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One Year Later On the One-Year Separation

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Special to the Legal

On Oct. 4, 2016, the waiting period for a no-fault divorce was reduced from two years to one year. The new law became effective on Dec. 3, 2016. The law was prospective and applied to separations which began on or after Dec. 4, 2016. Now a year later the question becomes what if any impact this new legislation has had on obtaining a no-fault divorce in Pennsylvania.

Historically, the no-fault divorce under Irretrievable breakdown grounds was a three-year separation. Most family law practitioners generally believed that if the parties were uncertain they wanted a divorce, waiting three years would be a sufficient time period to determine if a divorce was the right thing to do in their case. Many practitioners also believed when the parties had to wait three years, litigation was lengthy and costly and there seemed no end to a divorce when one party was holding out.

In order to secure a no-fault divorce in Pennsylvania, the parties must either secure grounds under consent or wait out the two-year separation. Consents could be signed 90 days after filing and service of the divorce complaint. If

one party did not want to consent to the divorce, the other party had to wait for two years from date of separation to unilaterally secure grounds for divorce. Date of separation is defined as, “a complete cessation of any and all cohabitation whether the parties live in the same house or not.” There must be more than just physical separation of the parties. There must be intent by one party to dissolve the marriage and this intent must be clearly expressed to the other party, see *Sinha v. Sinha*, 526 A.2d 765 (1987). Parties may be considered separated even if living in the same house. The filing and service of a divorce complaint is a clear intent by one party to be separated.

After the statute was changed to the two-year separation most practitioners believed this was a good compromise. The length of time wasn't necessarily forcing a financially dependent spouse to make decisions quickly, which would affect his or her future, but there was sufficient time to complete discovery and negotiate a settlement. A no-fault divorce could be obtained if one party didn't consent—so long as the other party waited two years from date of separation.

When the date of separation was amended to two years, the divorce process seemed to take on a life of its own. Over the last decade,



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family law attorneys were able to use the two-year separation to their advantage. Since the divorce statute permitted a financially dependent spouse to file for support without filing for a no-fault consent divorce, litigants would secure a spousal or APL award for their client and then wait out the two-year separation. This strategy was very successful and often awarded a financially dependent spouse with some significant monies while the divorce was pending for two years.

Divorce is a stressful process and delays can be financially costly and mentally draining. Having a two-year separation often means the actual divorce might not be concluded for another year or so after the two-year separation. In most

counties, you must secure grounds for a divorce before you are eligible to get on the divorce masters list. The list may be a six-month wait in some counties and most counties have a first listing which is only a conference with the parties. Therefore, waiting two years before you can get on the divorce list would often lead to more conflicts. Securing the actual divorce usually took more than three years.

Now the statute provides for a one-year separation. Are cases really moving quicker through the system? Are financially dependent spouses being forced to sell their house and get divorced even if they don't want to consent? What effect does the statute have on the financially dependent spouse receiving support?

Of course the importance of the date of separation remains the same. Assets are identified and valued as of date of separation. Although assets are also updated as the parties approach their date of distribution, it is imperative to identify the marital estate as the date of separation. Parties should be careful to express their intent in writing to verify the date of separation has begun. Although parties cannot obtain a legal separation in Pennsylvania, the parties to a divorce may want to enter into a separation agreement which outlines the rights and responsibilities of each party in paying bills, custody issues and discovery while the separation is in effect.

There are many positives to having a shorter date of separation. Certainly if children are involved it is better to start a custody schedule and have the children used to

two houses as opposed to delaying the divorce for two years and then starting the custody exchanges. A one-year separation also brings closure to the divorce sooner and lets both parties move on with their lives. Psychologically, bringing the case to an end allows the parties to begin saving money for retirement, focus on their careers and begin their new life.

The one-year separation also brings some negatives. For a spouse who is unable to emotionally deal with a divorce or separation or who may be financially dependent, a one-year separation may be overwhelming. A financially dependent spouse may be thinking of how he or she is going to raise children, support her or himself and begin a new life possibly alone. In the past, the two-year separation allowed a financially dependent spouse at least two years to obtain support and perhaps stay in the marital residence with young children. This was an enormous benefit to a financially dependent spouse in a high-net income case.

In contrast, the one-year separation has greatly reduced the amount of support a dependent spouse can collect during the separation. Additionally, one year may not be enough time for a dependent spouse to be retrained and get back in to the workforce. Certainly if a spouse needed to finish schooling to secure a degree or to begin preparing a resume and obtaining suitable employment to support his or herself, one year may not be sufficient to obtain this goal. Twelve months of less support, less planning and delay certainly has had an impact on the economically

dependent spouse; and perhaps a windfall to the financially independent spouse.

The court system itself has certainly seen a movement of the backlog. Once the one year separation is secured a party to a divorce may now unilaterally file grounds for divorce and get before the divorce master many months sooner than previously under the old law. A swift resolution for the divorce has increased in the past few months resulting in quicker negotiations and final settlements. Certainly the clearing up of backlog is always an advantage to the attorneys and the litigants they represent.

Time will tell the effect on parties going through a divorce as to whether the one-year separation will benefit the litigants. Psychologically and economically an expeditious divorce proceeding will have positive impacts on the litigants. But some financially dependent spouses may feel time is no longer on their side.

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