

HOUSE OF REPRESENTATIVES  
COMMONWEALTH OF PENNSYLVANIA

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House Bill 2075

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House Judiciary Subcommittee on Courts

Hershey Public Library  
701 Cocoa Avenue  
Hershey, Pennsylvania

Tuesday, April 14, 1998, 1:00 p.m.

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BEFORE:

Honorable Daniel Clark, Majority Chairperson  
Honorable Jere Schuler  
Honorable Chris Wogan  
Honorable Jerry Birmelin

ALSO IN ATTENDANCE:

Honorable Thomas Caltagirone

KEY REPORTERS

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C O N T E N T S

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WITNESSES

PAGE

Honorable Thomas Clark

4

Chairman, Subcommittee on Courts

Opening Remarks

Patricia A. Dubin, Esquire

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Women Against Abuse

Betty Garlow, Esquire

15

Pennsylvania Coalition Against Domestic Violence

Erminia Kleppinger

20

Turning Point

Michael Viola, Esquire

23

Representing the Philadelphia Bar Association

1 **ALSO PRESENT:**

2 **David Bloomer**  
3 **Majority Research Analyst**

4 **John Ryan, Esquire**  
5 **Minority Chief Counsel**

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1                   CHAIRPERSON CLARK: Good afternoon, everyone.  
2 I'd like to welcome you to the Judiciary Committee's  
3 Subcommittee on Courts hearing on House Bill 2075. My name  
4 is Representative Dan Clark, and I represent the good  
5 citizens of the 82nd Legislative District which includes all  
6 of Juniata County, part of Mifflin County and part of Snyder  
7 County and part of Perry County.

8                   I think what we'll do at this time is we'll have  
9 the other gentlemen on the panel introduce themselves, and  
10 then what we'll do is introduce each one of you and have you  
11 present your testimony in order. And then we'll sit down  
12 and go over our questions and concerns and comments, et  
13 cetera.

14                   I guess initially why House Bill 2075 was  
15 introduced, prime sponsored by Representative Gannon, was  
16 before the full Judiciary Committee at a voting session in  
17 Harrisburg and there was a concern or confusion as to the  
18 extent of the bill and its intent. Currently a court may  
19 grant a protection order or approve any consent agreement,  
20 and as part of that order, why the judge may include  
21 directing the defendant to pay certain costs and the judge  
22 may also direct the defendant to pay reasonable attorney's  
23 fees in those cases.

24                   This bill would require the judge to direct the  
25 payment of attorney's fees to the plaintiff from the

1 defendant and in essence would take away the judge's  
2 discretion to assess the case and make a decision as to  
3 whether or not to have the defendant pay attorney's fees.

4 I think one of the concerns off the top of my  
5 head from that meeting was that that may discourage or could  
6 cause problems in having people reaching certain agreements  
7 because of that additional cost. I'm certain that each of  
8 you who have been involved in these situations will have  
9 your own ideas and expertise to provide to the committee.

10 So with that with small introduction, I'd like  
11 to start on my right and have the individuals on the panel  
12 introduce themselves to you.

13 MR. RYAN: John Ryan. I'm counsel to the  
14 Democratic Chair of the Judiciary Committee.

15 REPRESENTATIVE SCHULER: Jere Schuler, 43rd  
16 District, Lancaster County.

17 REPRESENTATIVE CALTAGIRONE: Tom Caltagirone,  
18 127th District, City of Reading, Berks County.

19 REPRESENTATIVE WOGAN: Chris Wogan, the 176th  
20 District in Northeast Philadelphia.

21 MR. BLOOMER: My name is David Bloomer. I'm a  
22 research analyst with the committee.

23 CHAIRPERSON CLARK: I think what we'll do is  
24 identify each individual who's going to testify today and we  
25 have set this panel and what I'd like to do is have each

1 individual testify and give their perspective on the bill  
2 and then we will go through and ask questions, et cetera.

3           With us today we have Patricia A. Dubin, Esq.,  
4 with the Women Against Abuse. She's the senior staff  
5 attorney with that organization. We have Betty Garlow, Esq.  
6 She's with the Pennsylvania Coalition Against Domestic  
7 Violence, and we have Erminia Kleppinger. She is with  
8 Turning Point. And then we have Michael Viola, Esq., and he  
9 is with the law firm he'll tell us about when he gets to his  
10 testimony.

11           And with that, why I think what we'll do,  
12 Patricia, is slide that mike down your way. That is not a  
13 PA system. That microphone feeds into the television  
14 network and provides them with volume.

15           Before you get started we'll have a fellow who  
16 just joined us, Representative Birmelin, introduce himself  
17 to you and then you may begin.

18           REPRESENTATIVE BIRMELIN: Representative  
19 Birmelin from Wayne County.

20           MS. DUBIN: Thank you. Thank you for giving me  
21 the opportunity to speak this afternoon. I'm here on behalf  
22 of the Women Against Abuse Legal Center located in  
23 Philadelphia. And before I address my comments about the  
24 bill, I'd like to tell you a little bit about our legal  
25 center and what it does and give you some perspective on why

1 we wanted to comment on this.

2           We are the only legal center in Philadelphia  
3 that is devoted towards representing domestic violence  
4 victims and their children. We have a current staff of 15,  
5 which includes five attorneys and the rest paralegal and  
6 support staff. And we work solely in Philadelphia County  
7 courts.

