

5190

2015-2016 Regular Sessions

I N   S E N A T E

May 6, 2015

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Introduced by Sen. BONACIC -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

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

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

1     Section 1. Subdivision (a) of section 237 of the domestic relations  
2 law, as amended by chapter 329 of the laws of 2010, is amended to read  
3 as follows:  
4     (a) In any action or proceeding brought (1) to annul a marriage or to  
5 declare the nullity of a void marriage, or (2) for a separation, or (3)  
6 for a divorce, or (4) to declare the validity or nullity of a judgment  
7 of divorce rendered against a spouse who was the defendant in any action  
8 outside the State of New York and did not appear therein where such  
9 spouse asserts the nullity of such foreign judgment, (5) to obtain main-  
10 tenance or distribution of property following a foreign judgment of  
11 divorce, or (6) to enjoin the prosecution in any other jurisdiction of  
12 an action for a divorce, the court may direct either spouse or, where an  
13 action for annulment is maintained after the death of a spouse, may  
14 direct the person or persons maintaining the action, to pay counsel fees  
15 and fees and expenses of experts directly to the attorney of the other  
16 spouse to enable the other party to carry on or defend the action or  
17 proceeding as, in the court's discretion, justice requires, having  
18 regard to the circumstances of the case and of the respective parties.  
19 There shall be A rebuttable presumption that counsel fees shall be  
20 awarded to the less monied spouse. In exercising the court's discretion,  
21 the court shall seek to assure that each party shall be adequately  
22 represented and that where fees and expenses are to be awarded, they  
23 shall be awarded on a timely basis, pendente lite, so as to enable  
24 adequate representation from the commencement of the proceeding. Appli-

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

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1 cations for the award of fees and expenses may be made at any time or  
2 times prior to final judgment. Both parties to the action or proceeding  
3 and their respective attorneys, shall file an affidavit with the court  
4 detailing the financial agreement between the party and the attorney.  
5 Such affidavit shall include the amount of any retainer, the amounts  
6 paid and still owing thereunder, the hourly amount charged by the attor-  
7 ney, the amounts paid, or to be paid, any experts, and any additional  
8 costs, disbursements or expenses. AN UNREPRESENTED LITIGANT SHALL NOT BE  
9 REQUIRED TO FILE SUCH AN AFFIDAVIT DETAILING FEE ARRANGEMENTS WHEN  
10 MAKING AN APPLICATION FOR AN AWARD OF COUNSEL FEES AND EXPENSES;  
11 PROVIDED HE OR SHE HAS SUBMITTED AN AFFIDAVIT THAT HE OR SHE IS UNABLE  
12 TO AFFORD COUNSEL WITH SUPPORTING PROOF, INCLUDING A STATEMENT OF NET  
13 WORTH, AND, IF AVAILABLE, W-2 STATEMENTS AND INCOME TAX RETURNS FOR  
14 HIMSELF OR HERSELF. Any applications for fees and expenses may be main-  
15 tained by the attorney for either spouse in his OR HER own name in the  
16 same proceeding. Payment of any retainer fees to the attorney for the  
17 petitioning party shall not preclude any awards of fees and expenses to  
18 an applicant which would otherwise be allowed under this section.  
19 S 2. This act shall take effect immediately and apply to all actions  
20 whenever commenced.