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Public Hearing as to House Bill 22

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The Bucks County Family Masters Office employs four attorneys. All work for the office full-time, and have no outside practice of law. The office holds settlement conferences in equitable division, child custody, and alimony modification. It is responsible for formal, record hearings in fault divorce and annulment and contested Section 3301(d) cases.

The office also has some administrative responsibilities, including review of family court pleadings before orders or rules are entered or hearings set, and review of all divorce files prior to entry of decree. All family court hearings except for support and protection from abuse are scheduled by the masters office.

The masters office works in the area of child and spousal support both in connection with equitable distribution cases and as part of its Early Intervention Program. Cases which are scheduled for the Early Intervention Program program generally either present complex income or expense issues, or present potential issues which are related to the support and which are logically addressed in connection with support -- such as how to handle large mortgage or other debt payments, how to handle assets such as bank accounts which one of the parties wants to use or spend, issues of discovery, and issues of interim counsel fees. Among the goals of the program are to assist the parties in stabilizing their financial circumstances, and to avoid unnecessarily fragmented or repetitive litigation.

There are a number of distinguished people who can speak with authority about the nurturing parent doctrine, the current

state of the law, and the advantages and disadvantages of House Bill 22.

Masters and conference officers see large numbers of people in family court, and can offer observations from a central, unbiased viewpoint.

There is a great diversity in families and the lifestyles they choose. Different people make different decisions about how to spend their money and how to raise their children.

Many parents rely on the traditional homemaker/breadwinner model, but some parents share those two roles, and in some families, the mother is the breadwinner and the father the homemaker. There are families where roles switch because of illness, accident, misfortune in the job market or other events. There are situations where a child lives with someone other than either parent.

In some families, the parents spend a great deal of money on their children. The children are in private school, they take specialized classes outside of school, they go on expensive vacations. Other families are more asset-acquisition oriented, and don't make these expenditures. Some children have special problems and needs that require expenditures which the parents would not otherwise make.

The decisions which parents make when they are together about how much they will spend on their children seem to be only partly income-based. There are lifestyle choices involved. Some middle class families choose a lifestyle which invests a great deal of money in children while some families who could afford to

spend more on their children than they do, simply choose not to do so.

When a set of parents enters the court system for the first time, they may recently have separated and sometimes they have very serious financial problems. For instance, there may be a mortgage payment which is so high that it simply is unaffordable unless both parents live in the same house. Sometimes there is credit card debt which is so great that bankruptcy proceedings seem to be the only practical alternative.

Application of the statewide support guidelines provides the court system and families with a great deal of predictability and certainty in the law. People who know the likely result of litigation are less inclined to litigate and more inclined to settle their cases. This is an important consideration; predictability helps people avoid the financial and emotional cost of litigation, and helps the courts manage the high volume support caseload.

Because the guidelines already provide such a high degree of certainty and predictability, it's possible to have reservations about adjustments in support law which make the law even more certain and predictable. A risk already exists in support proceedings that the guidelines may be used with too much rigidity, without listening to people and their specific problems of unusual debts or expenses or needs, or that they may be applied in a way which doesn't respect as much as reasonably possible the freedom that people should have to make their own lifestyle choices.

Sometimes litigation is necessary. Sometimes people have disagreements about the facts of the case which cannot be compromised. Sometimes there is a personality conflict between people or their attorneys which makes it harder for them to negotiate. Sometimes there is a disagreement about the law -- what the law is, what the law means or how the law should be applied to the case.

My office records information about our cases, and studies those statistics. Some of the results of those studies are attached.

The custody information helps illustrate the unaffordability of litigation to many people in the context of a situation where a high degree of certainty and predictability is undesirable if not impossible. About 75 percent of the parents who participated in child custody conferences in Bucks County during the period of the study earned \$30,000 per year or less. On one hand, a formal custody evaluation and trial is probably unaffordable to people at those income levels. At the same time, however, it seems likely that the vast majority of the people in this state want child custody law to be flexible enough so that custody decisions can be molded to the particular facts and circumstances of each, individual case.

