty Interest--a fundamental Right to Privacy.

STANDING, JURISDICTION and VENUE

11. The jurisdiction of this Court is invoked pursuant to federal question subject matter and the provisions of 28 U.S.C. 1331.
12. The jurisdiction of this Court is invoked pursuant to Article III Section 2 of the U.S. Constitution; an actual "case or controversy" exists because the Plaintiff is currently subject

to jurisdiction of the Defendants and the laws of the State of Florida. The challenged statutes of the State of Florida have been exercised by all of the Defendants against the Plaintiff. The Plaintiff has been injured, and continues to be injured, by the challenged statutes and all of the Defendants.

The Plaintiff alleges that such a personal stake in the outcome of the controversy assures that "concrete adverseness" which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.

13. The jurisdiction of this Court is invoked pursuant to 28 USC 1441 (a) and (b)
14. The jurisdiction of this Court is invoked where the federal subject matter is an independent federal question and where the independent question is not inextricably intertwined with any state court judgment.
15. The jurisdiction of this Court is invoked where a federal question exists and the only relief requested is declaratory judgment relief pursuant to third party defendants under 42 USC 1983.
16. Separately, and in addition to, Plaintiff presents a general challenge to the constitutionality of Florida Statutes Chapter 61 "Dissolution of Marriage" alimony provisions (§ 61.08 et al.).
17. Plaintiff is not requesting a divorce decree, alimony, child custody, or other family law decision from this Court.
18. Plaintiff is not requesting that a state court judgment be overturned, altered, modified, or entered by this Court.
19. Plaintiff is only requesting declaratory judgment relief, not injunctive relief challenging the constitutionality of a state statute as impermissibly infringing the US Constitution

Fourteenth, Thirteenth Amendment, 42 U.S.C. 1983, and Florida Constitution Article I Section 23 and Section 2.

20. There is no bar to declaratory relief of independent federal questions and/or to a general constitutional challenge of state law.
21. The authority of this Court is further invoked pursuant to the Federal Declaratory Judgment Act and the provisions of 28 U.S.C. 2201.
22. The jurisdiction of this Court is invoked pursuant to the provisions of applicable sections of the U.S. Code that are not specifically asserted and/or are inadvertently omitted in this action that pertain to declaratory relief and the jurisdiction of this court.
23. The jurisdiction of this Court is invoked where the merits of the instant matter are capable of repetition but evade meritorious review.
24. Subject matter jurisdiction of this action is proper because an actual controversy exists among the parties, as well as adverse interests, as to which a declaratory judgment setting forth their rights and obligations under Federal law is necessary and will resolve the active issue, i.e. whether Florida Chapter 61 “Dissolution of Marriage” statute alimony provisions (§ 61.08 et al) impermissibly infringe the U.S. Constitution 14th Amendment Section 1 Due Process Clause, Right to Privacy, in the Privacy Protected Zone of a “personal decision relating to marriage” as well as impermissibly infringing the Florida Constitution, Article I Section 23, Right to Privacy, inter alia (see causes of action).
25. One or more of the Defendants reside in or are located in Palm Beach County, Florida. Therefore, venue is proper pursuant to 28 U.S.C. 1391 (b) (1) and (2).

PRO SE STANDARD OF REVIEW

26. Because the Plaintiff is pro se, the Court has a higher standard when faced with a motion to dismiss. *White v. Bloom*, 621 F.2d 276 makes this point clear and states:

> "A court faced with a motion to dismiss a pro se complaint alleging violations of civil rights must read the complaint's allegations expansively, *Haines v. Kerner*, 404 U.S. 519, 520-21, 92 S. Ct. 594, 596, 30 L. Ed. 2d 652 (1972), and take them as true for purposes of deciding whether they state a claim." *Cruz v. Beto*, 405 U.S. 319, 322, 92 S. Ct. 1079, 1081, 31 L. Ed. 2d 263 (1972).

Moreover, "the court is under a duty to examine the complaint to determine if the allegations provide for relief on any possible theory." *Bonner v. Circuit Court of St. Louis*, 526 F.2d 1331, 1334 (8th Cir. 1975) (quoting *Bramlet v. Wilson*, 495 F.2d 714, 716 (8th Cir. 1974)).

Thus, if this court were to entertain any motion to dismiss this court would have to apply the standards of *White v. Bloom*. Furthermore, if there is any possible theory that would entitle the Plaintiff to relief, even one that the Plaintiff hasn't thought of, the court cannot dismiss this case.

PARTIES

27. Plaintiff, WILLIAM A. CABANA, is a **Sarasota County, Florida** resident. Plaintiff is subject to the challenged statute (Chapter 61 and 61.08) pursuant to a Final Judgment of Dissolution entered July 28, 1972 by the Defendant FIFTEENTH JUDICIAL CIRCUIT COURT OF FLORIDA and is subject to the enforcement power authorized in Chapter 61 to the Defendants the FIFTEENTH JUDICIAL CIRCUIT COURT OF FLORIDA, The

HONORABLE SANDRA McSORLEY, in her official capacity, and the FLORIDA DEPARTMENT OF REVENUE.

28. Defendant, SHARON ANN MAYO, is the former Wife named in the Dissolution of Marriage Proceeding in the Fifteenth Judicial Circuit Court of Florida.

29. Third Party Defendant The HONORABLE SANDRA McSORLEY, in her official capacity, as the designated state agent to enforce § 61.08 provisions and as the state agent acting, not as a neutral adjudicator but as an enforcer of the challenged statute against the defendant for the FIFTEENTH JUDICIAL CIRCUIT COURT OF FLORIDA. Judge McSorley enforced § 61.08 against the Plaintiff pursuant to § 61.14.

30. Third Party Defendant, the FIFTEENTH JUDICIAL CIRCUIT COURT OF FLORIDA, a "political subdivision, " and as such not subject to Eleventh Amendment immunity in federal court, is a proper defendant. The FIFTEENTH JUDICIAL CIRCUIT COURT OF FLORIDA is the State agent designated to apply the "Dissolution of Marriage" Chapter 61 provisions against the Plaintiff. It is also the state agent statutorily designated (§ 61.14, § 61.16 (1), § 61.17, § 61.18) to enforce the Dissolution of Marriage statute alimony provisions against the Plaintiff.

