

Senate Judiciary Committee

Jennifer Horgan 271-7875

HB 139, relative to the submission of evidence in divorce proceedings.

Hearing Date: May 7, 2021

Time Opened: 1:11 p.m.

Time Closed: 1:28 p.m.

Members of the Committee Present: Senators Carson, Gannon, French, Whitley and Kahn

Members of the Committee Absent : None

Bill Analysis: This bill permits the parties to request a continuance if evidence in a divorce proceeding is not submitted prior to the hearing.

Sponsors:

Rep. Yokela

Rep. Wallace

Rep. Gould

Who supports the bill: Representative Yokela; Nicholas Thomas

Who opposes the bill: Richard Head, Judicial Branch; Mary Krueger, New Hampshire Legal Assistance; Hannah Smith; Janet Lucas; Pamela Dodge; Amanda Vachon; Adrian Coss; Marissa Chase, NH Association for Justice; Pamela Keilig, New Hampshire Coalition Against Domestic and Sexual Violence

Summary of testimony presented in support:

Representative Yokela

- In divorce proceedings, a lot of people are representing themselves.
- There are guidelines that parties need to disclose their evidence 10 days prior to the hearing, but that requirement may be waived by a judge.
- This bill says that if a judge waives that requirement for evidence submitted and evidence is submitted less than 5 days prior to the hearing then the opposing party may request a continuance, so they have time to prepare for that evidence.
- If the judge says the evidence is de minimis or if the evidence was not available to the party submitting the evidence 5 days prior to the hearing, then that would not be grounds for a continuance.
- This allows for a continuance for up to 90 days.
- If a judge does declare the evidence is de minimis they need to write that down so that it can be challenged if there is a desire to appeal.

- This sets a floor so that if someone hasn't had very much time to look at the evidence, they have time to prepare.
- Senator Gannon asked if there are issues with this currently or are judges lenient with pro se litigants.
 - This is proposed by Representative Itse in prior years and people were reaching out to Representative Itse about this.

Summary of testimony presented in opposition:

Richard Head (Judicial Branch)

- Rule 2.21 deals with the marking of exhibits and exchange of documents prior to a trial, which provides that parties are generally required to bring exhibits 10-14 days prior to a hearing.
- It also provides that parties are required to bring and exchange pretrial statements, financial affidavits, proposed decrees, child support worksheets, etc.
- Further the rule states that following the pretrial conference the court shall not accept modifications to the documents presented at the pretrial conference unless the modified documents have been exchanged within a reasonable time before a final hearing.
- Has some significant concerns about trying to impose a different rule through legislative action, where the Judicial Branch has a current rule that addresses evidentiary rules.
- The Judicial Branch also has a rules committee with legislative members,
- Feels that if there are issues with the rule, the better venue for these types of changes would be through that committee.
- The bill also requires that there be a hearing within 90 days if there is a continuance.
- This creates substantial problems because depending on the court, a person may be looking at more than 90 days in terms of being able to get a trial.
- Some courts are scheduling the family docket into next year.
- Depending on the length and nature of the trial, courts may have bump a priority scheduled case to accommodate that trial on the docket.
- There are instances where evidence gets presented after a pretrial conference, and it is not viewed well by the court unless it is relatively de minimis or not a surprise to the parties which would not require a continuance.
- Senator Whitley asked if this could create confusion because of the inconsistency with the evidentiary requirements.
 - It could create a huge amount of confusion.
- Senator Gannon asked if it is like a balancing test the closer it gets to the trial for the judge.
 - Once you get past the deadline where parties were supposed to file, getting closer to the trial could be more problematic. The court expects the parties to present on the day they are supposed to. If there are instances where evidence doesn't get recorded or is not properly identified

on a pretrial statement, then after the final pretrial conference there is an amendment filed, the court then has to balance what the issues are, if it is a surprise to the parties, and do the parties now need more time.

- Senator French asked if the courts could have difficulties rescheduling within 90 days.
 - Yes. It depends on the nature of the trial. If a court needs to put in a five-day trial in the next 90 days, it is going to result in bumping another case. Some courts are currently scheduling family cases into next year.
- Senator French asked if because some cases are currently being delayed until next year, could this bill be used as a delaying tactic by one party or another.
 - Absolutely. If a person has an absolute right to a continuance and delay supports their side, this could be used to the party's advantage of gaining a delay.

Mary Krueger (NH Legal Assistance)

- Echoes Mr. Head's testimony.
- Under the current court rules there is an option for pretrial where parties would be required to submit the exhibits ahead of time.
- If the court doesn't have a pretrial, there is another rule that provides that those exhibits ought to be submitted 30 days before the trial.
- If someone does not follow the rules the court can exclude that evidence or witness.
- That is a real incentive for people to comply with the rules.
- Concerned that this would provide an individual with the opportunity to thwart the rules in order to delay.
- In representing victims of domestic abuse, the court can often be the last place where corrosive control can be exerted, and this bill could be inadvertently used to delay the process where sometimes finality is critical.
- Senator Gannon asked if the court tries to accommodate pro se litigants.
 - Generally, thinks the courts are going to be understanding of pro se litigants who do not understand the process. Along the way judges tend to give a lot of reminders or send out the expectations to make sure people understand the rules. Thinks the family division does quite a bit with case managers to help pro se litigants. By the time a person gets to trial, the court is going to use good judgment regarding what it is going to exclude. If all that is needed is a 15-minute break to review a single document then that is one situation, while a stack of financial documents that have been requested repeatedly may throw a wrench in the works.