



FAMILY MATTERS Q & A NEWSLETTER

The Law Firm of
**WISSELMAN,
HAROUNIAN &
ASSOCIATES, P.C.**

Established 1976

PROTECTING YOUR RIGHTS

HOW DOES NEW YORK'S NO-FAULT LAW IMPACT YOUR DIVORCING PATIENTS?

Greetings to Mental Health Professionals:

The Law Firm of Wisselman, Harounian & Associates, P.C. has created this informational Newsletter in response to questions raised by professionals who have attended any of our Annual Legal Workshops for the Mental Health Community in the New York Metro area. The goal of these workshops has been to provide an exchange of legal and mental health issues in family and matrimonial law in order to create a better understanding of the Court process, and help mental health professionals assist those patients who may be experiencing marital problems and contemplating litigation. We now have a following of many more professionals, in the mental health, medical and financial areas, who are able to benefit from the information we are circulating. We look forward to continuing to receive questions from you that we can answer in future newsletters. Outlined below is a perspective on New York's new No Fault Divorce Law, passed in August, 2010.

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New York is the 50th and final state to pass a no-fault divorce law. Prior to this, a spouse who filed for divorce in New York had to allege grounds for the divorce, such as adultery, abandonment, imprisonment or cruelty. While signing the new legislation into law on Sunday, August 15th, Governor Paterson noted "*....These bills fix a broken process that produced extended and contentious litigation, poisoned feelings between the parties and harmed the interests of those persons (too often women) who did not have sufficient financial wherewithal to protect their legal rights.*"

New Yorkers can now divorce by alleging that their marriage has been irretrievably broken down for six months or more. Simultaneous with enactment of no-fault

Does this change one's "strategy" for seeking a divorce?

This change will take some of the pressure off to falsely allege fault when both parties want to terminate the marriage. The prior law required one of the parties seeking a divorce to blame the other, and often it was untrue. Accusing one of abandoning (refusing to have sex, which is referred to as constructive abandonment) was the most common. So the prior law was, in essence, requiring individuals to lie under oath in order to get the divorce, even when both wanted one. Thus, the state put in these no-fault grounds.

Why didn't the Legislature eliminate the other "fault" grounds?

There are circumstances when a speedier process can protect one or more parties involved in their dispute. It enables people to get a

divorce, guidelines for fixing temporary spousal support (or maintenance) and attorney's fees were also enacted. The legislation created a formula and list of factors to govern such awards. The purpose of these new laws, according to Governor Paterson, would be to *"....Allow for speedy resolution of the maintenance issue, and prevent less well-off parties to divorce proceedings from falling into poverty during litigation, because they lack the resources to obtain a temporary maintenance order."*

It is rare that alleging grounds for divorce becomes a contested issue of its own in the divorce proceeding. Hopefully, enactment of the no-fault divorce provision will eliminate the tactic of withholding consent to a divorce in an otherwise dead marriage. Outlined below is a summary of Attorney Lloyd C. Rosen's perspective on the new law.

Will these laws lower the average cost of divorce or hasten the resolution?

There is no such thing as an average divorce; no two families and no two cases are alike. In most divorces, both parties agree that they don't want to be married. In the overwhelming majority of the cases, the grounds were stipulated to by the parties without litigation. Maybe 5% of cases I've handled had an issue regarding grounds, where one party contested the grounds, and of that 5%, maybe one-half of one percent actually went to trial to argue grounds. So, having a no-fault provision should not really change the cost. It just enables parties to agree to a divorce without having to blame one another for this kind of wrongdoing.

Does No-Fault divorce affect a person's right to contest a divorce?

The law doesn't seem to eliminate the ability to contest a divorce. The previous statute governing divorce, Domestic Relations Law 170, defined six different grounds for divorce. This new law adds a seventh ground: where one party can allege that the relationship has irretrievably broken down for six months or more. The new law may have created the opportunity for the other party to deny this, claiming that "No, our marriage has not irretrievably broken down," and then offer facts. People are thinking that no-fault means you can get a divorce just by asking for it. But in reality, this new provision creates a new additional ground where you don't have to blame your spouse for wrongdoing. In essence, getting a divorce no longer requires accusations of cheating, abusing, or abandoning, but merely alleging that the marriage has broken down.

About Our Firm

Established on Long Island in 1976, The Law Firm of Wisselman, Harounian & Associates, P.C. is a highly regarded litigation firm with a primary concentration in family and divorce law. Today we are ranked as one of the largest matrimonial law firms on Long Island. Our attorneys

divorce if they are being horribly abused, or if it is found the spouse committed adultery, without having to wait six months. A spouse who is beaten up, or the victim of violence or abuse shouldn't have to wait any amount of time to allege that the marriage had broken down, but should be able to expedite a divorce for their own protection.

Will this increase the prevalence of people seeking divorce?

No doubt there are some who might file for divorce who may not have before, but I think that number is statistically irrelevant. The number of additional cases that will result from no fault should be minimal.

How does this law affect custody?

The new reforms will not impact the harshest part of any divorce, which is custody. Custody will no doubt remain the main point of contention. It is more complicated now than ever, with more mothers in the workplace, sometimes earning more than fathers do. There are, now, a higher percentage of women with education and careers versus thirty years ago. We still see the majority of women being awarded custody, because a majority of women are also still the caretakers of their children. However, we also see more fathers being awarded custody when they deserve it, when they've earned it, and when logistical circumstances warrant their being the custodial parent. We also see more creative solutions to the custody situation. However, these creative solutions can only exist when the parents can cooperate with and respect one another.

The no-fault provision goes into effect 60 days from August 15, the day when Governor Paterson signed the law; and the spousal support and counsel fees provision will go into effect after 120 days.

If you wish to learn more about the no-fault divorce law and its implications, you may contact our office by calling 516-773-8300 or you can visit our Website at www.lawjaw.com.

If you or your clients are in the midst of marital difficulties, our firm hosts complimentary Fathers' Rights Presentations, "How to Have a Smart Divorce" workshops, and legal clinic meetings on an ongoing basis. For more information about these programs and groups, click on the following link: [Support Groups/Workshops](#).

About the Author

Family Law Attorney Lloyd C. Rosen has a great deal of litigation and appellate law experience, and he handles all aspects of matrimonial and family law matters for our firm. This includes cases of divorce and separation, child custody, and visitation, child and spousal support, domestic violence, the distribution of marital assets including business assets, and pre-nuptial and post-



are recognized by the legal, mental health, medical and educational communities for their lectures and published articles of family law matters. Their reputation among their peers as legal rights advocates for mothers, fathers, grandparents and children is a testament to their skill, expertise and social conscience. We maintain a "hands on" approach when providing legal counsel to our clients. Our attorneys main goal is to protect their best interests and right to be with their children. We serve all of the New York Metro area, including Long Island, Nassau, Suffolk, Queens, Manhattan, Brooklyn, Bronx, Staten Island, Westchester, and Rockland Counties. If you have questions on a family law matter, please contact our office at 516-773-8300, or you can go to our Website at www.lawjaw.com.

nuptial agreements. He has given numerous presentations to community professionals and residents about Divorce, The Financial Implications of Divorce, and Fathers' Rights. Mr. Rosen currently leads a legal clinic about all relevant matters pertaining to Fathers' Rights for local community members. For more information on this and other activities provided by the firm, please click on the following link: [Support Groups/Workshops](#).

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