Cohabitation Playbook: Anatomy of a Cohabitation Case

by John E. Finnerty

Cohabitation cases are not what they used to be. Until Sept. 10, 2014, the Legislature had *never* referenced cohabitation in the statutory framework regulating alimony. Cohabitation law was judge made, evolving from case to case. The ultimate judicial inquiry was whether cohabitation had an economic impact on the supported spouse, either by reducing that spouse's needs through payments from a paramour or by the paramour's receipt of benefit from the supported spouse's alimony. In either case, modification/reduction would likely be appropriate. Once a *prima facie* case of cohabitation was demonstrated, the law required the supported party—with greater access to evidence—to come forward to show there was no actual economic benefit being received from or provided to the paramour.[1]

In Sept. 2014, the Legislature took control of the cohabitation playing field. For the first time, the Legislature interjected itself and defined what cohabitation was—an intimate and mutually supportive personal relationship in which a couple undertakes duties and privileges commonly associated with a marriage or civil union, even if the couple was not maintaining a common household.

Economic impact was no longer the touchstone of a cohabitation analysis. Rather, the Legislature refocused the analysis from the economic impact of cohabitation to the nature of the relationship being examined. It also directed what evidence a court *must* consider when *assessing* whether cohabitation existed, and, at the same time, limited the remedies a court could employ if it concluded cohabitation was occurring.

The new law limits the court to suspending or terminating alimony. Simple modification of alimony in the event of cohabitation is no longer permitted.[2] If, after considering all evidence, the court concludes a relationship is enduring and the couple acts and lives like a married couple, then alimony has to end with discretion being maintained to do so only through suspension or termination. No standards were provided by the Legislature to assist courts in determining whether suspension or termination was appropriate, but factors were listed for the court's evaluation as to whether cohabitation was occurring.[3]

The Judicial Task

In reaching a conclusion about the nature of the personal bond that exists, and whether it constitutes cohabitation such that alimony must be stopped, the Legislature mandated that courts "shall" consider certain "assessment" factors, as well as "any other evidence." These assessment factors are:

- Intertwined finances such as joint bank accounts and other joint holdings or liabilities;
- Sharing or joint responsibility for living expenses;
- Recognition of the relationship in the couple's social and family circles;
- Living together, the frequency of contact, the duration of the relationship, and other *indicia* of a mutually supportive intimate personal relationship;
- Sharing household chores;
- 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;
- All other relevant evidence.

In evaluating whether cohabitation is occurring, and whether alimony should be suspended or terminated, the court must also consider the length of the relationship. In addition, a court may not find an absence of cohabitation *solely* on grounds that the couple does not live together on a full-time basis.[4] Although the focus of the judicial inquiry is the nature of the relationship, the Legislature did *not* say there was a certain quantum of evidence that must be discovered about each assessment factor, or even that there had to be evidence related to each factor. Rather, the factors are a guide for the court to consider to help it ascertain whether a mutually supportive personal relationship exists such that, under the statute, it is appropriate either to suspend or to terminate alimony.

Before Filing

Does this statute now invite full-fledged discovery every time a supporting spouse finds out or hears a rumor that his or her former spouse is dating someone? Do such rumors justify intrusion into the lives and finances of the supported spouse and suspected paramour? This author thinks not; the law does not sanction intrusion without an evidential foundation that creates a reasonable basis justifying further inquiry.

The touchstone inquiry is whether a *prima facie* case has been presented justifying further proceedings. Certainly, this author believes such a finding must never be made based upon the presentation of hearsay, which is not competent evidence.[5] Discovery and a hearing should not be ordered just because a supporting spouse is told or believes that a former spouse is dating someone, or that someone has seen cars in the driveway for several weeks or months in a row. This should not be sufficient to justify a finding that a *prima facie* case has been made. The courthouse doors should not be thrown open and the docket of pending cases expanded frivolously without competent evidence.

A lawyer who is consulted by a payor who feels aggrieved must be a skillful guide in helping direct and supervise the gathering of evidence for the initial presentation, the primary realistic objective of which should be to have discovery sanctioned and a hearing ordered.

Prima Facie Case

Prima facie, according to *Black's Abridged 9th Edition Law Dictionary*, means:

> A parties' production of enough evidence to allow the fact-trier to infer the fact at issue and rule in the parties' favor.
>
> It is also defined in the same dictionary as:
>
> Evidence that will establish a fact or sustain a judgment unless contradictory evidence is produced.

