

**Divorce with Dignity**  
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**Written Testimony For the Senate Judiciary Committee Hearing – Support for S-1467**

November 13, 2006

Thank you for allowing me to speak about my organization's support for Senate Bill S-1467, which adds a new cause of action for divorce based on Irreconcilable Differences.

I represent the New Jersey Association of Professional Mediators. With nearly 400 members, NJAPM is the largest statewide association dedicated to mediation. Our organization's website is [www.njapm.org](http://www.njapm.org). Approximately two-thirds of our members are attorneys. At least 75% of our members provide divorce mediation services, both privately, and through court-sponsored programs. Mediation is a process where a trained neutral person, called a mediator, encourages and facilitates the resolution of a dispute between two or more parties. I am practicing mediator with offices in Hoboken and Clinton, and have mediated over 300 divorces during my nine's year's in practice. On a personal note, I went through my own divorce in 1994, and have since married again. I have an 18 year-old stepdaughter and an eight year old son.

Presently, couples seeking a divorce have two choices: physically separating and living in separate households and waiting 18 months to file for the divorce, or filing for an immediate divorce based on fault grounds. As long as you are willing to play the blame game, you don't have to wait. And the fact is that most people don't or can't afford to wait 18 months.

Fault grounds include:

- a. Adultery
- b. Desertion for the term of 12 or more months
- c. Extreme cruelty, which is defined as including any physical or mental cruelty which endangers the safety of health of the plaintiff. (It is important to note that if you file under cruelty, you are forced to actually describe these acts of cruelty).

The bill does not eliminate these grounds, but merely adds another choice – i.e. Irreconcilable Differences. It will not make divorce quicker, rather just less contentious for individuals who don't want to file under fault grounds.

It is important to note that under almost all circumstances, the grounds for divorce are not a factor in the settlement of property, child and spousal support or custody as suggested my New Jersey case law including the recent Mani decision. Nevertheless, the laws of physics hold for divorce. For every action in life, there is a reaction. And, when something ugly is said about you in a fault complaint for divorce, it is natural to want to counterattack. Typically, the party who wants to leave the marriage files the divorce complaint, further victimizing the party who seeks to remain in the marriage. Accusations made in a complaint for divorce become a matter of public record, frequently result in a counterclaim by the other party with its associated legal costs, and decrease the likelihood of the couple voluntarily agreeing to enter mediation or maintain civility with each other. The bitterness from the early state of filing serves as fuel for the fire, making settlement of cases longer and more expensive.

In the case where parties physically separate and wait 18 months to file for their divorce, the interim period often can add significant financial stress on one or both parties. Financial problems are one of the major causes of divorce. A prolonged separation period may compound those problems by continuing joint liability for debt that may be attributed to only one of the parties, exacerbating conflict, and possibly increasing the need for additional discovery and litigation costs. In these situations, the chances of the couple entering mediation are also reduced.

I need to emphasize there is nothing quick about getting a divorce. The divorce complaint is merely the first step in a multi-step process. Most divorces take at least a year to complete after the filing of the divorce. A complaint is filed, and the other party must either respond to the complaint by acknowledging service, counter-claiming or defaulting. Next, there are initial hearings to set interim child support. There may also be court-ordered mediation to establish a visitation schedule, which is now called parenting time. Next, the parties start the process of discovery to identify assets and liabilities. Discovery may include a review of there years bank and credit card statements. If they have a house, business or pension, they need to get these appraised. All of this takes time. They may hire a custody evaluator if the cannot agree on that issue. If they cannot agree on economic issues, the court will also send them to mediation. There may be multiple court appearances before they can agree on all their issues. Sometimes, people will amend their divorce complaint because the divorce process takes so long that by the time the case actually settles, they have lived separately for 18 months.

A significant number of couples start the mediation process before consulting with attorneys, and before filing a divorce complaint. They come to mediation with the misconception that they will be able to file under the grounds of irreconcilable differences. It is our experience that few couples choose to delay their divorce upon learning that irreconcilable differences is not an option in New Jersey. However, by being forced to file under fault grounds, they express cynicism and mistrust of our legal system. The belief that consenting adults in a democracy who construct a fair and mutually agreeable divorce agreement, must still be forced to vilify their child's other parent in the divorce filing, seems illogical and unnecessary. In addition, even in the most amicable divorce situation, fault grounds can create some level of conflict and mistrust between the parties.

By providing for irreconcilable differences as a cause of action for divorce, there will be reduced acrimony at the start of the divorce process, when people and their relationships with each other are both fragile and volatile. The filing of the divorce complaint often sets the tone for the divorce. Couples who start their legal proceeding in a civil manner, are more likely to enter mediation voluntarily, thus providing a private rather than court forum for resolving their conflicts, and saving their families costly litigation fees that can be better saved towards college education, summer camp and the like. Even those couples who do not utilize mediators increase their chances of a civilized divorce, when they file under less contentious grounds.

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The experience of other states shows that divorce is not any more common where irreconcilable differences are available as a cause of action for divorce - it is just less contentious and less acrimonious. This bill will not increase the divorce rate. Rather, it will facilitate the pathway for more a more peaceful divorce process, including the use of mediation.

In 1997, 36 years ago, the great anthropologist Margaret Mead stated "We are not going to get rid of divorce. People are too badly brought up in too many different ways, and they don't know how to live without other people very well. It takes a couple of tries to find out very often."

I am not promoting the concept of divorce. Divorce is a reality in our society, and it is here to stay. What I am trying to say is that no one wins in the blame game. So please give consideration to the grounds of Irreconcilable Differences. Let's try to make divorce a little more civilized, if not for our sake, then for the sake of our children.

Respectfully,

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Accredited Professional Mediator  
NJAPM President