House Legislative Analysis Section

Washington Square Building, Suite 1025
Lansing, Michigan 48909
Phone 517/373-6466

VENUE FOR DIVORCE

House Bill 4064 as passed by the House
Second Analysis (4-13-87)

Sponsor: Rep. David M. Gubow
Committee: Judiciary

THE APPARENT PROBLEM:

To receive a divorce in Michigan, a person must have lived in the state for 180 days immediately preceding the filing of the complaint. In addition, either the complainant or the defendant must have lived in the county in which the complaint was filed for ten days immediately preceding filing. In 1977, a panel of the court of appeals found the county residency requirement to be a venue requirement only, and not jurisdictional, meaning that the requirement relates to where the proceedings are to be held, and not whether the case can be decided in Michigan.

This finding that the county residency requirement related to venue, in Abadi v. Abadi (259 N.W.2d 244), conflicted with at least one earlier appellate decision, but subsequently was affirmed by the court of appeals panel that in 1984 decided Stamadianos v. Stamadianos (350 N.W.2d 268). However, the Michigan Supreme Court in 1986 reversed the Stamadianos decision, and ruled that the county residency requirement is one of jurisdiction, after all. It set aside a judgment of divorce because of the plaintiff's failure to fulfill the ten-day county residency requirement (385 N.W.2d 604).

The supreme court's decision has implications for many divorces made after Abadi. It means that ex-spouses can charge that the residency requirement was not met and thus reopen cases that were decided years ago. Often parties will have remarried, thus raising questions of bigamy. Living arrangements just prior to filing for divorce often are temporary, and many agree with the court of appeals that the county residency requirement should not be held to be one of jurisdiction. To ensure that this interpretation prevails, amendments to the divorce law are necessary.

THE CONTENT OF THE BILL:

The bill would amend the divorce law to provide that the ten-day county residency requirement is to determine venue for the proceeding, and is not to be a requirement for jurisdiction. A court would not have the jurisdiction to set aside or modify a divorce judgment made before the bill took effect because a party failed to meet the county residency requirement.

In addition, the bill would provide that the 180-day state residency requirement is not to apply to an action for separate maintenance, other than a counterclaim for divorce (MCL 552.9).

FISCAL IMPLICATIONS:

The House Fiscal Agency says that the bill has no fiscal implications (4-1-87).

ARGUMENTS:

For:

When the supreme court set aside a divorce decree because of a party's failure to fulfill a ten-day county residency requirement, it placed into question divorce judgments issued over the nine years that had elapsed since Abadi. Attorneys and courts no doubt relied on Abadi and acted on the premise that the county residency requirement simply determined venue for the proceeding. The current situation invites vindictive ex-spouses to try to reopen divorce cases and raises issues of bigamy for those who have remarried. It makes no sense to have otherwise valid divorce decrees set aside merely because neither party had lived in the county for the previous ten days. The county residency requirement is, or at least ought to be, one of venue rather than jurisdiction. The bill would ensure that this viewpoint held, and would prevent past divorce judgments from being set aside for failure to fulfill the county residency requirement.

H.B. 4064 (4-13-87)

For:

According to committee testimony, the court of appeals last summer reversed a long-standing assumption that separate maintenance actions did not have a 180-day residency requirement. The bill would place into statute such an exemption from the residency requirement.

POSITIONS:

The Family Law Section of the State Bar of Michigan supports the bill (4-13-87).