

TESTIMONY OF NED HARK, ESQUIRE, CHAIR
FAMILY LAW SECTION, PHILADELPHIA BAR ASSOCIATION
REGARDING HOUSE BILL NO. 2562 AND HOUSE BILL NO. 2003
BEFORE THE JUDICIARY COMMITTEE OF THE HOUSE OF REPRESENTATIVES
AUGUST 20, 1996

In 1980, what is known commonly among the Domestic Relations Bar, as the Divorce Code, was signed into law in the Commonwealth of Pennsylvania. Title 23 of the Pennsylvania Statutes provides that Sections 3301(c) and 3301(d) a Court may grant a divorce where a Complaint has been filed alleging that the marriage is irretrievably broken. Pursuant to Section 3301(c), if the parties agree that the marriage is irretrievably broken and file the appropriate Affidavits ninety days after the filing of the Complaint in Divorce, the Court shall grant a divorce. Pursuant to 3301(d), if the parties have been separated for a period of at least two (2) years, and one party has alleged that the marriage is irretrievably broken, the Court shall grant a divorce, unless the allegations concerning the separation are denied.

House Bill No. 2562, seeks to eliminate the provisions that provide that individuals who seek a divorce based upon the fact that their marriage is irretrievably broken.

Such legislation would create increased animosity between the parties and make settlement of economic issues, specifically, equitable distribution, more difficult. Currently, for example, in

Philadelphia County, 87.6 per cent of the cases that come before the Permanent Master in Divorce for equitable distribution are settled by the parties. This legislation would not only require a hearing on the grounds, but also would most likely exacerbate the differences between the parties to the point where they would be unable to reach such a settlement. The very fact that they come into court now with the agreement to enter into a divorce, enables them to begin the negotiation process.

Furthermore, in recent years, the Bar and the lawmakers of this Commonwealth have sought to move toward alternative dispute resolution mechanisms such as arbitration and mediation. Under the present system, parties are further along the road toward a position where they would be amenable to resolving their differences. If they are required to come to court for a hearing to put their marital differences on the record, one can only assume that they will be more difficult to encourage resolution.

In addition to the difficulty that the proposed legislation would cause in having individuals begin the negotiation processes, the proposed legislation will also create an additional need for court hearings in already overcrowded courts. Our Family Courts are the arm of the court system which face a large burden of overcrowding on our court dockets and our court lists. The requirement to conduct a hearing would only exacerbate the situation.

Elimination of the irretrievable breakdown provisions as

grounds for divorce does not serve to encourage individuals in a difficult marital situation to work out their problems. The idea that because it is "easy" to get a divorce because the provisions for irretrievable breakdown exist in the Divorce Code, is a fallacy. Couples that are experiencing difficulties in their marriage are not more likely to decide to end their marriage because the process is procedurally more efficient. There are within the Statute, waiting periods under both 3301(c) and 3301(d) before a divorce can be granted by the court. In addition, the argument that no-fault divorce reduces the negotiating power of spouses who do not want to end their marriage, is also without basis. In fact, a dependent spouse could be made to experience a longer period of economic hardship.

One can only look to the unfortunate situations that occur in domestic violence matters and realize that the elimination of a process which enables individuals to agree that their marriage is irretrievably broken and require them to prove a fault ground in court, would lead to unfortunate and needless domestic violence. Under our present system, the entry of a divorce decree and final resolution of the issues begins to alleviate the turmoil and chaos that these individuals face. Practitioners who represent individuals in divorce matters know the potential for serious harm that can come from the pressures of spousal acrimony.

Over the past sixteen (16) years, since the inception of the provisions of the Divorce Code of 1980, our Bench and our Bar have

worked to streamline the procedures for divorce so as to prevent ongoing hostility and turmoil in the family. The large majority of these cases involve children. The need to have their parents rehash their differences only creates a more uncomfortable situation for the children of families who are in the process of divorcing.

The Family Law Section of the Philadelphia Bar Association opposes House Bill No. 2562 and House Bill No. 2003.