

Good Morning.

Thank you for the opportunity to speak with you. My name is Lori Shemtob and I am a Fellow of the American Academy of Matrimonial Attorneys and the current President of the Pennsylvania chapter. For those of you who do not know about the American Academy of Matrimonial Lawyers, it is a national organization comprised of approximately 1650 Fellows from around the country. The purpose and core value of the Academy is promoting professionalism and excellence in the practice of family law. The Pennsylvania Chapter has 61 fellows. The requirements to be admitted as a fellow are rigorous, including taking both a national and state exam, interviews and recommendations from judges and peers. I come before you today, on behalf of the Academy, to speak about proposed House Bill Number 1250 Session of 2017. My fellow Academy Members and I have serious concerns about this bill.

I would like to start off by saying that this proposed bill, if passed, would likely benefit the financial interest of divorce attorneys. It has the potential to significantly increase the amount we can bill clients. So that the fact that the Academy and the Pennsylvania Bar Association are against this proposed change is very telling. Although this bill would be good for us, it would not be good for most of the families of Pennsylvania, the people whose best interests we as officers of the court, and you as legislators are tasked to serve.

I would like to start out by explaining how the *Spousal Support* or *APL* process works. APL means alimony pendente lite – this means alimony pending the litigation or temporary alimony. It means a Divorce Complaint has already been filed. So, there is litigation pending. Spousal support is the same thing except a Divorce Complaint has not yet been filed. SO, there is no litigation. *APL* and *Spousal Support* is only a short term award intended to address the period from the filing of the divorce or the time one spouse moves out of the house, until resolution of the divorce until the permanent alimony may be decided. On average it only lasts about 1-2 years. It is not permanent and is not intended to be permanent.

When a client begins the process of divorce or separation from their spouse, we must first determine the amount of money the client either will be required to pay or receive in the form of *APL* or *Spousal Support*, for this interim period. This is important information and clients need to know this amount to set their budgets for the next few months or year or two. Lawyers need to be able to provide some level of certainty of this amount to the client. We do this by determining the income or earning capacity of both parties, and determine *APL/Spousal Support* calculations based on the guidelines or the set formula.

For example, if a client earns \$5,000 per month (net of taxes), and the spouse earns \$10,000 per month (net of taxes) we can advise the client that the formula is \$10,000 minus \$5,000 (less the amount of guidelines child support) x 30%. The client will know with reasonable certainty the amount they will receive until the divorce is finalized. If there are no children and they earn \$5,000 per month net, and the spouse earns \$10,000 per month net, then the formula is \$10,000 less \$5,000 x 40%. Again, they know the amount they will get or pay for the short period until the divorce is settled. This adds a level of comfort and certainty to a party who is already involved in what will be a difficult and uncertain process and is likely having their first ever interaction with a lawyer or our judicial system. The attorney on the other side will calculate their numbers in the same fashion. The two attorneys will compare our calculations and how we came to our results. Frequently our numbers will be very similar due to the predictability created by the guidelines. This process helps lead to settlements with respect to *Spousal Support* and *APL* amounts and allows us to move onto other aspects of the case which may be more labor intensive, such as custody and division of assets. It reduces expenses to clients, and allows a client that may not have an attorney or cannot afford an attorney, the simplicity of the formula allows them to figure it out themselves. Attorneys do not even need to be involved, and in fact, often clients choose to represent themselves.

The proposed bill, on the other hand will require a trier of fact (a Judge or Master) to conduct a needs based-analysis in nearly every *Spousal Support and APL* case. It would

change a lawyer's or party's ability to predict the amount of *Spousal Support or APL* which the client may receive or be required to pay. This would result in more cost and time. It would also discourage the early settlement of simple cases. It would open the process to uncertainty and court discretion. All to determine an amount which is only intended to be interim in duration.

This proposed process would create the need for an unnecessary hearing on certain issues. What is basic needs? (Currently the term used is reasonable needs.) Just litigating the term "basic" involves subjective judgements. Is it a "basic apartment" or a "basic 4-bedroom home"? Is it "basic cable" or all the bells and whistles? This adds another layer of litigation which will likely ratchet up the hostility between both parties, thereby making more it difficult to resolve other aspects of the case. All of this only to come up with a temporary award that is only intended to last for an interim period.

