

NEW JERSEY STATE BAR ASSOCIATION
New Jersey Law Center
One Constitution Square
New Brunswick, New Jersey 08901
(732) 937-7505

SUZANNE CARDALI,	:	SUPREME COURT OF NEW JERSEY
	:	Docket No. 087340
Plaintiff-Respondent,	:	Civil Action
	:	
v.	:	Sat Below:
	:	
	:	HON. CARMEN MESSANO, P.J.A.D.
	:	HON. CATHERINE I. ENRIGHT, J.A.D.
MICHAEL CARDALI,	:	HON. JOSEPH L. MARCZYK, J.A.D.
	:	
Defendant-Petitioner.	:	Appellate Division Docket No: A-001624

BRIEF OF *AMICUS CURIAE* NEW JERSEY STATE BAR ASSOCIATION

OF COUNSEL AND ON THE BRIEF:

Jeralyn L. Lawrence, Esq.
President, New Jersey State Bar Association
New Jersey Law Center / One Constitution Square
New Brunswick, New Jersey 08901
Attorney ID No.: 015211996

ON THE BRIEF:

Derek M. Freed, Esq. / Attorney ID No.: 026022000
Timothy F. McGoughran, Esq. / Attorney ID No.: 028901986
Catherine Murphy, Esq. / Attorney ID No.: 014942009
Brian G. Paul, Esq. / Attorney ID No.: 034201995

Date Submitted: March 28, 2023

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PRELIMINARY STATEMENT

The issue of what constitutes cohabitation and its impact on alimony has long plagued litigants and the courts, causing confusion, frustration, and inconsistent adjudications. In this case, the Court has the opportunity to provide clear and unequivocal guidance on the standard for establishing a *prima facie* case of cohabitation, the quantum of evidence a party must submit on their initial application in order to obtain discovery, and the burden of proof, which shifts to the alimony recipient to prove they are not cohabiting once a *prima facie* case is established. By doing so, the Court can promote fairness and equity by ensuring consistent application of the law throughout our state and streamlining the litigation process.

Over 40 years ago, in the landmark case of Lepis v. Lepis, 83 N.J. 139 (1980), this Court established a three-step process for determining whether a material change in circumstances warrants a modification of an existing support award. The first step requires the moving party to establish a *prima facie* showing of a material change in circumstances. In the cohabitation context, now is the moment to clarify that a *prima facie* showing of cohabitation is made when the evidence, if unrebutted, would allow a trier of fact to conclude that the supported spouse and a third party are involved in a mutually supportive, intimate personal relationship in which they have taken on duties or privileges commonly associated with marriage or civil union. Importantly, under the clear and unambiguous language of N.J.S.A. 2A:34-23(n), a showing of

intertwined finances is *not* required to prove cohabitation at either the *prima facie* stage or at final hearing. Rather, that should remain merely one factor in the analysis. Indeed, the statute identifies a series of factors which assist in the determination of whether the relationship between the alimony recipient and the third party has the hallmarks of a marriage, as outlined in Konzelman v. Konzelman, 158 N.J. 185 (1999). This approach represents a clear and deliberate departure from the “economic needs” analysis originally established in Gayet v. Gayet, 92 N.J. 149 (1983). The New Jersey State Bar Association (NJSBA) urges the Court to clarify and emphasize this change in the law in its opinion to ensure N.J.S.A. 2A:34-23(n) is uniformly and correctly applied throughout the state.

Once a *prima facie* case is established, the burden of proof should continue to shift per existing case law to the alimony recipient to prove they are not cohabiting as defined by the statute. Discovery plays a crucial role in cohabitation cases, as movants require access to financial information, evidence of sharing of household chores, and other types of evidence that is not in their possession to address each of the factors in N.J.S.A. 2A:34-23(n); and the existing case law recognizes that movants often face practical difficulties in obtaining such evidence. Accordingly, shifting the burden to the alimony recipient after a *prima facie* case of cohabitation has been established helps level the playing field and ensure fairness by recognizing that it is unreasonable to place the burden of proof on the moving party who likely

would not have access to *all* the evidence necessary to support that burden of proof.

