

## **Couples find breaking up hard to do, even with no-fault divorce**

### **Seeking a way out, without recriminations**

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**By Linda Stein**

After five years, Selina Penn-King wanted out of her marriage.

The former Hamilton woman was looking to make a simple exit: No kids, no fighting and no airing of painful details. But when a judge did not accept the reasons she and her soon-to-be ex-husband put forth, the couple had to open their relationship to scrutiny.

That has Penn-King steaming and her attorney campaigning to change the law.

"What should have just been two adults who agreed it just isn't working, now we have to pump up the reasons," Penn-King said. "It just didn't seem right. ... We're just two adults that have differences. It just got ugly and didn't make sense. It just brought up a lot of emotional stuff."

Although New Jersey has long had no-fault divorces, thousands of people find out every year that breaking the bonds of matrimony isn't as easy as that expression suggests.

"Unless you've lived apart for a year and a half, you have to allege some kind of cruelty," said lawyer David Perry Davis, who represents Penn-King.

If a spouse claims extreme cruelty, the marriage can be dissolved in three months, but often people are reluctant to make those claims, he said.

"People are ready to move on but some judges are rejecting complaints and are saying they need something meatier," Davis said.

He believes irreconcilable differences should be added as grounds for divorce, coupled with a six-month waiting period. He said that would make divorce less costly and less acrimonious for New Jersey residents.

Others in the legal field as well as some lawmakers agree. They back a bill that would add "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" to the eight other grounds for divorce in the state.

### **Cause for alarm**

But not everyone agrees that hastening divorce is a good idea.

"Anything to make a divorce easier is against the interests of society," said Demetrios Stratis, a spokesman for the New Jersey Family Policy Council, a non-profit group that lobbies for family values. "In general, we believe divorce is a factor to blame in the moral decline and the decline in the values system in our society and anything to make it easier to get divorce should be rejected."

The New Jersey Catholic Conference has opposed adding irreconcilable differences to the law since it was proposed in 1995 as part of the recommendations of a committee that studied divorce law.

"The tragic consequences of divorce upon children and upon the family is one of the important reasons why we unalterably oppose the commission's recommendation that irreconcilable differences ... be added as a new ground for divorce in New Jersey," said William F. Bolan Jr., the group's executive director. "This conference believes this provision makes a mockery of marriage." His group believes that marriage should be strengthened and the acceptance of divorce should be a "cause for profound alarm, not resignation, passivity and excuse-making."

To be sure, New Jersey's divorce rate has climbed in recent years, from 60,943 divorces granted in 2001 to 64,252 last year, although the state does not track the grounds cited.

Extreme cruelty has been cited as grounds even when it's not true because it's the fastest course of action.

Carol Oswald, who has practiced family law for 25 years and chairs the family section for the Mercer County Bar Association's Bench-Bar committee, said that stems in part from the way the law is written.

"Most people don't want to wait 18 months, living in separate houses before they even begin the process," said Oswald, who favors changing the law. Now "the only reasonable course is based on extreme cruelty and no matter how gently you try to word it, it's offensive to some people," she said.

Most people "would rather not be forced to put their personal lives into a court record. Once you file that public record, it's there for all to see. ...," she said. "Irreconcilable differences would allow them to file (for divorce) and not air their dirty laundry. There should be a more civilized way to get divorced."

### **A legal fiction**

The change in the law would bring New Jersey into line with other states, like California, said Assemblyman Reed Gusciora, D-Princeton, who has recently signed on as a co-sponsor of the measure.

"If you go down to family court you will find nearly every single divorce alleges extreme cruelty, just so you can take advantage of being separated for three months," Gusciora said.

If the law was changed, couples would be able to "go their separate ways without being forced to lie."

"There are people who don't want to allege (extreme cruelty) if children are involved," he said. "You actually have to create the legal fiction there was extreme cruelty, have wild accusations about spousal abuse alleged so you can get a quicker divorce."

Gusciora said he believes the change would not encourage divorce.

"We're already living in an age where Newt Gingrich and Brittany Spears can have a divorce whenever they want," he said.

Davis also points to the cost factor. Right now an average contested divorce can cost \$5,000 or \$6,000, he said. An uncontested divorce can be as little as \$600.

### **No easy answers**

Assemblyman Neil Cohen, D-Union, who co-sponsored the bill with Assemblyman Christopher Bateman, R-Somerset, said the Legislature approved the bill in the late 1990s only to have it conditionally vetoed by former Gov. Christie Whitman in 1999. Cohen, who blames conservative opposition, said he has been trying to get it passed ever since. A lawyer who handles some divorces, Cohen said most of his clients are astounded to learn New Jersey does not already have this provision. Instead they have to "sometimes amend pleadings and put in nasty stuff."

Rutgers University law professor Sally Goldfarb said there are arguments to be made for and against the change.

"There's no easy answer," Goldfarb said. "New Jersey has not made divorce available in the absence of fault or an 18-month waiting period. The effect of that (change) would make divorce easier to obtain. It would liberalize the availability of divorce in New Jersey. Whether that's good or bad, opinions differ."

Making it cheaper and less angst-ridden is "the argument for making divorce quicker and easier to obtain," she said. "On the other side, some people think it should not be done lightly, that divorce is a cumbersome process and some believe it should remain so."

"There's a big difference if it's mutual rather than only one person," she added. "A unilateral, no-fault option is disadvantageous for people who want to work on the marriage."

"Many states make it available in a shorter period of time and this would dramatically shorten it," she said of the pending legislation. "Irreconcilable differences would be available for the first time"

... It's not clear if this would break down as a male or female issue but it would make it easier for one person to get out of a marriage."

Anju D. Jessani, president of the New Jersey Association of Mediators, said her organization favors the proposed change in the law.

"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," Jessani said. "In addition, even in the most amicable divorce situation, fault grounds can create some level of conflict and mistrust between the parties."

Plus, experience in other states shows that the rate of divorce does not increase if irreconcilable differences is available as a cause of action for divorce, she said.

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