

Family Law

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Why the date we file a petition for dissolution of marriage just became important

BY STACI BALBIRER

The first month of 2016 has been challenging for family law practitioners in Illinois. Those of us who thought we had it all figured out were in for a rude awakening when January 1, 2016, hit as we now have to alter our practices to include and implement the new changes to the Illinois Marriage and Dissolution of Marriage Act. Besides the more notable changes to the Act, such as abolishing grounds other than irreconcilable differences, applying geographical restrictions on relocation and removing the term "custody" altogether, the new changes to the Act have subtly placed an emphasis on the date of filing a Petition for Dissolution of Marriage.

Prior to January 1, 2016, the Petition for Dissolution of Marriage was talked about because it commenced an action for divorce. When counseling our clients about filing their Petitions, it was important who filed first for purposes of venue and that residency requirement had or would be met within 90 days. Beyond that, the date a Petition was filed had very little significance to the ultimate outcome of a case. Welcome to 2016.

The date we file our Petition for Dissolution of Marriage has become significant. The amendment to the maintenance statute, see 750 ILCS 5/504(b)(1)(B), now states that "The duration of

an award under this paragraph (1) shall be calculated by multiplying the length of the marriage *at the time the action was commenced...*" (Emphasis added). Waiting a few months, weeks or days to file a Petition for Dissolution of Marriage for cases that fall under the maintenance statute can potentially be the difference in how many YEARS of maintenance a party receives, or, that a party will have to pay. For example, if a couple has been married 19 years and 11 months, when representing the payor, we should counsel that client to file his/her Petition immediately. If representing the payee, waiting until the day after the parties reach their 20th wedding anniversary would be the ideal time to file a Petition for Dissolution of Marriage. That one month swing can literally be the difference between 15 years of maintenance and permanent maintenance.

The date of filing also has potential to rear its head in how we value and ultimately divide marital and non marital assets. See, 750 ILCS 5/503(f), which now states, "...the court, in determining the value of the marital and non-marital property for purposes of dividing the property, has the discretion to use the date of the trial or such other date as agreed upon by the parties, *or ordered by the court within its discretion*, for purposes

of determining the value of assets or property." (emphasis added). As Illinois has looked toward other states for guidance when re-writing the Act, it is entirely plausible that judges will look toward other states when using their discretion for purposes of asset valuation.

For example, New York and South Carolina both reference the date of filing a divorce action when valuing assets. In New York, marital property is actually defined by statute as "All property acquired by either or both spouses during the marriage and before the execution of a separation agreement *or the commencement of a matrimonial action.*"¹ (Emphasis added). The statute goes on to say, "As soon as practicable after a *matrimonial action has been commenced*, the court shall set the date or dates the parties shall use for the valuation of each asset. The valuation date or dates may be anytime from the *date of commencement of the action* to the date of trial."² (Emphasis added). Based on the repeated specific reference to the commencement of a matrimonial action it would appear that the date of filing would be the preferred asset valuation date.

South Carolina law also refers to the date of filing when discussing asset valuation and states, "Subject to certain exceptions, 'marital property' includes 'all real and personal property which has

been acquired by the parties during the marriage and which is owned *as of the date of filing or commencement of marital litigation*.³ (Emphasis added). Case law has gone one step further to state, “Thus, for purposes of equitable distribution, *the value of marital property is the value of the property at the time of the commencement of the marital litigation*.”⁴ (emphasis added). It can certainly be implied from the statute and case law that judges in South Carolina can and do use the date of commencement of the marital litigation when selecting an asset valuation date.

Illinois Courts now have discretion when selecting an asset valuation date. Whether judges will look at how other states select an asset valuation date, or use their best judgment, it is conceivable that judges may use the date of filing a Petition for Dissolution of Marriage. The date of filing can represent the final breakdown in a marriage that judges can select without the appearance of impropriety and that allows for a consistent timeframe if maintenance is at issue.

The date we file a Petition for Dissolution of Marriage is no longer

arbitrary. Clients need to understand that there can be a financially beneficial time to file for divorce, or to the contrary, to stay married. As practitioners we will always be concerned with the end result of the case, however, we can no longer overlook the beginning. ■

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1. N.Y. Dom. Rel. Law §236(B)(1)(c)
 2. N.Y. Dom. Rel. Law §236(B)(4)(b)
 3. S.C. Code Ann. §20-7-473 (Supp. 1997).
 4. *Dixon v. Dixon*, 334 S.C. 222, 227, 512 S.E. 2d 539,541 (S.C. Ct. App. 1999).

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