    It is a suable entity for declaratory judgment and declaratory relief.

    It has applied and enforced the challenged statutes against the Plaintiff.

31. Third party Defendant, The HONORABLE EDWARD FINE, in his official capacity, is the Chief Judge with administrative function responsibility and authority for the FIFTEENTH JUDICIAL CIRCUIT COURT of FLORIDA. He is its titular head.

32. Third Party Defendant, FLORIDA DEPARTMENT OF REVENUE, a "political subdivision" and as such not subject to Eleventh Amendment immunity in federal court, is a

proper defendant. The FLORIDA DEPARTMENT OF REVENUE, through its subsidiary the State Disbursement Unit, is the State agency designated to collect alimony provisions and to enforce § 61.08 et al., the challenged statutes.

33. Third Party Defendant, JAMES ZINGALE, in his official capacity, is the Chairman and the Executive Director of the Florida Department of Revenue, the state agent directing the agency (State Disbursement Unit) whose mission is, *inter alia*, the collection of alimony and the enforcement of § 61.08 provisions.

34. The Florida Attorney General cites, and we rely upon him and the authority he offers as to the proper defendant for a constitutional challenge to a statute, *Walker v. President of the Senate*, 658 So. 2d 1200, 1200 (Fla. 5th DCA 1995) "it is the state official designated to enforce (it) who is the proper defendant, even when that party has made no attempt to enforce (it)."; *American Civil Liberties Union v. The Florida Bar*, 999 F. 2d 1486, 1491 (11th Cir. 1993) "Under the Supreme Court precedent, when a plaintiff challenges the constitutionality of a rule of law, it is the state official designated to enforce that rule who is the proper defendant, even when that party has made no attempt to enforce the rule. [Citing] *Diamond v. Charles*, 476 U.S.54, 64, 106 S. Ct. 1697, 1704, 90 I.Ed. 2d 48 (1986)."[1]

35. NOTICE is given to the Attorney General of the State of Florida because of the declaratory judgment claim challenging the constitutionality of Florida Statutes Chapter 61 "Dissolution of Marriage" alimony provisions (§ 61.08 et al).

[1]Memorandum of Law of the Florida Attorney General on behalf of John Bush Governor et al, Defendants in Jerry Bainbridge, et al v. John Bush, et al, Case No. 99-2681-CIV-T-25E U.S. District Court, Middle District, Tampa, Florida, February 2000. Available at http://www.wswa.org/public/state/pdfs/fl/StateMTD.PDF.

RELEVANT LAW

> "Our law affords constitutional protection to *personal decisions relating to marriag*e, procreation, contraception, family relationships, child rearing, and education. … … …Our precedents 'have respected the private realm of family life which the state cannot enter.' These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State." (Emphasis Supplied) *Planned Parenthood v. Casey,* 505 U.S. 833, 859 (1992),

Federal Right to Privacy

36. The Liberty Interest of the Federal and Florida Right to Privacy has currently moved to the forefront of fundamental constitutional rights rulings.

37. The Federal Right to Privacy (U.S. Constitution Fourteenth Amendment Due Process clause) has a long recognized Privacy Protected Zone of "Personal Decisions Relating to Marriage" *Carey v. Population Serv. Int'l.*, 431 U.S. 678, 684-685 (1977), *Loving v. Virginia*, 388 U.S. 1, 12, 87 S.,Ct. 1817 (1967); *Zablocki v. Redhail*, 434 US 374 (1978)and; *Planned Parenthood v. Casey*, 505 U.S. 833, 859 (1992), *Roe v. Wade*, 410 U.S. 113, (1973); *Griswold v. Connecticut*, 381 U.S. 479 (1965)

38. The Plaintiff asserts that the challenged alimony provision (§ 61.08 et al.) is part of the "Dissolution of Marriage" Statute. This Statute is written intruding in the long recognized Privacy Protected Zone of a "personal decision relating to marriage," i.e. a Floridian's personal decision to dissolve his marriage.

39. The Right to Privacy attaches to the state statute “Dissolution of Marriage” because its title plainly relates to a Floridian’s “personal decision relating to marriage,” i.e. to dissolve his marriage.

40. Daily Floridians make the personal decision relating to their marriage to dissolve it.

41. Any State statute to which the Federal Right to Privacy attaches is presumed unconstitutional unless the State proves a compelling interest applied in the least intrusive manner, i.e. strict scrutiny. The challenged alimony provisions are thus presumed unconstitutional unless the State of Florida proves its burden of the statute having a compelling state interest and that the statute is applied with the least intrusive manner and that the interest is substantially furthered by the legislation.

§ 61.08 Alimony Provisions

42. The alimony provisions (§ 61.08) mandate that the state of Florida invade a Floridian’s family, through the judiciary, to examine, evaluate, determine and conclude the terms and nature of the interpersonal relationship, spousal roles, spousal conduct, parental decision making, parenting conduct, parental spending, economic standard of living, occupations, education, savings, assets, charitable contributions and most importantly the intimate emotional, psychological and physical details of the parties and family during their marriage granting the judiciary a broad range of discretion to apply a property stripping statute with a standard of equity, with a threat of contempt and imprisonment.

43. The State of Florida has never exhorted or proved a compelling state interest for the alimony provisions.

44. Chapter 61 "Dissolution of Marriage" Purpose section lists three Purposes for the Statute and its provisions.[2] None of the purposes have ever been offered as or proved to be a compelling state interest.

45. § 61.08 annunciates over 2^{17} permutations then includes the phrase "may consider any other factor necessary to do equity and justice between the parties" from which the State of Florida may choose as reasons to burden a Floridian with lifetime alimony.