8           I am an attorney there, and what I do is go to  
9 court on a daily basis and handling only protection from  
10 abuse cases. And I've been involved in this work at the  
11 present with my present employer, Women Against Abuse Legal  
12 Center, for three years. And prior to that for three years  
13 I worked solely in the area of domestic violence.

14           In Philadelphia County we have a high volume of  
15 these cases. This past year, 1997, there were approximately  
16 15,000 protection from abuse petitions filed in the county.  
17 The year before about 14,000. We see a tremendous volume of  
18 these cases. Of these people that file, approximately 70  
19 are without attorneys or going pro se, and I think that that  
20 will tie in with the comments that I'm going to make about  
21 the bill.

22           So as you can probably understand, just from our  
23 agency's point of view alone, we do a tremendous volume of  
24 cases in this area and we're very interested in the content  
25 of the Protection From Abuse Act, and if it's amended, how

1 it will be amended because we're dealing with people on a  
2 daily basis who are trying to utilize the relief available  
3 through the Protection From Abuse Act.

4 I want to tell you in this area of attorney's  
5 fees where we have had problems so far, which is not really  
6 the area that has been targeted by this bill, but if we got  
7 to draft a new section of the bill that had to do with the  
8 attorney fee portion, the key problem we have is that there  
9 is still debate and dispute in the legal community with the  
10 judges about whether nonprofits like ours are entitled to  
11 get attorney fees. And this is in spite of the fact that,  
12 as you all may know, in 1988 Senator Greenleaf specifically  
13 amended the Protection From Abuse Act so that nonprofit  
14 organizations could collect attorney fees.

15 Since that time there have been cases where  
16 under the current statute judges in Philadelphia County and  
17 other places have required -- have required parties to brief  
18 the issue at the trial court level on attorney's fees the  
19 question again whether nonprofits can accept attorney fees  
20 because the plaintiff didn't pay for their services. And  
21 the Superior Court has still had cases on that.

22 So one thing we would ask if you're going to  
23 amend the section of the statute that has attorney fees, put  
24 something in specifically that says nonprofits are people  
25 who represent plaintiffs without charging a fee can collect



1 so that we don't have to, in a case where we're going now  
2 and the judge orders attorney fees, brief it, which is time  
3 consuming for agencies, nonprofits like ours, who have lots  
4 of clients and very limited resources.

5           We don't -- that's a real drain, and in spite of  
6 the fact that the act was supposedly amended to take care of  
7 this, we still have the problem.

8           The other thing that we in Philadelphia County  
9 and I understand from people in other parts of the state  
10 there are problems with the attorney fee section is that  
11 some judges are making attorney fee awards to defendants in  
12 cases. So in other words it would typically come up where a  
13 plaintiff's petition for relief under Protection From Abuse  
14 Act is dismissed, the judge -- and I can't tell you what the  
15 thinking is, but defendant's counsel will ask for attorney  
16 fees and judges will award it.

17           I think we need something in the Protection From  
18 Abuse Act that clearly sets forth language stating -- and I  
19 proposed it in my written comments that I handed up to the  
20 committee -- that defendants who have not filed petitions  
21 are not entitled to collect attorney's fees.

22           We also have judges in Philadelphia County who  
23 when they dismiss a plaintiff's petition require -- prior to  
24 filing another petition a plaintiff has to post a bond or  
25 pay costs. And we feel that this is improper, is not

1 authorized by the statute, but is a loophole that needs to  
2 be cleared up. Because if somebody has to pay -- post a  
3 bond or pay a cost prior to filing, they may not be able to  
4 file. And the way the Protection From Abuse Act is written,  
5 as you all know, there's no requirement that anybody pay  
6 filing fees.

7 Judges are doing this. This is stopping people  
8 from filing. And if you're going to amend this section, we  
9 feel like this would be extremely helpful to nonprofits.

10 Now, I'd like to speak briefly about the  
11 problems I see with the amendment as it's currently being  
12 proposed in terms of mandating attorney's fees.

13 We think to begin with that the language that's  
14 been drafted so far is not clear in terms of which cases  
15 would have mandated attorney's fees and which cases  
16 wouldn't. I understand that there was an amendment to the  
17 original House Bill 2075 which talks about the language  
18 extended in securing the protection from abuse order or in  
19 accordance with agreement of the parties concerning attorney  
20 fees. But I still do not think that it will be clear to  
21 judges whether in cases where there are agreements by the  
22 parties, which often happens in protection from abuse cases,  
23 whether the agreement would have to contain an attorney fee  
24 provision.

25 And so if you go with that language, we hope

1 that that can become a little clearer. If the intent is to  
2 say that if parties agree with each other about how the case  
3 is going to resolve and they're presenting an agreement for  
4 the judge's approval, the question is does that have to  
5 contain a provision for attorney's fees. Under this statute  
6 is the judge allowed to make that a final order if there's  
7 no provision for attorney fees.

8           Basically all our staff looked at this. We  
9 wanted to go with this concept of mandatory attorney fees  
10 because we wanted to think that it would have a deterrent  
11 effect for people who are going to be abusive and we were  
12 hoping too that it would be a way to get a little more money  
13 into a nonprofit organization that has high volume and few  
14 resources. In the end we looked at it from a lot of  
15 different angles and felt that mandating attorney fees was  
16 not going to help the situation with protection from abuse,  
17 was not going to help in most of the cases for the people  
18 who come before us.

