

Some Judges Still Decreeing Divorce Grounds Trials Are Warranted

In mid-2010 I wrote that grounds trials were largely relegated to the dustbin of history with the new no-fault law. I was wrong.

The new statute states that as long as all the other issues are resolved by agreement or the Court, a divorce may be entered if “[t]he relationship between husband and wife has broken down irretrievably for a period of at least six months, provided that one party has stated under oath.”

This plain language led me, many attorneys, and judges to conclude that as long as one party swears under oath that the marriage has broken down irretrievably for six months or more, grounds are resolved. However, some judges are arriving at a different conclusion on this issue.

I filed an action under this new section the day it became effective. The other attorney indicated that his client was contesting grounds. I brought the matter before a local Supreme Court Justice who indicated that, indeed, there was an issue for trial. The issue was not whether there was a statement under oath that the marriage was irretrievably broken, but whether the marriage itself was irretrievably broken.

In early October 2011, I participated in the first grounds trial in the area on the new law. Looking at factors such as the parties’ relationship, their sex life (or lack thereof), whether they socialized, exchanged cards, gifts or flowers, whether they lived together and so on, the Court determined that the marriage was irretrievably broken.

Though that was the result in my case, other judges interpret the same statute to require only that one party make a sworn statement. Until a higher court chimes in, we will continue to see different takes on the new law from trial judges.

Please read my articles on other laws recently passed affecting divorce situations, including [new no-fault grounds for divorce](#), [attorney’s fees](#), and [child support](#).