

More Exciting New Laws

By now most everyone has heard or read about New York State going “No Fault” by providing grounds to divorce a spouse based on an irretrievable breakdown of the marriage for a period of six months. What is getting less attention though, are two companion laws passes at the same time.

The first has to do with awards of legal fees. Let’s face it, divorce litigation costs. But what if one party has money to fund the legal fight and the other doesn’t. Previously, lawyers could make applications to the courts asking that the other side contribute to their costs. The problem was however, that not all judges saw the issue the same way. One judge may be sympathetic and generous to a request, while another judge felt that an award of fees would only “fund a war chest” and make the litigation take longer than necessary. In the end, the spouse with less financial power would sometimes settle for less than they wanted or even deserved, because they could not afford the cost of the battle.

The new law DRL Section 236 B now requires that judges consider an award of legal fees to the spouse with lesser income or available assets. This really only makes statutory, what the courts should have been doing all along. But with the mandate to consider the different financial positions of the parties in place, Courts must now entertain these applications for legal fees and not dismiss them outright. It still does not guarantee an award or the size of an award, but the hope is that the Judge’s get the message and start putting the parties on a level playing field. For the more financially sound spouse, this also means that they should consider making a voluntary payment toward their spouses legal fees, since the likelihood of an award is now much higher.

The second, and just as important law, has to do with awards of Temporary Spousal Support. DRL Section 236 B has codified a mathematical formula for the court to use in determining how much spousal support should be paid to a party during the pendency of a divorce action. This is not a final or permanent spousal support statute. It only governs the payment of spousal support while a divorce case is being litigated. Knowing however, that temporary awards often become the blue print for permanent orders, this statute needs to be seriously considered. The machinations of the formula are too involved to spell out in this article, but it has literally reduced the payment of interim support to a math calculation. The issuance of the resulting amount is not mandatory, but presumptive, meaning that the payor can argue for a deviation. The formula also does not take into consideration any interim payments a party may be making for a mortgage, housing costs or other such marital upkeep. Many of those bugs will likely be worked out as the cases develop.

After ages of silence in the field of Family Law, New York has suddenly burst on the scene with laws that are dramatically changing the landscape of divorce. Will it make the view more attractive? We will have to wait and see.