NEW YORK CITY BAR

COMMITTEE ON MATRIMONIAL LAW

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Ms. Janet Fink, Esq.
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Re: Proposed legislation to amend F.C.A. §413(1)(h) and D.R.L. §240(1-b)(h) (stipulations and agreements for child support in Family Court and matrimonial proceedings)

Dear Ms. Fink:

I am writing on behalf of the Matrimonial Law Committee of the New York City Bar Association (the "Matrimonial Committee"), to provide additional feedback on the proposed legislation to amend F.C.A. §413(1)(h) and D.R.L. §240(1-b)(h), as revised by Assembly Member Weinstein's office (the "Assembly Draft"). The Committee has reviewed the Assembly Draft, which you kindly shared with us following our discussion last year, and we now recommend that OCA adopt the Assembly Draft as part of its legislative program for 2017, with one minor clarification discussed below.

The purpose of this legislation is to revise the procedures to be followed where the required Child Support and Standards Act ("CSSA") language is omitted from an agreement regarding the payment of child support. An earlier proposal captioned "Stipulations and agreements for child support in Family Court and matrimonial proceedings" set forth in the Report of the Family Court Advisory and Rules Committee to the Chief Administrative Judge of the Courts of the State of New York, dated January 2016 (the "OCA Proposal") expressed concern about the lack of specificity in those procedures, particularly regarding whether courts should invalidate child support provisions retroactively if they are part of a stipulation or agreement that does not include the required recitations.

As I noted in a June 23, 2016 letter to you, the Matrimonial Committee shares OCA's concerns.[1] The legislative language in the OCA Proposal, however, appeared to be unintentionally overbroad. It would have invalidated an entire agreement, including all

[1] *See* http://onenorth-nyc-bar.s3.amazonaws.com/files/Stips_Agreements.pdf.

provisions relating to other issues which may be entirely unrelated to the concerns underlying the requirement to include CSSA recitations.

The Assembly Draft largely resolves that problem. It would provide that "[t]he sections relating to child support in any agreement, stipulation or court order . . . shall be deemed void" if the necessary recitations are omitted.[2] The Assembly Draft does not, therefore, threaten to invalidate entire agreements. And like the OCA Proposal, it makes clear the effective date of any invalidation.

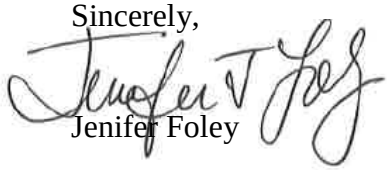
We recommend one further change to the Assembly Draft to clarify that it preserves existing law. Current case law directs courts to invalidate provisions beyond child support only if they are "so directly connected or intertwined with the basic child support obligation that they necessarily must be recalculated along with the basic support obligation." *Cimons v. Cimons*, 53 A.D.3d 125, 129-30, 861 N.Y.S.2d 88 (2008). Because the Assembly Draft refers only to "[t]he sections relating to child support," it might be misread to say that only those sections are invalid. That could pose a problem for parties who accept a "package deal" with, for example, extensive child support but limited spousal support. If the child support provision is voided but the spousal support provision survives, then the payee spouse will suffer, and the payor spouse will benefit, in ways neither party intended.

For clarity, we recommend that the statute codify the existing rule. That can be done by adding at the end of each sub-paragraph (6) in the Assembly Draft the new sentence "Any sections of an agreement, stipulation or court order that are so directly connected or intertwined with a section deemed void that they necessarily must be recalculated therewith shall also be deemed void effective as of said date."

In sum, the Matrimonial Committee recommends that OCA's legislative program for 2017 include the Assembly Draft with the addition of clarifying sentences described above.

We remain happy to work with you and the Legislature on the topic further if you wish. You should continue to feel free to contact Mr. Feigin. Thank you for your consideration.

Sincerely,



Jenifer Foley

Cc: Hon. Helene Weinstein
Nadia Gareeb, Esq., Counsel for Assembly Member Weinstein

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[2] This new provision would appear in sub-paragraph (6) of both Family Court Act § 413 subd. 1(h) and Domestic Relations Law § 240 subd. 1-b(h).