

New Jersey's "Irreconcilable Differences" Divorce Grounds - Facilitating the Pathway to a More Peaceful Divorce Process

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On January 22, 2007, Governor Corzine signed the "Irreconcilable Difference" divorce bill. Clients who choose grounds (i) under Statute 2A:34-2, attest that they are filing for divorce arising from "Irreconcilable differences which have caused the breakdown of the marriage for a period of six months, and which make it appear that the marriage should be dissolved and that there is no reasonable prospect of reconciliation." Under these new grounds, couples can file for a divorce in New Jersey, while continuing to reside together.

In amending the divorce statute to include Irreconcilable Differences, New Jersey was playing catch-up to most other states that have provided this option for at least a decade. The experience from these states has shown 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. There is no doubt that there will be an immediate increase in filings for divorce, as many clients have been waiting for this law to take effect. This initial increase in divorce filings should not be misconstrued.

Previously, couples seeking a divorce had 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. In the first case, prior law forced unnecessary emotional and financial stress on one or both parties by requiring one of them to accuse the other party of some action which would induce the Court to grant their divorce. In the second case, the interim period often added significant financial stress on one or both parties. Frequently, these options for divorce did not meet the parties' needs, and also made entering the mediation process more difficult.

By providing for Irreconcilable Differences as a cause of action for divorce, there will be reduced friction 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.

For some clients, delaying the filing of the divorce may be in their mutual best interest. Once a divorce complaint is filed, the clock starts ticking as far as the court schedule. If parties are not ready to start the divorce mediation or divorce process, they might find the pressure of court deadlines onerous. Additionally, if both parties are not sure they want the divorce, filing the complaint, may be premature.

There also may be financial reasons to delay the filing of the divorce complaint. With the high cost of COBRA for the spouse who does not have their own health care insurance, some parties are better served by waiting until the unemployed spouse has achieved coverage through their new employer to complete the divorce process. Additionally, for some parties, there may be benefits in filing a joint tax return for the current year; the timing of the divorce complaint should match this desire.

While there may be circumstances when filing for divorce under fault grounds may be appropriate, 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 evidenced by the recent *Mani v. Mani* decision. Clients should confer with their attorneys on the best choice of grounds for their specific situation.

By providing Irreconcilable Differences as a grounds for divorce, New Jersey is facilitating the pathway for more a more peaceful divorce process, including the use of mediation. Hopefully, the handful of other states that have not yet amended their divorce laws to include Irreconcilable Differences, including neighboring New York, will also bring their divorce processes into the 21st century, very shortly.

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