46. "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." Quote addressing the § 61.08 2^{17} criteria for awarding alimony (page 7) in Gender Bias—Then and Now, Continuing Challenges in the Legal System, The Report of the Gender Bias Study Implementation Commission (1996) Commission of the Florida Supreme Court.

47. § 61.08 is applied in a court of chancery with a standard of equity given to a judiciary granted wide discretion to determine if a Floridian will be forever enslaved to pay alimony.

48. The fundamental Federal and Constitutional Rights at issues under § 61.08 cannot be adjudicated by such a forum forever affecting the fundamental Rights of a Floridian.

Alimony

49. There is no common law basis for alimony. It is merely a statute and as such must comport with the Federal and State Constitutions.[3]

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[2] 61.001 Purpose of chapter.--
(1) This chapter shall be liberally construed and applied.
(2) Its purposes are:
(a) To preserve the integrity of marriage and to safeguard meaningful family relationships;
(b) To promote the amicable settlement of disputes that arise between parties to a marriage; and
(c) To mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage.

50. Coverture, the rationale for alimony and the doctrine of necessaries, was extinguished in Florida with Article X Section 5 Florida Constitution, Florida Statutes Section 708 (Married Women's Property) and *Merchant's v. Cain*, 9 So. 2d 373, 375 (Fla. 1942).

Federal Equal Protection

51. § 61.08 constructed as noted above cannot facially nor as applied be implemented equally among all Floridians exercising their fundamental privacy protected right to dissolve their marriage.

52. Marriage has achieved the status of a suspect class. Federal statutes routinely classify marital status along with suspect classes. See, e.g., 12 U.S.C. § 3106a (1) (b)(foreign banks must conduct operations in compliance with laws prohibiting discrimination on the basis of race, national origin, marital status); 5 U.S.C. § 7204(b) ("...[D]iscrimination because of race, color, creed, sex, or marital status is prohibited with respect to an individual or a position held by an individual"); 15 U.S.C. § 1691(a)(1)(unlawful for creditor to discriminate on the basis of sex, race, religion, national origin, or marital status); 20 U.S.C. § 1087tt(c)(unlawful to discriminate in loaning money on basis of sex, race, religion, national origin, or marital status); 20 U.S.C. § 1071(a)(2)(same, for credit or insurance).

53. The State of Florida does not intrude in the Privacy Protected Zone of economic, private, intimate, and personal areas of Floridians who plan to marry or who are married as it does with Floridians dissolving their marriages.

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[3] "At common law there was no right to alimony at all. Divorce was not a function of the judiciary…
The so-called 'right' to alimony does not exist as an incident to divorce A vinculo unless it is granted by statute." *Pacheco v.Pacheco,* 246 So.2d 778, 780 (Fla.1971).

54. The State of Florida does not intrude and mandate that a Floridian in an intact marriage provide the same level of economic support—"lifestyle of the marriage"-- that the State of Florida mandates an unmarried former spouse provide after exercising his personal decision relating to marriage to dissolve his marriage.

55. The State of Florida does not subject all Floridians who wish to dissolve their marriage to § 61.08. It only applies the statute for the benefit of those Floridians who plead for alimony when dissolving their marriage.

56. The State of Florida, as relates to alimony, treats differently Floridians starting a marriage versus those dissolving a marriage; treats differently, as relates to alimony, some Floridians dissolving their marriage compared with other Floridians dissolving their marriage; treats differently, as relates to alimony, Floridians during a marriage compared with the same Floridians after they dissolve their marriage. (Compare § 61.09 v. §61.08)

57. The Plaintiff asserts the state has no compelling state interest nor even a rationally related interest for such variability in stripping property rights from Floridians and permanently enslaving only some of them to work for a former spouse.

58. The State of Florida never has, and cannot articulate a compelling state interest applied in the least intrusive manner, and that the interest is substantially furthered by the legislation, to satisfy the strict scrutiny test to validate the alimony statute on equal protection grounds.

59. The State of Florida never has, and cannot even articulate a rationally related interest for the statute particularly in light of the Purposes of the Statute elucidated in §61.01. A rationally related interest should be evident and found in the purposes of the statute. It should apply to all Floridians dissolving their marriage, contested or uncontested, § 61.08 alimony pled or not pled.

Thirteenth Amendment

60. Involuntary servitude is prohibited by the Thirteenth Amendment to the U.S. Constitution. While the term is easily definable, the "exact range of conditions it prohibits" is not so evident. In a fairly recent case, *United States v. Kozminski,* 487 U.S. 931, 942 (1998) the Supreme Court defined the term as a compulsory condition "in which a person lacks liberty especially to determine one's course of action or way of life."

61. The *Kozminski* Court held that involuntary servitude "necessarily means a condition…in which the victim is forced to work for [another] by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or the legal process."

62. The use of law or the threat of legal coercion by a Floridian to induce involuntary servitude is thus a recognized violation of the Thirteenth Amendment. *United States v. Kozminski,* 487 U.S. 931, (1998).

63. "…the Amendment's drafters thought that involuntary servitude generally includes situations in which the victim is compelled to work by law." *United States v. Kozminski,* 487 U.S. 931, 931 (1998).

64. "Dissolution of Marriage" § 61.08 alimony provisions, when entered against a Floridian compel him to work by law and with further coercion by law of contempt proceedings and imprisonment.

Florida Privacy Amendment

65. "**Right of Privacy**.--Every natural person has the right to be let alone and free from governmental intrusion into his private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law." Article I Section 23 Florida Constitution.

66. "[The Florida privacy] amendment embraces more privacy interests, and extends more protection to the individual in those interests, than does the federal Constitution. *In re T.W.*,

551 So. 2d at 1192." *North Florida Women's Health & Counseling Services, Inc. v. State*, 28 Fla. L. Weekly S549 (Fla. July 10, 2003).

