

Neighborhood Legal Services Association

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TESTIMONY FOR THE
HOUSE JUDICIARY COMMITTEE
ON
DOMESTIC RELATIONS INJUSTICES
IN THE
PENNSYLVANIA LEGAL SYSTEM

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by

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Introduction

Neighborhood Legal Services Association (NLSA) is a non-profit corporation responsible for providing free legal services in civil cases to indigent residents of Allegheny, Beaver, Butler, and Lawrence counties. NLSA, as well as its legal services counterparts throughout the Commonwealth, is funded primarily by the state and federal government. The goal of the legal services programs is to ensure access to the courts and equal justice for the poor and the vulnerable. The programs' activities are coordinated by Pennsylvania Legal Services Center, which is located in Harrisburg.

I have worked at NLSA in Allegheny County as a legal services staff attorney for the past twelve years. Throughout that time I have worked with clients on domestic relation's cases. For the past three years, I have specialized in these cases working as the chief attorney in the Pittsburgh office's Family Law Unit. Also, I am a member of Pennsylvania Legal Services Center's state-wide Family Law Task Force.

NLSA'S Domestic Relations Practice

Neighborhood Legal Services Association (NLSA) presently provides legal representation and assistance to clients in several domestic relations areas. In Allegheny County approximately 26% of NLSA's caseload involves Protection from Abuse cases, 11% involves custody cases, and 2.5% involve support and other family law cases (not including Juvenile Court cases). These family law cases are handled primarily by the program's Family Law Unit, with a staff of one (1) paralegal and four (4) unit attorneys, under my supervision as the unit's chief attorney.

1. Protection from Abuse

In 1990, NLSA handled 2,982 Protection From Abuse (PFA) cases. In these cases, NLSA provided legal advice and representation to victims of domestic violence who were seeking relief under Pennsylvania's PFA Act (23 Pa.C.S. § 6101 et seq.)

The Act has been in effect since 1976. Under this law, a victim of domestic violence can get a protective order from the Family Division of the victim's Court of Common Pleas. The Court can grant relief which is intended to bring about a cessation of abuse that includes but is not limited to: directing the abuser to refrain from abusing, harassing, or having any contact with the victim; excluding the abuser from the victim's residence, place of employment and/or school; granting temporary custody of children to the victim; granting temporary support to the victim; and, awarding damages to the victim for out-of-pocket losses occurring as a

result of the abuse.

An average of 15 people per day come to NLSA in Allegheny County requesting our representation in obtaining relief under this Act. Some of these individuals require only advice and referral because the problems they are experiencing do not qualify them for relief under the PFA Act. They may need referrals to district justices' offices to file criminal charges, referrals for legal advice on custody or divorce proceedings, or referrals to social service agencies. Most of them (approximately 10 per day), however, need our legal representation in filing a PFA action. These victims that we represent in court are primarily battered women who are filing against their husbands or boyfriends; they also, however, include a broad range of individuals, such as senior citizens filing against their adult children, minor children filing against their parents, and even men seeking relief from their wives or girlfriends.

When we represent these individuals as plaintiffs in PFA actions, each case typically involves the following legal work: client interview; preparation of petition; representation at preliminary hearing in Family Court (to obtain 10 day temporary protective order); and representation at final hearing in Family Court (to obtain a final protective order for up to one year). Many of these plaintiffs also require further representation at contempt and/or modification hearings. Additionally, some of the cases also require NLSA attorneys to respond in Family Court to various motions presented on behalf of the defendants (e.g. motions

to vacate orders and to modify relief).

We do occasionally represent defendants in PFA cases. This will only occur, however, when one of our present or former PFA plaintiff's has a PFA action filed against her or him.

Providing all of this PFA representation requires NLSA to have at least two (2) of its family unit attorneys in Family Court almost every day. We are before the Family Division Judges daily for motions, for pre-trial conciliations, and for hearings. Furthermore, because of the high volume of cases that we handle in this area, we meet with Family Division's Manager of Administrative Services on a regular basis to address issues affecting parties in PFA cases and the Family Division's responses to them (e.g. scheduling of hearings, transport of defendants from jail to final hearings, improvement of the Court's PFA pro se system). Several times a year, we meet with the Administrative Judge to review similar issues.

In addition, we have participated as trainers along with the Manager and Administrative Judge in trainings to educate various segments of the justice system on the PFA Act and to ensure proper compliance with the requirements of the Act (e.g. minor judiciary, police chiefs, attorneys, Family Division domestic relations officers).

2. Custody

In 1990, NLSA handled 1,260 custody cases in Allegheny County. This work falls generally into two categories: a) legal

representation in Family Court proceedings; and, b) legal assistance through advice and referral.

We provide court representation primarily in custody cases where full custody is at issue and where the custodial parent has lost or is being threatened with the loss of his or her custody rights. A typical case that we handle in this area involves our representation of a parent whose child has been "snatched" by the non-custodial parent. In such situations there is no custody order and frequently a temporary order must be obtained by emergency petition so that the child can be returned to the status quo custody arrangement while litigation is pending. The underlying complaint for custody must also be filed and the custody action then pursued through conciliation, evaluations by a court appointed psychologist and home evaluator, and trial. In these cases we represent the plaintiff who initiates the court proceedings.

