



NEW YORK
CITY BAR

COMMITTEE ON MATRIMONIAL LAW

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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:

In a follow up to a telephone conversation we had earlier this year, I am writing on behalf of the Matrimonial Law Committee of the New York City Bar Association (the “Matrimonial Committee”), to provide feedback as to the proposed legislation to amend F.C.A. §413(1)(h) and D.R.L. §240(1-b)(h), as 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 “Proposal”). Specifically, this email is to address the second item on the list of previously endorsed measures, captioned “Stipulations and agreements for child support in Family Court and matrimonial proceedings.”

As noted in the Proposal, the intention of the amendment is to address 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. The Matrimonial Committee shares the Proposal’s concern over the current lack of specificity, and it does not have an overall objection to the Proposal, including the requirement that upon a finding of noncompliance, a hearing must be held to determine an appropriate amount of child support.

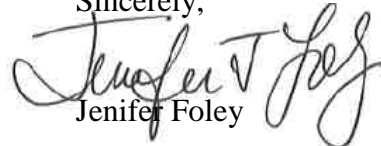
The Matrimonial Committee’s only concern relates to certain language in the Proposal that appears to be unintentionally overbroad, and which is likely to have unintended negative consequences. Specifically, the proposed subparagraph (h)(6) states the following:

An agreement, stipulation or court order which a court finds fails to comply with any of the provisions of this paragraph shall be deemed void as of the date that any of the parties raises the failure to comply in a pleading or motion or a court of competent jurisdiction makes a finding of the failure to comply, whichever is earlier.

As drafted, the omission of the required CSSA language would invalidate an entire agreement, including all provisions relating to other issues which may be entirely unrelated to the concerns underlying the requirement to include said CSSA language. Otherwise binding provisions regarding equitable distribution, spousal maintenance and child custody and access would be invalidated. The same result would arise if the parties and their counsel tried to comply with the CSSA but misstated their “income” (as defined by DRL § 240(1-b)(5), with its many additions and deductions) or if they simply miscalculated the presumptive level of basic child support, even by a tiny amount. We surmise this was not the intention of the Proposal, as this would unnecessarily create additional litigation and impose a greater burden on judicial resources.

Accordingly, the Matrimonial Committee suggests that the language be modified to state that only those provisions in an agreement, stipulation or court order that relate to the payment of child support be deemed void. That is how courts currently apply the CSSA. *See, e.g., Toussaint v. Toussaint*, 270 A.D.2d 338, 338-39, 704 N.Y.S.2d 144 (2d Dep’t 2000); *Vernon v. Vernon*, 239 A.D.2d 108, 108-09, 656 N.Y.S.2d 634 (1st Dep’t 1997). 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 (2d Dep’t 2008). We do not believe that the Proposal meant to change current law on which provisions of an agreement will be invalidated due to missing or defective recitals, but only current law on as of when provisions are invalid.

We would be happy to work with you on drafting modified language which would accomplish the Proposal’s goal while avoiding such unwanted side effects. At your convenience, please feel free to contact me, David Elbaum or Matthew A. Feigin if you would like to discuss the Proposal further. Thank you for your consideration.

Sincerely,

Jenifer Foley

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