67. Even Florida case law attaches the fundamental Privacy Right to marriage, see *Winfield v. Division of Pari-Mutuel Wagering*, 477 So.2d 544, 548 (Fla.1985) citing *Roe v. Wade*, 410 U.S. 113, 152-53, 93 S.Ct. 705, 726-27, 35 L.Ed.2d 147 (1973) and *Shevin v. Byron*, 379 So. 2d 633, 636 (Fla. 1980),

> "Unwarranted governmental intrusion on decisions in these 'fundamental' areas is a deprivation of the "liberty" secured by the due process clause of the fourteenth amendment." (recognizing privacy interests in marriage, procreation, contraception, and family relationships)."

68. "In every case since *Winfield v. Division of Pari-Mutuel Wagering*, 477 So. 2d 544, 548 (Fla. 1985), we have held that legislation that infringes on the right of privacy…is unconstitutional unless the State has proved that the legislation serves a compelling state interest; that the legislation substantially furthers that interest; and that the legislation does so through the least restrictive means. Known as "strict scrutiny analysis," this standard is the most stringent this Court applies, and imposes the heaviest burden of proof for the State to sustain." (*see North Florida Women's Health & Counseling Services, Inc. v. State*, 28 Fla. L. Weekly S549 (Fla. July 10, 2003).

69. *North Florida Women's Health & Counseling Services, Inc. v. State,* 28 Fla. L. Weekly S549 (Fla. July 10, 2003) is now the authoritative Florida case law on the Privacy Amendment, Article I Section 23.

Florida Equal Protection

70. Florida Constitution Article I Section 2 entitled Basic Rights stipulates equal protection for all Floridians.

71. The Plaintiff reasserts 47 to 55 above from the Federal Equal Protection Law.

Florida Inalienable Rights to life and liberty, pursue happiness, and to be rewarded for industry

72. Florida Constitution Article I section 2 Basic Rights includes rights that are inalienable, i.e. cannot be surrendered.

73. "Dissolution of Marriage" statutes alimony provisions, §61.08, infringe a Floridian's right to life and liberty, his pursuit of happiness, and his reward for his industry.

74. Because the "Dissolution of Marriage" alimony provisions take future property and liberty rights from Floridians they impermissibly infringe these fundamental rights. As such, strict scrutiny applies.

75. § 61.08 denies Floridians the Liberty Interest in the property rights of their future earnings and thus denies them the inalienable right to be rewarded for their industry.

***Connor v Southwest*…abrogation of the doctrine of necessaries**

76. The Florida Supreme Court ruling in *Connor v. Southwest Florida Regional Medical Center, Inc.*, 668 So. 2d 175 (Fla. 1995) (abrogating the doctrine of necessaries) changed the public policy of the state of Florida to make spouses economic independents.

Justice Overton in his dissent in *Connor* stated, "The majority's abrogation of the doctrine of necessaries appears to shift the policy of the State by, in effect, requiring each spouse to take care of himself or herself."

77. The *Connor* ruling made parties in a marriage economic dependents as well as changed the public policy of the State of Florida.

42 U.SC. 1983

78. 42 U.S.C 1983 provides a private right of action against parties acting "under color of any statute, ordinance, regulation, custom, or usage, of any State" to redress the deprivation of rights secured by the United States Constitution or federal law.

79. 42 U.S.C. 1983, despite 1996 Congressional changes to the statute, permits a judge to be sued without a defence of judicial immunity when the judge is not a neutral adjudicator, but has statutorily granted enforcement power and as such is an enforcer of the challenged statutes, and the only relief requested is declaratory judgment. (*Brandon et al, v Reynolds et al*, No. 99-1262,United States Court of Appeals for the Third District.

Pro Se Plaintiff

80. The Plaintiff has had difficulty obtaining counsel to remove his case and raise the federal questions entered here.

81. In *Barna v. Barna* (CD00-534 FZ, Fifteenth Judicial Circuit Court of Florida, 2003) attorneys raised a F.S. Chapter 86 declaratory judgment constitutional challenge to § 61.08 predicated it impermissibly infringed the Florida Constitution Article I Section 23 Right to Privacy. Without analysis the Fifteenth Circuit Court Judge, The Honorable James Carlisle, deemed the proceeding a frivolous constitutional attack and sanctioned the attorneys with fees despite F. S. Chapter 86 declaratory judgment statute precluding an award of fees.

82. Subsequently the 4th DCA in *Barna v Barna*, Case 4D02-3332, July 2003, without any response or brief from appellees or the Attorney General, sua sponte, declared the challenge frivolous and affirmed the lower court ruling.

83. The Florida Supreme Court, again without a response from appellees or the Attorney General, declined to accept the appeal.

84. The chilling effect of these rulings has made attorneys contacted refuse to represent the Plaintiff.

FACTS

85. WILLIAM A. CABANA is a 66 year old retired individual with an annual income of $8,604 and with medical tests that indicate a possible prostate cancer.
86. SHARON ANN MAYO is a 60 year old healthy woman currently employed.
87. WILLIAM A. CABANA, the Plaintiff, and SHARON ANN MAYO were married April 2, 1961 in Miami, FL. They have been blessed with four healthy children of the marriage, Paul age 42, Tawny age 41, Cheryl age 39 and Peter age 38 all married. A Final Judgment of Dissolution of Marriage was entered in the Fifteenth Judicial Circuit Court, West Palm Beach, Florida on July 28, 1972, and an amended Final Judgment on October 21, 1986. (Attached Judgment and Amended Final Judgment)
88. Prior to issuing its July 28, 1972 Order the State of Florida, through the Defendant FIFTEENTH JUDICIAL CIRCUIT COURT, invaded and examined the intimate details of the Privacy Protected Zone of the marriage of WILLIAM A. CABANA.
89. After its invasion and examination of the intimate details of the Privacy Protected Zone of WILLIAM A. CABANA's marriage, the State of Florida, through the Defendant the FIFTEENTH JUDICIAL CIRCUIT COURT reassigned the property rights between WILLIAM A. CABANA and SHARON ANN MAYO.
90. The State of Florida, through the Defendant FIFTEENTH JUDICIAL CIRCUIT COURT**,** redistributed the property of WILLIAM A. CABANA and SHARON ANN MAYO pursuant to Florida Chapter § 61.075.

