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Alert

Matrimonial and Family Law

Governor signs laws making significant changes to New York Divorce Law and practice.

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On October 14, 2010, important changes will take effect substantially altering the rights and responsibilities of divorcing couples in New York State. While most press accounts have focused on the so called "no-fault divorce" provisions, it is perhaps the other two changes that will have the broader impact on most people in the midst of matrimonial difficulties.

It is true that Governor Patterson's signature on new legislation adds a substantial new provision to the host of grounds which one seeking divorce in the State of New York may utilize. Under the provision, one of the parties may merely allege that the marital relationship has "broken down irretrievably for a period of at least six months" in order to gain entry into Supreme Court to seek dissolution of the marriage. Some press reviews have erroneously stated that the parties must have worked out all important provisions on their own prior to commencing the action. In fact, parties may follow the traditional routes seeking Court intervention and guidance in taking care of such thorny issues as child custody, support, maintenance, and equitable distribution of marital assets.

However, it is two other provisions which change the matrimonial landscape on behalf of so called "non-monied or lower income" spouses.

New York State has long afforded either party to the marriage the opportunity to seek maintenance from the Court, using that word to replace old fashioned "alimony awards". Until now, whether or not to make such an award, when to do so, in what amount, and for what duration rested almost exclusively within the sound discretion of the Court. Now, a formula similar to that used to calculate child support will award temporary maintenance to the lower income spouse early in the proceedings, with what appears to be greater frequency and perhaps in larger amounts. The Court is required to apply a statutory formula and to fully explain "any deviations therefrom".

A third statute will require the "monied spouse" to pay for counsel fees and the fees and expenses of experts. Previously, such awards were infrequent, and most often came at the end of a matrimonial matter, in a way that was perceived to put less well off spouses at a substantial, practical disadvantage. Where previously, such awards were normally anticipated to be considered once all other property distributions has been made, and the burden was placed on the spouse seeking such an award to prove need, the new statute creates a "rebuttable presumption that counsel fees should be awarded to the less monied spouse".

As October 14, 2010 approaches, the Courts will need to answer many procedural questions left unanswered in the new legislation including whether temporary maintenance analysis will be automatic or will require application to the Court, whether child support payments by the monied spouse should be taken into account in awarding maintenance, and whether a different treatment will be afforded matters coming before the Court under the new "no fault law." Each of these new statutes has the potential to substantially impact the divorcing process in New York, and the manner in which the Courts choose to apply the new principles will seriously impact practical outcomes as well.

If Green & Seifter, Attorneys, PLLC, can provide you with additional insight regarding New York State Divorce Law, please contact **Steven A. Paquette** at **(315) 701-6308** or by email at: **spaquette@gslaw.com**. Steven Paquette is a member of Green & Seifter, Attorneys, PLLC and concentrates his practice in the areas of **Matrimonial and Family Law** as well as Collaborative Law, Economic Development, Government Relations, Litigation, and Real Estate.



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