The initial filing seeking a *prima facie* ruling must be deliberately and carefully prepared. A premature filing without sufficient basis, which is rejected, will likely doom future applications about the same relationship. The couple involved will have been put on notice and, in all likelihood, will be even more careful about covering their tracks. A premature application not properly developed without evidence being gathered over a long period of time also allows the knee-jerk defense mantra: "Judge, if you allow discovery on this, it will never stop. You will be opening the courthouse doors to a floodgate of litigation simply because people are dating."

If a client suspects the former spouse is involved in an intense relationship that has gone on for a significant period of time and is serious, he or she should do a 'quiet' investigation with counsel's assistance and under counsel's supervision. There should be no rush to file a motion unless there is competent evidence to support it.

The rules regarding certifications should be carefully followed. Rule 1:6-6 requires that certifications be based on personal knowledge or other competent evidence, not hearsay or speculation. Allegations of "somebody told me," or the naked conclusion without foundation that "I know they spend all their time together" likely will not be sufficient to open full discovery and obtain a hearing. Patience should be the watch word of the investigation. The longer the period of time one can demonstrate the relationship has existed, the more likely the obligor will be successful in getting permission for further inquiry by way of discovery.

Social Media and Social Sources

The former spouse's social media information should be vetted carefully, but properly. This obviously does *not* mean having counsel's staff 'friend' the former spouse on Facebook.[6] However, many people are very careless with social media information, which can provide a wealth of potential evidence by way of admissions in public postings. In addition, although former spouses may be unfriended and blocked, it may be that there are other interlocking family connections—the client's relatives or mutual friends—who *still* are connected via social media, through whom information can be obtained.

Counsel must quiz the client about any such evidential sources. Any such potential sources should be interviewed in a way that is most likely to produce the evidence sought. Before approaching a prospective witness, there has to be a high degree of comfort that the person approached will not 'spill the beans' to the client's former spouse. In most circumstances, that potential witness is best approached initially by the client rather than a paralegal from the attorney's office. The client should have an instinct about whether the potential witness is trustworthy and how to approach him or her. Counsel must sensitize the client to the importance of only inquiring of people he or she completely trusts, and who also are *already* connected to the former spouse via

social media. If there is any doubt, there should be no inquiry. Counsel and client do not want to do anything that will chill the ongoing relationship or have the couple being investigated go underground. If the source is open to providing evidence, then the attorney should do the formal specific evidence-gathering interview.

Private Investigators

Additional evidence that may be sought prior to going public with the application can be garnered by involving licensed private investigators. Private investigators may be able to obtain information that is not otherwise available, such as the identity of a person associated with a particular license plate, and other public databases through which information can be obtained about identified individuals. In addition, investigators can conduct actual or video/still camera surveillance. Actual surveillance may not be practical depending upon the location of the former spouse and the nature of the interaction with the suspected paramour.

If private surveillance is not practical or is too expensive, private investigators frequently utilize video or pole camera surveillance to monitor comings and goings at a particular location. This is considerably less expensive than in-person surveillance. Typically, a camera is installed on a public thoroughfare at a public location that targets the subject's location, whether it be a home or an office, or some other location. It is important the video/camera surveillance not be installed in such a fashion that a trespass occurs, and that all the surveillance provides access to is that which anybody passing by that spot would be able to see or hear with their naked eyes or ears at the location. These cameras usually have SIM cards, operate 24/7, and can be set at very short intervals, for example, to snap pictures every 10 to 15 seconds. The camera is checked periodically throughout the investigation, and when the card is filled, the camera or the cards are replaced. The time- and date-stamped images captured are inventoried and analyzed. The longer the surveillance occurs and demonstrates ongoing comings and goings of the couple, the more credible the application and the more likely permission will be given for full-scale discovery. Depending upon the existence of other evidence, surveillance should continue for at least multiple months.

Private investigators also may examine discarded garbage that is placed at the curb before it is picked up. So long as the garbage is not located on the private property of the surveillee and has been discarded for public pickup, it will likely be ruled grist for the mill.[7] Investigators should be creative, but counsel must warn them they are not to do anything that will cause aspersions to be caste on the investigation or anyone involved with it—litigant and professional alike.

