

# New York Law Journal



WWW.NYLJ.COM

©2010 ALM

An ALM Publication

VOLUME 244—NO. 72

WEDNESDAY, OCTOBER 13, 2010

## Those Eager to Be 'Ex-Spouse' Embrace No-Fault

BY JOEL STASHENKO  
ALBANY

SPOUSES SEEKING to be among the first to file for divorce under New York's new no-fault statute flocked to law offices yesterday.

David M. Siegal, a partner at the high-volume matrimonial firm of Assaf, Mackenzie & Siegal, said men were lined up yesterday outside his Albany firm's office before it opened to finalize their divorce petitions.

"It's like the Oklahoma land rush," Mr. Siegal said. "You should see what is going on in my office. It's like a Bruce Springsteen concert. I am busier than hell."

Mr. Siegal's office had filed three divorce petitions by midday yesterday and expected to file four or five others before court closed for the day. His office planned to file a similar number today and tomorrow in surrounding counties.

In the past, Mr. Siegal said some of his clientele who lacked proper grounds for divorce would opt to move 50 miles to Vermont for one year before qualifying for a divorce in that no-fault state.

"I think the Vermont landlords are in mourning today," Mr. Siegal said.

Earlier this year, Governor David A. Paterson signed three bills that sponsors said would make divorce easier and less painful for the families involved.

A divorce can now be granted where one spouse declares that the marriage has been "irrevocably" broken for at least six months—presuming that all financial, child custody and visitation issues have been resolved (NYLJ, July 6).

New York was the last state in the union to adopt no-fault divorce. And it is the first substantial change to the grounds-based divorce law since 1966, when other grounds were added to adultery, the sole ground since 1787. The other grounds include cruel

and inhuman treatment, abandonment and the imprisonment of one spouse for three years or more.

Two other new divorce-related laws also went into effect yesterday: the standardization of criteria for temporary and permanent maintenance payments to a spouse and the payment of the lawyers' fees of the "non-monied" spouse by the "monied" spouse.

Taken together, the new laws were designed as a compromise between those who claimed the previous statute set too high a hurdle to getting a divorce while protecting the financial interests of the "non-monied" spouse—typically the wife.

"It was basically, 'We'll give the guys their divorce and we'll give the girls more money,'" said attorney Kenneth B. Wilensky of Vessa Wilensky in Uniondale.

Mr. Wilensky said his office filed only a handful of divorce petitions yesterday in Nassau and Suffolk counties. But he said he has been talking to clients who inquired about the new no-fault option for weeks and advised several who did not have grounds under the previous law to wait until yesterday to finalize their petitions.

Attorney Susan Bender of Bender Rosenthal Isaacs & Richter said that she noticed no change in business on the first day of no-fault divorce and expects to see little in the future.

"We don't have a large practice, we have a very elite clientele," she said. "No-fault will affect 2 percent of our cases. In our practice, the grounds for divorce are rarely the issue, it is custody and financial issues."

With the other issues so hard-fought, Ms. Bender said her firm's litigants almost do not care about the grounds.

"The divorce cannot be finalized until everything else is done," she said. "By that time, the clients are so litigation-weary that

you say, 'Adultery?' They say, 'Fine.' 'Cruel and inhuman treatment?' 'Fine.'"

### Potential Challenges

Sondra M. Miller, a former Appellate Division justice who has lobbied for no-fault divorce for years, said she thinks the new law will achieve its primary purpose: to avoid as much as possible the "misery and nastiness and expense and delay caused by having to find fault as a factor."

But Ms. Miller, who is now of counsel at McCarthy Fingar in White Plains, said she sees potential for legal challenges to no-fault if, for instance, a spouse files a cross-claim alleging one of the grounds-based causes against a partner who is trying to invoke the no-fault provision.

And Mr. Wilensky said it will take time to see how judges apply the new laws.

"If you factor in the appellate process, you're probably talking about two or three years," he said.

Also under the new law, the state Law Revision Commission will study the setting of maintenance levels statewide to determine if courts are failing to take into account financial factors that could unfairly disadvantage a spouse.

That five-member commission is to submit a preliminary report to the Legislature and governor by June 2011 and make a final report by the end of next year.

@ Joel Stashenko can be reached at  
jstashenko@alm.com.

Reprinted with permission from the October 13, 2010 edition of the NEW YORK LAW JOURNAL © 2010. ALM Media Properties, LLC. All rights reserved. Further duplication without permission is prohibited. For information, contact 877-257-3382 or reprints@alm.com. = 070-10-10-32