The article called "Age and Alimony" provides an illustration of how presumptions can lead to incorrect conclusions, or at least arguably incorrect conclusions. There is a fairly common misconception that older women with long-term marriages have the greatest need for alimony. However,

information about age of parties, age disparities between parties, income of parties, and marital estate sizes supports a suggestion that this is a generalization which may not be true.

From the standpoint of a person who works with about 1,250 families per year in various types of family court settlement proceedings, the ideal support law would be one that:

- (1) Provides a high degree of certainty and predictability;
- (2) Avoids misconceptions about people and the problems presented by cases;
- (3) Is flexible enough so that there is room to make reasonable adjustments reflecting the diversity in our population, in the reasonable lifestyle decisions of parents, and in the various specific problems which may be presented by a case.

BUCKS COUNTY COURT OF COMMON PLEAS

CHILD CUSTODY CASE INFORMATION

The information below is based on data collected by the Bucks County Family Masters Office, which holds conciliation conferences in about 850 child custody cases per year. Most of the data was collected during 1995. The person who presided at a conference recorded information in response to sets of queries raised by the senior master. The sets of queries varied from time to time during the year. The purpose was to build a more informed understanding of the people who use the custody system and the issues which they were presenting to the system.

Who petitions? Fathers raise the issue on which the conference is scheduled in about 47 percent of the cases, mothers in 42 percent, both in eight percent, and some other person, such as a grandparent or other relative, in three percent.

On what issue? About 29 percent of the cases presented a primary physical custody issue, and about 69 percent presented partial physical custody issues. The balance of 2% presented shared or split custody, special relief and other issues.

Custodial arrangements at time of conference: Fathers had primary physical custody in about 23% of the cases, and mothers in 67%. Custody was shared or split in 10%. At the time that these statistics were gathered in 1995, no cases presented where a grandparent or other relative had primary physical custody.

Amount of income: One part of the 1995 survey showed income levels as follows. Note that 75 percent of the parties were earning \$30,000 or less.

Income level	Parties
\$10,000 or less	22%
\$10,001 to \$20,000	29%
\$20,001 to \$30,000	24%
\$30,001 to \$40,000	11%
\$40,001 to \$60,000	6%
\$60,001 or more	8%

Income by gender: 87 percent of the mothers and 64 percent of the fathers earned income of \$30,000 or less. These income levels were not, however, adjusted for receipt or payment of support or alimony.

Comparison to Equitable Division Cases: The average age of parents who appear for custody conferences is 34, with mothers at 33 and fathers at 35. These parties tend to be younger and to earn less than the parties who appear for equitable division cases -- where men are about age 45 and earn about \$47,000, and women are about age 43 and earn about \$24,000 (1995 equitable division income data).

What issues and problems are being presented?

Allegation/Problem	All cases	Primary Custody Disputes	Partial Custody Disputes
Parent is drug or alcohol addicted or mentally or physically infirm	10.0%	11%	9%
Parent or paramour has abused child, or parent has neglected child or can't care for child	20.0%	28%	15%
The child does not want to see the parent, and/or there is alienation or interference	13.5%	8%	17%
There is an issue about the behavior of a paramour or new spouse	2.0%	0%	4%
Relocation case	4.5%	8%	2%
Parents are unable to communicate well enough to solve problems about the children	31.5%	31%	32%
Abuse between parents is raised as an issue in the case	3.5%	0%	6%
Other	15.0%	14%	15%

Examples of "other" issues: Jurisdiction or venue, choice of a family counselor, sexual preference of a parent. Some of the cases in this category involved concerned, uncertain parents who were not particularly at odds, but who wanted to talk and to study their options.

Custody conference caseload: From 1993 through 1996, 1,400 to 1,600 conference slots were scheduled per year. Slightly more than half of the cases appear at the scheduled time (53%), with the balance either settling prior to the conference or rescheduling.

Conference dispositions: Data from 1990 through 1996 shows the following dispositions in the 5,137 cases which participated in the conference:

38% -- "Final" agreement at conference.

25% -- Temporary custody agreement and agreed referral to the Court Conciliation and Evaluation Service (CCES). In this

program, the adults and children work with a psychologist or clinical social worker during a series of six or more sessions. If no "final" agreement is reached, an evaluation and recommendation is produced for the court. (About nine percent of these cases require a court hearing after completion of the CCES program.)

