



---

# RON TUSLER

---

STATE REPRESENTATIVE • 3<sup>rd</sup> ASSEMBLY DISTRICT

**Testimony on  
Assembly Bill 722  
Assembly Committee on Family Law  
Public Hearing  
December 1, 2021**

Chair Magnafici and fellow members of the Assembly Committee on Family Law: thank you for hearing this bill today. The bill before you is Assembly Bill 722 (AB 722) relating to: stipulated orders before judgment in actions for divorce, annulment, or legal separation. This bill codifies established case law regarding the entry and enforceability of stipulations filed by parties prior to finalizing a divorce while also adding safeguards to avoid undue pressure or influence on either party.

Stipulations are agreements between the parties submitted for the court's, or judge's, approval. In family court, final stipulations in divorce are referred to as a marital settlement agreement (MSA). It is common in divorce matters for parties to enter MSAs on specific issues before the final dissolution of marriage as matters are agreed upon. Often, parties will agree on issues such as legal custody and physical placement relatively quickly, but require more time or a court order to resolve financial matters.

Once settled, the parties will file a partial MSA (PMSA) on the agreed to matter to limit issues for litigation later in the divorce process. The PMSA becomes final when the judge accepts the terms and signs the document. Until that point, a PMSA is merely a suggestion to the court and individual parties are free to withdraw, requiring negotiations to start over.

Wisconsin's tradition is to encourage settlement and discourage litigation, particularly in family law. Conflict between parents is generally regarded as one of, if not the greatest, indicator of disruption and difficulty for children in divorce.

This bill seeks to codify case law which makes a PMSA final upon approval by the judge, while adding a layer of protection for parties by requiring a brief hearing prior to finalizing the stipulation. Although some judges will not accept a PMSA until the final hearing, which they can continue to exercise discretion over, this bill states that upon approval by the judge following an on-the-record proceeding with the parties, the agreement shall be made a final order pending the dissolution of marriage. This bill allows a means in which parties can move forward with confidence and security, avoiding substantial court delays and escalating legal fees should the "agreed" issues be drawn back into the dispute and re-litigated.

Thank you again, members of the Assembly Committee on Family for hearing my testimony and I welcome any questions that you may have.



STATE SENATOR

**Eric Wimberger**

DISTRICT 30

## **Testimony on Assembly Bill 722**

*Assembly Committee on Family Law*

*Wednesday, December 1, 2021*

Chairperson Magnafici and Committee Members,

Thank you for taking the time to hear testimony on Assembly Bill 722 which will codify established case law and clarify the enforceability of certain stipulation orders filed before the finalization of a divorce.

Sometimes parties of a divorce will come to agreement on certain issues – such as legal custody or physical placement – before a divorce is finalized. These are typically referred to as partial marital settlement agreements or stipulations. Until the complete marital settlement agreement is accepted and signed by the judge, parties may be free to withdraw from stipulations which then may require negotiations to start over.

To help prevent extended litigation, this legislation will make the marital settlement agreements or partial marital settlement agreements final upon approval by a judge. The legislation also requires a brief hearing prior to finalizing the stipulation. This hearing ensures both parties understand the order.

Rather than bring an entire laundry list of issues into court, a partial settlement agreements allow individuals to cross some of those things off up front, if they can mutually agree on how to handle them. Reducing the number of decisions a judge must rule on can save individuals a substantial amount of stress, time, and money in the long run during their divorce.

Thank you for taking the time to hear our testimony this morning.

State Capitol • PO Box 7882  
Madison, WI 53707-7882  
(608) 266-5670 • (800) 385-3385  
Sen.Wimberger@legis.wi.gov

## FAMILY LAW SECTION

---

To: Members, Assembly Family Law Committee  
From: Family Law Section, State Bar of Wisconsin  
Date: December 1, 2021  
Re: Support for AB 722 – stipulation agreements in divorce matters

---

The State Bar of Wisconsin's Family Law Section requests your support of AB 722, clarifying the entry and enforceability of stipulations filed by parties prior to finalizing a divorce by codifying established case law while also adding safeguards to avoid undue pressure or influence on either party.

Stipulations are agreements between the parties submitted for the judge's approval. In family court, final stipulations in divorce and legal separation matters are referred to as a marital settlement agreement (MSA). It is common in divorce matters for parties to enter MSAs on specific issues before the final dissolution of marriage as matters are agreed upon (typically referred to as Partial MSAs). Often, parties will agree on issues such as legal custody and physical placement relatively quickly, but require more time or a court order to resolve financial matters. Once settled, the parties will file a PMSA on the agreed matter to limit issues for litigation later in the divorce process. The PMSA becomes final when the judge accepts the terms and signs the document. Until that point, a PMSA is merely a suggestion to the court and individual parties are free to withdraw, requiring negotiations to start over.

AB 722 codifies case law to make the MSA or PMSA final upon approval by the judge, while adding a layer of protection for parties by requiring a brief hearing prior to finalizing the stipulation. Although some judges will not accept a PMSA or LMSA until the final hearing, which they will continue to exercise discretion over, this proposal states that upon approval by the judge following an on-the-record proceeding with the parties, the agreement shall be made a final/initial order pending the dissolution of marriage. Allowing MSAs to be finalized when agreed by the parties and approved by the judge provides a means in which parties can move forward with confidence and security, avoiding substantial court delays and escalating legal fees should the "agreed" issues be drawn back into the dispute and re-litigated.