91. SHARON ANN MAYO received all of the right, title and interest to all the real property of WILLIAM A. CABANA together with the furniture, furnishings and fixtures located thereon as a partial lump sum alimony. She lives in a private home in West Palm Beach.
92. SHARON ANN MAYO has no impediments to economic independence in addition to adequate assets: stocks and other financial investments, retirement savings, employer pension plan, vacant land and rental property. The State of Florida, through the Defendant the FIFTEENTH JUDICIAL CIRCUIT COURT**,** in its Final Judgment of Dissolution of Marriage mandated WILLIAM A. CABANA pay permanent alimony until he or his former wife die or she remarries.
93. WILLIAM A. CABANA has continuously met his alimony obligation to the best of his physical, mental and emotional capacity until August, 2003—over thirty three (33) years.
94. Despite his best efforts to comply with the court ordered alimony edict, the plaintiff has had § 61.08 enforced against him pursuant to § 61.14 by the HONORABLE SANDRA McSORLEY. (Attached Motion to Show Contempt, Notice of Contempt Hearing)
95. WILLIAM A. CABANA has not presented these claims to state court. He has not had them adjudicated there.

CAUSE OF ACTION

Count I

Federal Question

FLORIDA STATUTES CHAPTER 61 "DISSOLUTION OF MARRIAGE" ALIMONY PROVISIONS IMPERMISSIBLY INFRINGE THE RIGHT TO PRIVACY (U.S. CONSTITUTION FOURTEENTH AMENDMENT DUE PROCESS) IN THE PRIVACY PROTECTED ZONE OF PERSONAL DECISIONS RELATING TO MARRIAGE, i.e. DISSOLUTION OF MARRIAGE

96. The Plaintiff incorporates 1 to 95 above.

97. The Plaintiff asserts Florida Statutes Chapter 61 "Dissolution of Marriage" Alimony Provisions impermissibly infringe the Right to Privacy (U.S. Constitution Fourteenth Amendment Due Process) in the Privacy Protected Zone of Personal Decisions Relating to Marriage, i.e. the personal decision of Floridians to dissolve their marriage.

98. The Plaintiff asserts that a fundamental Liberty Interest, the Right to Privacy, has been infringed and that the strict scrutiny standard applies. Further the Plaintiff asserts that strict scrutiny applying, the statute is presumed unconstitutional unless the State of Florida and the Defendants fulfill their burden under strict scrutiny.

99. The Plaintiff asserts the State of Florida nor any of the Defendants have ever exhorted or proven a compelling state interest that is applied in the least intrusive manner and that the interest is substantially furthered by the legislation to validate the alimony statute, § 61.08 et al.

100. The Plaintiff asserts that the state interest is at its weakest in the facts asserted herein.

101. Therefore, this Court must adjudge the challenged statute, "Dissolution of Marriage" alimony provisions, § 61.08 et al., impermissibly infringe the Federal Right to Privacy and are null and void.

Count II

Federal Question

FLORIDA STATUTES CHAPTER 61 "DISSOLUTION OF MARRIAGE" ALIMONY PROVISIONS IMPERMISSIBLY INFRINGE THE EQUAL PROTECTION CLAUSE (U.S. CONSTITUTION FOURTEENTH AMENDMENT EQUAL PROTECTION)

102. The Plaintiff incorporates 1 to 95 above.

103. The Plaintiff asserts Florida Statutes Chapter 61 "Dissolution of Marriage" Alimony Provisions impermissibly infringe the Equal Protection Clause, U.S. Constitution Fourteenth Amendment.

104. The Plaintiff asserts that not all similarly situated married Floridians who decide to dissolve their marriage are burdened with alimony per § 61.08—only those of contested dissolutions whose spouses plead for alimony.

105. The Plaintiff asserts that the criteria for burdening a spouse with permanent alimony annunciate over 2^{17} permutations then includes the phrase "may consider any other factor necessary to do equity and justice between the parties." They are applied in a court of chancery with a standard of equity by a judiciary given wide discretion such that similarly situated Floridians could not conceivably be equally treated under the alimony provision.

106. The Plaintiff asserts no compelling state interest nor even a rationally related state interest exists for permanent alimony which forever enslaves a Floridian former spouse and denies him his future property rights in the rewards of his industry.

107. The Plaintiff asserts that the state interest is at its weakest in the facts asserted herein.

108. Therefore, this Court must adjudge the challenged statute, "Dissolution of Marriage" alimony provisions, § 61.08 et al., impermissibly infringe the U.S. Constitution Amendment XIV Section 1 Equal Protection clause and are null and void.

Count III

Federal Question

FLORIDA STATUTES CHAPTER 61 "DISSOLUTION OF MARRIAGE" ALIMONY PROVISIONS IMPERMISSIBLY INFRINGE THE U. S. CONSTITUTION THIRTEENTH AMENDMENT

109. The Plaintiff incorporates 1 to 95 above.

110. The U.S Constitution, Thirteenth Amendment, ensures the right of citizens to be free of involuntary servitude.

111. Involuntary Servitude has been defined by the U.S. Supreme Court as "a condition of servitude in which the victim is forced to work for [another] …by the use of threat of coercion through law or the legal process. *U.S. v Kozminski*.

112. Some Floridians dissolving their marriage, for their own benefit, choose to ask the State of Florida to apply § 61.08 alimony provisions against their spouses.

113. The only method a Floridian has to compel a spouse to forever work for her benefit is to make the personal decision to dissolve her marriage and request the State of Florida apply

§ 61.08 alimony provisions against him. There is no common law right to alimony. The doctrine of necessaries has been abrogated (see Count VII below).

114. The State of Florida at the request of a Floridian can have the alimony provision § 61.08 applied against her spouse in a court of chancery, with a standard of equity, granted wide discretionary powers.