7% -- One of the parents disregarded a properly served order to appear for the conference. The recommendations prepared by the conference officer in these cases rarely are challenged by the nonparticipating parent.

30% -- Listed for court as the parties were unable to agree on a custody arrangement, and were unable to agree to participate in the CCES or some other evaluation process (which would be required in a "typical" case prior to the "final" hearing). (Many cases on these lists resolve prior to the date of hearing, or by agreement on the date of hearing. Some cases present emergencies where abuse or neglect is alleged, and a judge must make a decision.)

Preventive Aspect of CCES Work: One of the goals of the CCES program mentioned above is to "curb existing tensions between the parents". Both the court system and the parties prefer parents to learn techniques to resolve custody problems within the family because (1) Litigation associated with petitions to modify, petitions for special relief and petitions for contempt is an expense for the family and for the system, and (2) It is generally agreed that, "Parental conflict and the custodial parent's ability to function have more impact on children's adjustment than custody and visitation arrangements." (Furstenberg & Cherlin, *Divided Families: What Happens to Children When Parents Part*).

The chart below shows the number of occasions that a family brought further, new custody disputes to the attention of the system after participating in subsidized CCES work. (This was not a study of all cases, but only of the cases which received some financial assistance from the county toward the CCES fee, which currently is \$350 per parent.) "New" disputes are defined as any new proceeding, regardless of disposition. In many of the cases shown on the chart below, the disposition was an agreed order. In some instances, the disposition was another referral to CCES, paid by the parties rather than subsidized.

	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>Total</u>
No further disputes	40 cases	45 cases	66 cases	151 cases
One instance	9 cases	13 cases	2 cases	24 cases
Two instances	3 cases	0 cases	0 cases	3 cases
Three instances	1 case	0 cases	0 cases	1 case
Four instances	0 case	1 cases	0 cases	1 case
Total	53 cases	59 cases	68 cases	180 cases

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EDITOR'S COLUMN

We think you will find Catherine McFadden's article, analyzing and categorizing the equitable distribution cases in Bucks County, where she so ably serves as Senior Master in Divorce, absolutely fascinating. Your picture of what you perceive as the nature of the cases that pass through a particular divorce system in a particular county may be very much different from reality. Wouldn't it be interesting if we had this material available from all of the counties to see how the cases varied from county to county? Cathy's comments on trading off percentage points in equitable distribution for alimony are particularly significant.

Well, we have a poet in our midst. David Rasner's poem, "I Do," says it all. Enjoy!

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Article:

AGE AND ALIMONY

By Catherine M. McFadden

Generalizations can be dangerous when considering what is appropriate as to equitable distribution and alimony because individual cases can vary greatly from stereotypes. However, if an age-related generalization were made in connection with alimony, that generalization might be that the spouses who tend to have the greatest need for alimony are women who are aged 39 to 49 and who undertook the homemaker role during marriage.

Data compiled by the Bucks County Divorce Masters Office in 1994 shows that cases involving younger women tend to present significant income disparities, small estates and parties of similar age. Cases involving older women also tend to present income disparities, but on average, estate sizes are much larger and there are frequently significant age disparities between the parties.

Certainly, there are some cases involving dependent older women where a lengthy term of alimony is appropriate, just as there are some cases involving dependent men where alimony is appropriate. As suggested by Elizabeth L. Bennett's article, "Divorce, Older Women and Alimony," *Pennsylvania Family Lawyer*, December 1994, it is important to avoid assumptions when considering how to resolve equitable distribution and alimony claims. The Divorce Code provides the opportunity to consider each case individually, and it is important to take advantage of that opportunity.

The following information is based on a study of about 200 equitable distribution cases that appeared in 1994 for proceedings in the Bucks County Masters Office. By January 1, 1995, 92 percent of these cases had settled, two percent had proceeded to trial and six percent remained pending. The pool of cases in the study is not particularly large, and the data should be considered in that light.

