



**New Jersey Association of Professional Mediators**

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May 3, 2006

Honorable Christopher Bateman  
36 East Main Street  
Somerville, NJ 08876

Honorable Neil Cohen  
985 Stuyvesant Avenue  
Union, New Jersey 07083

Re: A-483 (Bateman/Cohen) Adds new cause of action  
for divorce based on irreconcilable differences.

Dear Assemblyman Bateman & Assemblyman Cohen:

Thank you for introducing Assembly Bill A-483, which adds a new cause of action for divorce based on irreconcilable differences. The New Jersey Association of Professional Mediators (NJAPM) is in full support of this change in divorce law which will make the divorce process less acrimonious, increase the use of mediation, which is less expensive both financially and emotionally on families, and reduce the burden of contested divorces on our court system.

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. Attorneys advise clients during the mediation process, and also file all necessary documentation with the Court. Mediation also establishes a framework for future decision-making; this is essential when there are children involved. People who design solutions to their own conflicts through mediation are more satisfied with the outcomes, have a stronger commitment to maintaining their agreements, and are less likely to return to court to litigate post-divorce conflicts.

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.

Presently, couples seeking a divorce have two choices, filing for an immediate divorce on fault grounds, the most common of which is extreme cruelty, or physically separating and waiting 18 months to file for the divorce. (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). Frequently, these options for divorce do not meet the parties' needs, and also make entering the mediation process more difficult.

In the first case, where parties seek an immediate divorce based on grounds, current law forces unnecessary emotional stress on one or both parties by requiring one of them to accuse the other party of some action or actions which will induce the Court to grant their divorce. It is far more difficult for them to remain amicable, knowing one or both of them will have to make accusations of fault or wrong-doing in order to obtain a divorce. 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.

In the second 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.

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.

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.

With approximately 350 members, NJAPM is the largest statewide association dedicated to mediation. Approximately two-thirds of our members are attorneys, one-quarter are mental health professionals, and the rest are CPAs, professional engineers and business professionals. At least 75% of our members provide divorce mediation services, both privately and through court-sponsored programs. You can find information about our organization and our members at [www.njapm.org](http://www.njapm.org). Recently, we polled our members to determine their positions on A-483. The results were overwhelmingly in favor of the irreconcilable differences bill.

As president of NJAPM, I welcome the opportunity to meet with you and to assist in the promotion of this vital legislation, including testifying regarding the bill, when there is an opportunity for public comment. If you have any questions regarding NJAPM or its view on this important issue, I can be reached at (908) 303-0396 or by email at [ajessani@dwdmediation.org](mailto:ajessani@dwdmediation.org).

Respectfully,

Anju D. Jessani, MBA, APM®  
Accredited Professional Mediator  
NJAPM President