This author was involved in one case where an investigator decided to attend an open house for the sale of the supported spouse's home. The detective appeared with his wife and received a tour of the home and was allowed to look around by himself. As he moved about the house, the detective saw substantial evidence of the presence of a man, including men's toiletry supplies in the bathroom, men's suits in the closet and other *indicia* that created a serious inference of cohabitation, and the identity of the cohabitant.

One must be mindful of complying with ethical requirements when commissioning an investigation by a private detective. For example, the use of GPS is fraught with risk.[8]

Client Knowledge

Counsel should also carefully interview the client and have him or her review and organize text message and email communications with the former spouse. There may be multiple concessions and acknowledgments of requests to assist with or switch dates for child care because of plans to be away. Knowing these dates will facilitate efforts to capture the couple together. Moreover, there may be inferential acknowledgments of a relationship in the communications.

It is also important to debrief and interview the client carefully about his or her own observations in the course of routine child exchanges or social interactions with the former spouse, such as those that occur at school functions or private social and family events, where the former spouse's significant other may be present. If the client has a reasonably cordial relationship with his or her former spouse, and is allowed access to the new home at the time of child pick-ups and drop offs, or to use the bathroom, there may be testimonial observations the client can make about activities or the contents of the house that suggest the presence of a third party. The client may even have interactions with the significant other to report. It is important to get as much information about the identity of that person as possible, and to have it reviewed by the private investigator to see what can be discovered on public websites or social media.

It is particularly important to counsel the client not to file an application prematurely. Patience while gathering evidence before the application is made is critical. The relationship that is the basis of the cohabitation claim must be allowed to develop to the point where it creates at least an appearance of being enduring before the circumstances that exist are presented to the court. Once the location of the video/camera surveillance is disclosed in the initial filing, it is reasonable to conclude that any further camera surveillance from that location will not work, and other arrangements will be made to assure comings and goings are masked.

Filing the Application

It is unlikely the court is going to terminate alimony on an initial filing. That request should be made—assuming the evidence gathered is strong enough—but counsel must alternatively ask for an order granting discovery and scheduling the matter for a plenary hearing. Counsel must ask for a declaration that a *prima facie* case has been made and request discovery to fairly assess and determine the issue raised. The submission made should be thorough. Remember, it is not likely that the initial application will have enough evidence to do more than persuade a judge that further inquiry must be made to seek evidence that the Legislature has said *must* be considered when assessing these issues.

In addition to requesting termination and/or suspension of alimony pending discovery and a plenary hearing, counsel should also suggest that, pending the plenary hearing, the support due should be paid into his or her trust account.[9] Such a ruling is fair to both parties because both are assured the money will be available following the court's decision after a hearing. It should further seek a temporary restraining order and a preliminary injunction to prevent the party spouse either from removing and deleting texts, emails and posts from social media accounts, or from altering, destroying, or discarding electronic hard drives of any devices or the devices themselves. It should further seek the same injunctive relief against spoliation of evidence.

Discovery

Discovery in post-judgment matters is not allowed to commence until an order has been entered permitting it.[10] However, once such an order is entered, the rules do not impose upon counsel the order in which discovery must occur. There is no rule that precludes discovery from a third party because discovery of a party is not complete.[11] There is likewise no rule that requires completion of party discovery before service of third-party subpoenas. It is counsel's right to obtain information deemed necessary to process the case expeditiously.[12] Discovery may be obtained in whatever order it is deemed effective, so long as the evidence sought is relevant or reasonably calculated to lead to relevant evidence.[13] Moreover, Rule 5:5-1(c) makes clear that depositions of any person can be taken as of course in connection with discovery. Leave of court for deposition of third parties is not required. If the statute requires judges to assess certain evidence, then *a fortiori* counsel should have a right to seek it and to present it.

Tactically, in connection with the initial filing, counsel should decide whether to detail the third-party discovery being sought, or simply seek a general discovery order and then issue subpoenas once the order has been entered. Obviously, if discovery is allowed, third-party subpoenas will be served on the paramour's financial institutions and other relevant providers, including cellphones. If counsel specifies in the initial motion what specific requests will be made, then the applicant will learn of any predilections the assigned judge has about the kinds of discovery being sought. If counsel does not make specific requests, then the judge's personal perspective will not emerge until and unless the paramour retains counsel who files a motion to quash. If generic discovery is requested and subpoenas served, the paramour might not retain counsel or object, and then the institution subpoenaed will provide the requested documents and the judge's predilections may never come into play. These are decisions that have to be made at the time based upon developments in consultation with the client.

