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## Vanessa Soto Nellis: A 'no-fault' state beats the blame game

It's the Law

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**By Guest Commentary**

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The California court form on which a party requests a divorce does not allow a spouse to indicate a specific reason for divorce, such as adultery, lying, addiction problems or unfaithfulness.

California is a "no-fault state," meaning that a spouse does not have to prove that the other spouse was at fault for marital problems leading to divorce. Fault is irrelevant for purposes of ending a marriage.

It also means that if only one spouse wants a divorce, the divorce will be granted in California.

As a family law attorney, I often need to explain to clients why California is a no-fault state. The basis for no-fault divorce in California is deep-rooted in protecting spouses and encouraging honesty.

When fault was required in order to obtain a divorce, the suing spouse had to prove the fault of the other spouse and show himself or herself to be blameless; otherwise, both parties' culpability would cancel out each other's claims.

This often meant that one party would lie, sometimes even staging adulterous liaisons. The result of a fault system was that courts routinely heard a spouse testify that the other spouse swore, physically abused her and generally treated her horribly.

The testimony was often coached by attorneys. There was a great incentive to lie, since the only way to obtain a divorce was to prove fault by the other party.

In 1966, in an effort to decrease the high divorce rate in California, the governor established the Governor's Commission on the Family, which recommended eliminating the principle of fault.

Some of the reasons for this recommendation were that the necessity of alleging fault created a hostile atmosphere that made it difficult to settle issues such as child custody and support; the family law court has an inherent conflict in trying to provide a fair and equitable result when it had information about the fault of one party and most importantly, to "free the administration of justice in divorce cases from the hypocrisy and perjury that had resulted from the use of martial fault as a controlling consideration in divorce proceedings."

Effective Jan. 1, 1970, fault was eliminated in California, which made obtaining a divorce easier because parties did not have to prove grounds for a divorce and it allowed privacy because parties were not forced to "air their dirty laundry" in a public courtroom in order to obtain a divorce.

Eliminating the fault requirement also provided protection for victims of domestic violence, since they no longer had to muster the courage to testify about their abuse in order to obtain a divorce.

The Legislature subsequently enacted Family Code section 2335 to make evidence of specific acts of misconduct "improper and inadmissible" in divorce proceedings.

Fault cannot be used a basis for divorce, even if both parties agree. In *Diosdado v. Diosdado*, the husband had an affair and thereafter the parties agreed that if one of them was unfaithful to the other, he or she had to leave the family home, pay for both parties' attorneys fees and costs and give the party \$50,000.

When the husband had another affair, the wife tried to enforce their agreement. The court held that the agreement was not enforceable because a family law judge cannot consider fault in dissolving a marriage.

The family law court will not enforce an agreement by a recovered drug addict to voluntarily give his wife all of his interest in certain property if he uses drugs.

In *Marriage of Mehren & Dargan*, the husband was addicted to cocaine for many years. The parties separated after the husband relapsed and began using cocaine.

Several months later, husband and wife agreed to reconcile on the condition that the husband would not use drugs. If the husband used drugs, he would forfeit his right and interest in certain property.

Since the spouses' agreement attempted to avoid California's "no fault" policy, it was unenforceable.

In sum, it is usually unproductive to prove the fault of the other party. That time is better spent on something positive.

Vanessa Soto Nellis is a family law attorney at Lewitt, Hackman, Shapiro, Marshall & Harlan in Encino. "It's The Law" appears Fridays and rotates among members of the Santa Clarita Valley Bar Association. Her column represents her own views and not necessarily those of The Signal.

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