

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA

* * * * *

House Bill 2267

* * * * *

House Judiciary Subcommittee
on Courts

Main Capitol Building
Room 60, East Wing
Harrisburg, Pennsylvania

Wednesday, May 27, 1998 - 10:00 a.m.

--oOo--

BEFORE:

- Honorable Daniel Clark, Majority Chairperson
- Honorable J. Scot Chadwick
- Honorable Jerry Schuler
- Honorable Peter Daley
- Honorable Joseph Petrarca

IN ATTENDANCE:

- Honorable Tom Gannon
- Honorable Jere Birmelin
- Honorable Timothy Hennessey
- Honorable Robert Reber
- Honorable Brett Feese
- Honorable David Mayernik
- Honorable Thomas Caltagirone
- Honorable Don Walko

KEY REPORTERS
1300 Garrison Drive, York, PA 17404
(717) 764-7801 Fax (717) 764-6367



1 **ALSO PRESENT:**

2

3 **Judy Sedesse**
4 **Majority Administrative Assistant**

5 **David Bloomer**
6 **Majority Research Analyst**

7 **Richard Scott, Esquire**
8 **Minority Counsel**

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C O N T E N T S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

WITNESSES

PAGE

Honorable Joseph A. Del Sole
Pennsylvania Superior Court

6

Professor Robert Rains
Dickinson School of Law

31

Widener University School of Law
Palmer Lockard, Esquire
Director, Civil Law Clinic
Professor Mary Kate Kearney
Associate Professor of Law

45

51

Robert L. Freedman, Esquire
Dechert, Price and Rhoads

58

John R. Mondschein, Esquire
Mondschein Associates

72

(Written testimony also submitted by
Harry J. Gruener, Esquire from the firm
of Goldberg, Gruener, Gentile, Voelker
& Horoho.)

1 CHAIRPERSON CLARK: Good morning. This
2 is the time and place advertised to have a public
3 hearing on House Bill 2267, and this is the
4 Judiciary Committee Subcommittee on Courts. And
5 I'm Representative Dan Clark, a Representative
6 from the 82nd Legislative District.

7 And I think before we introduce the bill
8 and receive testimony this morning I'd like the
9 rest of the Members in attendance to introduce
10 themselves. I'll guess we'll start down here to
11 the far right, my far right. Please introduce
12 yourself for the stenographer and the people in
13 attendance.

14 REPRESENTATIVE DALEY: Representative
15 Daley from Washington and Fayette Counties.

16 REPRESENTATIVE HENNESSEY: Tim
17 Hennessey from Chester County.

18 REPRESENTATIVE CHADWICK: Representative
19 Scot Chadwick, Bradford and Susquehanna Counties.

20 REPRESENTATIVE MAYERNICK:
21 Representative Dave Mayernik from Allegheny
22 County, Pittsburgh area.

23 REPRESENTATIVE BIRMELIN: Representative
24 Birmelin from Wayne and Pike Counties.

25 REPRESENTATIVE CALTAGIRONE:

1 Representative Caltagirone, Berks County.

2 REPRESENTATIVE REBER: Representative
3 Reber, Montgomery County.

4 MR. BLOOMER: I'm Dave Bloomer, a
5 research analyst.

6 CHAIRPERSON CLARK: This morning we're
7 going to consider House Bill 2267, and that deals
8 with the support issue of a parent who's
9 obligated to support a minor or an unemancipated
10 child.

11 And a problem occurs sometimes upon the
12 death of that parent, the support obligation ends
13 if there is not an agreement or a court order
14 which would provide for continuing support.

15 Judge Del Sole is with us today, and he
16 had brought this issue to our attention during a
17 previous Subcommittee on Courts hearing, and he
18 is again with us today and he brought this issue
19 up in a dissenting opinion in one of his Superior
20 Court decisions.

21 And I think with that we'll ask the
22 Honorable Joseph A. Del Sole to present his
23 testimony to the Committee and be available for
24 questions. Mr. Del Sole, how are you this
25 morning?

