

STATEMENT

By David S. Rasner, Esquire

To: The Honorable Members of the Pennsylvania House of Representatives Judiciary Committee

Thank you for inviting me to address this committee and express my thoughts and position regarding House Bills 2562 and 2003. I have been a practicing attorney for twenty-four (24) years in Pennsylvania since my graduation from Villanova University School of Law. I have devoted my practice exclusively for the last sixteen (16) years to the area of Family Law. I am a partner in the Philadelphia Law Firm of Fox, Rothschild, O'Brien & Frankel which has a regional commercial, litigation, transactional and labor practice in the Philadelphia Metropolitan Area and New Jersey. My practice takes me to all the counties in the Philadelphia Metropolitan area particularly Montgomery, Philadelphia, Bucks and Chester Counties. I am a member of the American, Pennsylvania and Philadelphia Bar Associations. I am co-chair of the Support and Alimony Committee of the Philadelphia Bar Association. I am also a Fellow of the American Academy of Matrimonial Lawyers. I am here today to state my professional position regarding these Bills. I have also been authorized to state that my position represents the position of the American Academy of Matrimonial Lawyers of which I am a member.

Let me state, from the outset, my professional position regarding these Bills so that there is no confusion or mistake in the minds

of those present. The enactment of these Bills into law would be emotionally and economically injurious to the welfare and well-being of the citizens of this Commonwealth.

To prepare for this presentation I again reviewed the legislative history of our present Divorce Code which became law in 1980 and which was subsequently amended in 1988. The nature of the debate has not changed. What has occurred is that we now have sixteen (16) years of experience to determine if the law has worked as envisioned by our legislators. As the adage goes "if it ain't broke, don't fix it." The Divorce Code isn't broke - so, my message is, don't attempt to fix it!

What I believe has caused our legislature to initiate these Bills has been the hue and cry of a vocal minority of our citizenry well-intentioned but wrapped up in myopic morality which has no place in the law and which is certainly not grounded in the facts or the reality of experience. The legitimate concerns for the sanctity of marriage and the preservation of the family unit would not be enhanced by the repeal of no-fault as grounds for divorce in Pennsylvania or by providing an option for considering fault by the trier of fact in the resolution of the divorce and consequent economic issues which affect every marital break-up.

First, some statistics are in order. If some of our legislators feel that the introduction of no-fault as part of our divorce law in 1980 has made divorce easier or more prevalent, they are

mistaken! In 1979 before the enactment of our current law, there were 3.4 divorces per 1000 of population. Today, as of 1994, there were 3.2 divorces per 1000 of population. Virtually, no change. If it is felt that no-fault makes it easier for people to get divorced then, it seems logical to assume that more people would be getting married as they would expect that ending the marriage would be simpler. Again, that assumption is incorrect. In 1979, there were 93,677 marriages. In 1994, there were 75,703 marriages. A decrease of approximately 19%.¹

Then, what is the intent of these House Bills and what effect would their passage have on the lives of our citizens. The intent can only be the introduction of morality as a punitive factor when considering and resolving the economic issues arising in a divorce. It is my unalterable personal and professional experience that forces me to state unequivocally that punishment (or the introduction of morality) has no bases in family law or the resolution of family conflict. The introduction of fault into the complex personal and economic issues that effect all marriages and divorces would, ipso facto, undermine and irreparably injure the family unit (which we are trying to preserve) and the very standards and ideals that this Assembly wishes to maintain.

¹ 1996 Pennsylvania Abstract published by the Pennsylvania State Data Center, Institute of State and Regional Affairs, Penn State, Harrisburg.

As there are expectations when people marry, there are also expectations when people divorce. The introduction of fault would introduce a wild card in the dissolution of the marriage causing the parties to inject spite, anger, hurt, and other emotions into the delicate negotiations and legal resolution process which accompanies the disappointments of every failed marriage ending in divorce. It would place an undue burden on our judges and the judicial system which is composed of mere mortals to make Solomon-like decisions which, to date, they are either incapable of or unwilling to make. It would change the focus of divorce from the central issue of providing economic justice to the parties to a sideshow of "who struck John" and for what reason. I submit to this Assembly that the causes leading to divorce are many and generally not black and white and are personal and individualistic and complex for all married couples. It would unnecessarily protract the litigation into an endless series of battles on secondary or tertiary issues of no economic significance but directed only to some moral vindication (perhaps) in the end. It would additionally financial burden the dependent spouse (predominantly the wife) who already does not have sufficient financial resources to fight on a level playing field with her husband for a just economic resolution of the marriage for herself and the children. And, finally what does it mean to the children? It is my professional opinion that the longer (and harder) the divorce battle is waged, the greater and more permanent psychological harm there is to the children. These Bills would aid and abet such an unintended consequence.

Further, children are inevitably drawn into such a conflagration and are asked either expressly or implicitly by either or both parties to take sides. My professional experience tells me that children generally love both parents; demand neutrality in such battles; and, wish to maintain ties to both of them. Again, the passage of these Bills would further undermine those family relationships if not cause the family unit to be forever fractured by exacerbating emotional/psychological wounds that never will heal.

Divorce laws should be remedial in nature designed to mitigate the financial losses engendered to one or both spouses, when the marriage breaks down. Those laws should be compensatory not punitive in nature. They should not encourage a dialogue which, for example,, would degenerate into "I'll let you out of the marriage, but you can't see your kids;" but should elevate the dialogue so that the parties can obtain a divorce with dignity. Divorce laws should not inquire into the internal workings of a marriage but should look only to supplement and ameliorate the financial losses of the parties occasioned by the divorce through the administration of a wise and compassionate system of justice.

Question: Do people stay together because divorce laws make it more difficult to be divorced? Answer: I think not! Question: Does the individual about to commit a crime not commit that crime because of the threat of serving jail time if caught or even worse, face capital punishment because of the possible nature of

that act? Answer: I think not! Question: Will the threat of staying in a failed marriage strengthen the family unit for the betterment of the parties and the children? Answer: Again, I think not!

Legal divorce ends the interpersonal losses suffered by the parties as a result of the termination of that relationship. Moral discourse in the guise of fault has no place in what should be an economic inquiry into mitigating the harm and damage caused the parties (either or both of them). It is a destructive waste of human, economic and judicial resources to permit such an inquiry. Only the lawyers would benefit.

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