

Partner Barbara King discusses trends in WNY divorce data with the Buffalo Law Journal

OPINION: The ‘new normal’ for divorce

The New York State Department of Health recently finalized its 2012 Vital Statistics divorce data. What are we learning? That in light of the new “no-fault” divorce era, Western New York has seen a huge jump in the number of divorces based on the irretrievable breakdown of the marriage (for at least six months). This ground, known as “no fault,” became available to New Yorkers on Oct. 12, 2010. What is especially surprising is how the often more costly and time-consuming divorces based on the older grounds of cruel and inhuman treatment appear to have not lost their appeal to jilted or abused spouses. Equally surprising is how no-fault divorce may have in some instances become a more attractive dissolution method than annulments, which are often sought by spouses who may have entered a union due to fraud, force or other factors. This trend is suggested by a marked drop in annulments since they peaked in 2009. In 2012, there were 4,133 divorces granted in the Western New York region, which includes Allegany, Cattaraugus, Chautauqua, Erie and Niagara counties. While this number was just three fewer than the five-county region’s 2011 total, it remained well above the recession-era lows. In 2009, annual divorces bottomed out at 3,465, according to a Tully Rinckey PLLC analysis of Department of Health Vital Statistics data. In 2012, 79 percent of divorces in the five-county region were categorized as having grounds “not stated,” which is the category into which divorces based on the irretrievable breakdown of the marriage has been lumped. Ten years earlier, only 1.4 percent of divorces fell within this category. Before the no fault law took effect, cruelty used to be the most commonly cited grounds for divorce. In 2002, 3,183 of divorces, or 75 percent, were granted on such grounds. But even with no fault on the menu in 2012, 565 divorces granted regionwide, or nearly 13.7 percent, were still based on cruelty grounds. It is not clear how many of these cruelty-based divorces granted in 2012 were filed before no fault took effect. While the cruelty route may not be the easiest way to get a divorce, some spouses continue to see value in it, particularly if the issues of cruelty have some bearing on finances or custody. Unlike divorces granted on irretrievable breakdown of the marriage grounds, cruelty grounds can leave a social stigma on the alleged abusive spouse. While there has been a substantial shift in grounds on which divorces are based, it is important to remember the end result generally remains the same: an equitable division of assets. And while many more Western New York couples are divorcing now than during the recession years of 2007 through 2009, this trend does not necessarily mean the improving economy or the enactment of the no fault law are the root causes of the recent uptick in divorces in Western New York. A new study published in Population Research and Policy Review could shed some light on the region’s fluctuating divorce rate over the past few years. Focusing particularly on the impacts the recession had on divorces nationwide, Philip Cohen, a researcher at the University of Maryland, said: “Fluctuations in divorce rates resulting from changing economic conditions may reflect the timing of divorce more than the odds of divorce for specific marriages or birth cohorts.” One especially perplexing trend the region has seen is its stark decline in annulments, which have always represented a fraction of dissolutions. There were only six annulments granted regionwide in 2012 and nine the

previous year. Between 2002 and 2009, there were an average 18 annulments granted annually, and this type of dissolution peaked in 2009 at 24. It is not as though couples can exchange an annulment for a no fault divorce and expect the same outcome, as they can with a divorce based on traditional grounds and a divorce based on the irretrievable breakdown of the marriage. An annulment does not merely say two spouses are no longer legally married; it says their marriage never actually happened. So it is quite clear that while the volume of divorces in Western New York has returned to “normal” levels, there is nothing normal about the region’s marriage dissolution environment. The divorce landscape remains in flux, and while no fault has emerged as the most popular option for divorcing couples, it is not the default option. When consulting with their attorneys, spouses should explore all options for the dissolution of their marriage. Barbara King, a partner at Tully Rinckey PLLC, heads the family and matrimonial practice group. bking@1888law4life.com.