Age and age disparities

The average age of parties to equitable division cases in the Bucks County Masters Office is mid-40s, with men 45 and women 43. In 1994, ages of the oldest party in each case were as follows:

Age 29 or less	1%
Age 30 to 39	25%
Age 40 to 49	40%
Age 50 to 59	24%
Age 60 or more	10%

Age disparities are quite common, with husbands older than wives in 65 percent of the cases, and wives older than husbands in 19 percent of the cases. However, age disparities of significance tend to be concentrated in cases involving older people, as shown on the chart below.

Age of oldest party

Disparity	30-39	40-49	50-59	60 plus	All cases
0 to 3 years	84%	62.5%	50%	43.5%	63%
4 to 6 years	14%	22%	25%	22%	21%
7 to 9 years	2%	12.5%	10%	4%	8%
10 or more years	0%	3%	15%	30.5%	8%

A significant disparity in the age of the parties is pertinent to the assessment of earning and asset acquisition ability, particularly in cases involving older parties. The case where, for instance, a 65-year-old Husband is earning \$2,500 net per month and a 55-year-old Wife is earning \$1,100 net per month, should not necessarily be treated the same as one where both parties are the same age.

Estate Size

The average net estate value for equitable division cases in the Bucks County Masters Office in 1994 was \$164,760 (down from \$179,100 in 1993 and \$215,425 in 1992). However, the value of net marital estates varies significantly from the overall average depending upon the ages of the parties.

Age of Oldest Party	Net Value of Estate
30 to 39	\$ 59,160
40 to 49	\$125,370
50 to 59	\$303,380
60 or older	\$334,040

With larger estates, the parties and the court system have more flexibility to fashion a financial resolution which is not dependent upon alimony that is available when the marital estate is of little or no value.

Income

Although there were a few cases in the Bucks County Masters Office in 1994 where wives earned as much as or more than their husbands, the vast majority of the cases mirrored the typical, traditional homemaker/breadwinner norm, regardless of the age of the parties.

Husbands were income superior in 79 percent of the cases. The parties had equivalent income in 10 percent of the cases. Wives were income superior in 11 percent of the cases.

The wife had either equivalent income to the husband, or greater income than the husband according to age as follows.

Age of oldest party, Wife income equivalent or superior

30-39	40-49	50-59	60 plus	All cases
18%	24%	22%	14%	21%

The average wife earned \$1,579 net per month, about half as much as the average husband, who earned \$3,054 net per month.

Age of Oldest Party	Net Monthly Income Average, all cases	
	Wife	Husband
30 to 39	\$1,495	\$2,657
40 to 49	\$1,718	\$3,197
50 to 59	\$1,693	\$3,502
60 or older	\$1,080	\$2,468

Where the parties were income equivalent, the average incomes were as follows.

Age of Oldest Party	Net Monthly Income Equivalence cases
30 to 39	\$2,105
40 to 49	\$2,914
50 to 59	\$1,187
60 or older	\$ 892

In the group of cases where husband was income superior, the average incomes were as follows.

Age of Oldest Party	Net Monthly Income Income superior husbands	
	Wife	Husband
30 to 39	\$1,325	\$2,816
40 to 49	\$1,384	\$3,558
50 to 59	\$1,309	\$4,102
60 or older	\$1,002	\$2,780

In the group of cases where wife was income superior, the average incomes were as follows. Two averages are shown for the age 50 to 59 bracket. The first line shows the average for the category; the second shows the average if the high and low incomes are removed from consideration, because one of the women in this category had a \$14,700 net per month income, which is unusually high whether for a man or for a woman, and one of the men had a zero income, which also is unusual in equitable distribution cases at this age bracket.

Age of Oldest Party

Net Monthly Income Income superior wives

Age of Oldest Party	Wife	Husband
	30 to 39	\$2,439
40 to 49	\$2,694	\$1,639
50 to 59	\$3,849	\$1,371
	\$2,433	\$1,410
60 or older	\$2,000	\$1,258

The highest monthly net income in 1994 was \$18,400, earned by a man in the 50-59 bracket. The second was \$14,700, earned by a woman in the same age bracket. The third was \$14,355, earned by a man in the same age bracket. Two other men had five-digit monthly net incomes, one age 71 at \$11,667 and one age 41 at \$11,339. (The 71-year-old man with employment income of \$11,667 was in good health and had no plans to retire.) No other women in 1994 had five-digit monthly net incomes.

