

4532--A

2009-2010 Regular Sessions

I N S E N A T E

April 24, 2009

Introduced by Sen. SAMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- recommitted to the Committee on Judiciary in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee and committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the domestic relations law, in relation to the payment of counsel and expert fees in matrimonial actions

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivisions (a) and (b) of section 237 of the domestic
2 relations law, subdivision (a) as amended by chapter 482 of the laws of
3 1987 and subdivision (b) as amended by chapter 892 of the laws of 1986,
4 are amended to read as follows:
5 (a) In any action or proceeding brought (1) to annul a marriage or to
6 declare the nullity of a void marriage, or (2) for a separation, or (3)
7 for a divorce, or (4) to declare the validity or nullity of a judgment
8 of divorce rendered against a spouse who was the defendant in any action
9 outside the State of New York and did not appear therein where such
10 spouse asserts the nullity of such foreign judgment, [or] (5) TO OBTAIN
11 MAINTENANCE OR DISTRIBUTION OF PROPERTY FOLLOWING A FOREIGN JUDGMENT OF
12 DIVORCE, OR (6) to enjoin the prosecution in any other jurisdiction of
13 an action for a divorce, the court may direct either spouse or, where
14 an action for annulment is maintained after the death of a spouse, may
15 direct the person or persons maintaining the action, to pay [such sum or
16 sums of money] COUNSEL FEES AND FEES AND EXPENSES OF EXPERTS directly to
17 the attorney of the other spouse to enable [that spouse] THE OTHER
18 PARTY to carry on or defend the action or proceeding as, in the court's
19 discretion, justice requires, having regard to the circumstances of the
20 case and of the respective parties. [Such direction must be made in the
21 final judgment in such action or proceeding, or by one or more orders

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [] is old law to be omitted.

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1 from time to time before final judgment, or by both such order or orders
2 and the final judgment; provided, however, such direction shall be made
3 prior to final judgment where it is shown that such order is required to
4 enable the petitioning party to properly proceed] THERE SHALL BE REBUTT-
5 ABLE PRESUMPTION THAT COUNSEL FEES SHALL BE AWARDED TO THE LESS MONIED
6 SPOUSE. IN EXERCISING THE COURT'S DISCRETION, THE COURT SHALL SEEK TO
7 ASSURE THAT EACH PARTY SHALL BE ADEQUATELY REPRESENTED AND THAT WHERE
8 FEES AND EXPENSES ARE TO BE AWARDED, THEY SHALL BE AWARDED ON A TIMELY
9 BASIS, PENDENTE LITE, SO AS TO ENABLE ADEQUATE REPRESENTATION FROM THE
10 COMMENCEMENT OF THE PROCEEDING. APPLICATIONS FOR THE AWARD OF FEES AND
11 EXPENSES MAY BE MADE AT ANY TIME OR TIMES PRIOR TO FINAL JUDGMENT. BOTH
12 PARTIES TO THE ACTION OR PROCEEDING AND THEIR RESPECTIVE ATTORNEYS,
13 SHALL FILE AN AFFIDAVIT WITH THE COURT DETAILING THE FINANCIAL AGREEMENT
14 BETWEEN THE PARTY AND THE ATTORNEY. SUCH AFFIDAVIT SHALL INCLUDE THE
15 AMOUNT OF ANY RETAINER, THE AMOUNTS PAID AND STILL OWING THEREUNDER, THE
16 HOURLY AMOUNT CHARGED BY THE ATTORNEY, THE AMOUNTS PAID, OR TO BE PAID,
17 ANY EXPERTS, AND ANY ADDITIONAL COSTS, DISBURSEMENTS OR EXPENSES. Any
18 applications for [counsel] fees and expenses may be maintained by the
19 attorney for either spouse in his own name in the same proceeding.
20 PAYMENT OF ANY RETAINER FEES TO THE ATTORNEY FOR THE PETITIONING PARTY
21 SHALL NOT PRECLUDE ANY AWARDS OF FEES AND EXPENSES TO AN APPLICANT WHICH
22 WOULD OTHERWISE BE ALLOWED UNDER THIS SECTION.