115. A Floridian can compel her spouse to involuntarily work for her forever through the law and legal process of utilizing the Dissolution of Marriage Statute and it alimony provision, § 61.08 against him with the threat of coercion through law and the legal process to wit, contempt proceedings and imprisonment.

116. A Floridian is placed by § 61.08 in a situation where he is compelled to work by law.

117. The Plaintiff asserts the challenged statute alimony provisions create a situation of involuntary servitude that impermissibly infringes the U. S. Constitution Thirteenth Amendment right of a Floridian to be free from involuntary servitude.

118. Therefore, this Court must adjudge the challenged statute, "Dissolution of Marriage" alimony provisions, § 61.08 et al., impermissibly infringe the U.S. Constitution Thirteenth Amendment prohibiting involuntary servitude and are null and void.

Count IV

Federal Question

FLORIDA STATUTES CHAPTER 61 "DISSOLUTION OF MARRIAGE" ALIMONY PROVISIONS IMPERMISSIBLY INFRINGE THE U. S. CONSTITUTION FOURTEENTH AMENDMENT RIGHT TO PRIVACY, FOURTEENTH AMENDMENT EQUAL PROTECTION AND THIRTEENTH AMENDMENT AS A 42 USC 1983 CLAIM

119. The Plaintiff incorporates 1 to 118 above.

120. § 61.14 authorizes the defendants FIFTEENTH CIRCUIT COURT and the HONORABLE SANDRA McSORLEY to enforce §61.08.

121. Further provisions of Florida Statues Chapter 61 authorize the Department of Revenue to enforce § 61.08 provisions.

122. The Plaintiff asserts judicial immunity does not apply to defendant the HONORABLE SANDRA McSORLEY because she did not act as a neutral adjudicator. When Judge McSorley applied § 61.08 and examined the intimate details of the marriage of WILLIAM A. CABANA, or any other Floridian she performed a ministerial task and therefore was not a neutral adjudicator. When Judge McSorley initiated and applied §61.14 enforcement provisions against the Plaintiff she acted as an enforcer of the statute outside the scope of a neutral adjudicator. She acted in a ministerial and enforcing capacity of the challenged statute and thus judicial immunity is not a valid defense.

123. Further, judicial immunity does not apply to defendant the HONORABLE SANDRA McSORLEY because the Plaintiff only requests declaratory judgment relief, not injunctive relief.

124. The Plaintiff asserts that if this court feels declaratory judgment relief does not apply then it may grant injunctive relief as authorized by 42 USC 1983 and applicable case law.

125. The Plaintiff asserts the third party defendants acted to deprive him of his civil rights, i.e. Right to Privacy, and Equal Protection and to be free of involuntary servitude when it applied and enforced § 61.08 against him.

126. No bar exists to Plaintiff's request for declaratory relief of whether the applied and enforced statute, § 61.08, impermissibly infringes his above stated U.S. Constitutional fundamental rights.

Count V

State Claim

FLORIDA STATUTES CHAPTER 61 "DISSOLUTION OF MARRIAGE" ALIMONY PROVISIONS IMPERMISSIBLY INFRINGE THE FLORIDA CONSTITUTION ARTICLE I SECTION 23 RIGHT TO PRIVACY IN THE PRIVACY PROTECTED ZONE OF PERSONAL DECISIONS RELATING TO MARRIAGE

> "**Right of Privacy**.--Every natural person has the right to be let alone and free from governmental intrusion into his private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law." Article I Section 23 Florida Constitution.

127. The Plaintiff incorporates 1 to 95 above.

128. 160,000 Floridians annually exercise their Federal and State Liberty interest in their Right to Privacy in the Privacy Protected Zone of personal decisions relating to his marriage to dissolve their marriage.

129. The State of Florida, when asked, applies the "Dissolution of Marriage" alimony provisions against some Floridians forever enslaving them for the benefit of their former spouse.

130. The Plaintiff asserts Florida Statutes Chapter 61 "Dissolution of Marriage" Alimony Provisions impermissibly infringe the Florida Constitution Article I Section 23, Right to Privacy in the Privacy Protected Zone of Personal Decisions Relating to Marriage, i.e. Floridians personal decision to dissolve their marriage.

The Plaintiff asserts that a fundamental Liberty Interest, the Right to Privacy, has been infringed and that the strict scrutiny standard applies.

131. The Plaintiff asserts the State of Florida nor any of the Defendants have ever exhorted or proven a compelling state interest that is applied in the least intrusive manner and that the interest is substantially further by the legislation.

132. The Plaintiff asserts that the state interest is at its weakest in the facts asserted herein.

133. Therefore, this Court must adjudge the challenged statute, "Dissolution of Marriage" alimony provisions, § 61.08 et al., impermissibly infringes the Florida Constitution Article I Section 23 Right to Privacy and is null and void.

Count VI

State Claim

FLORIDA STATUTES CHAPTER 61 "DISSOLUTION OF MARRIAGE" ALIMONY PROVISIONS IMPERMISSIBLY INFRINGE THE FLORIDA CONSTITUTION ARTICLE I SECTION 2 EQUAL PROTECTION CLAUSE

134. The Plaintiff incorporates 1 to 95 above.

135. The Plaintiff asserts Florida Statutes Chapter 61 "Dissolution of Marriage" Alimony Provisions impermissibly infringe Florida Constitution Article I Section 2 Basic Rights, Equal Protection Clause.

136. The Plaintiff asserts that not all similarly situated married Floridians who decide to dissolve their marriage are burdened with alimony per F.S. § 61.08.

137. The Plaintiff asserts that the criteria for burdening a spouse with permanent alimony annunciate over 2^{17} permutations then includes the phrase "may consider any other factor necessary to do equity and justice between the parties." They are applied in a court of chancery with a standard of equity by a judiciary given wide discretion such that similarly situated spouses are not equally enslaved with permanent alimony.

138. The Plaintiff asserts the State of Florida treats some Floridians differently that other Floridians who decided to dissolve their marriage.