1 JUDGE DEL SOLE: I'm fine,
2 Representative Clark. How are you?

3 CHAIRPERSON CLARK: Great. We're trying
4 to get the air conditioning turned on.

5 JUDGE DEL SOLE: I appreciate the
6 opportunity to speak to this body on this issue.
7 As you said, I raised this when I testified last
8 March on some other bills involving support. And
9 I have had the opportunity to review the proposal
10 in House Bill 2267, Printers No. 2997.

11 And I had sent to counsel and I believe
12 counsel has forwarded to the Members of the
13 Committee some thoughts that I had that were
14 embodied in the letter of March 18th, 1998, with
15 regard to this issue.

16 Historically, this case -- the case that
17 has prompted my testimony involved a situation
18 where after parties divorced, the children were
19 living with their father who had remarried.

20 The father died. He had left his entire
21 estate to his new wife with I think the belief
22 that she would continue to care for his children
23 from the first marriage.

24 The children were then returned to the
25 natural mother and she filed an action for

1 support against the estate of her -- for the
2 children and it was denied.

3 Recovery was denied by the trial court
4 and by our court on the basis that there was no
5 authority for a court to enter an order against
6 an estate to provide for support of minor
7 children. This prompted, of course, my dissent
8 and has led us here today.

9 I believe that the language in the bill
10 that has been offered has one limitation which I
11 called to the attention of the Committee in my
12 letter, and that is that the first sentence could
13 be interpreted only to permit a court to order an
14 estate to pay a support award that had previously
15 been determined.

16 And, of course, that's not the situation
17 that we had in the matter of the Hain case and it
18 may not be a situation that is always going to
19 occur -- always going to occur in our society.

20 It is my view that it is important that
21 the support be provided under the circumstances
22 that showed up in the Hain case but that any
23 attempt to legislate in this area has to consider
24 a lot of other problems that might occur.

25 One of which, very basic, is how will this

1 affect the administration of estates in
2 Pennsylvania? You know, you conceivably could
3 have a court order that would exist for years;
4 and we certainly don't want to tie estates up for
5 some long periods of time while some support
6 obligation is continuing.

7 In addition, there may be benefits that
8 enure to the children as a result of the death of
9 the parent, and these should be taken into
10 account.

11 They might be Social Security benefits,
12 some type of pension benefits, life insurance,
13 there might be a living trust arrangement or some
14 other vehicle that provides for the child's
15 support.

16 And to the extent that these vehicles
17 are in place, it would negate the necessity of
18 ordering an estate to provide support for the
19 children.

20 So I think you have a lot of areas of
21 concern and issues that you're going to have to
22 examine before some type of meaningful and
23 effective legislation can be developed, not the
24 least of which is what is the inheritance tax
25 consequence of any payments that would be made

1 with regard to support payments that would come
2 from an estate to benefit minor children?

3 So you have to balance I think two very
4 important issues: One, the need to see to it
5 that children are supported when necessary; and
6 two, not to unduly burden estate administration
7 so that the estates can be administered and
8 handled expeditiously for the benefit of the
9 beneficiaries of that estate.

10 I have taken the opportunity to talk to
11 some attorneys that work in the estate field.
12 And one attorney, Marvin Raditsky (phoentic),
13 from Central Pennsylvania has offered some
14 suggestions and I'm going to share them with you.

15 One would be that if there is a
16 protective statute it should be triggered only if
17 the decedent's estate or living trust is not
18 distributable to the surviving parent of the
19 dependent minor child or to a trust account or
20 other entity that would require adequate support
21 for that child.

22 Once the statute is triggered, the
23 appropriate domestic relations office could
24 calculate the amount of support which would have
25 been paid by the decedent had it been ordered

1 prior to the death using the support guidelines
2 as a guide in that area.

3 Once the support is determined, it could
4 be converted to a lump sum present value by using
5 the Federal Mid-term Rate in the IRS Code, which
6 is an area that I'm not familiar with.

7 The lien could be divested by the
8 deceased parent's estate or living trust by
9 paying the sum into court. Any funds remaining
10 in court when the child ceases to be dependent
11 would then be returned to the estate or living
12 trust. You'd have to deal with the tax
13 consequences -- the inheritance tax consequences.

14 So that there are possible vehicles for
15 allowing this kind of relief to be available.
16 But I suggest that you have a lot of more
17 information to gather before you can structure
18 the kind of statute that would meet the
19 needs -- the competing needs of all people
20 involved.