23 (b) Upon any application to ENFORCE, annul or modify an order or judg-
24 ment for alimony, MAINTENANCE, DISTRIBUTIVE AWARD, DISTRIBUTION OF MARI-
25 TAL PROPERTY or for custody, visitation, or maintenance of a child, made
26 as in section two hundred thirty-six or section two hundred forty OF
27 THIS ARTICLE provided, or upon any application by writ of habeas corpus
28 or by petition and order to show cause concerning custody, visitation or
29 maintenance of a child, the court may direct a spouse or parent to pay
30 [such sum or sums of money for the prosecution or the defense of] COUN-
31 SEL FEES AND FEES AND EXPENSES OF EXPERTS DIRECTLY TO THE ATTORNEY OF
32 THE OTHER SPOUSE OR PARENT TO ENABLE THE OTHER PARTY TO CARRY ON OR
33 DEFEND the application or proceeding by the other spouse or parent as,
34 in the court's discretion, justice requires, having regard to the
35 circumstances of the case and of the respective parties. [With respect
36 to any such application or proceeding, such direction may be made in the
37 order or judgment by which the particular application or proceeding is
38 finally determined, or by one or more orders from time to time before
39 the final order or judgment, or by both such order or orders and the
40 final order or judgment] THERE SHALL BE A REBUTTABLE PRESUMPTION THAT
41 COUNSEL FEES SHALL BE AWARDED TO THE LESS MONIED SPOUSE. IN EXERCISING
42 THE COURT'S DISCRETION, THE COURT SHALL SEEK TO ASSURE THAT EACH PARTY
43 SHALL BE ADEQUATELY REPRESENTED AND THAT WHERE FEES AND EXPENSES ARE TO
44 BE AWARDED, THEY SHALL BE AWARDED ON A TIMELY BASIS, PENDENTE LITE, SO
45 AS TO ENABLE ADEQUATE REPRESENTATION FROM THE COMMENCEMENT OF THE
46 PROCEEDING. APPLICATIONS FOR THE AWARD OF FEES AND EXPENSES MAY BE MADE
47 AT ANY TIME OR TIMES PRIOR TO FINAL JUDGMENT. BOTH PARTIES TO THE ACTION
48 OR PROCEEDING AND THEIR RESPECTIVE ATTORNEYS, SHALL FILE AN AFFIDAVIT
49 WITH THE COURT DETAILING THE FINANCIAL AGREEMENT, BETWEEN THE PARTY AND
50 THE ATTORNEY. SUCH AFFIDAVIT SHALL INCLUDE THE AMOUNT OF ANY RETAINER,
51 THE AMOUNTS PAID AND STILL OWING THEREUNDER, THE HOURLY AMOUNT CHARGED
52 BY THE ATTORNEY, THE AMOUNTS PAID, OR TO BE PAID, ANY EXPERTS, AND ANY
53 ADDITIONAL COSTS, DISBURSEMENTS OR EXPENSES. Any applications for [coun-
54 sel] fees and expenses may be maintained by the attorney for either
55 spouse in counsel's own name in the same proceeding. [Representation by
56 an attorney pursuant to paragraph (b) of subdivision nine of section one

1 hundred eleven-b of the social services law shall not preclude an award
2 of counsel fees to an applicant which would otherwise be allowed under
3 this section.] PAYMENT OF ANY RETAINER FEES TO THE ATTORNEY FOR THE
4 PETITIONING PARTY SHALL NOT PRECLUDE ANY AWARDS OF FEES AND EXPENSES TO
5 AN APPLICANT WHICH WOULD OTHERWISE BE ALLOWED UNDER THIS SECTION.