139. The State of Florida only exercises the § 61.08 provisions against a Floridian whose spouse pleads for alimony.

140. The State of Florida will not exercise § 61.08 unless a spouse pleads for alimony.

141. The Plaintiff asserts the state has no rationally related interest for such variability in stripping property rights from Floridians and permanently enslaving some of them to work for a former spouse.

142. The Plaintiff asserts that if a compelling state interest or even a rationally related state interest existed then the State of Florida should be examining all dissolution of marriage proceedings for the interest, not just those who plead for it.

143. The Plaintiff asserts that the State of Florida through § 61.08 treats Floridians whose marriages are dissolved differently as to the level of support obligation of a spouse than it does a married spouse.

144. The State does not measure the ability of married spouses to support each other nor establish any of the criteria for the level of support due a married spouse that it does apply to spouses who are dissolving their marriage.

145. The Plaintiff asserts no compelling state interest nor even a rationally related state interest exists for permanent alimony which forever enslaves some Floridian former spouses and denies them their future property rights in the rewards of their industry.

146. The Plaintiff asserts that the state interest is at its weakest in the facts asserted herein.

147. Therefore, this Court must adjudge the challenged statute, "Dissolution of Marriage" alimony provisions, § 61.08 et al., impermissibly infringe the Florida Constitution Article I Section 2 Equal protection clause and are null and void.

Count VII

State Claim

FLORIDA STATUTES CHAPTER 61 "DISSOLUTION OF MARRIAGE" ALIMONY PROVISIONS IMPERMISSIBLY INFRINGE THE FLORIDA CONSTITUTION ARTICLE I SECTION 2 INALIENABLE BASIC RIGHTS CLAUSE

148. The Plaintiff incorporates 1to 95 above.

149. The Plaintiff asserts Floridians' Basic Rights enumerated in Article I Section 2 are inalienable.

150. As inalienable Floridians' right to life and liberty, pursuit of happiness, and to enjoy the rewards of their industry cannot be impaired by the State and the challenged Statutes without the State proving a compelling state interest applied in the least intrusive manner and that the legislation substantially furthers the interest.

151. Tens of Thousands of Floridians have had § 61.08 provisions entered against them such that their Liberty Interest has been denied by contempt orders, their pursuit of happiness

forever impaired by the prospects of future litigation over the statute and denied the rewards of their industry as some part of those rewards must now accrue to their former spouse--forever.

152. Floridians' right to all of the rewards of their future industry are inalienable and any statute impacting it must be reviewed by strict scrutiny.

153. The Plaintiff asserts that the state interest is at its weakest in the facts asserted herein.

154. Therefore, this Court must adjudge the challenged statute, "Dissolution of Marriage" alimony provisions, § 61.08 et al., impermissibly infringe the Florida Constitution Article I Section 2 Inalienable Rights of life, liberty, pursuit of happiness and the enjoyment of the rewards of his industry.

Count VIII

State Claim

FLORIDA STATUTES "DISSOLUTION OF MARRIAGE" ALIMONY PROVISIONS CONFLICT WITH THE FLORIDA STATE SUPREME COURT RULING IN *CONNOR V. SOUTHWEST* AND VIOLATE THE PUBLIC POLICY OF THE STATE OF FLORIDA

155. The Plaintiff incorporates 1 to 95 above.

156. The Plaintiff asserts the Florida Supreme Court ruling in *Connor v. Southwest Florida Regional Medical Center, Inc*., 668 So. 2d 175 (Fla. 1995) (abrogating the doctrine of necessaries) changes the public policy of the state of Florida to make spouses economic independents.

Justice Overton in his dissent in *Connor* stated, "The majority's abrogation of the doctrine of necessaries appears to shift the policy of the State by, in effect, requiring each spouse to take care of himself or herself."

157. The statutory Alimony provisions conflict with, and impermissibly infringe, the *Connor* ruling and the public policy effect of the ruling. The statute makes former spouses economic dependents after the marriage when they were adjudicated economic independents during marriage.

158. The rationale for the alimony statute having long since died so must the statute. The doctrine of necessaries having been abrogated the alimony statute has no rationale.

159. Therefore, this Court must adjudge the challenged statute, "Dissolution of Marriage" alimony provisions, § 61.08 et al., impermissibly conflicts with the Florida Supreme Court ruling in *Connor v. Southwest Florida Regional Medical Center, Inc*., 668 So. 2d 175 (Fla. 1995) as well as the public policy therein established and is null and void

PRAYER FOR RELIEF

> "It is revolting to have no better reason for a rule of law than that so it was laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since, and the rule simply persists from blind imitation of the past."
> O.W. Holmes. The Path of the Law. 10 Harvard Law Review 457 (1897)

Wherefore the Plaintiff, WILLIAM A. CABANA, prays that the Court take jurisdiction over this matter, enter such orders as are appropriate to expedite consideration of this motion, and:

160. Enter a declaratory judgment that Florida Statues Chapter 61 "Dissolution of Marriage" alimony provisions (§ 61.08 et al.)

a) impermissibly infringe the U.S. Constitution Fourteenth Amendment Due Process clause, Right to Privacy, and as such are null and void;

b) impermissibly infringe the U.S. Constitution Fourteenth Amendment Equal Protection clause and as such are null and void;

c) impermissibly infringe the U. S. Constitution Thirteenth Amendment prohibiting involuntary servitude.

d) impermissibly infringe the Florida Constitution Article I Section 23 Right to Privacy and as such are null and void;

e) impermissibly infringe the Florida Constitution Article I Section 2 Equal Protection Clause and as such are null and void;

f) impermissibly infringe the Florida Constitution Article I Section 2 Inalienable Basic Rights and as such are null and void.

g) impermissibly conflict with the Florida State Supreme Court Ruling and public policy expressed in *Connor v. Southwest* and as such are null and void.

