



NEW YORK STATE SENATOR

Ruth Hassell-Thompson

## Senate Majority Works to Reform Antiquated Matrimonial Laws

RUTH HASSELL-THOMPSON May 7, 2010

| ISSUE: **CRIME, JUDICIARY**

| COMMITTEE: **CRIME VICTIMS, CRIME AND CORRECTION**

*Enhance the Integrity and Efficiency of Courtrooms, Facilitate Equitable Settlements,  
Reduce Acrimony and Tension between Divorcing Partners,  
Protect the Emotional Well-Being of Children and Improve Support for Domestic Violence  
Victims*

(Albany, NY) Today, the Senate Democratic Majority held a hearing on matrimonial law reform, hosted by Senate Majority Conference Leader, John L. Sampson and Senator Ruth Hassell-Thompson, Chairwoman, Crime Victims, Crime and Correction Committee and Chairwoman, Majority Task Force on Domestic Violence. The hearing focused on :

- No-fault divorce
- The treatment of marital assets specifically the examination of post-marital income guidelines
- The award of interim counsel fees to non-monied spouses in matrimonial matters

Testimony was given by leaders of New York's Matrimonial Bar, State and local Bar Associations, leading advocates for victims of domestic violence and the public. Today's testimony revealed the following:

### **No-Fault Divorce:**

New York is the only state that has failed to adopt provisions allowing no-fault divorce, the divorce reform that swept the country in the 1970s. Today, most states allow divorce if one person says the marriage is irretrievably broken. In New York, however, you still must establish fault grounds, like adultery or cruelty to end a marriage.

Under current New York law, divorces can only be granted on six grounds: (1) cruel and inhuman treatment that endangers the safety of the person seeking the divorce; (2) the abandonment of the person seeking the divorce by his or her spouse for at least a year; (3) a person's spouse has been confined in prison for three or more years; (4) adultery; (5) the spouses have lived apart for at least a year following a separation decree; or (6) the spouses have lived apart for at least a year following a written separation agreement. Although grounds (5) and (6) are technically no-fault divorces, the onerous requirements for a legal agreement prior to the commencement of the separation means that, in practice, one spouse can prevent the other from attaining a desired divorce.

The fault requirements of New York State's current divorce law have significant financial and emotional costs, and unnecessarily force couples in deteriorating relationships to rehash the bitter, painful and

embarrassing reasons for divorce. Requiring a finding of fault traps individuals in failing relationships and exacerbates hostility and resentment between couples who have already indicated their desire to separate.

These consequences are even more pronounced and enduring in cases involving children, who are often caught in the middle of their parents' bitter exchanges throughout the process. Further, trial proceedings to establish fault costs litigants thousands of dollars in legal fees each year, and places great strain on an already overburdened court system.

In instances involving domestic violence, no-fault divorce is crucial because it allows a quicker end to the marriage without the need for the abusive spouse's cooperation. Under current New York law, a spouse who has been emotionally or physically abused has two options. He or she can involve the abusive spouse in separation proceedings that do not discuss fault, but keep them legally married for at least a year after the separation is finalized and require the cooperation of the abusive spouse. Or, he or she can file for a divorce on the grounds of cruel or inhuman treatment, which requires confronting the abusive spouse with detailed allegations and then arguing for the truth of those allegations in a courtroom whenever they finally make it to the top of the docket.

Providing a no-fault option after a six month separation without a separation agreement would simplify and speed the process for domestic violence survivors, and potentially increase their safety.

Legislation (S3890), sponsored by Senator Hassell-Thompson would bring New York State in line with every other state in the country by permitting marriages to end without the condition of assigning blame or enduring a lengthy and cumbersome separation process.

Senator Ruth Hassell-Thompson (D-Mt. Vernon) said: "Under New York State's current law, couples in deteriorating relationships are forced to assign blame or fault in order to validly end their marriages. By implementing a policy of no-fault divorce, this prolonged and often destructive process would be eliminated."

#### **Post-Marital Income Guidelines (PMI):**

Decisions, large and small, made over the course of a marriage often have the effect of sacrificing one spouse's ability to earn money for the benefit of the entire family. Most families do not have substantial assets to divide upon dissolution of a marriage—the greatest asset of the marriage is frequently the income of the more-monied spouse. The less-monied spouse often invests time and energy supporting his or her spouse's career, raising the children, and taking care of the home. Yet, current law fails to respond to this reality and does not provide adequate guidance as to how to divide the assets of future earned income in an equitable manner.

Most prejudiced by current mechanisms for distribution of post-marital income are moderate- and low-income spouses who cannot afford the lengthy, expensive litigation required to establish a right to maintenance. The unpredictability and inconsistency of current maintenance awards creates an incentive for the less-monied spouse to settle to avoid the cost of litigating for an uncertain outcome. As such, less-monied spouses in low-income households are forced to give up legitimate claims to marital income.

Legislation (S.7740), also sponsored by Senator Hassell-Thompson, would ensure that there is consistency and predictability to maintenance calculations within divorce proceedings.

Senator Ruth Hassell-Thompson (D-Mt. Vernon) said: "Neither spouse should feel financially compelled into accepting potentially detrimental or unfair settlements. Post-marital income guidelines will simplify the basis on which a predictable and equitable settlement between two divorcing spouses may be reached."

#### **Interim Counsel Fees:**

When an action for divorce is commenced, it is often the case that most of the marital assets available for the payment of legal fees are possessed or controlled by one of the spouses. Currently, in order to ensure that each party will have equal access to adequate legal representation, §237 of the Domestic Relations Law authorizes awards of interim counsel fees to the less-monied spouse during the course of the litigation.