A paramour or a couple that has nothing to hide should not reasonably seek to block access to this information, which could be exculpatory. If its release demonstrates no connection of any kind, then the respondent's case is made much stronger. In addition, resistance always engenders the suspicion of a pro-active attorney. If a *prima facie* case has been made, there would seem no reasonable basis to object to gathering evidence to assess whether people are involved in a relationship that the Legislature has said, if existent, will cause alimony to be interrupted or stopped.

Requests to Admit

As social media, surveillance and other evidence is

gathered, it is important to craft and serve carefully written requests to admit, which may dramatically simplify proofs and do away with any social media authentication issues.[14] Preparation of these requests will cause counsel to focus on and analyze the evidence as it is being gathered to get a sense of the impression it may make on a trier of fact. Carefully crafted requests to admit regarding the authenticity of Facebook and other social media posts are critically important. If properly prepared, many material substantive factual issues also may become undisputed by virtue of requests to admit responses. For example, a request to admit can be used to generate an admission about any fact that is contained within a post or social media communication, as well as to authenticate it.

Electronic and Other Discovery

Cellphone Records and Social Media Passwords

Critically important to the development of a cohabitation case is ascertaining where people are in proximity to each other from time to time during the course of a day and evening. Prompt provision of cellphone records of both the supported spouse and the cohabitant for the length of time the relationship has existed can put an immediate focus on the couple's physical interaction and emotional involvement. Cellphone records reveal the cell tower through which a call from or to a particular number is processed. When a person claims to be at his or her residence in Middlesex County at 11 p.m., but his cellphone provider records reveal that calls to or from his phone at that time go through a cell tower near the supported spouse's residence, powerful location evidence has been created. Such records also reflect the frequency with which the parties contact or seek to contact each other, another *indicia* of the nature of the relationship. Moreover, for the limited period of time for which cell providers retain the content of text messages exchanged (about 10 days), the content of transmitted communication between the couple is available.

Equally important is access to email communications between the supported spouse and cohabitant about their relationship, or their communications with others about it, either through social media, texts or emails. One assessment factor set by the Legislature is recognition of the relationship in the couple's social and family circle. Not only are communications and posts between the couple relevant regarding the nature of the relationship, but so also are communications by either of the couple with third parties *about* their relationship. In the initial application, a request should be made for social media passwords and access for a digital expert to devices and social media accounts. There can be no reasonable expectation of privacy if either member of the couple is sharing with third parties their feelings and opinions about each other or the nature of the relationship. Such communications, posts or tweets are directly relevant to assessment of the nature of the interaction between the couple and whether their bond is such that alimony should stop. Access to social media accounts through release of passwords to an expert is the only efficient way to obtain such information, as service of subpoenas on social media companies like Facebook and Instagram is an unwieldy process that is likely to occasion great delay.

Respondents will likely assert that their social media accounts, passwords and electronic devices are protected and private, and that they cannot be compelled to release private information. Respondents may seek to raise the Stored Communications Act as a bar to a request for social media information and electronic communications information.[15] That act prohibits internet service providers (ISPs) from revealing the content of, and/or turning over, stored communications in their possession under penalty of law, except in certain limited circumstances. An exception to this prohibition is conduct authorized by "a user of that service with respect to communication of or intended for that user."[16]

To the extent the information on devices and social media is privileged, meaning communications with doctors or lawyers, for example, it should be protected. Absent such a circumstance, this author believes a litigant should not be able to block information about the status of a relationship, which the law states will allow alimony to be stopped, if it reaches a certain level of connectedness. A litigant, or third party involved with a litigant, should not hide behind a statute and refuse to provide information about a relationship status the Legislature has said may be such that support rights are affected. This author believes people with such evidence in the face of claims about the viability of continued support should be compelled to disclose the information that may exist, so long as their privileged communications are kept private.