Once discovery has been completed, the court must determine whether there are genuine issues of disputed fact on the cohabitation claim requiring a plenary hearing. To assist the trial court in this determination, the NJSBA proposes that the three-step process outlined in Lepis be clarified to provide that the trial court conduct a mandatory case management conference following the completion of discovery. If either party contends there are no genuine issues of material fact requiring a plenary hearing, they should be afforded the opportunity to file a motion for summary judgment, with a schedule set for its adjudication. If granted, the case would be completed; if denied or no such motion is filed, a plenary hearing would be conducted. This three-step process is consistent with the original procedural guidelines in Lepis, complies with N.J.S.A. 2A:34-23(n), and ensures both parties have access to all necessary information to properly address a cohabitation claim. This will provide a practical and effective approach for trial courts to apply in cases where cohabitation is alleged, and will provide a clear and unequivocal standard for litigants that is sorely missing under current case law.

LEGAL ARGUMENT

POINT I

THE COURT SHOULD ADOPT A CLEAR AND UNEQUIVOCAL STANDARD AND PROCEDURE FOR ADJUDICATING COHABITATION CASES THAT CLARIFIES WHAT CONSTITUTES A *PRIMA FACIE* CASE OF COHABITATION ENTITLING THE MOVING PARTY TO DISCOVERY AND SHIFTING THE BURDEN OF PROOF TO THE ALIMONY RECIPIENT, AND ENSURES THE DETERMINATION OF WHETHER A PLENARY HEARING SHOULD BE CONDUCTED DOES NOT OCCUR UNTIL AFTER DISCOVERY HAS BEEN COMPLETED.

In New Jersey, alimony is a statutory creation, Glass v. Glass, 366 N.J. Super. 357 (App. Div. 2004), with N.J.S.A. 2A:34-23 granting courts the power to enter alimony or maintenance orders. There are four types of alimony under New Jersey law: open durational alimony, rehabilitative alimony, limited duration alimony, and reimbursement alimony. N.J.S.A. 2A:34-23(b). The court is required to consider the circumstances of both parties and the nature of the case to render a “fit, reasonable and just” alimony award, taking into account the 14 relevant factors listed in N.J.S.A. 2A:34-23(b). Id. “No factor shall be elevated in importance over any other factor unless the court finds otherwise, in which case the court shall make specific written findings of fact and conclusions of law in that regard.” Ibid.

“Alimony is neither a punishment for the payor nor a reward for the payee. Nor should it be a windfall for any party.” Aronson v. Aronson, 245 N.J. Super. 354, 364 (App. Div. 1991); see also Mani v. Mani, 183 N.J. 70, 80 (2005). Instead, it

serves as compensation for a spouse who becomes economically dependent upon the other due to their role in the marital partnership and the circumstances of their marriage. Id. at 80; see also Reese v. Weis, 430 N.J. Super. 552, 569 (App. Div. 2013) (“Alimony is a claim arising upon divorce, which is rooted in the prior interdependence occurring during the parties’ marital relationship.”). Thus, alimony reflects “the important policy of recognizing that marriage is an adaptive economic and social partnership,” Glass, 366 N.J. Super. at 369 (quoting Cox v. Cox, 335 N.J. Super. 465, 479 (App. Div. 2000)), and it serves to protect the interests of a dependent spouse whose non-economic contributions to the marriage, such as raising children, and maintaining the marital home, enabled the supporting spouse to work. Guglielmo v. Guglielmo, 253 N.J. Super. 531, 543 (App. Div. 1992).

