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March 11, 1998

The Honorable Don Walko  
Pennsylvania House of Representatives  
219 South Office Building  
House Box 202020  
Harrisburg, PA 17120-2020

Re: House Bill 1723

Dear Representative Walko:

Thank you for requesting my comments to House Bill 1723. I have enclosed my curriculum vitae so that you will know my involvement with the area of family law for a great many years. I have represented both fathers and mothers in a number of custody disputes.

Let me begin by saying that I believe that the enactment of House Bill 1723 as it presently stands would be a serious mistake. Historically and appropriately, the best interests of a child should be the determining factor in awarding custody. The presumptions do not consider what is in the child's best interest. I believe that a judge, with the aid of psychological evaluations as well as home study evaluations can determine what is best for the child. Let me address in a cursory manner some of the provisions in the proposed bill that give me problems.

1. The definitions as set forth are very confusing and I would strongly suggest that the scrivener's look to the definitions relating to custody as provided by the judiciary in their various opinions. They are more specific in their meaning than the suggested legislation.

2. Counselling is a good idea. Whether it should be required in every custody dispute or should be left up to the courts is surely debatable. I believe that persons who do counselling or mediation should be precluded from testifying in any custody trial. Parents will not be able to do so if they should be if they think that something they tell the counsellor or mediator would end up being presented to the judge.

Representative Don Walko

March 11, 1999

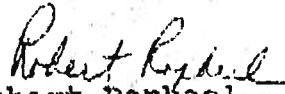
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3. As far as a parenting plan, in those instances where such is necessary, this could be brought up by the counsellor or mediator. If a trial judge felt there was need for such a plan, the judge could so order.

4. Joint legal custody may work in some instances and not in others. I had a very bad experience in one case where the parents had both shared legal and physical custody. Each parent had the children for one week on a rotating basis. They lived within one block of each other. They could not agree on anything, how long the children's hair should be, what musical instruments they should play, what school they should attend, etc., etc., etc. Many times it is better for one parent to have the decision-making process if that parent has been a good and sensible parent in the past.

May I suggest that the Legislature appoint an ad hoc committee of family lawyers from around the state who would put their heads together to come up with a recommendation to your body that will accomplish what the Legislature would like to do, and that is determine what is in the best interests of the children. So often, custodial fights are merely a continuance of the ongoing war between the two parents and not really a consideration of the child's interests.

Yours very truly,

  
Robert Raphael

RR/jo

ROBERT RAPHAEL

LAW FIRM: RAPHAEL, RAMSDEN & BEHERS, P.C.

Preparatory Education: University of Pittsburgh (B.A., 1948)  
Legal Education: University of Pittsburgh (L.L.B., 1950)  
Legal Fraternity: Tau Epsilon Rho

Admitted to Bar: 1950, Pennsylvania; 1951, Supreme Court,  
Pennsylvania, 1967, U.S. Supreme Court; 1976, U.S. Court  
of Appeals for Third Circuit

Author: "ANNUAL SURVEY OF FAMILY LAW IN PENNSYLVANIA",  
Pennsylvania Bar Association Quarterly, 1975-1993.

"DIVORCE REFORM - AT LONG LAST - MAYBE", Pennsylvania Legal  
Journal Monthly, December 1979.

"ON THE ROAD TO DIVORCE REFORM", Pennsylvania Law Journal,  
December 10, 1979.

"NEGOTIATING THE MARRIAGE SETTLEMENT", New Jersey Family Lawyer,  
December 1983

Co-Author: "PENNSYLVANIA LAW CITATOR", PENNSYLVANIA BAR INSTITUTE (1995 - )

"PENNSYLVANIA FAMILY LAW DISCOVERY FORMS - THE LAWYERS DESK BOOK  
SERIES", PENNSYLVANIA BAR INSTITUTE (1993 - )

"DIVORCE IN AMERICA: THE EROSION OF FAULT", 81 Dickinson Law  
Review 719 (1977).

