

TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE
HB 2075

Pennsylvania Coalition Against Domestic Violence
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Introduction:

Good Afternoon. My name is Bette Garlow. I am here today speaking on behalf of the Pennsylvania Coalition Against Domestic Violence. The Pennsylvania Coalition Against Domestic Violence is a not-for-profit organization, incorporated in the Commonwealth of Pennsylvania for the purpose of providing services and advocacy on behalf of victims of domestic violence and their minor children. PCADV is a membership organization of 65 shelters, hotlines, counseling programs, safe home networks, legal advocacy projects, and transitional housing projects for battered women and their dependent children in the Commonwealth. For more than 20 years, PCADV has provided training and technical assistance to domestic violence programs, bar associations and their members, courts, and law enforcement agencies on issues of domestic violence, safety, and custody. PCADV is an organization that has been involved in the Pennsylvania battered women's movement and is also participates nationally in the development of policy. PCADV was instrumental in the drafting and enactment of the Protection From Abuse Act. As an organization, we are always looking for ways to strengthen the system's response to domestic violence. That has been our mission from our inception.

Thank you very much for inviting me here today to talk about House Bill 2075. PCADV appreciates that the Pennsylvania legislature is again looking for ways to strengthen the Commonwealth's response to domestic violence. In many ways, the Commonwealth has been a forerunner in the United States in enacting laws that are intended to protect victims of domestic violence. Though not the first in the United States, but one of the first and one of the best, the Protection from Abuse Act is one such example of the Commonwealth's responsiveness. PCADV commends the chair of this committee and the committee for recognizing the importance of finding ways to provide legal representation to victims of domestic violence for the purpose of obtain protection from abusers.

We know that victims who are represented by legal counsel in protection order hearings fare much better than victims who are not represented by counsel at hearing. We also know that victims of domestic violence are more protected when their protection orders provide comprehensive relief for their children and them. (Keilitz, 1994.) The comprehensive relief of which I refer includes specified orders that detail for abusers that they must not initiate contact

WHY THE LEGISLATURE SHOULD NOT ENACT HB 2075

I. In some cases, it is more appropriate that the court order other relief to protect victims of domestic violence before or instead of attorney fees. The court's discretion to devise the most appropriate and comprehensive protection orders should remain intact. The award of attorney fees should be discretionary, not mandatory.

PCADV recognizes that many, if not most, of the parties who come before the Commonwealth's courts seeking protection have limited resources. Sometime, it may be far more critical to the protection of victim's of domestic violence that the court exercise its discretion and award other financial relief before or instead of awarding attorney fees. Given limited resources, it shouldn't be preferred that attorneys fees must be ordered under the law when the replacement of damaged property, or critical medical expenses or relocation expenses to put a roof over the heads of victims and their children is just discretionary. That does not indicate that this legislature is putting the needs of victims and their children first. There are cases in which the court can best seek to protect victims by using the other weapons in the arsenal that the law provides, before or instead of ordering attorney fees.

II. Most victims of domestic violence obtain representation from legal services. Legal services funded organizations are prevented by federal law from accepting attorney fees or taking fee generating cases. Mandating attorney fees will be detrimental to victims of domestic violence from obtaining services from the Commonwealth's predominant provider of legal services in Protection From Abuse actions.

A recent needs assessment conducted by PCADV indicated that most victims of domestic violence seek representation for Protection From Abuse actions through legal services. Federal law (attachment A) prevents legal services organizations from accepting attorney fees. Further, there are provisions under the federal law which require legal services entities to refer fee generating cases out of their offices and to private attorneys. The impact of mandating attorney fees may well impact the Commonwealth's primary provider of such service from representing victims of domestic violence. The federal law's preclusion cannot be legislated around by the Commonwealth.

Further, if legal services does have to refer protection from abuse cases to private attorneys, most of the bar will still hesitate to represent battered women. Traditionally, protection order cases do highly among the desirable cases of the private bar. Even if attorney fees are awarded to the private bar, access to legal representation for victims of domestic violence will more likely be hampered than enhanced.

III. Mandating attorney fees in Protection From Abuse cases will result in burdening the courts because attorneys will need to enforce the court's order of attorney fees. This will demand the court's time and resources. Further, enforcing the attorney fee provisions may

attorney fees, often at the expense of providing necessary relief to victims, flies in the face of designing orders that best protect victims of domestic violence. That is inappropriate and not what we intend the Protection From Abuse act to accomplish. Furthermore, this legislature should not create law that will unnecessarily burden the courts while failing to best protect victims of domestic violence. The law should provide courts the discretion, not a mandate, to order attorney fees.