Additionally, the goal of an alimony award is to allow each party to live a lifestyle that is reasonably comparable to the marital lifestyle after the parties’ divorce. See Crews v. Crews, 164 N.J. 11, 16 (2000); see also N.J.S.A. 2A:34-23(c). “The supporting spouse’s obligation is mainly determined by the quality of economic life during the marriage, not bare survival. The needs of the dependent spouse and children ‘contemplate their continued maintenance at the standard of living they had become accustomed to prior to the separation.’” Lepis, 83 N.J. at 150 (quoting Khalaf v. Khalaf, 58 N.J. 63, 69 (1971)).

A. Lepis Set Forth A Three-Step Process for Adjudicating an Alimony Modification Motion, Which is Applicable Here.

After an order has been entered setting the initial amount of alimony, “[o]rders so made may be revised and altered by the court from time to time as circumstances may require.” N.J.S.A. 2A:34-23. “As a result of this judicial authority, alimony and support orders define only the present obligations of the former spouses. Those duties are always subject to review and modification on a showing of ‘changed circumstances.’” Lepis, 83 N.J. at 146 (quoting Chalmers v. Chalmers, 65 N.J. 186, 192 (1974)).

To modify an alimony award, the moving party must illustrate a change in circumstances compared to the circumstances that existed when the prior support determination was made. Donnelly v. Donnelly, 405 N.J. Super. 117, 127 (App. Div. 2009). In Lepis, this Court established a three-step process for the adjudication of change in circumstance motions. Id. at 157-59. In step one, the moving party must make a “*prima facie* showing of changed circumstances.” Id. at 157. The term *prima facie* has been defined by this court to mean “evidence, if unrebutted, [that] would sustain a judgment in the proponent’s favor.” Baures v. Lewis, 167 N.J. 91, 119 (2001). If a *prima facie* case is established, the court then moves on to step two of the process, the discovery phase, where post-judgment discovery is authorized including access to tax returns and other relevant financial information. Lepis, 83 N.J. at 157. Presciently, the Lepis Court stated that while the respondent may wish

to maintain the confidentiality of their tax returns, “without access to such reliable indicia of the supporting spouse’s financial ability, the movant may be unable to prove that modification is warranted. Similarly, without knowledge of the financial status of both parties, the court will be unable to make an informed determination as to ‘what, in light of all the [circumstances] is equitable and fair.’” Id. at 157-58 (quoting Smith v. Smith, 72 N.J. 350, 360 (1977)).¹

After discovery has been completed, the case moves on to the third and final phase of the Lepis protocol, which requires the judge to determine whether a plenary hearing is warranted. As this Court explained:

“Once the [first and second] steps have been completed, the court must decide whether to hold a hearing. Although equity demands that spouses be afforded an opportunity to seek modification, the opportunity need not include a hearing when the material facts are not in genuine dispute. We therefore hold that a party must clearly demonstrate the existence of a genuine issue as to a material fact before a hearing is necessary.”

[Id. at 159.]

B. Cohabitation is a Statutorily Recognized Change in Circumstance.

Alimony terminates upon remarriage. N.J.S.A. 2A:34-25. Recognizing the ever-changing nature of relationships, in September of 2014, the Governor signed

¹ In response to the second question presented, the NJSBA submits that once a *prima facie* case is established, the moving party is entitled to discovery of the alimony recipient’s financial information for the reasons specified in the Lepis decision.

into law amendments to the alimony statute, adding cohabitation as a changed circumstance, to wit: “Alimony may be suspended or terminated if the payee cohabits with another person.” N.J.S.A. 2A:34-23(n). Under the statute, “[c]ohabitation involves a mutually supportive, intimate personal relationship in which a couple has undertaken duties and privileges that are commonly associated with marriage or civil union but does not necessarily maintain a single common household.” Id. The statute provides a number of factors that the Court shall consider when “assessing whether cohabitation is occurring,” which include the following:

- (1) Intertwined finances such as joint bank accounts and other joint holdings or liabilities;
- (2) Sharing or joint responsibility for living expenses;
- (3) Recognition of the relationship in the couple’s social and family circle;
- (4) Living together, the frequency of contact, the duration of the relationship, and other indicia of a mutually supportive intimate personal relationship;
- (5) Sharing household chores;
- (6) Whether the recipient of alimony has received an enforceable promise of support from another person within the meaning of subsection h. of R.S. 25:1-5; and
- (7) All other relevant evidence.