Counsel will need to persuade a judge that the expert, if directed to redact and create a privilege log for such information for review by the court, will do so honorably and comply with court orders. If the court is

unwilling to take that chance, then counsel can request a digital electronic expert to be designated as the court's expert to review accounts and provide the information to the court for *in camera* review. It is important that whomever the expert is, he or she be given a keyword list with which to search social media and electronic accounts. It is not just the spouse and paramour whose names should be searched; searches should be made of communications with family members of either person or people in their social circles. Compiling such a list requires close coordination and discussion with the client.

Although the former spouse may have blocked the paying spouse from social media accounts, if his or her new relationship with a paramour is openly disclosed on social media to anyone, then there is no reasonable expectation of privacy that precludes that information and data, whatever it may be, from being utilized in connection with the cohabitation case. Certainly, after posting or tweeting information on social media about one's relationship—even through hidden from the supporting spouse—there can be no reasonable expectation of privacy regarding that relationship.

In *People v. Harris*, Judge Matthew Sciarrino Jr. set forth:

> If you post a tweet, just like if you scream it out the window, there is no reasonable expectation of privacy.[17]

If one releases information to the world about a relationship, then it is grist for the mill on an application that seeks evidence to assess whether that relationship has grown into the realm of one the Legislature has concluded should result in the cessation of alimony.

As part of the initial request, a temporary restraining order and preliminary injunction should be sought enjoining the alteration or deletion of such material on devices and further preventing spoliation of evidence. Although one has an ethical obligation to alert one's client that such spoliation should not occur, it is best to put an order in place at the beginning prohibiting such actions. Digital experts also may be able to ascertain when and what the owner of an electronic device sought to delete, as well as any deletions that occurred. There are time limitations that are relevant to how much can be discovered with respect to attempted alterations or deletions, which is why these issues need to be raised and resolved promptly. That would be one reason why such discovery requests should be specifically delineated initially, to avoid delay in the adjudication of any dispute about them.

In addition to having no reasonable expectation of privacy about information that has been released to anyone in the world, this author believes a litigant should not have the right to hide their personal circumstances that are relevant to the case. Any non-privileged fact that exists that enables assessment of the nature of the new relationship and whether it should cause a change in an alimony entitlement is relevant. Just like a divorce litigant can not stand behind the privacy of his or her bank accounts and refuse to provide information about them, so too, in a case where a *prima facie* finding has occurred, the respondent cannot seek to cover up and block access to evidence that may assist in evaluating further the nature of the new relationship.

There is no privilege against incrimination in a civil case. A litigant should not be able to lie or withhold evidence about what is going on. Moreover, the Legislature has directed that such evidence must be assessed.

Assertions by a respondent that allowing such inquiries will open the flood gates of litigation can be demonstrated not to be correct if counsel has carefully made the initial application and gathered substantial evidence to support it. The requests will be made, not in the context of a former spouse who drove by his or her ex-spouse's house for a few weeks and saw the same car out front, but in the context of a long, demonstrated relationship that needs to be further probed and analyzed with access to evidence about the factors the Legislature has said must be used to assess that relationship. That is why it is particularly important to carefully develop the application before going public to make sure that counsel has enough to get an order allowing discovery.

E-Z Pass

E-Z Pass records facilitate learning about people's location from time to time. Service of a subpoena on E-Z Pass is not likely to result in any prompt return or any return at all. E-Z Pass honors authorizations from the E-Z Pass subscriber and that is the most effective way to obtain E-Z Pass records that are directly relevant to people's locations. E-Z Pass records regarding New Jersey toll roads are self-authenticating.[18] However, information from other state road authorities that appear in New Jersey E-Z Pass records must be authenticated in another manner. Records provided by New Jersey agencies make that clear.

Financial Records of Third Party

There are cases where the third party simply turns over records after hiring counsel, who communicates their willingness to cooperate. However, there are other instances where motions to quash are filed and every effort is made to block and impede access to information.

When dealing with resistance, counsel must emphasize that he or she is only doing what the Legislature has directed must be done. The Legislature has directed judges on how they must assess cohabitation; namely, they must consider several identified factors and anything else that anybody wants to present regarding the issue (*i.e.*, "all other relevant evidence"). If the court rules that a *prima facie* case has been made, then there is going to be discovery and a hearing about the issue of cohabitation. In connection with that hearing, the Legislature has stated that courts *must* consider evidence of financial intertwining and expense sharing. In order for courts to *consider* it, counsel must be able to *present* it, which means counsel must have the right to *access* it. How else is one to determine and utilize assessment evidence pertaining to finances without being able to examine both involved parties' financial records? If counsel is barred from the paramour's records on the basis of a privacy interest, then evidence about it can't be presented.