This change ensures accountability and discourages undue pressure by requiring an additional level of judicial scrutiny, especially in cases involving domestic abuse or imbalanced power dynamics between parties. First, potential withdrawal from an agreement can, in some instances, be weaponized by a party as a threat to extract a greater concession later in the case. Second, the existing safeguards and judicial review of all initial marital agreements would be increased by requiring an additional court hearing, at minimal impact to the court and parties. Further, existing remedies would remain available to parties to reopen the judgment due to fraud, mistake, etc. or to modify an order pursuant to current statutory provisions.

Wisconsin's public policy is to encourage settlement and discourage litigation, particularly in family law. Conflict between parents is generally regarded as one of, if not the greatest, indicator of disruption and difficulty for children in divorce. Therefore, to encourage enforceable settlements, courts should have clear authority to accept MSAs as final orders, whenever they are made. Doing so will help courts manage their calendars, reduce litigation, and ensure that parties carefully consider agreements before submission.

For these reasons, the State Bar's Family Law section seeks your support of AB 722. For more information, please do not hesitate to contact our Government Relations Coordinator, Lynne Davis, [ldavis@wisbar.org](mailto:ldavis@wisbar.org) or 608.852.3603.

*The State Bar of Wisconsin establishes and maintains sections for carrying on the work of the association, each within its proper field of study defined in its bylaws. Each section consists of members who voluntarily enroll in the section because of a special interest in the particular field of law to which the section is dedicated. Section positions are taken on behalf of the section only.*

*The views expressed on this issue have not been approved by the Board of Governors of the State Bar of Wisconsin and are not the views of the State Bar as a whole. These views are those of the Section alone.*



STATE BAR OF WISCONSIN

P.O. Box 7158 | Madison, WI 53707-7158      5302 Eastpark Blvd. | Madison, WI 53718-2101  
(800) 728-7788    (608) 257-3838    Fax (608) 257-5502    [www.wisbar.org](http://www.wisbar.org)    [service@wisbar.org](mailto:service@wisbar.org)



**Attorneys**

David S. Kowalski  
Emily L.R. Wilson  
Annabelle Vang  
Cecilia Ju  
Jacob Wiese

David@kwvfamilylaw.com  
Emily@kwvfamilylaw.com  
Annabelle@kwvfamilylaw.com  
Cecilia@kwvfamilylaw.com  
Jacob@kwvfamilylaw.com

**Paralegals**

Laura Eiteuner & Kathleen Andreoni

To: Members, Assembly Family Law Committee  
From: David Kowalski  
Date: December 1, 2021  
Re: Support for AB 722 – stipulation agreements

---

It is common in divorce matters for parties to enter agreements (known as Marital Settlement Agreements--MSA) on some, but not all, of the main issues. These MSAs are often submitted well before the divorce is finalized. For example, parties may agree on child-related issues well before they focus on financial matters such as support or property division. When the parties complete these Partial Marital Settlement Agreements (PMSA), they are submitted to the judge. However, because agreements between the parties are only “suggestions” until accepted and entered by the judge, simply filing the PMSA does not make it final.

In my experience, many judges are unsure how to manage a PMSA. Some will enter the PMSA as a “final” order as soon as it is filed. Some will refrain from entering it, and simply hold it in the file until the final divorce hearing. Some will sign it, but consider it only a temporary order, or placeholder, until all issues are resolved at the final hearing. The latter two approaches may create confusion because the parties cannot be certain that their agreement will be enforced by the court.

This confusion potentially increases conflict and manipulation during the divorce. Throughout my years of practice, I have seen parties threaten to withdraw from a PMSA in order to gain an upper hand if s/he believes that the remaining unresolved issues may not turn out in his/her favor. In several cases, that party has formally withdrawn, or at least attempted to withdraw, from the earlier PMSA, leading to substantial court hearings and legal fees. In some cases, after months of progress, the divorce matter is placed back at square one. A statute that clearly permits the judge to accept a PMSA as a final order gives parties and the courts clarity, and prevents manipulation of this type.

AB 722 also provides an added layer of protection for these agreements, by requiring a brief hearing, with both parties present to testify. This hearing will ensure that the parties (a) intend the agreement to be their final order on the subject and (b) understand the agreement and enter it freely. If it appears coerced or grossly unfair, the court may still reject it, as with any other agreement submitted for review. In any case, the judge still retains discretion to accept the agreement or hold off until another point in the proceedings.

Although this bill requires one additional hearing to enter a PMSA, such hearings are generally only 5-10 minutes in length, and will be permitted to be conducted virtually or by phone to minimize inconvenience to the court and parties. In my experience, removing the possibility of withdrawal from such an agreement will, on average, reduce potential litigation in family court and move divorce cases more quickly to completion.

Conflict between parents is widely regarded as the most damaging aspect of a divorce for children. Therefore, Wisconsin’s public policy wisely encourages settlement and discourages litigation, particularly in family law. If divorcing parties are able to agree, even on only some issues, they should have a clear path to do so. AB 722 accomplishes that goal, consistent with current judicial authority and state public policy.

**[www.kwvfamilylaw.com](http://www.kwvfamilylaw.com)**

**Madison Office** Phone: 608-709-5000 Fax: 877-892-6183 725 Heartland Trail, Suite 100, Madison, WI 53717  
**Baraboo Office** Phone: 608-709-5000 Fax: 877-892-6183 123 2<sup>nd</sup> Street, Baraboo, WI 53913