Incomes and Estate Sizes

One way to consider income in relation to estate size is to study how income disparities compare to estate sizes from case to case, and to see if any patterns develop. For instance, an income disparity of \$17,000 per year is equivalent to about 29 percent of a \$59,000 marital estate, but only about five percent of a \$334,000 estate. The smaller the disparity by comparison to the estate, the easier it is to address that disparity in equitable distribution as opposed to alimony. The following chart shows the percentage of all cases in each age category where the annual net income disparity in 1994 was equivalent to 25 percent or more of the marital estate.

Income Disparity Equivalent to 25% or More of Marital Estate

	Age of oldest party				
	30-39	40-49	50-59	60 plus	All cases
Husband income superior	43%	34%	20%	4.5%	30%
Wife income superior	4%	7%	2%	4.5%	5%

Consider an average or typical situation of parties in their 30s. The estate is worth \$59,160. Husband earns \$2,816 net per month, and Wife earns \$1,325. The income disparity is \$17,892 net per year, equivalent to 30 percent of the marital estate. If the distribution of the estate to the wife is 60 percent, the wife receives \$5,916 more than she would in an equal distribution, and Husband receives \$5,916 less than he would in an equal distribution. Husband earns \$5,916

more than Wife in a period of four months. In such a situation, the 10 percent disparity in the property distribution is nearly meaningless if it is intended to address the differences in lifestyle arising from the differences in income and earning ability. A meaningful attempt to address the impact of the income disparity in such a situation would require a much greater percentage distribution of the marital estate to the wife and/or an alimony award to the wife.

Consider an average or typical situation where at least one of the parties is age 60 or older. The estate is worth \$334,040. Husband earns \$2,780 net per month, and Wife earns \$1,002. The income disparity is \$21,336 net per year, equivalent to six percent of the marital estate. If the distribution of the estate to the wife is 60 percent, the wife receives \$33,404 more than she would in an equal distribution, and Husband receives \$33,404 less than he would in an equal distribution. Husband has net earnings of \$33,400 more than Wife only at the conclusion of a 19-month period. If the marriage is long-term, and the parties are older, particularly if the wife is younger than the husband, the 60 percent distribution combined with a definite term and/or amount of alimony may be adequate to address lifestyle differences that arise from income differences. (Alternatively, a 50 percent distribution combined with indefinite alimony may be an appropriate resolution in such a case, depending on the precise circumstances.)

Ms. Bennett's caution to avoid general assumptions, broad rules of thumb and unacknowledged prejudices should be emphasized again and again in connection with equitable distribution and alimony cases.

It is surprising how often parties and counsel tend to rely on stereotypes and assumptions rather than on facts in the presentation

of equitable distribution and alimony cases. It is not uncommon for an argument to be presented that wives always receive more, and therefore a particular wife should receive more, as if gender rather than the precise circumstances of the parties were the appropriate consideration. Likewise, it is not uncommon for an argument to be presented that 60 percent is enough for a husband to pay, as if equitable distribution and alimony were a taking from the husband, rather than an allocation between two parties of what was acquired as a result of their union.

The circumstances of parties who participate in equitable distribution vary considerably, even within general categories. The factors which are set out in the Divorce Code for consideration in connection with equitable distribution are broad enough to provide the parties and the courts the luxury and the responsibility to hand-tailor resolutions to the particular circumstances of each case.

Catherine M. McFadden is the senior master in divorce in Bucks County, and has worked in the county's family court system for 13 years. The masters office in Bucks County employs three full-time attorneys responsible for initial proceedings in equitable distribution, divorce and annulment contests and child custody. The office also is responsible for a variety of administrative functions for the Family Court system. The data collection and study mentioned in the previous article is done by the office as part of an ongoing effort to examine equitable distribution cases. Another aspect of this effort is the provision of a statement of office policies and procedures in equitable distribution. The policies are available on written request to the office at 30 E. Court St., Doylestown, Pa. 18901.