NEW YORK LAW SCHOOL

digitalcommons.nyls.edu

Faculty Scholarship | Other Publications

2017

Polish Divorce, New York Style

Arthur S. Leonard
New York Law School, arthur.leonard@nyls.edu

Follow this and additional works at: https://digitalcommons.nyls.edu/fac_other_pubs

Part of the Law and Gender Commons

Recommended Citation

Leonard, Arthur S., "Polish Divorce, New York Style" (2017). *Other Publications*. 202.
https://digitalcommons.nyls.edu/fac_other_pubs/202

This Article is brought to you for free and open access by the Faculty Scholarship at DigitalCommons@NYLS. It has been accepted for inclusion in Other Publications by an authorized administrator of DigitalCommons@NYLS.

Polish Divorce, New York Style

Added by **paul** *on November 8, 2017.*
Saved under **Legal**, **National**, **NY State**
Tags: **Wiktor Jerzy Twarkowski**, **Justice Matthew F. Cooper**, **divorce residency requirements**, **New York County Supreme Court**, **New York City Clerk's Manhattan Marriage Bureau**, **Andrzej Gruszczynski**

Share This Post

The New York City Marriage Bureau office in Manhattan on Worth Street. | BEYOND MY KEN/ WIKIMEDIA COMMONS

BY ARTHUR S. LEONARD | New York's Domestic Relations Law sets residency requirements for married couples seeking to divorce in the state, which vary in length — one or two years, depending upon whether they were married in New York and have lived in the state continuously. This creates a problem for a same-sex couple who came to New York to marry and then returned home to a jurisdiction that does not recognize their marriage. The problem is compounded, of course, if they want to divorce without at least one of them establishing residency here.

This was the problem faced by Andrzej Gruszczynski and Wiktor Jerzy Twarkowski, Polish citizens who were married in the New York City Clerk's Manhattan Marriage Bureau on December 6, 2013, having traveled to New York specifically for that purpose before returning to their home in Warsaw. After a few years, they "mutually decided" to end their marriage, according to Justice Matthew F. Cooper's October 26 opinion in the matter, which explained, "because Poland does not recognize same-sex marriage in any form, the parties could not turn to their local courts to obtain a divorce."

After receiving legal advice to file for divorce in New York State, Gruszczynski filed papers in New York County's "uncontested matrimonial calendar" in September 2016, noting the two men have no children, no assets to divide, and no request by either for alimony. The matrimonial clerk, however, finding that the men's residency in Poland meant the one-year New York residency requirement had not been met, refused to accept Gruszczynski's filing.

> *Manhattan judge waives residency requirement for overseas couple wowed by chance for Gotham wedding*

Their lawyer, Livius Ilasz, then filed a motion with Justice Cooper, seeking an order permitting an uncontested divorce despite the lack of residence. Cooper's summary of Ilasz's motion explained that the two men "stress that if New York refuses to entertain the proceeding, they will face the prospect of being unable to find any forum in which they can be divorced." The motion called on Cooper to use the court's equitable powers to waive the residency requirement and allow them to dissolve their marriage.

The case harkens back to the "wed-lock" phenomenon experienced by US same-sex couples prior to June 26, 2015, at which time same-sex marriage — and divorce — became available in every state. Occasional media reports cited judges in states without marriage equality who were earlier than that willing to bend the rules to help out local residents married out of state who needed to get a dissolution of a marriage, or perhaps a civil union or domestic partnership. But published decisions on this point are scarce, so Cooper's effort may fill an important legal gap now for foreign nationals who marry in the US and then return home.

"There are good reasons to allow this uncontested divorce action to proceed irrespective of the parties' inability to meet the one-year residency requirement," the justice wrote, finding that Gruszczynski made a "compelling argument" that "a strict application" of the Domestic Relations Law is "inequitable and discriminatory."

Cooper noted how New York City carried out a promotional campaign after marriage equality became available to lure out-of-staters to get married here, generating substantial additional business for the city's hotel, restaurant, tourism, and retail businesses. He quotes a figure, stated publicly by then-Mayor Michael Bloomberg, of a quarter of a billion dollars in extra business revenues during the first 12 months — July 2011 to July 2012 — of the marriage equality era in New York.

"Having accepted New York's invitation to come and exercise their right to marry as a same-sex couple, the parties now find that they are being deprived of the equally fundamental right to end the marriage," Cooper wrote. "Thus, they face the unhappy prospect of forever being stuck in their made-in-New York marriage, unable to dissolve it here or in their home country. Clearly, equity demands that the parties be spared such an excruciating fate."

The justice noted a parallel decision by the Albany-based Appellate Division's Third Department in 2011 authorizing a New York trial court to dissolve a Vermont civil union so that one of the partners would not have to establish residency there to terminate their relationship.

Cooper also explained the policy concerns that led New York to establish its divorce residency requirements in the first place. When the state was early in liberalizing divorce law, there was fear that out-of-staters seeking to escape more demanding requirements in their home states (such as proving adultery) would flock to New York to divorce, inundating the courts. Since then, divorce laws throughout the country have been dramatically altered to allow no-fault divorce everywhere — including, ironically among the last to join that trend, recently in New York — so that the incentives to come to this state specifically to divorce, at least from elsewhere in the US, have disappeared.

In light of that, wrote Cooper, "It is difficult to see how permitting plaintiff and defendant to pursue their uncontested divorce here would somehow open the floodgates to our courts."

The court directed Gruszczynski to resubmit the uncontested divorce papers to the New York County matrimonial clerk within 30 days, and the clerk was directed to accept and forward the papers, "including the proposed judgment of divorce," back to the judge's chambers "for review and signature."