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Shortening the Waiting Period for Divorce: A Step Backwards?*

by Gerald J. Schorr

** This article was first published on the Op-Ed page of the Philadelphia Inquirer on July 13, 2016. The proposed change to the Pennsylvania Divorce Code was enacted, but the article remains timely for its analysis of the potential ramifications of the new legislation.*

A bill to shorten the waiting period to establish no-fault grounds for divorce for certain Pennsylvania litigants has passed the General Assembly and been voted out of the Senate Judiciary Committee for consideration by the Pennsylvania Senate (Bill 380). Parties who agree that the marriage is over (“irretrievably broken”) may still establish grounds for no-fault divorce once ninety days have passed from service of a Complaint in Divorce. But parties who do not agree that the marriage is over will have a one-year waiting period to establish no-fault grounds for divorce rather than the current two-year waiting period in effect since 1988. All things being equal, Pennsylvanians proceeding on no-fault grounds who do not agree that their marriage is broken may expect to save nine months, the difference between the ninety-day period for parties who agree the marriage is over and the proposed one-year waiting period for those who do not. The proposed amendment retains the requirement that the parties live apart during the waiting period.

The Pennsylvania Bar Association and family law attorneys in general have welcomed the proposed amendment. Assuming that a shorter waiting period actually shortens the time it takes to finalize the divorce, by no means a foregone conclusion, the potential benefits are many. There is the emotional turmoil and stigma of divorce on children, which cannot end soon enough. The prolonged, financial uncertainty of how the assets will be divided and whether there will be any continuing, post-divorce financial obligations such as alimony will be resolved sooner, restoring parties’ control over their financial future. Quicker divorces will allow each side the opportunity to explore new commitments sooner, with the possibility of creating new families. The prospect of post-divorce healing between the parties and cooperative resolution of ongoing, post-divorce issues, such as changes in custody and child support, will be expedited. And then there are the legal fees: they end sooner, and should be less than with a two-year waiting period. What can be wrong with this picture?

The proposed amendment overlooks a critically important dimension of the divorce process: the impact on the economically weaker spouse. In most divorces, financial earning power is unequal, and the separation is invariably harder on the spouse with the lesser or non-existent earning power (almost always a “she” in a gender-traditional marriage, even in this day and age). In addition to cash shortfalls and uncertainty about long-term finances, the financially weaker spouse usually has custody and, with it, the heightened emotional demands of children navigating a new schedule and new emotional terrain. Acute depression and other mental health issues are also no strangers to marital break-ups, often requiring prolonged treatment. Finally, and perhaps most importantly, the financially weaker spouses face the challenge of re-tooling for an ever-changing, 21st century economy. A tall order under the best of circumstances, re-entering the job market in one’s 40’s, 50’s and even 60’s while divorcing is an altogether daunting task. Just ask many of the highly educated, highly skilled, middle-aged women that our practice has had the privilege to represent these past thirty years.

Like many jurisdictions, Pennsylvania provides interim remedies during the divorce intended to blunt the financial impact of the separation on the dependent spouse. These remedies include spousal support, continuation of health insurance coverage, and, depending on the circumstances, exclusive occupancy of the marital residence and continued life insurance coverage. The longer these remedies are in place, the more likely that these parties will recover from the shock of the separation, provide much-needed extra nurture for children, and develop ways to contribute to their own support. From this perspective, the two-year waiting period affords many dependent litigants invaluable breathing room: financial, psychological, and parental. Faced with the other side’s request to agree that the marriage has ended under the ninety-day no-fault option - a mere three months after a divorce has been filed and well within the “after-shock” period - it is no wonder that many dependent spouses say “no thanks”. Even if psychologically “ready”, the lack of meaningful employment or assurances of a reasonable financial settlement render dependent spouses ill-equipped to risk a two-year safety net of support, health insurance and other interim remedies for an uncertain, post-divorce future. They need more time.

When enacted in 1980, the Pennsylvania Divorce Code provided for a three-year waiting period for no-fault grounds for parties who did not agree that the marriage was over. In 1988, the waiting period was reduced to two years. If passed, the proposed new amendment’s one-year waiting period will further reduce support, health benefits and other interim remedies, and leave dependent spouses less time in general to acclimate financially and emotionally to the divorce. Perhaps the proposed, one-year waiting period is a way station toward the elimination of the waiting period altogether and, with it, the evisceration of interim remedies? All legislation involves balancing competing interests, but Bill 380 as drafted clearly tilts precariously against the more vulnerable party.

Gerald J. Schorr is a partner in the Center-City based law firm of Astor Weiss Kaplan & Mandel LLP, and is co-chair of the firm’s Family Law Department