19           The majority of the cases, as I've said, in  
20 Philadelphia County and all the areas of family law people  
21 are going pro se which I think basically means that most of  
22 the parties, plaintiff and defendant, don't have a lot of  
23 money. We're concerned if we see a mandate of attorney's  
24 fees that judges will have to enter that relief and they  
25 won't be able to enter other relief that may be important to

1 a plaintiff like unreimbursed medical expenses, moving costs  
2 where they would be warranted, costs for broken doors,  
3 broken windows, this sort of thing. That if the -- what  
4 would happen is the only part of the relief section of the  
5 Protection From Abuse Act that would have something mandated  
6 would be the attorney fee section and all the other sections  
7 where the judge has discretion and operates on a  
8 discretionary basis would have to come after the mandatory  
9 attorney fees.

10           So in our case that would mean we could go in  
11 with a woman that would have a broken jaw and \$5,000 of  
12 unreimbursed medical expenses, broken doors, broken windows,  
13 and if the judge felt that it was reasonable for the  
14 defendant to pay attorney fees according to his ability,  
15 they would first have to mandate that he pay the attorney  
16 fee. And the plaintiff would be out the money for the  
17 out-of-pocket losses and for the property damage.

18           We don't want judges to be in that position. We  
19 don't think that that's going to help the plaintiffs who  
20 come before the Court.

21           The other thing that we're concerned about is  
22 that in protection from abuse I think in all the counties,  
23 not just Philadelphia County, they require a fair number of  
24 resources as things are now from the courts. In  
25 Philadelphia County the Philadelphia County Court devotes

1 two judges every day to sit and hear these 15,000 new  
2 protection from abuse petitions -- a very big expenditure of  
3 resources I think for the Court. We are worried that if  
4 there are mandatory attorney fees that a good portion of the  
5 protection from abuse case hearings, the cases that go to  
6 trial, will be spent on resolving the issue of what is the  
7 reasonable amount of fees. A lot of discussion and a lot of  
8 testimony on can the defendant pay, what's the plaintiff's  
9 situation, a lot of discussion on attorney fees. And other  
10 relief that's usually more important to a plaintiff, what's  
11 going to happen with custody of the children, what's going  
12 to happen with temporary support, all these things there  
13 wouldn't be time for.

14           It's a judicial allocation issue. And if we  
15 mandate one section of the statute where the judge must  
16 enter relief, the other kinds of relief that are very  
17 important to plaintiffs the judge may not have time to get  
18 around to. All the counties I think spend -- have many  
19 cases for protection from abuse. I don't think that's just  
20 Philadelphia County.

21           The other thing that we're concerned about is if  
22 you mandate attorney fees, if one petition -- if a  
23 petitioner files, defendant gets notice of this, defendant  
24 realizes there could be mandatory attorney fees on this  
25 case, we're afraid that a lot of people will adopt the

1 strategy of filing a counterpetition for their own  
2 protection from abuse petition so that the attorney fees  
3 will basically wash each other out. And there will be more  
4 negotiating from the defendant in the case and hopefully  
5 they can avoid attorney fees by having the strategy of  
6 cross-filing.

7           It would be very unfortunate to see a lot of  
8 cross-filing. It could lead to people getting protection  
9 orders who weren't the abused people, for people agreeing to  
10 protection orders because somebody else has filed when they  
11 shouldn't, and also if there are more filings, that is going  
12 to put more strain on the Court.

13           Basically we want to see relief to the plaintiff  
14 go towards plaintiff's primary needs which are usually in  
15 the support issue, time to discuss custody, to take  
16 testimony on custody, so that these things can be taken care  
17 of. Because if the judge has to devote resources to looking  
18 at the attorney fee issues and the judge therefore has to  
19 skip over listening to testimony on child custody or  
20 temporary support, it may mean that people will be reluctant  
21 to file.

22           Those issues are very important that they be  
23 resolved and it may mean that people, if there's not time to  
24 give relief in those areas, may be forced back into abusive  
25 situations.

1           The last thing I want to say about this is that  
2 in family law in general there are very few mandates. Most  
3 of the time judges are given -- there are presumptions in  
4 the law, there are factors for judges to consider, but  
5 usually things aren't mandated. And I think that that's a  
6 good policy. I think that gives judges the ability to look  
7 at the facts of the case and make decisions based upon the  
8 facts of the case before them. It doesn't tie them into  
9 applying rules which could turn out to be arbitrary and are  
10 not really going to help the plaintiff in the action.

11           So thank you for giving me the opportunity to  
12 speak on behalf of the Women Against Abuse Legal Center to  
13 express our concerns about this bill. We basically do not  
14 want to see mandatory attorney fees, but we would like to  
15 see the other areas that I mentioned amended so that there  
16 can be clarity that nonprofits can accept attorney fees and  
17 so that judges cannot require people to post bond or pay  
18 costs of court prior to allowing them to file for protection  
19 from abuse. Thank you.

20           CHAIRPERSON CLARK: We thank you. Ms. Garlow.

21           MS. GARLOW: Mr. Chairman, Members of the  
22 Committee, good afternoon. My name is Betty Garlow, and I'm  
23 here to representing the Pennsylvania Coalition Against  
24 Domestic Violence. The coalition is a not-for-profit  
25 organization incorporated in the Commonwealth of

1 Pennsylvania for the purposes of providing services to  
2 victims of domestic violence and their children. We're made  
3 up of a membership that consists of 65 shelters, hotlines,  
4 counseling programs, safe home networks, legal advocacy  
5 projects, traditional housing projects for battered women  
6 and their children.

7           For more then 20 years the Pennsylvania  
8 Coalition Against Domestic Violence has provided training  
9 and technical assistance to domestic violence programs, bar  
10 associations and their members, the courts, law enforcement  
11 agencies concerning the issues of safety and custody.

