

NO FAULT DIVORCE - THIRTY YEAR LATER AND ASSESSMENT
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In 1971, New Jersey was swept into the national frenzy of divorce reform, enacting the most significant modifications to substantive practice since the codification of matrimonial law at the turn of the century. In particular, the 1971 amendments to NJSA 2A:34-2 modified and expanded cognizable grounds from three - adultery, twenty-four month desertion and extreme cruelty, all fault based-to eight, including twelve month conjugal desertion and eighteen month physical separation. The adoption of the two no-fault grounds acknowledges the long-standing practice of discontinuing marital fault as a consideration with regard to the substantive issues of support, equitable distribution and other collateral matters.

There were at least three critical rationalizations for the adoption of the no-fault regime. First, it was believed that the adoption of no-fault would reduce acrimony in matrimonial cases. Second, it would protect the integrity of the judicial system by eliminating suspected perjured testimony about fault grounds that was said to be common. And third, it would conform practice to the realities of a changing society.

As we approach the thirtieth anniversary of the divorce reform legislation early next year, we are presented with an opportunity to reflect upon the reform as well as the rationales underlying the legislation.

Has acrimony been reduced in matrimonial litigation? Yes, to a degree. Grounds are no longer a focus. Rather, modern practitioners immediately focus upon the collateral issues. Grounds for divorce are generally considered insignificant. However, it would appear that hostility has shifted to the substantive issues. We are truly naive if we believe hostility has been eliminated from matrimonial practice.

Has the divorce reform law discouraged testimonial fraud? This is really unknown. It is my experience that litigants are still prone to selective memory retention and factual misrepresentation.

Did the statute conform practice to reality? The answer to this inquiry is probably yes. With the multi-disciplinary approach to marital dissolution, and the infiltration of modern psychology into divorce practice, most attorneys recognize that marital fault is simply too complex and elusive to litigate. The various circumstances contributing to the end of love between a married couple are arguably beyond analysis and quantification.

In retrospect, the creation of unilateral divorce is probably the most obvious result of the no-fault movement. A system has been created where a single party or a single spouse to the marriage can initiate the process to terminate the relationship.

Additionally, the explosion of divorce is arguably a symptom of larger societal trends. Simply stated, less value is placed upon the traditional family structure. Concurrently, we have witnessed the demarcation of important social institutions that tended to reinforce marital relationships, including participation in organized religions, small, multi-generational communities, and other relevant social forces.

Be advised that reform is in the air. Divorce is now being identified as a major 'social problem' among both conservative religious organizations and more liberal factions, including an insurgent candidate for the United States Senate in New York who has repeatedly expressed support for the Louisiana covenant marriage. Although there has been no committee discussion or legislative debate about the adoption of covenant marriages or reforms to the no-fault system in the State of New Jersey, the concept is on the legislative platform of several powerful interest groups. It is just a matter of time before one of our State representatives introduces covenant marriage into the continuing debate over divorce reform.