In another typical case that we handle, we defend the custodial parent when a custody complaint is filed by the non-custodial parent who is attempting to take primary custody away from our client through the court proceeding.

In handling both of these types of custody cases, where full custody is at issue, our attorneys are present in Family Court on a regular basis. We are there to present or oppose motions and emergency petitions, to attend conciliations (where settlements are discussed and pretrial issues resolved), and to participate in trials.

With regard to other types of custody, partial custody, and

visitation issues, we provide legal advice and referral information. In most of these cases, where primary custody is typically not in dispute, the cases are handled by the Family Division through a more informal system that begins with a conference before a domestic relations officer. In such a system it is easier for parties to represent themselves. We primarily familiarize clients with the court system and forms in this area and give the clients advice on how they can best proceed on the merits of their individual cases.

3. Support and Miscellaneous Family Law Areas

In 1990, NLSA handled 138 support cases and 141 miscellaneous family law cases (in areas such as separation advice, divorce, and adoption). Unfortunately, our representation in these areas has been reduced dramatically over the past ten years due to funding cuts.

In the area of support, NLSA has provided legal advice and, in some cases, court representation both for parties seeking to establish support orders and for parties defending in support actions. In the other areas, our representation has been limited almost exclusively to giving legal advice and referrals to pro bono programs.

Domestic Relations Cases in the
Family Division of the Allegheny
County Court of Common Pleas

In my domestic relations work described above, I have practiced before all four of the judges presently sitting in the Adult Section of our Family Division and at all levels of this division in a variety of cases. Through my personal caseload and my supervision of four attorneys with the same practice, I have had the unique opportunity to observe hundreds and hundreds of cases filed under Pennsylvania's domestic relations statutes as they are processed and litigated through Family Division. It is my overall assessment that the present system works well. Through it, I believe, the goals of the statutes as well as the procedural requirements of the rules of procedure are being met.

The Adult Section of Family Division, more than any other court section that I am aware of, has made efforts to ensure that parties are aware of and have access to the court procedures that they must follow in order to obtain support, custody, and protection from abuse relief. It has adopted uniform procedures and forms, that comply with the requirements of the state statutes and rules, covering the areas of child and spousal support, custody, partial custody and visitation, protection from abuse, divorce, alimony, and equitable distribution. It has prepared a technical manual of all of these forms and procedures that is available for the public (a copy of this court manual is available with this testimony). The Family Division has also developed a simpler and

more explanatory handbook, in pamphlet form, for parties who may need to use the Court's services in the areas of "Child and Spousal Support", "Custody and Partial Custody", and "Protection from Abuse" (a copy of each of these pamphlets is attached to this testimony). In addition, the Court's administrative manager and his staff have met and are available to meet with representatives of groups advocating for the rights of parties in family court to consider suggestions on how to make the Family Division work better for the parties involved.

In the actual decision making process, from the domestic relations officers through the hearing officers and to the judges, it is clear to me that a conscientious effort to properly apply the law is being made on all levels. The judges in our Family JDivision have shown themselves to be quite knowledgeable on the latest developments in the law. Regularly I have seen them apply the law to the evidence presented to them, as is their judicial function. I have had the most contact with such judicial decision making in the areas of protection from abuse and custody.

At PFA hearings, both preliminary and final, our judges work to ensure that relief is granted when the statutory requirements are met. The relief that is granted is that which they deem to be needed to prevent abuse from occurring in the future. Accordingly, while most petitioners at preliminary hearings are granted emergency relief, some are not. For those who are granted emergency relief, some receive all of the protective relief that they requested (no abuse provision, exclusion provision, temporary custody provision)

and some do not. Some may receive only a "no abuse" provision and the scheduling of a final hearing. While the results may vary from case to case at both preliminary and final hearings, the process - which involves a real adjudication - remains the same. While I have not agreed with the result of each case decided by each judge, I have not seen evidence of "injustices" in this system of adjudication.

I do have concerns that the volume of cases in this area, as well as in the other domestic relations areas, is growing faster than is the number of judges available to handle them. This has caused some hardship on parties who may have to wait until late in the day for their final PFA hearing but it is not a problem that I would classify as an "injustice". For this problem of volume, I would recommend to the Committee the obvious solution of additional appropriations for our family divisions. I would not recommend any amendment to current domestic relations statutes to address this problem.

In custody cases, similarly it is my observation that our family division judges do apply the law to the facts of the individual cases giving weight to the factors specified by statute and established by case law. The results in these cases, however, are particularly difficult for both parties to accept because the court's decision is based on what is in the "best interests" of the children and not the best interests of either parent. I do not believe that I have ever had a client in a custody case come away from an adjudication

totally satisfied. Neither have I, however, felt that in one of those decisions the law was misapplied by the judge such that an appeal was warranted.

Conclusion

Cases in the domestic relations area are by their nature so intensely personal to the parties that I believe it is unlikely that any party can be truly objective in evaluating the outcome. This must be kept in mind when any assessment of family court systems and legislation is made. It is my opinion from a more objective and a broader view, that the system (with the main exception of the volume problem discussed above) is working well. The worthy goals of the legislature in enacting current domestic relations statutes, particularly the goals of preventing domestic violence and providing custody arrangements in the best interests of children, are being met.