12           PCADB is an organization that's been involved in  
13 the Pennsylvania Battered Women's Movement and also  
14 participates nationally almost since its inception. It was  
15 instrumental in drafting and the enactment of the Protection  
16 From Abuse Act. As an organization we're always looking for  
17 ways to strengthen the system's response to domestic  
18 violence. That's been our mission.

19           Thank you for inviting me here today to talk to  
20 you about House Bill 2075. The PCDB appreciates the fact  
21 that the Legislature is looking for ways to strengthen our  
22 state's response to domestic violence. We too are opposed  
23 to mandatory attorney fees. We know that victims who are  
24 represented by legal counsel in protection order hearings  
25 fare much better who are not represented by counsel. And we



1 know that representation is important, not just for  
2 protection order purposes, but also for many other civil  
3 issues as well.

4           We know too that comprehensive relief that's  
5 afforded in protection orders best protects victims of  
6 domestic violence and their children. We also know that  
7 each case must be looked at separately, individually and the  
8 facts of that case apply to the law. By removing the  
9 Court's discretion and mandating that the Court  
10 provide -- order attorney fees to the plaintiff in  
11 protection order cases, you're taking the discretion away  
12 from the Court.

13           You assess each case and the facts of each case  
14 and best determine what relief should be afforded victims of  
15 domestic violence. In some cases it's more appropriate that  
16 the Court order other relief to protect victims of domestic  
17 violence before or instead of attorney fees. The Court's  
18 discretion to devise the most appropriate and comprehensive  
19 orders should remain intact. The award of attorney fees  
20 should be discretionary, not mandatory.

21           Most victims of domestic violence obtain  
22 representation from legal services. Legal services funded  
23 organizations are prevented by federal law from accepting  
24 attorney fees or taking fee-generating cases. Mandating  
25 attorney fees will be detrimental to victims of domestic

1 violence from obtaining services from the Commonwealth's  
2 predominant provider of legal services in protection from  
3 abuse cases.

4           Recently the Pennsylvania Coalition Against  
5 Domestic Violence conducted a needs assessment across the  
6 state. And we assessed each shelter, domestic violence  
7 domestic program, and asked them what level of  
8 representation was available to victims of domestic violence  
9 for purposes of protection orders and who it was that was  
10 providing that representation. What we learned was that  
11 legal services funded corp-funded organizations most  
12 frequently provide assistance to victims for purposes of  
13 obtaining protection orders. Now we've got a federal  
14 mandate that says you can't take cases that are  
15 fee-generating cases, then we pass a state law that says  
16 every court has to mandate attorney fees. It's not in sync.  
17 And it actually may result in confusion in the system.

18           Legal services funded corporations may actually  
19 be required to refer those cases out. Some of the federal  
20 preclusions of taking fee-generating cases require legal  
21 services funded -- or corp-funded organizations to refer  
22 those victims of domestic violence to at least two other  
23 attorneys before they take the case, and then even if they  
24 do take the case, the mandate for attorney fees can't be  
25 honored because they're precluded from accepting attorney

1 fees.

2           So that's one of the implications of mandating  
3 attorney fees and one reason why this legislature shouldn't  
4 do it.

5           Domestic violence protection from abuse cases  
6 aren't the most desirable cases for the private bar to take  
7 so you have a situation where attorney fees are mandated,  
8 legal services corp-funded organizations can't represent,  
9 they've got to refer out. It would be my guess that the  
10 private bar is not going to be clamoring for these cases so  
11 you are placing a burden on victims of domestic violence  
12 from getting representation for protection from abuse cases  
13 which is completely contrary to what this bill was intended  
14 to do I would think.

15           Mandatory attorney fees will burden the courts  
16 because more parties will file actions in order to prevent  
17 the Court -- to avoid attorney fees, and that was an  
18 argument that Miss Dubin advanced a minute ago, if people  
19 who are defendants in protection from abuse actions know  
20 that there are going to be mandated attorney fees, a good  
21 strategy for their attorney is to simply file an action of  
22 their own. And so then you've got two plaintiffs where  
23 there was one plaintiff, which probably there was one victim  
24 in the case, so it's just mucking up the system -- the court  
25 system.

1           We urge the Legislature, if you're going to do  
2 anything to the Protection From Abuse Act concerning  
3 attorney fees, just clarify because not all legal services  
4 providers are legal services funded providers -- legal  
5 services corp-funded providers from the federal dollars.

6           For example, Miss Dubin's organization is not.  
7 There has been confusion in some courts as to the  
8 appropriateness of awarding attorney fees to nonprofit  
9 organizations that aren't precluded. So if you would clear  
10 that language up and leave it to the discretion of the Court  
11 to order attorney fees when it's appropriate, which it isn't  
12 in every single case, then you would be doing the  
13 Commonwealth a service. Thank you.

14           CHAIRPERSON CLARK: We thank you. Thank you for  
15 your testimony. Miss Kleppinger.

16           MS. KLEPPINGER: Good afternoon, Mr. Chairman  
17 and Members of the Committee. I'm Erminia Kleppinger. I  
18 work for Turning Point of the Lehigh Valley. We have two  
19 agencies and shelters. I'm a bilingual legal advocate. I  
20 have been doing this work for nine years.

21           I have some concerns concerning this House Bill  
22 2075. As of January the 5th, 1998, Northampton Court has  
23 started a new schedule where we're in court on Mondays,  
24 Wednesdays and Fridays. The hearing list is started at  
25 1:15. There are from eight to ten cases heard on one day.

