

Digital Forensics & Alimony Recoupment – Putting Sharp Teeth Into Today's Divorce Proceedings

By

One Million Eighty-Two Thousand Five Hundred Dollars (\$1,082,500)! In May 2015, I secured a judgment on behalf of my client in that amount, representing \$807,500 in back alimony payments and \$275,000 in attorney's fees and court costs. Recently, payment was made in full and the judgments were satisfied.

How is this possible? How was this achieved? Through the extensive and ground-breaking use of digital forensic evidence. Over nine days of trial, and an excruciatingly detailed review of over 69,000 pieces of data, I was able to persuade the trial court that my client's ex-Wife had cohabitated with her boyfriend as early as January 1, 2007, in violation of their settlement agreement. The parties' settlement agreement provided for a termination of alimony on the basis of cohabitation. Through a detailed forensic digital examination of the ex-Wife's iPhone, laptop, desktop, and external hard-drive, I was able to uncover proof of her cohabitation consistent with the requirements of *Gordon v. Gordon*, 342 Md. 294, 675 A.2d 540 (1996).

More importantly was the implementation of the concept of recoupment of alimony as a theory of recovery, which as far as my research has found, has never been done in Maryland until now. There are no reported appellate cases on this issue in the State of Maryland; nor will this case serve as such, since the appeals period has expired.

As argued at trial, recoupment of alimony is premised on the ideals of fundamental fairness arising from contracts precluding cohabitation.

It is also noteworthy that, in discussing the contracting against cohabitation relationships for alimony purposes, the court acknowledged that "[a]n adult receiving alimony is presumed to be capable of making a free choice: He or she can chose to avoid those circumstances (other than death) that will result in suspension or termination of alimony. In fairness, where the parties have agreed that cohabitation will affect the right to receive alimony that agreement should be enforced and there should not be engrafted thereon the requirement of change of financial circumstances."
Quisenberry v. Quisenberry, 449 A.2d 274, 275 (Del. 1982)

These ideals were set forth in failed legislation attempted in Maryland as recently as February 2, 2011. It was introduced in the Maryland House of Delegates to codify the termination of alimony upon cohabitation of the recipient of alimony. Specifically, House Bill 304 proposed to terminate alimony if the recipient of alimony cohabitated for a period of at least 30 days with an individual who is not a member of the recipient's family. The Bill would also have created a presumption that cohabitation exists under the following circumstances:

- 30 days of cohabitation;
- The recipient and the other individual are engaged in a relationship of a romantic nature;
- The recipient provided any economic benefit to or received any economic benefit from the other individual as a result of the relationship.

House Bill 304 would have also made it a requirement that the recipient immediately notify the party required to pay alimony upon marriage or cohabitation. Had this Bill been voted into law, it would have taken effect on October 1, 2011. Ultimately, this Bill did not go anywhere in the Maryland legislature, but it is a subject with which the legislature is concerned.

So, where does that leave Marylanders who are paying the ex-spouses alimony in circumstances where they are cohabitating? For those without "cohabitation" clauses, they are likely stuck paying alimony up and until other contract terms are met or when they go back to Court to terminate or modify for other material reasons. For those with "cohabitation" clauses in their agreement, there is sufficient legal basis with which to assert a claim for alimony recoupment where the underlying premise for the receipt of the

alimony is no longer present and payments are nevertheless accepted.

The key, as in the case mentioned above, will be to carefully analyze and implement appropriate investigative and discovery tactics to secure the crucial evidence to prevail at trial; including the proper development of an attorney's fees claim. Contractual Alimony Recoupment has come to Maryland; leveling the playing field for those unfairly paying alimony to a recipient who unjustly receives it contrary to their agreement. This is a very powerful weapon – not just stopping alimony, but getting it back!