[N.J.S.A. 2A:34-23(n).]

In evaluating cohabitation and whether alimony should be suspended or terminated, the court is to consider the length of the relationship and the court “may not find an absence of cohabitation solely on grounds that the couple does not live together on a full-time basis.” Ibid.

In adopting N.J.S.A. 2A:34-23(n), the law surrounding cohabitation was substantially changed. Prior to the statute, in order to modify an alimony award based on the alimony recipient's cohabitation, the movant had to prove that the alimony recipient was "living together" with their significant other. Gayet, 92 N.J. at 150. Once cohabitation was determined, it was "[t]he extent of actual economic dependency, not one's conduct as a cohabitant, [that] must determine the duration of support as well as its amount." Id. at 154. "Economic realities" must determine the result. Ibid. The Gayet Court concluded that modification of support is appropriate in cohabitation cases under two circumstances: "when (1) the third party contributes to the dependent spouse's support, or (2) the third party resides in the dependent spouse's home without contributing anything toward the household expenses." Id. at 153 (citing Garlinger v. Garlinger, 137 N.J. Super. 56, 64 (App. Div. 1975)). Thus, the modification of an alimony award when the supported spouse was cohabiting would be equal to the economic benefit that resulted from the cohabitation.

After the adoption of N.J.S.A. 2A:34-23(n), the party seeking modification no longer had to prove that the recipient of alimony was living with a third party to obtain relief. Indeed, the requirement of a shared residence was specifically stated in the statute *not* to be a prerequisite to a finding of cohabitation. Id. ("... but does not necessarily maintain a single common household.") Moreover, the days of the

“economic benefit” test of Gayet were ended. Instead, the statute requires the Court to examine the nature of the relationship, assisted by considering a series of factors (the last factor being an open-ended “catch-all”), to evaluate whether the parties were involved in a relationship that was akin to marriage (regardless of whether the new relationship provided an economic benefit to the supported spouse). The statute does not require any of these factors to be present, but rather only that they be considered when assessing whether a “mutually supportive, intimate personal relationship” has been formed. Id.

This change in approach towards alimony and cohabitation reflects the changing nature of relationships since the 1983 Gayet decision. Today, it is increasingly common for a couple to no longer formalize their union through marriage to conform to societal expectations. Instead, some couples choose to engage in long-term dating relationships that possess all the characteristics of marriage, but without the formal marriage certificate. Even among married couples, it is increasingly common for finances and living arrangements to remain separate. For instance, some married couples, especially those in second marriages, choose to maintain separate homes for work or to maintain consistency in children's schooling, while others only share a residence on weekends or holidays, living separately for the rest of the year. As such, some modern-day marriages may not be distinguishable from a modern-day long-term dating

relationship, except for the presence of a marriage license. These challenges require a fact-specific examination of the relationship to ensure that the legislative goal of treating alimony recipients in marriage-like relationships the same as those who have formally remarried is fulfilled.

C. The Lepis Three-Step Process Should be Refined for Cohabitation Cases.

The NJSBA supports the continued use of the Lepis three-part process as the framework for handling support modification motions, as it has been effective in providing clarity and consistency. Nevertheless, given the intricacies of cohabitation cases, it is respectfully submitted that the three-step process should be refined for such cases, not only to promote fairness and equity in their adjudication, but also to create a more streamlined and efficient litigation process.

(1) Step One: The Court Should Provide Guidance on the Standard for Establishing a *Prima Facie* Case of Cohabitation and Adopt the Temple v. Temple Approach.