1 Sometimes if there's cross-filings there will be 12, 13.  
2 And my concern is that as of right now for next Monday  
3 there's already eight cases so that if in the future this  
4 House Bill goes through, there's going to be more  
5 cross-filings, there's going to be more hearings, more  
6 burden on the Court. And for the plaintiff that cannot  
7 afford to get an attorney, will feel intimidated, will not  
8 get one because her concern is that she is left at home to  
9 pay the rent, to pay the bills, to put food on the table for  
10 the family because he has -- or the defendant has taken the  
11 savings, taken the car keys and has left her destitute and  
12 has left her with a powerless feeling. So how is she going  
13 to get an attorney to represent her when she can't afford it  
14 and she doesn't know what the outcome will be.

15 I have seen where the cross-filing -- just  
16 recently this week it was left at the judge's discretion to  
17 pay the attorney and he granted it. If this is passed in  
18 amendment and it isn't left to the judge, what happens  
19 then? The plaintiff that couldn't afford, must she pay?  
20 From where? From what? What does it do to the family?  
21 Those are my concerns.

22 Also I see undocumented plaintiffs that are  
23 afraid to come to the Court, but they can't take the abuse  
24 anymore so they file through help of family or friends, and  
25 if somebody knows of Turning Point they give us a call and

1 we go and explain to them step-by-step what is going to  
2 happen. In their country there have been -- there are a lot  
3 of bad experiences dealing with the court, dealing with the  
4 police. But if he is aware or the plaintiff is aware of  
5 what is there for him or her, because sometimes it's the  
6 other way around, they're liable to get an attorney and this  
7 makes the victim feel much less powerless and it makes them  
8 feel very bad to be in court and have somebody there  
9 questioning them when they do not what to respond because  
10 they're afraid.

11 Another hardship that it would cause to the  
12 clients is the legal services. We do not have a pro bono  
13 list of attorneys to help these victims. I rely a lot on  
14 legal services. And they're very good to Turning Point. As  
15 of now I see them at least once or twice a week on Monday,  
16 Wednesdays or Fridays and they represent two, three  
17 clients. Now, if this is to go through, they will not be  
18 able to serve our people. They will not be able to  
19 interview them and tell them which way to go. What they  
20 will do is just refer them to an attorney. And they can't  
21 do that. They don't know where to start.

22 So we're really affecting the plaintiff, the  
23 victim who has been victimized already by years of abuse, by  
24 years of threats, and also in some cases where they threaten  
25 to take the children away.

1           So I urge you to please really consider in your  
2 words not shall, but may. And that all of this -- the  
3 amendment will inhibit rather than enhance the services of  
4 legal services to our clients by mandating attorney fees  
5 with this bill. It will affect the victim of domestic  
6 violence.

7           The Court is in the position now to determine  
8 when to award attorney fees, that the Court evaluate  
9 case-by-case, let the Court at its discretion award attorney  
10 fees. Don't victimize the victims again. Thank you.

11           CHAIRPERSON CLARK: And we thank you. Attorney  
12 Viola.

13           MR. VIOLA: Thank you. I welcome this  
14 opportunity to speak before this distinguished panel. I'm I  
15 guess the loner on this panel from the standpoint that I'm  
16 the one individual representing private counsel. As was  
17 mentioned, my name is Michael Viola. I am here on behalf of  
18 the Philadelphia Bar Association. I personally practice  
19 exclusively in the area of family law in Southeastern  
20 Pennsylvania with the firm of Shainberg and Fingerman.

21           I am presently the co-chair with Miss Dubin of  
22 the Philadelphia Bar Association Family Law Section on  
23 Domestic Violence. I am the immediate past chair of the  
24 Philadelphia Bar Association Young Lawyers Division.

25           On March 26th of this year the Board of

1 Governors of the Philadelphia Bar Association passed a  
2 resolution against House Bill 2075. Attached to my written  
3 materials is the resolution as it was passed. This bill was  
4 initiated by the family law section. It's the position of  
5 the Philadelphia Bar Association that the award of counsel  
6 fees in domestic violence matters remain discretionary.

7           A mandatory award of counsel fees can cause, as  
8 we saw it, four problems. I'll indicate now that those four  
9 points have been brought up already by the people you've  
10 already heard speak.

11           A mandatory award of counsel fees will encourage  
12 litigation by not promoting an amicable resolution of abuse  
13 matters by agreement. Defendants are going to be reluctant  
14 to enter into agreements if they know they're going to be  
15 obligated to pay counsel fees. As private counsel I have  
16 encouraged some of my clients when I represent the defendant  
17 to enter into an agreement without admission. So they're  
18 not admitting anything that they had done anything  
19 inappropriate, but if there's a mandatory award of counsel  
20 fees, they're paying one way or the other. Defendants are  
21 going to litigate the cases. They're going to want to prove  
22 there was or there was not abuse there.

23           There's also a concern that counsel fee awards  
24 by being mandatory will be given to the detriment of claims  
25 for out-of-pocket expenses. There was testimony about



1 medical expenses, property damage. All that will be put  
2 aside for the sake of the mandatory counsel fee award.