21 You know, you have new families,
22 beneficiaries; you have existing children. But
23 that's basically the premise that children need
24 support.

25 CHAIRPERSON CLARK: We thank you very

1 much for your testimony. We had some Members
2 come in the room during your testimony, and I'd
3 like them to introduce themselves to everybody.
4 I'll start down here to my left with
5 Representative Schuler.

6 REPRESENTATIVE SCHULER: Representative
7 Jere Schuler, Lancaster County.

8 CHAIRPERSON CLARK: We also, to my right,
9 we have Representative Feese.

10 REPRESENTATIVE FEESE: Representative
11 Brett Feese, Lycoming County.

12 CHAIRPERSON CLARK: And Representative
13 Petrarca, who is the sponsor of this House Bill.

14 I think what we're going to try to do is
15 tie down this issue a little bit. And I believe
16 from your testimony, No. 1, there has to be an
17 absence of a support agreement or court order has
18 to happen first?

19 JUDGE DEL SOLE: Well, we would probably
20 be dealing with cases were there -- we may be
21 dealing with cases where there is an agreement or
22 a support order or where there is not. So you
23 would have either -- you could have either
24 situation as I see it.

25 CHAIRPERSON CLARK: Isn't the agreement

1 and the court order now enforceable against the
2 estate?

3 JUDGE DEL SOLE: No.

4 CHAIRPERSON CLARK: No.

5 JUDGE DEL SOLE: The agreement may be,
6 depending on the agreement; but a court order
7 would not necessarily be enforceable against the
8 estate. The traditional law in Pennsylvania has
9 been the duty of support ends when someone dies.

10 CHAIRPERSON CLARK: And then according
11 to suggestions from Attorney Raditsky, there
12 would be no provision in the will in the benefit
13 of a child.

14 JUDGE DEL SOLE: That's the situation
15 that we're dealing with, if there are no
16 provisions to take care of the child or children.

17 CHAIRPERSON CLARK: And then the way not
18 to hold up the estate is sort of to set it up in
19 a structured settlement so to speak where you
20 load it up, invest that, and then have a monthly
21 payment for the child's support.

22 MR. DEL SOLE: Basically that's what
23 he's suggesting. I think also that you would
24 want any court that would be structuring that to
25 consider the benefits -- any benefits that are

1 received through life insurance or maybe some
2 other third-party or public funding that would go
3 to the benefit of that child. It might reduce
4 the burden on the estate.

5 CHAIRPERSON CLARK: Do any other
6 Members -- Representative Caltagirone.

7 REPRESENTATIVE CALTAGIRONE: Yes. In
8 our society today, Judge, with every other
9 marriage ending up in divorce basically according
10 to statistics, you would have two, sometimes
11 three, maybe even four families with children
12 involved potentially -- at least let's say in
13 two, maybe more.

14 What would your recommendation be if,
15 let's say, I was married; we had two children.
16 Divorced and were married and we had two
17 children. I die. Would the children in the
18 hallway --

19 CHAIRPERSON CLARK: The children in the
20 hallway maybe --

21 REPRESENTATIVE CALTAGIRONE: How would
22 the court handle situations where I was obliged
23 in my first marriage to pay support for the first
24 two children, let's say, in that marriage, being
25 divorced then and having another wife and having

1 two or three other children with her and passing
2 on?

3 Would there be accommodations or
4 considerations or would it have to be spelled
5 out? Because if there were additional children
6 involved -- and this gets even more complicated
7 with or without wedlock, by the way, where there
8 would be obligations by that person for both
9 families.

10 JUDGE DEL SOLE: We see that -- we see
11 that now before death because the support
12 guidelines try and take into account the demands
13 for support by successive families, children of
14 different relationships. And it's not an easy
15 answer, Representative.

16 I can tell you that it particularly
17 becomes more complicated as the financial ability
18 of the payor's spouse or deceased's spouse is
19 limited.

20 That's why I think that any legislation
21 should be more general and then specific because
22 what we would hope is that as these issues as you
23 present -- and we can't possibly anticipate all
24 of the various fact permeations that'll come into
25 play -- that it's going to be really an ad hoc

1 decisional basis. It's going to be a
2 case-by-case process.

