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*Practice Limited To Family and Matrimonial Law*

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TESTIMONY FROM MICHAEL L. VIOLA, ESQUIRE  
FOR PUBLIC HEARING ON APRIL 14, 1998  
REGARDING HOUSE BILL 2075

I am Michael L. Viola, Esquire. I am appearing before this distinguished sub-committee on behalf of the Philadelphia Bar Association. I practice exclusively family law in south-eastern Pennsylvania with the firm of Shainberg & Fingerman. I am a resident of South Philadelphia. I am the immediate past-chair of the Philadelphia Bar Association Young Lawyers Division. I am currently a member of the Philadelphia Bar Association Family Law Section Executive Committee and the co-chair of the Section's Domestic Violence Committee.

On March 26, 1998, the Board of Governors of the Philadelphia Bar Association passed a resolution against House Bill 2075, a copy of which is attached. This resolution was proposed by the Family Law Section.

It is the position of the Philadelphia Bar Association that an award of counsel fees in domestic violence matters remain discretionary. Mandatory awards of counsel fees may cause problems including:

1. It may encourage litigation and not promoting the amicable resolution of abuse matters by agreement;
2. Defendants would be reluctant to enter into agreements, even without admission, if they are obligated to pay counsel fees;
3. Counsel fees awards would be awarded to the detriment of a plaintiff's claims for out-of-pocket expenses; and
4. Parties may file cross-petitions against each other in order to claim a right of counsel fees.

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While the intent of House Bill is noble, the changing an award of counsel fees from discretionary to mandatory could cause additional problems for the parties in domestic violence situations.

(3-7b-98)

**RESOLUTION OPPOSING PROPOSED AMENDMENT  
TO PROTECTION FROM ABUSE ACT**

**WHEREAS**, Section 6108(a)(8) of the Protection from Abuse Act, 23 Pa.C.S. §6101 *et seq.* provides, "In addition to out-of-pocket losses, the court may direct the defendant to pay reasonable attorneys fees." 23 Pa.C.S. §6108(a)(8);

**WHEREAS**, House Bill 2075, Printer's Number 2721, proposes an amendment to Section 6108(a)(8) which would make the award of counsel fees to the plaintiff mandatory and not discretionary;

**WHEREAS**, it is anticipated that the mandatory award of counsel fees based on the proposed amendment to Section 6108(a)(8) of the Protection from Abuse Act could create additional difficulties for the parties involved in domestic violence matters including the following:

- a. A mandatory award of counsel fees would encourage litigation for a finding of abuse and would not promote the amicable resolution of abuse matters by agreement;
- b. A mandatory award of counsel fees would be entered against a defendant even in the event of an agreement, which is likely to cause defendants to be unwilling to enter into agreements;
- c. A judge might feel obligated to award counsel fees to the detriment of plaintiff's claim for out-of-pocket losses; and
- d. Parties may file cross-petitions solely for the purpose of gaining the right to a mandatory award of counsel fees.

**NOW, THEREFORE, BE IT RESOLVED** that the Philadelphia Bar Association opposes the passage of House Bill 2075 or other comparable legislation.

**PHILADELPHIA BAR ASSOCIATION  
BOARD OF GOVERNORS  
ADOPTED: March 26, 1998**