161. As Plaintiff, despite being pro se, has incurred costs and attorney fees to prosecute this action he requests an award for all costs and reasonable attorney fees incurred;

162. Provide any other relief appropriate.

Respectfully submitted,

_____

WILLIAM A. CABANA, pro se
1050 Capri Isles Blvd., Apt. F-105.
Venice, FL 34292
Telephone 941-480-1395
Fax None
Email bcabana2@comcast.net

Dated: April 2, 2004

VERIFICATION

WILLIAM A. CABANA, being duly sworn, deposes and says:

That deponent is the Plaintiff in the above-entitled action; that deponent has read the foregoing **VERIFIED COMPLAINT** and knows the contents thereof; that the same is true to deponent's own knowledge; except as to matters therein stated to be alleged on information and belief, and that as to those matters deponent believes them to be true.

_____

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Fax None
Email bcabana2@comcast.net

STATE OF FLORIDA
COUNTY OF PALM BEACH

Sworn to before me

April , 2004

_____

Notary Public

CHAPTER 61
DISSOLUTION OF MARRIAGE; SUPPORT; CUSTODY
PART I
GENERAL PROVISIONS (ss. 61.001-61.45)
PART II
UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT (ss. 61.501-61.542)
PART I
GENERAL PROVISIONS

61.001 Purpose of chapter.--
(1) This chapter shall be liberally construed and applied.
(2) Its purposes are:
(a) To preserve the integrity of marriage and to safeguard meaningful family relationships;
(b) To promote the amicable settlement of disputes that arise between parties to a marriage; and
(c) To mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage.
History.--s. 1, ch. 71-241; s. 111, ch. 86-220.

61.011 Dissolution in chancery.--Proceedings under this chapter are in chancery.
History.--s. 1, Oct. 31, 1828; RS 1477; GS 1925; RGS 3188; CGL 4980; s. 2, ch. 29737, 1955; s. 16, ch. 67-254; s. 2, ch. 71-241.

61.031 Dissolution of marriage to be a vinculo.--No dissolution of marriage is from bed and board, but is from bonds of matrimony.
History.--s. 3, Feb. 14, 1835; RS 1479; GS 1927; RGS 3190; CGL 4982; s. 16, ch. 67-254; s. 4, ch. 71-241.
Note.--Former s. 65.03.

61.08 Alimony.--
(1) In a proceeding for dissolution of marriage, the court may grant alimony to either party, which alimony may be rehabilitative or permanent in nature. In any award of alimony, the court may order periodic payments or payments in lump sum or both. The court may consider the adultery of either spouse and the circumstances thereof in determining the amount of alimony, if any, to be awarded. In all dissolution actions, the court shall include findings of fact relative to the factors enumerated in subsection (2) supporting an award or denial of alimony.
(2) In determining a proper award of alimony or maintenance, the court shall consider all relevant economic factors, including but not limited to:
(a) The standard of living established during the marriage.
(b) The duration of the marriage.
(c) The age and the physical and emotional condition of each party.

(d) The financial resources of each party, the nonmarital and the marital assets and liabilities distributed to each.
(e) When applicable, the time necessary for either party to acquire sufficient education or training to enable such party to find appropriate employment.
(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) All sources of income available to either party.

The court may consider any other factor necessary to do equity and justice between the parties.
(3) To the extent necessary to protect an award of alimony, the court may order any party who is ordered to pay alimony to purchase or maintain a life insurance policy or a bond, or to otherwise secure such alimony award with any other assets which may be suitable for that purpose.
(4)(a) With respect to any order requiring the payment of alimony entered on or after January 1, 1985, unless the provisions of paragraph (c) or paragraph (d) apply, the court shall direct in the order that the payments of alimony be made through the appropriate depository as provided in s. 61.181.
(b) With respect to any order requiring the payment of alimony entered before January 1, 1985, upon the subsequent appearance, on or after that date, of one or both parties before the court having jurisdiction for the purpose of modifying or enforcing the order or in any other proceeding related to the order, or upon the application of either party, unless the provisions of paragraph (c) or paragraph (d) apply, the court shall modify the terms of the order as necessary to direct that payments of alimony be made through the appropriate depository as provided in s. 61.181.
(c) If there is no minor child, alimony payments need not be directed through the depository.
(d)1. If there is a minor child of the parties and both parties so request, the court may order that alimony payments need not be directed through the depository. In this case, the order of support shall provide, or be deemed to provide, that either party may subsequently apply to the depository to require that payments be made through the depository. The court shall provide a copy of the order to the depository.
2. If the provisions of subparagraph 1. apply, either party may subsequently file with the depository an affidavit alleging default or arrearages in payment and stating that the party wishes to initiate participation in the depository program. The party shall provide copies of the affidavit to the court and the other party or parties. Fifteen days after receipt of the affidavit, the depository shall notify all parties that future payments shall be directed to the depository.
3. In IV-D cases, the IV-D agency shall have the same rights as the obligee in requesting that payments be made through the depository.
History.--ss. 7, 12, Oct. 31, 1828; RS 1484; GS 1932; RGS 3195; CGL 4987; s. 1, ch. 23894, 1947; s. 1, ch. 63-145; s. 16, ch. 67-254; s. 10, ch. 71-241; s. 1, ch. 78-339; s. 1, ch. 84-110; s. 115, ch. 86-220; s. 2. ch. 88-98; s. 3, ch. 91-246.
Note.--Former s. 65.08.

61.09 Alimony and child support unconnected with dissolution.--If a person having the ability to contribute to the maintenance of his or her spouse and support of his or her minor child fails to do so, the spouse who is not receiving support or who has custody of the child or with whom the child has primary residence may apply to the court for alimony and for support for the

child without seeking dissolution of marriage, and the court shall enter an order as it deems just and proper.

History.--ss. 1, 2, ch. 3581, 1885; RS 1485; GS 1933; RGS 3196; CGL 4988; s. 2, ch. 29737, 1955; s. 1, ch. 65-498; s. 16, ch. 67-254; s. 11, ch. 71-241; s. 116, ch. 86-220; s. 320, ch. 95-147.

Note.--Former s. 65.09.

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of April, 2004, I caused a true and accurate copy of the foregoing to be served in the manner specified on the following.

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