New York State Bar Association
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MEMORANDUM IN OPPOSITION
FAMILY LAW SECTION

January 28, 2022

Bill Number: S07474

By: Senator Mayer
Senate Committee: Judiciary
Effective Date: 90th day after it shall have become a law

AN ACT to amend the domestic relations law in relation to informing the parties in certain judgments or decrees that resuming the use of their former surname is permitted by operation of law.

LAW AND SECTION REFERRED TO: DRL § 240-a

THE FAMILY LAW SECTION OPPOSES THIS BILL

The title of this bill states that its purpose is to inform "the parties in certain judgments or decrees that resuming the use of their former surname is permitted by operation of law." The statement of "purpose or general idea" advises that the bill is intended "[t]o eliminate the implicit requirements that the court and the ex-spouse must consent before a party can resume use of their former surname."

As regards the purported problem of a spouse withholding consent to the submission of a final judgment of divorce unless the provision allowing a spouse to resume a prior surname is eliminated, upon information and belief, any such occurrences are exceptionally infrequent at best, and are only without an immediate remedy in an uncontested divorce action (which, by its very definition, implies that there are no issues being contested). In the context of a contested divorce, the party properly seeking the inclusion of a decretal paragraph authorizing a change of name can overcome any such objections by submitting their proposed Judgment of Divorce with notice of settlement, thereby obviating the need for consent from their spouse as to the form and substance of the proposed judgment.

The objection of the Family Law Section to the said bill rests not with overriding the intentions of the proposed legislation, to wit: to ease the process of obtaining a change of name, which most often is needed by women, in the context of a divorce and to remove "a paternalistic attitude towards women by portraying the legality of resuming the use of a former surname as dependent upon the consent of both the court and the ex-spouse." Rather, the objection rests upon the proposed legislation's elimination, with no replacement, of the most cost-effective and expeditious means currently extant for a spouse to obtain unequivocal proof of authorization to change their name on necessary and vital legal documents. While the bill would direct that a notice accompany "each interlocutory and final judgment" stating that "the use of a pre-marriage

surname or any other former surname is permitted by operation of law," it would then further direct that "no interlocutory or final judgment or decree or other documents related to the action or proceeding shall include a provision regarding an individual resuming the use of a former surname." Accordingly, the bill begs the question of how a former spouse is to obtain a certified court order, which is often times required by administrative agencies and governmental departments, reflecting the propriety of a requested change of surname?"

By way of example, the United States Department of State, Bureau of Consular Affairs, advises that, with regard to a request to change one's name on a passport, one is required to produce "your original or certified name change document, such as a marriage certificate, divorce decree, or court order." If a spouse is precluded from including a decretal paragraph authorizing the name change as part of the judgment of divorce, or indeed even of obtaining a separate order as part of the said action or proceeding reflecting the priority of the change of name, then they will be relegated to seeking an order pursuant to Article 6 of New York's Civil Rights Law clearly reflecting authority to obtain a change of name on official documentation. That will impose an additional burden, at the very least, in terms of personal time and effort, and more likely in terms of attorneys' fees as well as costs and disbursements, to obtain an order acceptable to administrative agencies and governmental departments that is now obtainable as a matter of course within a divorce action.

Based upon the foregoing reasons, the Family Law Section of the New York State Bar Association **OPPOSES** the proposed bill.

Memorandum prepared by: Erik Kristensen, Esq.
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