3           And as you heard from all of presenters today,  
4 there's going to be an increase in cross-filings. You'll  
5 have two plaintiffs. And if the act says that it's  
6 mandatory for a plaintiff, well, then both sides are going  
7 to get it. It's possible to have a situation where the  
8 defendant's counsel fees are higher than the original  
9 plaintiff's counsel fees. And if it's mandatory and both  
10 parties then collecting, the original plaintiff, who is in  
11 most cases the original victim, it's costing that person  
12 more to pay for the counsel fees.

13           It's unfortunate that while the intent of this  
14 legislation is noble, it's causing more problems by just  
15 changing one word. It's better to leave it discretionary,  
16 keep it in the hands of the judge who can be presented with  
17 all the facts and circumstances of the individual case, and  
18 let that judge decide if counsel fees are appropriate.  
19 Thank you.

20           CHAIRPERSON CLARK: Thank you very much. I'm  
21 sure that Representative Gannon had the best intentions when  
22 he introduced this bill and had it drafted, and I guess  
23 that's why it behooves us to have public hearings to hear  
24 from the individuals that are out on the firing line so to  
25 speak to get their expertise and their day-to-day experience

1 in handling these matters.

2           At this point I'll turn it over to see if there  
3 are any questions or comments from the other members.

4 Representative Schuler.

5           REPRESENTATIVE SCHULER: Thank you very much,  
6 Mr. Chairman, and I do thank you folks for coming and giving  
7 testimony. Some of the things that came out here, I think  
8 in yours, Patricia, on page three, this third paragraph  
9 mentioned requiring petitioners to post a bond or pay  
10 court. I get from your testimony that you feel that is not  
11 appropriate; is that correct?

12           MS. DUBIN: Yes.

13           REPRESENTATIVE SCHULER: Why do the judges do  
14 this?

15           MS. DUBIN: Yes, that's correct, I feel that it  
16 is not appropriate. I think that there are occasions when  
17 people will file protection from abuse more than one time,  
18 and in situations where the judge doesn't like that they've  
19 done that, they may ask them to post a bond before filing  
20 again. I think it's very difficult in protection from abuse  
21 cases in the short time that judges have to make a  
22 determination about entering relief to really assess the  
23 legality of the case and figure out what's going on. And so  
24 even though a judge, after hearing testimony on a particular  
25 day, may decide to deny a petition, I don't think they

1 should be allowed to say that before that petitioner can  
2 file again, should a new incident arise, that they have to  
3 post a bond or pay court costs.

4 REPRESENTATIVE SCHULER: Are these the judges  
5 that common pleas --

6 MS. DUBIN: Yes, sir. These are the common  
7 pleas court judges.

8 REPRESENTATIVE SCHULER: How about the district  
9 justice? Now, in my area we have DJ's, and you have a  
10 little bit different situation. They're not allowed to do  
11 it at the local level?

12 MS. DUBIN: In Philadelphia County the district  
13 justices are not involved in the initial entering of final  
14 protection orders.

15 REPRESENTATIVE SCHULER: So I guess that would  
16 be the same thing. But what I'm getting at I've heard  
17 constant complaints from police officers that these abuse  
18 cases -- I have one particular situation the officer spent  
19 almost six hours getting the whole thing -- getting the two  
20 separated, then goes back, does the paperwork, then in the  
21 morning -- it's like 2:00 in the morning -- around 8:00 the  
22 papers are all ready for her to sign the Complaint and she  
23 refuses to do it. How do we address that?

24 It's getting to be a major problem. I don't  
25 want to stifle the complainant, but on the other hand the

1 municipalities are paying a police officer for this work and  
2 I guess you could say, well, that's what he's getting paid  
3 for, but then when they go to file the Complaint they back  
4 off, be it he or she. How do we address that?

5 MS. DUBIN: Sometimes that happens and I think  
6 it's --

7 REPRESENTATIVE SCHULER: It happens quite a bit.

8 MS. DUBIN: I think it's a problem to be  
9 addressed, but I think if we address it by trying to  
10 preclude filings we may put people in danger. The fact that  
11 someone decides not to go through with the paper filing on a  
12 protection from abuse case does not mean that they weren't  
13 abused and they aren't in danger. And I think a way to help  
14 would be to offer more support services, to offer cheaper  
15 housing so that people who can't afford to leave an abuser  
16 and an abusive situation because they have have no place to  
17 go with their children has a place to leave.

18 All the reasons I think why people find it so  
19 difficult to leave an abusive relationship, if we start to  
20 look at them one by one and offer support in those areas, I  
21 think it will have people able to make up their minds to  
22 leave and then leave.

23 REPRESENTATIVE SCHULER: I agree with you and I  
24 think that's very important, but I don't know if that  
25 addresses our problem. And maybe this problem shouldn't be

1 addressed today, but you brought it up in there about the  
2 bond.

3 MS. DUBIN: Yes, I did. I feel very strongly  
4 that people should not be precluded --

5 REPRESENTATIVE SCHULER: I agree with you.

6 MS. DUBIN: -- from filing actions even if it  
7 means in some cases they will be dismissed by judges or it  
8 will have cost some money in the processing and the papers;  
9 that what's at risk is too important, namely, the safety of  
10 battered individuals and their children.

11 REPRESENTATIVE SCHULER: But then isn't the  
12 plaintiff not going to pursue the issue by not filing?  
13 Let's be honest. It's a serious situation when a man or a  
14 woman, in most cases it happens to be a woman being battered  
15 and bruised -- and I agree. But once the police officer  
16 separates them and gets them separated, says to that person  
17 will you file charges against this individual, and that  
18 person says, yes, I will, and then proceeds -- the officer  
19 goes back, proceeds with the paperwork and then four hours,  
20 five hours later that person says, no, I changed my mind, is  
21 she or he helping themselves by doing that?