3 What I would think from just my own view
4 is that we would want the authority to exist, we
5 would want certain legislative guidelines on what
6 the court should consider and in what order maybe
7 that the court should consider it; but we would
8 like to have, I would think, the ability to have
9 whatever the fact-finding agency is the
10 opportunity to try and do economic justice in the
11 kind of situation you present.

12 Because it is, as you say, something that
13 is not uncommon in our society today and an issue
14 that I don't think we can fully appreciate the
15 fact patterns that will come before the courts
16 under those circumstances.

17 So I'm sorry I can't give you a specific
18 answer. I think more we would have to rely on
19 the ability of the judge in the given case to do
20 the economic justice balancing the needs of the
21 current family, the prior family, maybe the
22 current spouse.

23 You know, we may have a current spouse,
24 for example, that is physically disabled and is
25 not working. So there is economic concerns for

1 him or her depending. And so it's very hard to
2 say that there is a fix -- a unique fix that will
3 solve all the questions that come before the
4 court.

5 REPRESENTATIVE CALTAGIRONE: Your Honor,
6 in the current legislation that we would be
7 considering here, do you think specific
8 guidelines should either be adopted or a little
9 bit more general leeway for the court should be
10 added to the language so that situations like
11 that would come up, the court would have
12 flexibility in dealing with those particular
13 issues?

14 JUDGE DEL SOLE: Yes. In my comment on
15 the proposed amendment in House Bill 2267, the
16 first sentence of the bill seemed to me to only
17 allow an action of the court to occur if there is
18 an existing support obligation.

19 And, of course, we could have a
20 situation where there is no support obligation
21 because the children are living with the parent,
22 for example, who is -- like in the Hain case,
23 they were living with the father who died; and he
24 was supporting them while they were alive.

25 So that language I thought was very

1 restrictive on how the matter would proceed, you
2 know, when you could invoke the statute.

3 I would much prefer to see the authority
4 to trigger a mechanism to provide for economic
5 justice be there with certainly guidelines that,
6 you know, the court should consider before making
7 the award: The existence of life insurance, any
8 other benefits that arose for the benefit of the
9 children based on the death of this parent,
10 whether the parent has made other provisions
11 through a living trust or through life insurance.

12 Many times those needs are satisfied,
13 you know, by planning on the part of a parent.
14 And the life insurance and everything would
15 satisfy those needs, so there would be no reason
16 then to burden the estate.

17 If you have a parent who has done an
18 estate plan and in the meantime is providing for
19 children from a prior relationship through life
20 insurance or other vehicles, then that parent is
21 being responsible and why burden that estate, you
22 know, under those circumstances?

23 And those are the kinds of things that I
24 think the General Assembly would want to consider
25 as they go through this area.

1 REPRESENTATIVE CALTAGIRONE: Thank you,
2 Your Honor. Thank you, Mr. Chairman.

3 CHAIRPERSON CLARK: Representative
4 Reber.

5 REPRESENTATIVE REBER: Thank you very
6 much, Mr. Chairman. Joe, it's an honor to be
7 able to interrogate a judge from the other side
8 of the bench for a change, especially an
9 appellate court judge. I haven't had that luxury
10 too often.

11 Let me look at it from a little bit
12 different perspective. And I guess the fact
13 that I've been working on a couple of estates
14 recently that trigger these thoughts in my mind
15 as we're talking.

16 Where are we going to draw the line
17 assuming that an estate does provide -- that the
18 estate allows for a certain amount of specific
19 bequests to be given to a child?

20 And I'm an attorney representing the
21 estate, where do I have to make a determination
22 or how are we going to procedurally make the
23 determination whether there is sufficient support
24 being given under the will to the particular
25 minor children?

