

Brian J. McLaughlin Family Law Blog on Lawyers.com

To Be Material, or Not to Be?

Tuesday, February 1, 2011 by [Brian J. McLaughlin](#)



This blog will examine what steps need to be taken to file for and prove a material change in circumstance. Part two of this blog will examine the new legislation concerning alimony and its impacts.

First a person must file a complaint alleging a material change in circumstance. The material change in circumstance must be something new that has not been brought to the court's attention during the divorce proceeding. Either party may file for a change in circumstance after the divorce has been granted. If the divorce was settled by an agreement, the agreement must have a merger clause merging the agreement into the final divorce judgment. The merger clause allows for the modification standard to be used rather than a more difficult countervailing equity standard. Some obvious examples of material change in circumstance are a job loss or ill health. These must be explained in the complaint and supported by evidence.

However, there are two different types of material changes in circumstance that are not as obvious as ill health or job loss. First is the situation that involves children. For example, the child has been living with his/her mom and now live with the father. Here, the change in circumstance also deals with the child and not strictly financial issues. Now, there's an additional step to the analysis. The court must now take into account the best interest of the child when considering a material change in circumstance.

The second situation to be aware of is whether either spouse has a new cohabitant. Under the current law in MA, the court considers this a material change in circumstance. Now, the non-cohabiting spouse is entitled to file for a modification of his/her alimony payment.

Furthermore, under current MA law, if one of the spouses remarries, the court may take into account the new spouses income when modifying a previous alimony judgment. This situation has helped form several groups such as the [2nd Wives Club](#) and [Mass. Alimony Reform](#) whom have both participated in presenting the Alimony Reform Bill to the Mass. Legislature just last month.

You can consult Brian McLaughlin for any of your modification needs at www.bmjrlaw.com.

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