22 MS. GARLOW: Coming from the experience of  
23 working with domestic violence issues for about 20 years,  
24 I've adopted a philosophy of battered women know when it's  
25 time to take action. We can't say on their behalf every

1 single time that this is when you need to do it. She knows  
2 her own situation better than anybody knows her situation,  
3 she's knows her partner better than anybody knows her  
4 partner.

5           Historically the system hasn't always been so  
6 responsive. She is weighing a whole lot of different  
7 elements, and her decision when it's appropriate to file a  
8 Complaint, when to leave, what decision she needs to make.  
9 So the decisions that affect her life should be left to her  
10 is my philosophy on it, sir.

11           MR. VIOLA: If I can add to that if I may,  
12 because I actually recently had the situation I was  
13 representing the husband. He was the plaintiff. Wife had  
14 cross-filed, we were in court for the initial hearing. Wife  
15 did not show. I explained to husband that if a default  
16 judgment would have been entered, the final protection order  
17 would have been granted.

18           We went before the judge. The judge knew that  
19 the wife did not appear. And to my surprise in open court  
20 the husband said he was withdrawing the petition. I did not  
21 know it until the words were coming out of his mouth. And  
22 then I talked to him about that afterwards, he had made a  
23 decision knowing what would have been the -- what the family  
24 situation would have been if that order had been entered, if  
25 it was entered without her appearing, and he chose to take

1 that step. He knew when it was right to proceed.

2           The issue that you have brought up does fall  
3 back more towards counseling and advising parties what their  
4 rights are. If they know what their rights are or what can  
5 happen and what can't happen, they still have to make that  
6 ultimate decision themselves. We can't say to them you must  
7 file, you should do this.

8           But I mean we can even get to that full point  
9 where even all the fees have been paid. And my client had  
10 paid for my time and then while we were there, standing  
11 there in front of the judge, that's when he said for the  
12 first time I'm going to withdraw it. And that's the kind of  
13 situation there's no way to prepare for that. Thank you.

14           REPRESENTATIVE SCHULER: I understand and I do  
15 agree about attorney's fees. I don't disagree with what  
16 you're saying, but it's -- as a representative of my  
17 constituents I get this complaint constantly, what are you  
18 going to do about it. That's the question I get. I'm not  
19 sure I know what to do about it.

20           MS. KLEPPINGER: In Northampton County we have a  
21 lot of rural areas where the state police go out at 2:00,  
22 3:00 in the morning and the abusee is wanting to get out of  
23 the battered situation. The state police talk to them,  
24 separates them and says in the morning go to the PFA office,  
25 file for a complaint. Meanwhile the children wake up and

1 they beg her not to throw Daddy out.

2                   So there's a lot more than just why doesn't she  
3 leave him. There's the thinking of where do I go with my  
4 children, what about school if they're school age. It's  
5 3:00 in the morning, what do I do now. So that right now I  
6 feel I can leave him, yes, take him away, but then you have  
7 the children crying, you have the children wanting their  
8 daddy, you have the family that's saying, well, you tried  
9 this last time and it didn't work and why are we going to go  
10 out of our way and help you again.

11                   So that by the time that it comes to be 8:30 in  
12 the morning when she should be at the PFA office, she's not,  
13 she's thinking what is she going to fix for dinner so he  
14 doesn't get angry again.

15                   REPRESENTATIVE SCHULER: Okay. That's all I  
16 have.

17                   REPRESENTATIVE WOGAN: I don't have any other  
18 questions, but I just wanted to thank you you all for your  
19 testimony. You've given us some very compelling arguments  
20 why this discretion to award counsel fees should remain with  
21 our judges. And I hope the Chairman, although it's his  
22 bill, doesn't call this up for a vote in this form. Thank  
23 you.

24                   CHAIRPERSON CLARK: Representative Birelim. Any  
25 other questions for the panel? Counsel Ryan.



1 MR. RYAN: Ms. Dubin, you've indicated that you  
2 do not think that there are any circumstances in which a  
3 plaintiff may be assessed for attorney's fees?

4 MR. DUBIN: Yes.

5 MR. RYAN: Wouldn't that be at odds with the  
6 general civil practice in all areas of the law concerning  
7 where spurious suits that are ill-advised or more for  
8 malicious purposes where the judge may properly issue  
9 sanctions?

10 MS. DUBIN: Well, my thinking on this is because  
11 the Protection From Abuse Act has specific language that if  
12 there's one filer and that filer requests fees that the  
13 judge may order them that that overrides the other civil  
14 statute that I believe you're referring to because there's  
15 something specific in the Protection From Abuse Act about  
16 it.

17 MR. RYAN: All the other Rules of Civil  
18 Procedure are overridden by that particular language?

19 MS. DUBIN: No, I don't think all the other  
20 rules are overridden, but I think that when there's  
21 something specific in a statute that applies to that statute  
22 and then there's something in another statute that's more  
23 general, what's specific in the statute that you're looking  
24 at would be the law that would apply. But obviously I don't  
25 think it's as clear as all that because I'm asking you to

1 amend the statute because what I do think is wrong is that  
2 when a plaintiff files that she could end up paying the  
3 defendant's attorney fees when the defendant has not filed  
4 anything.

5 I think that will have a very chilling effect on  
6 people filing if they think when they go in that they could  
7 end up paying for defendant's attorney fees.