1 It just seems to me that somewhere we're
2 going to get involved in a real procedural
3 quagmire. How do I in essence represent to the
4 executor/executrix that this estate is clean, so
5 to speak, and we don't have a problem based upon,
6 you know, different bequests to the minor
7 children as meeting what may be a statute we
8 create? Do you understand the --

9 JUDGE DEL SOLE: I understand.

10 REPRESENTATIVE REBER: How far do we
11 have to go? Who's going to make that decision?
12 When do we make it? What kind of clearance do I
13 need if I'm representing the estate to go to
14 audit to close it out, that type of thing --

15 JUDGE DEL SOLE: I understand --

16 REPRESENTATIVE REBER: Big red flag in
17 my mind as we're discussing about that.

18 JUDGE DEL SOLE: It is one of a, you know,
19 a very legitimate point. And I think that first
20 of all if there is a question it's
21 going -- unless the General Assembly would make
22 some specific trigger point before which this
23 statute would come into play. And you could do
24 that and maybe you should do that.

25 You know, you'd have to get testimony I

1 think from people that are involved in estate
2 planning to know when that should occur. You
3 might want to establish a trigger point before
4 this statute would permit an order against an
5 estate for the purposes of providing some type of
6 support obligation out of that estate. And I
7 think that's a very legitimate area that should
8 be considered.

9 Once you're beyond that trigger point,
10 it may very well be that the needs of these
11 children have been adequately met through the
12 estate planning and insurance vehicle of the
13 decedent.

14 And there I think we're going to have to
15 rely on whatever guidelines the membership of
16 this body and the General Assembly set forth or
17 the court in a determination. I don't know how
18 else to answer your question. I understand the
19 concern, and it is a legitimate concern.

20 REPRESENTATIVE REBER: It seems to me to
21 be a real procedural nightmare for the
22 administration of estates where we have the
23 nonexistence of an agreement and/or an order and
24 we have minor children that might otherwise be
25 triggered under the support concept that we're

1 talking about attempting to protect.

2 And then as part of the administration
3 of the estate, where is it and how do we
4 delineate that --

5 JUDGE DEL SOLE: Where can you be sure
6 that you can go in and get the estate closed
7 out --

8 REPRESENTATIVE REBER: And then also
9 let's assume where do you go, before what
10 tribunal or what agency or what -- you know, I
11 can't conceive of -- it's kind of interesting. A
12 lot of estate attorneys don't really like to get
13 involved in domestic relations work. Hello.
14 You're there now. But be that as it may --

15 JUDGE DEL SOLE: I might suggest, of
16 course, that it would be the Orphans Court judge
17 who would deal with this issue directly. It
18 would also -- there's also the potential -- and I
19 don't know if this is true, but I think that
20 there's also the potential that if there is some
21 form of legislation in this arena lawyers who are
22 engaged either in the domestic arena or in the
23 estates arena are going to make provisions for
24 whatever legislation is triggered, is passed, in
25 order to meet the needs and not to burden the

1 estates in the future.

2 And I do -- many do that now. We don't
3 see a lot of cases on this issue coming up. It's
4 just a question of -- at least I haven't seen
5 many.

6 I don't know how many are out there
7 where people just tell a custodial parent that
8 you can't get anything out of the estate. It's
9 too bad if the other parent died. I don't know
10 how many situations like that exist, but I think
11 you've raised one of the areas of concern that
12 really has to be looked into and --

13 REPRESENTATIVE REBER: Seems like a
14 practical question for an attorney in the estate
15 field and certainly in the Orphans Court
16 administration of the process.

17 JUDGE DEL SOLE: No question. That's
18 why I raised in my comments was that, you know,
19 what effect does this legislation have on estate
20 administration. Because you don't want to tie
21 estates up or put questions in place that can tie
22 estates up.

23 REPRESENTATIVE REBER: Just shifting
24 gears in one other direction, Your Honor. In
25 your dissenting opinion, you referenced that the

1 parents who didn't support a minor child was
2 absolute.

3 Now, how do we get from that under the
4 support law to the right of a parent under
5 Pennsylvania law to decide whether he decides to
6 disinherit his child all together under the will?
7 And I guess that's where we've been for the last
8 number of millenniums under Pennsylvania law.

9 JUDGE DEL SOLE: Well --

10 REPRESENTATIVE REBER: Is this really a
11 case of first impression on this particular
12 issue?

13 JUDGE DEL SOLE: There have been -- this
14 is the first case that I've seen in this arena
15 since I've been on the appellate courts. Prior
16 case law said that duty of support ends with the
17 death of a parent.

18 REPRESENTATIVE REBER: Right.

19 JUDGE DEL SOLE: The question sort of
20 becomes more prevalent as was pointed out before
21 because the change in our society with regard to
22 how long marriages last, for example.