The current application of the law on cohabitation in New Jersey is inconsistent, resulting in disparate outcomes for litigants. This case presents an opportunity for the Court to provide clarity on what a movant must show under Lepis to establish a *prima facie* case of cohabitation, thereby entitling the moving party to discovery and shifting the burden to the alimony recipient to prove that they are not cohabiting. At present, the lower courts have taken various approaches in applying the statute, resulting in different outcomes for similarly situated litigants.

Consistency in the application of the law is essential to maintaining the credibility and confidence in our judicial system. See, e.g. Crispin v. Volkswagenwerk, A.G., 96 N.J. 336, 353 (1984) (Handler, J., concurring) (“Consistency in the results of decided cases fosters the credibility — and acceptability — of the justice system. Inconsistency, on the other hand, ultimately engenders loss of confidence in the administration of justice.”).

The NJSBA urges this Court to adopt the standard identified in the Appellate Division case of Temple v. Temple, 468 N.J. Super. 364 (App. Div. 2021), authored by the Hon. Clarkson S. Fisher, Jr., which focuses on the essential meaning of cohabitation, rather than a rigid, “check-the-box” analysis of whether the movant presented evidence of all six factors identified in the alimony statute. In short, for a movant to succeed in establishing a *prima facie* case of cohabitation, “[i]t is enough that the movant present evidence from which a trier of fact could conclude the supported spouse and another are in ‘a mutually supportive, intimate personal relationship’ in which they have ‘undertaken duties and privileges that are commonly associated with marriage or civil union.’” Ibid. (citing N.J.S.A. 2A:34-23(n)). The Temple approach aligns with the plain language of the statute. The statutory definition of cohabitation also comports with New Jersey case law pre-statutory amendment. For example, in the New Jersey Supreme Court case of Konzelman v. Konzelman, 158 N.J. 185 (1999), the Supreme Court recognized:

A mere romantic, casual or social relationship is not sufficient to justify the enforcement of a settlement agreement provision terminating alimony. Such an agreement must be predicated on a relationship of cohabitation that can be shown to have stability, permanency and mutual interdependence...Cohabitation involves an intimate relationship in which the couple has undertaken duties and privileges that are commonly associated with marriage. These can include, but are not limited to, living together, intertwined finances such as joint bank accounts, sharing living expenses and household chores, and recognition of the relationship in the couple's social and family circle.

[Id. at 202.]

Similarly, in Reese, the Appellate Division confirmed, “[w]e recognize cohabitation relations take various forms. In determining whether an award of alimony continues to be ‘fit, reasonable and just,’ the court must consider the characteristics of the new relationship of the dependent spouse and the cohabitant.” Reese, 430 N.J. Super. at 581-82 (internal citations omitted). And, previously, in Gayet, 92 N.J. at 155, the Supreme Court recognized that a cohabitation analysis examines whether the couple “bears the ‘generic character of a family unit as a relatively permanent household.” Ibid. (citing State v. Baker, 81 N.J. 99, 108 (1979)). These cases confirm that establishing cohabitation requires a highly fact-specific analysis that can demonstrate stability, permanence, and mutual interdependence as the key considerations in determining whether a relationship meets the statutory definition. There is no *sine qua non* to proving cohabitation. What is important is the nature of the relationship.

Indeed, the various factual permutations in which cohabitation can be shown are limitless. It is often the specific details of the relationship — usually only gleaned after discovery — that illustrate a serious bond and a profound, special relationship between two people, distinguishing a mere dating relationship from a “mutually supportive, intimate personal relationship.” J. Paone & C. Murphy, Cohabitation Under NJ Law: A Special Relationship, 227 N.J.L.J. 27, 42 (July 5, 2021). Examples of such details include: the payee identifying the cohabitant as an emergency contact at the children’s schools; the cohabitant transporting the children to and from their extracurricular activities; the payee and cohabitant driving each other’s vehicles; the cohabitant meeting service providers for appointments at the payee’s home; the cohabitant co-signing a lease with the payee; the cohabitant being included in a family gym membership; the payee and cohabitant sharing a pet; and the payee and cohabitant having matching tattoos. Id. See also J. Lawrence & M. Lihotz, 50 (or More) Ways to Show They’re More Than a Lover: Facts to Prove Cohabitation, 40 N.J.F.L. 6 (September 2022).

