

# BUSINESS NEWS

MARCH 23-29, 2012 | VOL. 59 | NO. 12 | \$2.00 | [libn.com](http://libn.com)

## No-fault divorce bill contains unneeded uncertainty



Steven J. EISMAN

"no fault." Matrimonial attorneys around the state have been watching closely as this case unfolded. On the day Bruno handed down his decision, the report was the most viewed article in the New York Law Journal.

In the Townes case, we represented the wife, who was seeking the divorce. We are gratified by Bruno's decision reaffirming the intent of the state's no-fault divorce statute.

As the court set forth in its decision, "a no-fault divorce may be granted provided that one party has so stated under oath that the marriage is irretrievably broken. In adopting no-fault divorce, the Legislature implicitly recognized that the parties to a marriage should be able to make personal and unaidedly subjective decisions about the continuation of their marriage partnership. The conclusion, that it is sufficient that a party subjectively decide that their marriage is over, finds support in the reasoning of other courts."

Bruno also noted, "Suggestions that the party wishing to stay married has a constitutional right that

is being infringed upon in violation of due process is unavailing. Staying married, against the wishes of the other adult who states under oath that the marriage is irretrievably broken, is not a vested right." The controversy in the courts stems from a section of the Domestic Relations Law, which states, "In an action for divorce there is a right to trial by jury of the issues of the grounds for granting the divorce." To date, no New York appellate court has weighed in on the controversy.

While some judges have interpreted the new law to require a trial, I believe that in Townes v. Coker the court made a proper and just decision. Unfortunately, the entitlement to a divorce without a trial will not be determined with any certainty absent a decision by the Appellate Courts, or a revision to clarify the existing statute.

In finally passing the "no fault" legislation in 2010, our state Legislature also included a separate provision in the law which sets forth guidelines for temporary spousal support during the pendency of the

divorce action.

Since the effective date of both statutes, in October 2010, and due to the haste in which the laws were drafted, numerous issues have arisen. It is clear that the temporary maintenance statute was a quid pro quo for the passage of the no-fault legislation.

At the request of the Legislature, the Law Revision Commission will be issuing a report in April suggesting revisions and/or a repeal of the temporary support guidelines. I suggest the Legislature revisit the no-fault statute as well, and provide a much-needed clarification that follows the logic of Bruno's well-reasoned decision.

While zealous advocacy and jurisprudence may provide for the correct result in cases such as Townes, a proper response by the Legislature will allow the time and resources of the parties to be spent addressing the pressing issues of the divorce process.

**Eisman, a matrimonial attorney, is the executive partner of Abrams, Fensterman, Ferrasternan, Eisman, Formato, Ferrara & Einiger, in Lake Success.**

Earlier this month, Nassau County Supreme Court Justice Robert Bruno issued a decision in the matrimonial case of Townes v. Coker, granting summary judgment to the wife on no-fault grounds. For too many years, New York has lagged behind the rest of the country by permitting the grounds for divorce to be used as a ploy by one spouse to gain an economic advantage in an otherwise broken marriage.

Since the announcement of New York's No Fault Divorce legislation in 2010, there have been varied decisions concerning the level of proof required to demonstrate to a court that a marriage has broken down irretrievably for a period of at least six months.

Townes v. Coker swings the precedent-setting pendulum back to a more definitive, literal view of

ABRAMS **AF** FENSTERMAN

[www.abramslaw.com](http://www.abramslaw.com)