

IN THE CIRCUIT COURT OF THE 15TH 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.

**FORMER WIFE'S MOTION TO STRIKE FORMER HUSBAND'S MOTION TO
DENY CONTEMPT AND TO TERMINATE ALIMONY**

COMES NOW the Former Wife, SHARON ANN MAYO, by and through her undersigned counsel, files her Motion to Strike Former Husband's Motion to Deny Contempt and to Terminate and Alimony, and in support thereof states as follows:

1. This cause is before the Court on Former Wife's Amended Motion for Contempt, arising out of Former Husband's failure to pay Court ordered child support and alimony, including but not limited to any installments whatsoever due since August 15, 2003, together with prior installments.
2. The child support any alimony sought to be enforced arises out of an award contained in that certain Final Judgment of Dissolution of Marriage entered in the captioned cause on July 28, 1972.
3. On or about April 2, 2004, Former Husband filed his *pro se* Notice of

Removal, seeking to remove the captioned cause to Federal Court in order to challenge the constitutionality of the alimony statute.

4. By Order dated November 12, 2004, the Honorable James C. Paine, United States District Judge, entered that certain Order of Remand, dismissing the federal action for lack of prosecution and further finding that the matter was improperly removed from State Court, and affirmatively enjoining Former Husband from filing any further filings in the Federal Court.

5. Former Husband has now filed his Motion to Deny Contempt and to Terminate Alimony. Therein, Former Husband seeks to declare F.S. § 61.08 as unconstitutional.

6. Former Husband's motion is subject to being stricken for the following reasons:

- a. Pursuant to Fla.R.Civ.P. 1.140 (b), any defense to an action in law or fact must be asserted in the responsive pleading, or is deemed to be waived. Former Husband failed to raise the constitutionality of the alimony statute in the underlying dissolution of marriage action, and, as such, has waived any such defense
- b. It is well settled that the alimony provisions of Chapter 61 do not violate due process, equal protection, and are not unconstitutionally vague.

7. Similar attacks on the constitutionality of alimony statutes have previously been held to be irrelevant and frivolous and the proper subject of an award of attorney's fees and costs under Florida Statute § 57.105.

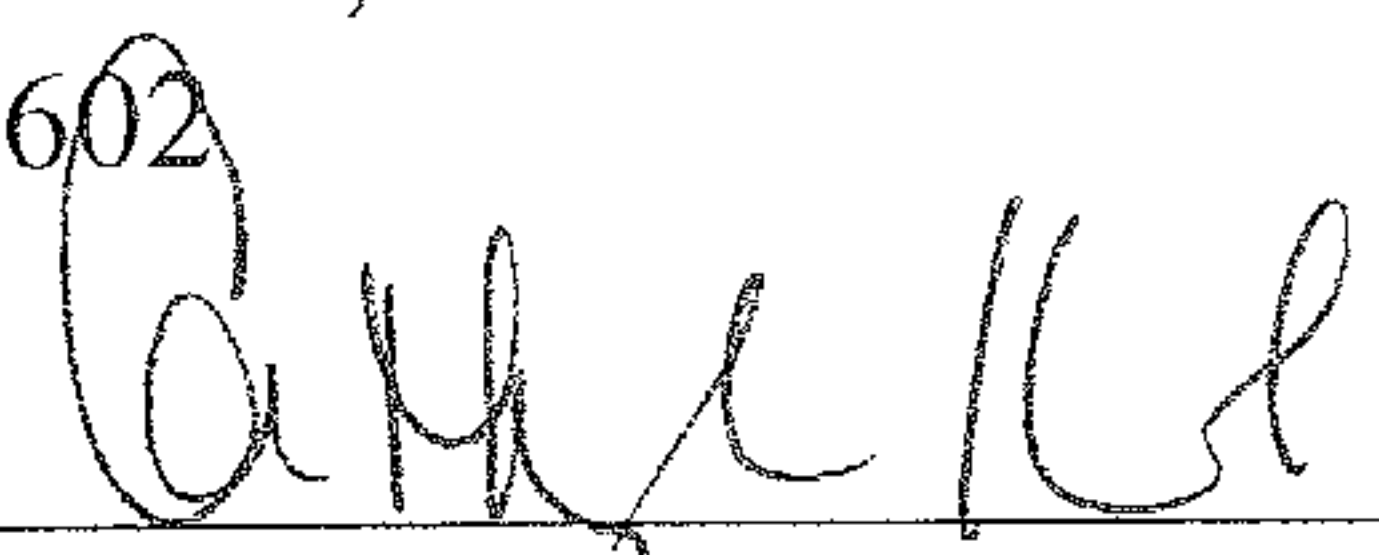
8. Former Wife has retained the services of your undersigned counsel and has agreed to pay those reasonably incurred attorneys fees. Former Husband should be ordered to pay such fees and costs under Florida Statute § 57.105, Chapter 61 and other applicable law.

WHEREFORE Former Wife prays that this Honorable Court enter an Order granting Former Wife's Motion to Strike Former Husband's Motion to Deny Contempt and to Terminate Alimony, for an award of attorneys fees and costs and for such and other relief as may be proper.

I HEREBY CERTIFY that a true copy of the foregoing was furnished by mail to: Mr. William A. Cabana, 1050 Capri Isles Blvd., #F105, Venice, FL 34292, this 17 day of May, 2005.

CATHY L. KAMBER, P.A.
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By: _____


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