

Memorandum in Opposition

FAMILY LAW SECTION

FLS #3

March 1, 2012

S. 4989-A
A. 6992-A

By: Senator Little
By: M of A McEneny
Senate Committee: Judiciary
Assembly Committee: Judiciary
Effective Date: Immediately

AN ACT to amend the domestic relations law, in relation to no-fault divorce.

LAW AND SECTIONS REFERRED TO: Section 170 of the domestic relations law.

THE FAMILY LAW SECTION OPPOSES THIS LEGISLATION

Senate Bill S4989A seeks to amend Domestic Relations Law §170(7) by requiring that a “documented victim of domestic violence” must consent to the granting of a “no fault” divorce before the Judgment of Divorce may be issued. The Memorandum in Support of this legislation states that the bill is intended to insure that domestic violence victims are not adversely financially impacted by “no fault” divorce. Although this is a noble goal, the NYSBA Family Law Section believes that S4989A is unnecessary and, in many ways, harmful for domestic violence victims.

This legislation gives a “documented victim of domestic violence” the ability to deny the issuance of a divorce decree – a very significant power. However, it lacks any definition of the term “documented victim.” The Family Law Section is very concerned that the lack of such a definition will cause confusion for the courts; moreover, a controlling/abusive spouse could easily manipulate this legislation to place themselves in the role of a “documented victim,” thereby gaining full control over the actual victim’s requested divorce. Additionally, the proposed legislation, by requiring consent to the issuance of a judgment of divorce, represents a significant step backward from no fault divorce. Lastly, the bill’s stated intent is already served by the recent amendments requiring *pendente lite* financial support, *pendente lite* counsel fees, and the resolution of all ancillary issues before the granting of a final divorce judgment.

Based on the foregoing, the NYSBA Family Law Section **OPPOSES** this legislation.

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Chair of the Section: Bruce J. Wagner, Esq.