The confusion and inconsistent application of the law which has occurred below has resulted from a mechanical and excessive focus on the cohabitation factors set forth in N.J.S.A. 2A:34-23 (n) as opposed to evaluating the fact sensitive details of the particular relationship. While the statute largely codifies those considerations regularly employed by trial courts in addressing cohabitation in the

pre-statute era, there is no “super factor” for cohabitation, statutory or otherwise. The statute does not give any factor primacy, nor does the statute provide that if any factor is not established — such as intertwined finances — a cohabitation claim must fail. This is true not only for the *prima facie* case, but at final hearing as well.

Where a statute is clear and unambiguous, it must be given its plain meaning, and the law should be applied as written. Lozano v. Frank DeLuca Constr., 178 N.J. 513, 522 (2004); Murray v. Plainfield Rescue Squad, 210 N.J. 581, 592 (2012). That is the case here. The plain language of the statute should be given full import, ascribing to the words used their ordinary meaning and significance. DiProspero v. Penn, 183 N.J. 477, 492 (2005).

To require a movant to produce proof of intertwined finances on an initial motion makes it very difficult for any movant to be able to succeed in establishing a *prima facie* case of cohabitation, as such evidence is not within the possession of the movant without the right to discovery. See Temple, 468 N.J. Super. at 370; Ozolins v. Ozolins, 308 N.J. Super. 243, 248-49 (App. Div. 1998); Reese, 430 N.J. Super. at 570. The Temple court astutely analogized initial cohabitation motions as being “akin to summary judgment motions filed prior to completion of discovery.” Temple, 468 N.J. Super. at 375. To hold a movant to such a high burden of proof at the initial motion stage all but ensures denial of that motion, rendering successful cohabitation cases “as rare as a unicorn.” Id. at 370.

Accordingly, the standard in Temple, requiring evidence from which a trier of fact could conclude the existence of a mutually supportive, intimate personal relationship in which the couple has undertaken duties and privileges commonly associated with marriage or civil union, aligns with the plain language of the statute and is consistent with New Jersey case law. It allows for a flexible and fact-specific analysis of each cohabitation case, rather than a rigid checklist of factors that must be met prior to the parties engaging in discovery.

(2) Step Two: Discovery and a Shifting of the Burden of Proof to the Alimony Recipient to Prove they are not Cohabiting.

After a *prima facie* showing of cohabitation is established, the second step of the Lepis process authorizes the parties to engage in discovery. In the context of cohabitation cases, meaningful discovery must include not only document requests, but also the opportunity to propound interrogatories and conduct depositions. These forms of discovery are necessary to explore the specific dynamics and details of the relationship that may not be found in a document. Importantly, these types of discovery are not typically available to cohabitation movants at the time of their motion, as nearly all cohabitation applications are made after the date of divorce, and post-judgment discovery is not allowed without leave of court. R. 5:5-1.

In addition, after the proper *prima facie* showing has been made, the burden of proof should continue to shift to alimony recipients to prove that they are not cohabiting under the statutory definition. This approach is consistent with existing

cohabitation case law which recognizes that much of the discovery necessary to prove a cohabitation claim, especially evidence of intertwined finances and sharing of household chores, is in the possession of the payee. For example, in Frantz v. Frantz, 256 N.J. Super. 90 (Ch. Div. 1992), the trial court recognized cohabitation as a changed circumstance triggering the shifting of the burden of proof to the payee under the framework of Lepis. Specifically, the Court stated:

This court perceives that it would be unreasonable to place the burden of proof on a party not having access to the evidence necessary to support that burden of proof. While it is not recognizing any presumption as set forth in Grossman, or in the dissenting opinion in Gayet, it does feel that cohabitation, consistent with Gayet, is a changed circumstance similar to the *prima facie* showing referred to in Lepis v. Lepis. Once that *prima facie* showing has been made, this court feels that the burden of proof would shift to the supported spouse.

