

Probate decision voids alimony agreement

A recent Probate & Family Court decision setting aside an alimony agreement — based on a clarification of the Alimony Reform Act earlier this year by the Supreme Judicial Court — provides direction for divorce lawyers seeking that rare result, but the window of opportunity is closing, practitioners say.

Late last month, Norfolk Probate Court Judge John D. Casey voided his February 2014 judgment regarding an agreement between an ex-husband and his ex-wife. Casey relied on three SJC rulings, issued at the beginning of 2015, which held that certain provisions of the alimony reform law are not a basis for nullifying an alimony order that predates the statute's March 1, 2012, effective date.

Casey's ruling revived the former couple's fight about alimony payments, which first began when the ex-husband sought to modify his alimony obligations in light of the new law. Because the ex-wife believed the law was retroactive, she had agreed to accept a \$90,000 lump sum amount from her ex-husband and forego future alimony.

The decision also granted the ex-wife's motion for relief from judgments under Rule 60(b), which outlines circumstances allowing judges to change judgments or orders. The rule's one-year filing deadline, unless there are extraordinary circumstances, means lawyers must move quickly to dissolve judgments issued between the alimony law's March 2012 effective date and the SJC decisions.

The decision illustrates how a divorce lawyer can use the SJC's guidance to revisit alimony agreements that were made when much of the family law bar believed the statute was retroactive.

This ruling also has opened up a new area of contention about whether courts can or should undo agreements based on the assumption that provisions are retroactive.

SJC's interpretation

Before the SJC's Jan. 30 decisions in *Chin v. Merriot*, *Doktor v. Doktor* and *Rodman v. Rodman*, lawyers and judges had different interpretations of the law's language on ending alimony at retirement.

In *Chin*, Justice Fernande R.V. Duffly held that the uncodified provisions of the act reflected the Legislature's intent to apply the law prospectively except for specific provisions on time limits to alimony tied to the length of the marriage.

Duffly further found the law's cohabitation provision prospective. That language allows the payor to cut off so-called general term alimony, or period payments to an economically dependent recipient, if the recipient has maintained a common household with someone else for at least three months.

Duffly also authored the other two decisions, writing in *Doktor* that the lower court judge "was correct in concluding that the Legislature distinguished between modifications of newly enacted durational limits on alimony ... and other modifications to the amount of alimony awarded."

Though many in the family law bar thought the retirement provision applied retroactively, some were aware that *Chin*, *Doktor* and *Rodman* were in the pipeline.

Clients in similar circumstances to the ex-wife might want to consider filing a Rule 60(b) motion.

In the current case, the ex-husband was looking to use the alimony reform act to extricate himself from a longstanding alimony agreement, but the ex-wife had no ability to modify the division of property.

By: [Sheri Qualters](#)