Allegheny County Bar Association:

President, 1973  
Chairman, Family Law Section, 1970 - 72  
Chairman, Special Fee Determination Committee, 1974  
Court of Common Pleas Rules Committee, 1985 - 86  
Quality of Practice and Quality of Life Committee, 1996

Pennsylvania Bar Association

Chairman, Family Law Section, 1974 - 78  
Chairman, Family Law Section Committee on Drafting Divorce Reform  
Code, 1975 - 78  
Chairman, Family Law Section Committee on Drafting Rules of Civil  
Procedure for Support, 1976 - 78  
Member, House of Delegates, 1974 - 78; 1982 - 1997  
Member, Merit Selection of Judges Committee, 1978 - 81  
Recipient, Special Achievement Award, November 1978  
Member, Legal Biography and History Committee, 1980 - 83  
Member, Law Office Management Committee, 1981 - 82  
Vice Chairman, Specialization Committee, 1985 - 88

## Pennsylvania Bar Association Cont'd.

Member, Credentials and Admissions Committee of the  
House of Delegates, 1989 - 1991  
Member, Specialization Committee, 1993 - 1996  
Member, Seniors Committee, 1997 -  
Fellow, Pennsylvania Bar Foundation  
Member, Board of Directors, Pennsylvania Bar Foundation  
Member, Senior Lawyers Committee

## Pennsylvania Bar Foundation

Fellow  
Board of Directors, 1997 -

## Pennsylvania Bar Institute:

Course Planner and Lecturer, 1975 - 85  
Board of Directors, 1981 - 87  
Treasurer, 1987 - 88  
Secretary, 1988 - 89  
Vice President, 1989 - 90  
President, 1990  
Executive Committee - 1991 - 1993

## American Bar Association:

Chairperson, Committee on Divorce Laws and Procedures, 1983 - 84  
Co-Chairman, Divorce Committee, Northeastern Section Family Law  
Section, 1976 - 77  
Member, House of Delegates, 1974 - 81  
Member, Family Law Section, 1979 - 88

## American Academy of Matrimonial Lawyers:

Vice President, 1979 - 81  
President, Pennsylvania Chapter, 1978 - 80

## Joint Family Law Council of Pennsylvania:

Vice President, 1981 - 87  
President, 1987 - 89

## University of Pittsburgh School of Law

Adjunct Professor of Law - 1977  
Board of Directors Alumni Association, 1992 -

## Miscellaneous:

Lecturer, Pennsylvania College for the Judiciary, Domestic  
Relations Training Program, 1978 - 82  
Lecturer - Divorce Code; Pa. Trial Judges Association, 1980  
Chairman, Rules Planning Committee for Family Law, 1979  
Pennsylvania Bar Institute Seminar

Miscellaneous Cont'd.:

Lecturer, Pennsylvania Bar Institute, 1975 - 85  
Member, 1973 - 75; Chairman, 1975 - 78, Governor's Trial Court  
Nominating Commission, 5th Judicial District  
Member, Supreme Court of Pennsylvania Domestic Relations Task  
Force, 1978 - 80  
Member, Supreme Court Domestic Relations Executive Committee, 1981-83  
Lecturer, Pennsylvania Trial Lawyers Association  
Course Planner, Pennsylvania Bar Institute-Equitable Distribution, '82  
Member, Supreme Court of Pennsylvania Rules Committee - Domestic  
Relations Subcommittee 1986  
Course Planner and Lecturer, Dickinson Law School, 1987 - 88  
Course Planner and Lecturer, Pennsylvania Bar Institute -  
Divorce Code Amendments, 1988  
Course Planner and Lecturer, Pennsylvania Bar Institute  
Statewide Guidelines, 1989  
Course Planner and Lecturer, Pennsylvania Bar Institute -  
Support 1993 - 1994  
Board of Directors - Member - Consumer Credit Counselling Service of  
Western Pennsylvania, Inc. 1996  
Course Planner and Lecturer, Pennsylvania Bar Institute  
Support Guidelines Update, 1997