Further this additional layer of litigation will translate into more delay and further overburden what is often an already overburdened Court system. All for very little or no long term benefit to the party.

To the extent the legislature may be concerned that the current guidelines approach does not have room for discretion, the Pennsylvania Rules of Civil Procedure, Rule 1910.16-5 already provides a list of factors which allow for Judges to deviate from the current guideline amounts in APL or Spousal Support awards. When I say deviate, I mean adjust the guideline amount. These factors include, but are not limited to, unusual needs and fixed obligations, like very high medical expenses or a very high monthly mortgage payment or, on the other hand, for a downward adjustment, low monthly expenses and income earned which is more than sufficient to cover the expenses and an award of APL would be a windfall to the person asking for it. the length of the marriage, the relative assets and liabilities of the parties and the old catch all phrase, "other relevant or appropriate factors". Therefore, Judges already have a significant amount of discretion to tailor their APL and spousal support awards and consider many factors. Lawyers can argue these deviations and ask for an adjustment to the guideline amount at a hearing before

a Judge or Master when necessary. However, the current guidelines provide a presumption that must be followed unless a Court determines to deviate. I have litigated these issues several times and raised the deviation factors. Judges will listen and often adjust the amount, even to no APL or spousal support at all. It is the lawyer's job to argue these deviations and try to persuade a Court to deviate where it is necessary or appropriate. There are some cases where it is clearly appropriate, and there is a mechanism already in place to accomplish this. **But let's not do this on every divorce.**

Changing this law would also conflict with existing provisions in Title 23, the support guidelines and Pennsylvania Appellate case law, all of which would have to be amended to be consistent with this change. 23 PA CSA section 4322 has clear language incorporating the concept of uniform guidelines intended to treat all parties on a consistent basis with allowable deviations. The passage of this proposed bill would require a substantial legislative overhaul to these provisions, and render moot many years of caselaw that attorneys have come to rely on.

It bears mentioning that Pennsylvania was the first state, and a pioneer in introducing the current guideline concept with the goal of increasing consistency of award and the stream-lining of the process. Legislation is currently pending in other states which would utilize the Pennsylvania model using guidelines for preliminary alimony.

In addition to the increased cost to litigants, is the lack of consistency in these interim awards. Here, I would like to present you with some perspective. In Colorado, at an annual luncheon which featured a panel of metro area judges, each judge was given the same fact sheet and asked to make a spousal support order. The results ranged from \$0 to \$5,000 a month for life. Uncertain results will also result in extending divorce litigation. This is something that the legislature was trying to avoid when it recently reduced the no fault divorce waiting period from two years to one last year. The intent of that legislation is to shorten divorces so that parties could reduce their costs, move on with their lives and avoid irreparable harm to families and children. The passage of this proposed bill would be contrary to the goals the legislature sought to

accomplish when it reduced the waiting period, and with the waiting period reduced, the length of time a party would receive or pay APL/spousal support is reduced

Further, this proposed bill is actually contrary to the well-established policy rationale for *Spousal Support and APL*: to place the parties on similar economic footing during the pendency of their divorce. The guidelines are designed so that the financially dependent spouse is almost assured of some reasonable amount of financial resources to assist them in litigation against a spouse with far superior resources. This intention may often be overlooked when determining a discretionary award of *APL or Spousal Support*. This would put the lower earning spouse at a disadvantage and potentially lead to a forced settlement that is unfair to that party.

As it is drafted right now, this bill would primarily benefit a narrowly tailored group of citizens, (likely to be wealthy individuals) who have an interest in removing the income formula as the basis of the APL/Spousal Support determination. They seek to base this interim support solely on the *basic needs* of the dependent spouse. Laws are supposed to promote the common good, rather than carving out a benefit for the affluent portion of society.

In summation, I refer back to the old adage, "if it ain't broke, don't fix it." The current system works well in the vast majority of cases, helps promote judicial efficiency, saves time and money for both the state and parties, and helps to create a level of comfort and certainty which is important for anyone's first interaction with the judicial system. Changing the current system will only create more problems than it proposes to solve, and simply serves to tip the scales more in favor of the financially independent spouse. Such a result is contrary to family law system, which is designed to create resolutions which are beneficial to all parties and stakeholders involved.

Thank you so much for this opportunity to speak. I welcome any questions you may have.