When there is a statutory right to seek cessation of alimony payments in the event of a finding of cohabitation, then how can those involved in that relationship reasonably assert either has a privacy right, which bars access to evidence the Legislature has said must be considered? How can one present evidence if one is not allowed to seek it? How can the court assess evidence if it doesn't have it?

The assertion that the statute requires joint holdings to establish a financially intertwined relationship, or that counsel is limited to seeking evidence of joint holdings, is belied by the language of the statute. Joint holdings are referenced as an example. The statute does not say that the parties must have joint holdings for there to be an assessment that they are intertwined financially. The author believes it is intuitively logical that it is impossible to examine the nature of a couple's financial relationship without examining both of their financial holdings. Without access to accounts to see whether money is coming from either to the other or being deposited into the account of the other or expended on behalf of the other, the financial interactions and interconnectedness cannot be fully vetted.

Conclusion

The law of cohabitation has now been set by the Legislature. This is the first time the Legislature has passed a statute defining cohabitation and declaring that alimony must be terminated or suspended if it is found. A finding of cohabitation can have the same statutory impact as the death or remarriage of a spouse[19]—alimony ends. The change in focus of the law has been to evaluate the nature of the relationship with the cohabitant, rather than its economic impact on the supported spouse.

It is important when presenting a cohabitation case that it be done in a deliberate fashion. Engage in careful investigation *before* the initial application. The longer the relationship being brought to the court's attention has gone on, the more likely a judge will be persuaded to order discovery and a hearing. Therefore, it is important to gather evidence from multiple sources before going public with a filing. Counsel must persuade the client to be patient. Success is more likely to come with deliberate preparation rather than a race to the courthouse. ■

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Endnotes

1. *Ozolins v. Ozolins*, 308 N.J. Super. 243, 245 (App. Div. 1998).
2. Based on the legislative history of the statute, this is the only reasoned interpretation. At the time of the passage of this statute, two different versions were being considered as it pertained to cohabitation. One version permitted modification, termination or suspension. These amendments were not adopted and the Legislature passed the current version of the law, which is codified at N.J.S.A. 2A:34-23(n). The word "modified" was deleted prior to passage. In addition, prior proposed bills not adopted referenced economic impact on the supported spouse when assessing cohabitation. (*See* A-845, 216 Leg. at 11 (N.J. 2014); A-971, 216 Leg. at 5 (N.J. 2014); S-488, 216 Leg. at 5 (N.J. 2014); A3909, 215 Leg. (N.J. 2013).

3. An excellent article tracing the development of cohabitation law and discussing policy issues is "Cohabitation and the Amended Alimony Statute: Has the Economic Needs Standard Been Replaced," Murphy, 36 *New Jersey Family Lawyer*, 13, June, 2016.
4. N.J.S.A. 2A:34-23(n).
5. R. 1:6-6.
6. *Robertelli v. NJ Office of Attorney Ethics*, 224 N.J. 470 (April 19, 2010).
7. *See State v. Hempele*, 120 N.J. 182, 216 (1990); *State v. Johnson*, 171 N.J. 192, 208-09 (2002).
8. *Villanova v. Innovative Investigations, Inc.*, 420 N.J. Super. 353 (App. Div. 2011); *LAVH v. RJLH*, 2011 WL 347701 (App. Div. 2011).
9. *Wachtel v. Wachtel*, 2015 WL 1511181 (App. Div. 2015).
10. *See Welch v. Welch*, 401 N.J. Super. 438 (Ch. Div. 2008).
11. R. 4:10-4 and R. 4:14-1.
12. *See Zaccardi v. Becker*, 88 N.J. 245, 252 (1982).
13. *See Pfenninger v. Hunterton Central*, 167 N.J. 230, 237 (2001).
14. Scafari, "Authentication and Admissibility of Electronic and Social Media Evidence in Family Law Matters," 310 *New Jersey Lawyer*, 47, Feb., 2018
15. 18 U.S.C.A. Sections 2701-2712.
16. *See Id.*
17. 949 NYA 2nd 590 (2012).
18. N.J.R.E. 902.
19. N.J.S.A. 2A:34-25.