6 S 2. Section 238 of the domestic relations law, as amended by chapter
7 529 of the laws of 1978, is amended to read as follows:

8 S 238. Expenses in enforcement AND MODIFICATION proceedings. In any
9 action or proceeding to [compel the payment of any sum of money required
10 to be paid by] ENFORCE OR MODIFY ANY PROVISION OF a judgment or order
11 entered in an action for divorce, separation, annulment [or], declara-
12 tion of nullity of a void marriage, DECLARATION OF VALIDITY OR NULLITY
13 OF A JUDGEMENT OF DIVORCE RENDERED AGAINST A SPOUSE WHO WAS THE DEFEND-
14 ANT IN ANY ACTION OUTSIDE THE STATE OF NEW YORK AND DID NOT APPEAR THER-
15 EIN WHERE SUCH SPOUSE ASSERTS THE NULLITY OF SUCH FOREIGN JUDGMENT, OR
16 AN INJUNCTION RESTRAINING THE PROSECUTION IN ANY OTHER JURISDICTION OF
17 AN ACTION FOR A DIVORCE, or in any proceeding pursuant to section two
18 hundred forty-three, two hundred forty-four, two hundred forty-five, or
19 two hundred forty-six OF THIS ARTICLE, the court may in its discretion
20 require either party to pay [the expenses of the other in bringing,
21 carrying on, or defending such action or proceeding] COUNSEL FEES AND
22 FEES AND EXPENSES OF EXPERTS DIRECTLY TO THE ATTORNEY OF THE OTHER PARTY
23 TO ENABLE THE OTHER PARTY TO CARRY ON OR DEFEND THE ACTION OR PROCEEDING
24 AS, IN THE COURT'S DISCRETION, JUSTICE REQUIRES HAVING REGARD TO THE
25 CIRCUMSTANCES OF THE CASE AND OF THE RESPECTIVE PARTIES. THERE SHALL BE
26 A REBUTTABLE PRESUMPTION THAT COUNSEL FEES SHALL BE AWARDED TO THE LESS
27 MONIED SPOUSE. In any such action or proceeding, applications for [coun-
28 sel] fees and expenses may be maintained by the attorney for the respec-
29 tive parties in counsel's own name and in counsel's own behalf. IN
30 EXERCISING THE COURT'S DISCRETION, THE COURT SHALL SEEK TO ASSURE THAT
31 EACH PARTY SHALL BE ADEQUATELY REPRESENTED AND THAT WHERE FEES AND
32 EXPENSES ARE TO BE AWARDED, THEY SHALL BE AWARDED ON A TIMELY BASIS,
33 PENDENTE LITE, SO AS TO ENABLE ADEQUATE REPRESENTATION FROM THE
34 COMMENCEMENT OF THE PROCEEDING. APPLICATIONS FOR THE AWARD OF FEES AND
35 EXPENSES MAY BE MADE AT ANY TIME OR TIMES PRIOR TO FINAL JUDGMENT. BOTH
36 PARTIES TO THE ACTION OR PROCEEDING AND THEIR REPRESENTATIVE ATTORNEYS,
37 SHALL FILE AN AFFIDAVIT WITH THE COURT DETAILING THE FINANCIAL AGREEMENT
38 BETWEEN THE PARTY AND THE ATTORNEY. SUCH AFFIDAVIT SHALL INCLUDE THE
39 AMOUNT OF ANY RETAINER, THE AMOUNTS PAID AND STILL OWING THEREUNDER, THE
40 HOURLY AMOUNT CHARGED BY THE ATTORNEY, THE AMOUNTS PAID, OR TO BE PAID,
41 ANY EXPERTS, AND ANY ADDITIONAL COSTS, DISBURSEMENTS OR EXPENSES.
42 PAYMENT OF ANY RETAINER FEES TO THE ATTORNEY FOR THE PETITIONING PARTY
43 SHALL NOT PRECLUDE ANY AWARDS OF FEES AND EXPENSES TO AN APPLICANT WHICH
44 WOULD OTHERWISE BE ALLOWED UNDER THIS SECTION.

45 S 3. This act shall take effect on the one hundred twentieth day after
46 it shall have become a law and shall apply to actions and proceedings
47 commenced on or after such effective date.