8 MR. RYAN: That can happen in any civil suit  
9 that's filed though under the Rules of Civil Procedure if  
10 the courts will have a problem, as the Legislature has had,  
11 when they've gone into the area of I guess courts trying to  
12 encroach upon the rules of court procedure concerning these  
13 particular issues.

14 MS. DUBIN: Well, I think the Protection From  
15 Abuse Act is somewhat different. I think already the  
16 Legislature has said we see a public problem with domestic  
17 violence, we're going to enter extraordinary relief in this  
18 area, which I think a lot of the relief that someone can  
19 obtain under the relief section of the Protection From Abuse  
20 Act is extraordinary. There are a few other parts of the  
21 law where you can have an exparte order if it -- you're  
22 excluding someone from a residence.

23 And so I think in keeping with that in order to  
24 allow people to utilize it fully that, yes, there should be  
25 something which bars defendants from being able to obtain

1 attorney fees under that action. Because the problem is it  
2 can be used as a weapon. Typically people who are filing  
3 are not going to be able to pay attorney fees of the other  
4 side. And if a petitioner -- if a filer is afraid that they  
5 will be assessed attorney fees, they may decide not to  
6 file. And I think that is much worse than the other  
7 problems that you raised, you know, is there a problem  
8 because this other law applies to other case law.

9 I think in keeping with the Protection From  
10 Abuse Act to really keep teeth in it, and I think the  
11 mandatory attorney fee was an effort to really put some  
12 teeth into it, and there is no mandatory attorney fee in any  
13 other place of family law that I know of, so I think if  
14 people were willing to do it there, perhaps it should go in  
15 a different version so that plaintiffs will not be faced  
16 with having to pay attorney fees.

17 MR. VIOLA: If I can also add to that. There is  
18 already in the abuse statute a provision providing for  
19 counsel fees when it gets to the point that a party has  
20 basically abused the process. Which seems to be part of  
21 your concern. So that's already in the act.

22 Also, when you have a situation where someone is  
23 abusing the process and constantly filing, the place to nip  
24 that bud is before it gets to court. The Court should not  
25 order -- should not enter any temporary orders so it does

1 not become as much of an issue if you stop the person from  
2 proceeding. But, of course, you've got to be careful with  
3 the person who cries wolf that they keep filing all claims  
4 that have no merit and then something meritorious does come  
5 up.

6 But there is a provision already in the act  
7 providing for counsel fees when it gets to the point that  
8 they've abusing the process.

9 MR. RYAN: That was my concern. I thought that  
10 Miss Dubin wanted it amended so that would no longer apply  
11 and would not be using -- that the courts used at all.

12 MR. VIOLA: I think that Miss Dubin's concern is  
13 not when it's exactly to that point but more -- because it  
14 could be a situation where a plaintiff files several  
15 protection from abuse actions and withdraws them, not  
16 because they don't have merit, but because she's concerned  
17 about proceeding. And then you have that kind of situation  
18 where the judge says, fine, if you want to proceed on this  
19 one, you're posting a bond. Well, then you're telling her  
20 don't come into my courtroom anymore even though you may  
21 have a legitimate claim. It may not be the situation where  
22 it's someone just abusing the system, but it's someone who  
23 has a legitimate basis. Thank you.

24 MR. RYAN: I guess the only other question I had  
25 was do you think that if mandatory attorney fees were

1 enacted that that might influence judges in some respect and  
2 perhaps move the line on where they may grant relief? In  
3 other words they might have an absolute reluctance --

4 MS. DUBIN: Yes.

5 MR. RYAN: -- sometimes to go ahead and grant  
6 the relief.

7 MS. DUBIN: Yes.

8 MR. RYAN: Because they're going have to award  
9 attorney fees to hurt any petitionary close case.

10 MS. DUBIN: I think that's absolutely right. I  
11 think just looking at it strictly at the letter of the law a  
12 judge should enter relief when the plaintiff has met a  
13 certain burden of proof. But I'm sure everyone realizes  
14 that whether the plaintiff meets that burden off proof is a  
15 lot of times connected to the creditability of that person.  
16 So you have a lot of leeway as a judge in terms of whether  
17 you're going to enter an order.

18 And I think that you're absolutely right, if the  
19 judge feels -- if they're on the fence on a case and feel  
20 like they're not -- they're not entirely sure whether they  
21 want to give this plaintiff relief, they're not sure if the  
22 person is abused, but they would have been otherwise  
23 inclined to give them the benefit of the doubt because they  
24 fear the repercussions if they don't give the protection  
25 order, if they also realize that not only do they have to

1 give this order, and it may be a very minimal order because  
2 all the other parts of relief are discretionary, so they  
3 could give an order that just gives protection only to the  
4 plaintiff meaning that defendant can't abuse, harass,  
5 menace, threaten, that the judge may want to give just that  
6 bit of relief and not an exclusion, not a support order.

7           If they also have to award the mandatory  
8 attorney fees, they may decide that they're not going to  
9 give it and they won't give anything and we are concerned  
10 about that.

11           CHAIRPERSON CLARK: Seeing no additional  
12 questions, we want to thank you all of you for coming out  
13 today and providing us with your testimony.

14           And I'd like to thank you, the members of the  
15 committee, for joining me today. And that concludes our  
16 Subcommittee on Courts hearing on House Bill 2075, and thank  
17 you very much.

18           (Whereupon, the hearing was concluded at 1:59  
19 p.m.)

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I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the within proceedings, and that this copy is a correct transcript of the same.



Pamela L. Packer  
Court Reporter-Notary Public