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Concerns on No-Fault Divorce, and a Conviction Stands

By JOHN ELIGON

COURTHOUSE CONFIDENTIAL

While no-fault divorce was signed into law in New York this summer with great fanfare, the bill included numerous unheralded provisions that have left many divorce lawyers uneasy.

Now, with the bill set to take effect next Tuesday, divorce lawyers are bracing for change and squeezing in as many claims as possible to avoid some of what they consider undesirable provisions of the new law.

Perhaps the most troubling new provision is a formula for judges to determine alimony. Under the current system, judges have broad discretion and consider the needs of a family and its budget to determine what is necessary to maintain that marital lifestyle, said Susan M. Moss, a divorce lawyer with the firm of Chemtob Moss Forman & Talbert.

Under the new law, however, only up to $500,000 of a spouse's income will be counted when determining alimony. So, for instance, if a spouse earns $2 million a year, only $500,000 of that will be counted toward the formula.

And here are the two formulas judges will consider:

1) Thirty percent of the higher-earning spouse's income, minus 20 percent of the lower-earning spouse's income.

2) Forty percent of their combined income, minus the lower-earning spouse's income.

The lesser outcome of these two formulas will be the alimony award, although the law does give judges the option to consider further factors.

"Even if you're married an extremely short time, a spouse could be entitled a substantial amount of alimony," said Ms. Moss, who is co-chairwoman of the matrimonial committee for the Women's Bar Association of the State of New York.

On the flip side, she said, those who lived a good life because their spouse earned a lot could be in for a serious downgrade in their lifestyle.

Divorce lawyers have also raised concerns about a provision that would make the higher-earning spouse responsible for all the legal fees for both sides, and a provision that places a three-year expiration date on child support orders, meaning spouses would have to return to court to have it renewed.

The disgust among divorce lawyers over some of these provisions ushered in with the bill provides a strange contrast to the joy associated with New York's finally passing a no-fault law.

Under the no-fault law, couples will be able to get a divorce by simply saying that their marriage is irrevocably broken. The current law requires a reason, such as allegations of cruelty, abuse, adultery or abandonment.

"The no-fault part of the statute was obviously a great event for New York," said Robert Stephan Cohen, a New York divorce lawyer. As for the other provisions, he said, "It's complicating everything. Judges know how to deal with spousal support and legal fees."

Still, some lawyers said they had a problem with no-fault divorce to begin with.

Bonnie Rabin, a matrimonial lawyer with the firm of Cohen Hennessey Bienstock & Rabin, said she had already received calls from several elderly people who were not necessarily unhappy with their marriages, but saw no-fault as a way out.

"It wasn't even on their radar screen," she said, "but it's been placed on their radar screen."

No-fault divorce takes away the leverage some women need to negotiate a fair settlement, Ms. Rabin said. A woman who stayed home with children, for instance, may not have the same earning power as her spouse and would be in a difficult position if her spouse left, she said.

"I think this is very, very bad for middle-class women who have been financially dependent on their spouses," she said.

Rape Conviction Is Upheld

Clarence Williams, a k a Fletcher Worrell, a k a Anderson Worrell, a k a Fletcher Anderson Worrell, a k a Umar Abdul Hakeem caused his trial to be delayed by hiding his identity and whereabouts, and therefore he was not entitled to have his 2005 rape conviction overturned because he did not get a speedy trial, the state appellate court in Manhattan ruled Thursday.

The decision, reported in The New York Law Journal, also denied Mr. Williams's request to overturn the verdict because of an article on the case that appeared in The New York Times.

In 1974, Mr. Williams went on trial for the first time on charges that he raped and robbed a woman the previous year. That trial ended with a hung jury. After that, Mr. Williams became hard to keep up with.

He was arrested several times but gave different names, according to a written decision by Justice Eugene L. Nardelli. In 1978, he was arrested in Washington and committed to a mental institution under the name Fletcher Anderson Worrell.

It was not until 2004, when he was fingerprinted while applying to purchase a gun, that Manhattan prosecutors found him. At his second trial, in November 2005, Mr. Williams was convicted.

Justice Nardelli, who wrote for the unanimous five-judge panel, wrote that it was "beyond cavil that the sole reason for the delay in defendant not being tried earlier was his own conduct."

"He fled, first, to another city, and then to another continent, and used multiple aliases and dates of birth," the judge wrote. "The conflicting pedigree information he provided had its obvious effect — to prevent authorities from realizing that defendant was wanted in New York to face trial."

But Mr. Williams offered another reason that his conviction and sentence of 15 1/3 to 25 years in prison should be overturned: The judge never asked any of the jurors if they had seen a 2,100-word article about the case that appeared on the front page of The New York Times on the day the trial started.

The victim, Kathleen Ham, gave a detailed account of the attack in the article. Mr. Williams claimed the article "was highly sympathetic to the victim, and included statements that the DNA evidence had provided a 'conclusive' link between defendant and this crime, as well as dozens of rapes and similar crimes along the East Coast."

The appellate panel denied this motion, saying that the trial judge instructed the jurors not to read any press accounts about the case.

Tax-deductible Sex? No, No.

A state tax appeals board ruled that a lawyer could not write off the money he spent on prostitutes, massages and other sexual pleasures as tax-deductible medical expenses, The New York Law Journal reported in an article Thursday.

William G. Halby, a retired Brooklyn lawyer, wrote off nearly $300,000 as deductions for things like “massage therapy to relieve osteoarthritis and enhance erectile function through frequent orgasms” and “pornography to enhance sexual performance in lieu of taking Viagra,” according to the law journal. Mr. Halby now owes the city and state more than $23,000 in unpaid taxes and penalties, the article said.