[Id. at 93 (internal citations omitted).]

In Ozolins, the Appellate Division concluded that a *prima facie* showing of cohabitation creates a rebuttable presumption of changed circumstances, shifting the burden to the alimony payee. Ozolins, 308 N.J. Super. at 245. As a basis for this holding, the Ozolins court adopted the reasoning set forth in Frantz; namely, that it is appropriate for the burden to shift in recognition of the fact that it is the payee, not the payor, who has access to the evidence. Id. at 249. See also Reese, 430 N.J. Super. at 570.

Thus, in “step two” of the NJSBA’s proposed refined Lepis process, once a *prima facie* showing is established, discovery should be allowed and the burden of proof should continue to shift to the payee spouse to prove that they are not cohabiting. This approach promotes fairness and equity and helps ensure a level playing field in cohabitation cases.

(3) Step Three: Once Discovery has been Completed, the Court Should Conduct a Mandatory Case Management Conference to Determine Whether a Plenary Hearing is Necessary.

As this Court noted in Lepis, the determination of whether a plenary hearing is necessary should occur *after* discovery has been completed. Lepis, 83 N.J. at 159. To assist the trial court in this determination, the NJSBA proposes that the process outlined in Lepis be clarified to provide that the trial court conduct a mandatory case management conference following the completion of discovery. At the case management conference, if either party believes there are no genuine issues of material fact requiring a plenary hearing and the evidence is so one-sided that they are entitled to judgment as a matter of law on the issue of whether the alimony recipient can meet their burden of proving they are not cohabiting under the statutory definition, they should be afforded the opportunity to file a motion for summary judgment. If no such summary judgment motion is going to be filed, a plenary hearing should be scheduled. If a motion is going to be filed, a schedule should be set for the motion’s adjudication. If following oral argument the summary judgment

motion is granted, then the post-judgment case will be completed. If the motion for summary judgment is denied, then a plenary hearing must be scheduled.

Such a three-step process is consistent with the original procedural guidelines set forth in Lepis which have served Family Part litigants well for over 40 years, and complies with the mandates of the statute and ensures that both parties have access to all of the information necessary to properly address the N.J.S.A. 2A:34-23(n) statutory factors. The NJSBA believes its proposed refined Lepis process will provide clarity and streamline the litigation process, ensuring fairness and equity for both parties involved in cohabitation cases.

CONCLUSION

The NJSBA urges the Court to adopt a clear and precise standard for proving cohabitation that promotes statewide uniformity and consistency. The current imprecise standard results in confusion and inconsistent outcomes in the lower courts, making it imperative for this Court to provide guidance on what evidence is required to establish cohabitation.

The NJSBA recommends that the Court formally adopt the Temple approach and clarify that a *prima facie* showing of cohabitation is made when the evidence, if unrebutted, would allow a trier of fact to conclude that the supported spouse and a third party are involved in a mutually supportive, intimate personal relationship in which they have taken on duties or privileges commonly associated with marriage or civil union. Moreover, the Court should specify that establishing intertwined finances is not a prerequisite for proving cohabitation at either the *prima facie* stage or final hearing.

The NJSBA further recommends that the Court implement a refined Lepis three-step process to create a clear and unequivocal protocol for trial courts to follow in cases where the suspension or termination of alimony is sought due to a party's alleged cohabitation.

This approach will promote fairness and equity, streamline the litigation process, and ensure prompt, efficient, and consistent outcomes in family law cases.

Respectfully submitted,

By: s/Jeralyn L. Lawrence
Jeralyn L. Lawrence, Esq.
President, New Jersey State Bar Association
Attorney ID No.: 015211996

Dated: March 28, 2023