An award of interim counsel fees ensures that the less-monied spouse will be able to litigate the action, and do so on equal footing with the more-monied spouse. Such an award is an important assurance of equal access to justice as it prevents the more affluent spouse from wearing down or financially punishing their partner by prolonged litigation.

However, the award is generally made near the conclusion of the proceeding, after the less-monied spouse has had to endure the high costs of litigation, often compromising the non-monied spouse's ability to adequately litigate the case.

Legislation (S4532A), sponsored by Senate Majority Conference Leader John L. Sampson, would create a rebuttable presumption that less-monied spouses be provided the resources they need to litigate contested issues while the litigation is on-going.

Senator Sampson said: "A judicial order for counsel awards in a matrimonial proceeding is a vital step in preventing an imbalance in the parties' resources from affecting the proceeding's outcome. Current law places the burden upon the party in a matrimonial action seeking counsel fees, to show why the interests of justice requires it. In addition, Judges appear reluctant to order counsel fee awards in matrimonial actions under the current statute. This legislation will better address today's economic and social realities, and will help ensure that no party to a matrimonial case is strategically at a disadvantage for lack of resources to pursue or defend the case."

**Additional Quotes:**

Senator Liz Krueger (D-Manhattan) said: "As it is, divorce is very a emotional and painful process, the State should not be making it more difficult through antiquated laws and a lack of guidance to our courts. As legislators, if we can help people during this difficult time by improving the process and making it easier for them to get on with their lives then we need to explore those options."

Senator Diane J. Savino (D-Staten Island) said: "I commend Senate Majority Conference Leader John L. Sampson and Senator Ruth Hassell-Thompson for holding today's hearing, studying our state's divorce laws, which may be a barrier for thousands of spouses who are trapped in abusive marriages. Currently, virtually every other state permits marriages to end without the condition of blame, forcing a victim of domestic violence to enter a costly court proceeding, where they must confront their abusive spouse. Providing a no-fault option would simplify the process for domestic violence survivors and potentially increase their safety."

Judge Sondra Miller, Chair of the 2007 Miller Commission said: "Overwhelming evidence supports the fact that allegations and false trials at significant cost, delay and trauma to matrimonial litigants and their children. Such consequences have been proven through compelling testimony provided at the public hearings held by the Miller Commission in 2006 and supported again at public forums in 2007 at the Association of the Bar of the City of New York and in 2008 in Albany at the Legislative Office Building. The need for this overdue and essential reform has been recognized by all major media as well as every bar association of this state and the New York Chapter of the Academy of Matrimonial Lawyers. The families and particularly the children of this state demand and are entitled to this relief and are encouraged by the vigorous support and leadership of Senators Sampson and Hassell-Thompson who sponsor Senate Bill 3890."

Judge Alan Scheinkman, Administrative Judge of the 9<sup>th</sup> Judicial District said: "New York's divorce process takes too long and costs too much. The typical middle class contested matrimonial action can take

well over a year or more to be resolved and the expenses -- for attorneys, accountants, appraisers, and experts in children's issues -- are counted in the tens of thousands of dollars, not even considering the income lost due to court appearances and preparation for court and child care expenses. Even apart from costs measured in dollars, there are significant intangible costs -- divorce litigants endure emotional stresses and are impeded from establishing a new life. A physically or emotionally abused spouse, especially an economically dependent spouse, may be deterred from seeking redress because of the high, and difficult to control, costs of litigation and the anxiety of an unpredictable result. Children are negatively impacted, with uncertainty as to their living and support arrangements. . . . No small part of this is attributable to New York's antiquated fault-based divorce system."

Annette Hasapidis, Esq., Co-chair Legislative Committee of the Women's Bar Association of the State of New York said: "In the context of abusive relationships, marriage becomes a tool used by the batterer. Permitting abusive spouses to use the legal bond of matrimony in order to dominate and abuse a spouse when there is no marriage left to speak of is contrary to our strong public policy to protect victims of domestic violence. For these reasons, I implore the Senate to pass Senator Hassell-Thompson's legislation S.3890. Passage of this bill would enable victims of domestic abuse by permitting them to sever the marital ties without prolonged, psychologically damaging proceedings, especially in light of the statistics establishing that domestic violence victims are in fact safer once the marriage has been dissolved."

Professor Andrew Schepard, Director for the Center for Children, Families and the Law at Hofstra University said: "I commend the Senate for taking up the important issue of no-fault divorce. Enacting the no-fault divorce bill is a vital first step to reducing conflict between parents who are getting a divorce and stabilizing the lives of their children"

Ellen Schell, Legal Director of The Legal Project in Albany, which provides pro bono representation for victims of domestic violence states "Our clients need safety and support and our current system of divorce laws does not reliably provide either. It is time for a change."

Catherine J. Douglass, Executive Director inMotion, Inc. said: "Divorcing couples fight hard about money, with good reason, and it is those battles that lie at the heart of the nasty, expensive and lengthy litigation that so plagues the New York State courts that hear divorce cases. The real battleground for financial issues is maintenance (formerly called alimony), for which outcomes are troublingly unpredictable and inconsistent. A spouse who may well be entitled to substantial maintenance and who may badly need this income for basic economic security has two choices: engage in the ritualized battle that is litigation or abandon the claim for maintenance altogether. In fact, many litigants have no real choice; litigation is expensive, and without considerable means or the luck to find an attorney to represent them without charging a fee, maintenance is a mirage."