

April 17, 2015

Hon. Kamala D. Harris
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Ashley Johansson
Initiative Coordinator

Dear Attorney General Harris:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative regarding spousal support (A.G. File No. 15-0007).

Background

Termination of Marriage. California law defines marriage as a personal relationship arising out of a civil contract between two consenting adults. Under state law, a marriage can only be terminated by (1) the death of one of the marital partners, (2) a dissolution of marriage (commonly known as divorce), or (3) the annulment of the marriage under specific circumstances (such as when consent to the marriage was obtained by fraud or force). If the marital partners wish to live separate lives but not officially terminate their marriage (such as due to religious beliefs or financial reasons), individuals can file for a legal separation. In 2012-13, the state trial courts received approximately 140,000 petitions for divorce, annulment, or legal separation.

In divorce or legal separation proceedings, decisions are made regarding spousal support payments—as well as the division of property and debt, child custody and visitation, and child support payments. A spousal support payment is a specified amount of money that the higher-earning marital partner must provide regularly to enable the lower-earning marital partner to become self-supporting. Decisions about spousal support payments and other issues (such as the division of property) can be reached in an uncontested or contested manner.

Uncontested Spousal Support Payments. Uncontested cases occur when both marital partners negotiate a contractual agreement between themselves and submit it to the courts. They may also occur when a marital partner does not contest a proposed spousal support payment, as well as the division of assets, child visitation and custody, and child support payments, submitted by the other partner. This proposal is then accepted by the courts as the contractual agreement. While state law places certain requirements on contractual agreements between marital partners, such partners generally have flexibility on the terms. For example, a marital partner might offer to provide a one-time lump sum payment in order to avoid ongoing spousal support payments or to give up property in exchange for ongoing spousal support payments. When the above contractual agreements are filed

with the court, the court only reviews them for completeness and compliance with statute. If approved, the marital partners are required to comply with the terms of the agreement.

Contested Spousal Support Payments. Alternatively, if marital partners are unable to reach agreement, the case is contested and a judge determines how to resolve the dispute, such as by determining whether one partner must make spousal support payments and how to divide property between the marital partners. State law provides guidance to judges in resolving these disputes. For example, judges must divide certain property equally and must consider the division of property separately from requests for support payments. When marital partners are unable to agree on spousal support payments, the court determines whether spousal support is appropriate, the amount of the payments, and how long the payments should be made. State law requires that the court consider a number of different circumstances in making this determination. Such circumstances include the marketable skills of the supported spouse, the amount of time the supported spouse remained unemployed in order to focus on domestic duties, the supported spouse's contribution to their partner's attainment of education and training, and evidence of domestic violence.

Modification or Termination of Spousal Support Payments. Once a judge issues a court order for spousal support, the order may only be changed by the court if (1) the marital partners negotiate a new agreement and file it with the court or (2) a marital partner demonstrates that there has been a significant change in circumstances since the spousal support order was made (such as if the paying spouse becomes unemployed). Spousal support payments terminate upon remarriage of the supported marital partner, death of either marital partner, or as specified in the court order. In contested cases, state law provides guidance to judges that spousal support payments in marriages that last less than ten years be provided for a period of one-half of the length of the marriage. However, judges are authorized to modify the time period depending on the circumstances of the marital partners. For marriages that last ten years or more, the court is not required to specify a date for terminating spousal support payments.

Proposal

This measure eliminates the ability for the state's trial courts to order spousal support payments in contested cases as part of divorce or legal separation proceedings. Additionally, the measure authorizes the modification of existing orders for spousal support payments as its enactment would be considered a significant change in circumstance. In such cases, orders less than ten years in duration would terminate immediately, unless the court finds sufficient justification to continue the order for up to one year. Spousal support orders for ten years or more would decrease by 20 percent annually and terminate at the end of five years. Based on the way the measure is written, it is unclear how the measure would impact spousal support payments in uncontested contractual agreements. Finally, the measure specifies that spousal support payments owed prior to its enactment that were unpaid would continue to be owed.

Fiscal Effects

Costs Related to Termination of Existing Spousal Support Orders. The measure would likely result in state court costs related to the termination of existing spousal support orders. For example, individuals currently paying spousal support could petition the court for modification or termination of existing spousal support orders. These factors would result in a one-time increase in state court costs not likely to exceed the low tens of millions of dollars annually over the next few years.

Effects on Future Divorce and Legal Separation Proceedings. In addition, the measure could impact state court costs on proceedings for future cases regarding divorce and legal separation. On the one hand, the measure could result in a reduction in the number of contested cases or the amount of time spent on such cases in state courts as requests for spousal support payments would no longer be adjudicated. This would reduce the cost of these proceedings. On the other hand, the measure could increase the number of contested cases or the amount of time spent on such cases heard by courts due to an increase in disagreements over other issues in divorce and legal separation proceedings. For example, the court's inability to order spousal support payments could result in more marital partners choosing to contest how property is divided or the amount of child support to be paid instead of resolving such issues through negotiated agreements. This would increase the costs of these proceedings. The net effect of the above factors on state court costs is unknown.

Effects on Public Assistance Programs. The measure could increase costs related to various state and local programs that provide low-income individuals who meet certain income thresholds and other criteria with public assistance (such as for health, child care, food, or housing services). Without spousal support payments, some lower-earning marital partners may be unable to become self-sufficient. As a result, these individuals could become eligible to participate in state or local public assistance programs. The actual increase in costs would depend on the number of individuals who become eligible and subsequently choose to participate in such programs. This increase in costs would likely be minor relative to the amount currently spent by state and local governments annually on these programs.

Summary of Fiscal Effects. This measure would have the following major fiscal effects:

- Increased state court costs not likely to exceed the low tens of millions of dollars annually over the next few years related to petitions to terminate existing spousal support orders.
- Unknown net effect on state court costs related to future divorce and legal separation proceedings.

Sincerely,

Mac Taylor
Legislative Analyst

Michael Cohen
Director of Finance