

New York Divorce and Family Law Blog

Court Rules There Is No Defense To New York's No Fault Divorce

Posted by [Daniel Clement](#) on April 08, 2011

There is now some uncertainty as what required in order to obtain a divorce when New York's "no fault" ground is contested. A no-fault divorce will be granted in New York when, "The relationship between husband and wife has broken down irretrievably for a period of at least six months, provided that one party has so stated under oath. . ."

Earlier this year, [an upstate court](#) opined that a trial was required when one party challenged the allegation that the marriage had irretrievably broken down.

Recently, however, [a judge on Long Island](#) opined that not only is a trial not required, there is no defense to the action; all that necessary to satisfy the no fault ground for divorce is a party's sworn statement alleging that the marriage has irretrievably broken down.

It is sufficient that one or both of the parties subjectively decide that their marriage is over and there is no hope for reconciliation. In other words, a plaintiff's self-serving declaration about his or her state of mind is all that is required for the dissolution of a marriage on grounds that it is irretrievably broken.

Provided that all the issues relating to the divorce, including equitable distribution,

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maintenance, child custody and support are resolved, a party should be granted a divorce based solely on his/her subjective allegation that the marriage has irretrievably broken down, a position I suggested in [my earlier posting](#). Hopefully, the holding of the more recent case will be widely adopted, giving New York a true no fault divorce.