23 In the past, of course, you could write
24 your children out of a will; but, generally, you
25 could not write your spouse out. And the view I

1 think historically was that by seeing to it that
2 the spouse who would in all probability have
3 custody of the children can take against the
4 estate, the children by implication -- the minor
5 children, unemancipated minor children by
6 implication would be cared for through the
7 benefits received through the estate by the
8 surviving spouse. That's not the situation that
9 we necessarily have in all areas today.

10 There has to be -- I think the question
11 you have to ask is will you allow a decedent to
12 disinherit unemancipated minor children, because
13 that's what we're talking about.

14 We're not talking about the parent who
15 at some point in the life of an adult child
16 decides that that child is not going to be the
17 benefit of whatever bounty that parent has when
18 they die. Because that's always, you know,
19 that's I think inherent in our human conduct.

20 But should a parent be permitted under
21 all circumstances to disinherit an unemancipated
22 minor child? And that's an issue that I think
23 you're going to have to decide.

24 REPRESENTATIVE REBER: That specific
25 issue framed exactly that way in the course of

1 your deliberation in the Hain case, what or is
2 there any existing case law where there was a
3 direct attempt to disinherit a minor,
4 unemancipated child vis-a-vis a will was probated
5 and the issue arose? Have we ever --

6 JUDGE DEL SOLE: You mean from the
7 basis --

8 REPRESENTATIVE REBER: Just curious
9 whether there --

10 JUDGE DEL SOLE: I don't know of any.
11 That's not to say there aren't any. But I can't
12 think of a situation where an unemancipated minor
13 child has sought to -- and I don't think that
14 they can come in and say I want a bequest on this
15 estate because you can -- we've traditionally
16 said that you can -- you're not required to make
17 a bequest to your minor child.

18 This case arose under the view of the
19 custodial parent seeking support for a minor
20 child, which is a different vehicle. The effect
21 is somewhat the same.

22 REPRESENTATIVE REBER: That's why I'm
23 asking these questions. A hallmark of this
24 institution as of late is to go in this direction
25 to solve a problem. But as a result of going in

1 that direction, we open up a Pandora's box in the
2 real world of the practice of law in the
3 Commonwealth of Pennsylvania. And that's why I'm
4 sort of going in that direction.

5 JUDGE DEL SOLE: I think it's very
6 legitimate concerns that have to be considered
7 because, in effect, you are sort of creating a
8 forced heirship, you know, a forced inheritance.

9 The question you have to ask yourself
10 and decide as the representatives of the people,
11 Is this a policy that we want to implement?

12 In other words, do we want to provide
13 that an estate should be required under given
14 circumstances, whatever you define, to provide
15 for support for unemancipated minor children who
16 otherwise are disinherited because of the death
17 of the parent?

18 REPRESENTATIVE REBER: I guess the real
19 problem there is the one that many times I know
20 I've grappled with over the years representing
21 defendant husbands in support cases where they
22 disagreed with the, quote, state-imposed and/or
23 county-imposed guidelines as being in excess of
24 what they consider it should be.

25 And I guess to some extent that's also

1 what could be a concern if we have some form of
2 guidelines imposed under this statute, which
3 again runs counter to what the individual may
4 have desired to pass under his will to that
5 children.

6 And there you have a contest brewing.
7 And, unfortunately, he's not around to argue the
8 case.

9 JUDGE DEL SOLE: I think what you wind
10 up doing --

11 REPRESENTATIVE REBER: We could go on
12 forever.

13 JUDGE DEL SOLE: What you wind up doing
14 is changing the old maxim, The only thing sure in
15 life are death and taxes. You will say death,
16 taxes, and support of your minor children.

17 REPRESENTATIVE REBER: Thank you very
18 much, Your Honor.

19 CHAIRPERSON CLARK: You're quite
20 welcome, Representative Reber. Representative
21 Chadwick.

22 REPRESENTATIVE CHADWICK: Thank you,
23 Mr. Chairman. I can come up with a lot of
24 questions too, but we'd never hear any other
25 witnesses. I'll restrict myself to one.

1 Do you think that it's inevitable if we
2 go this route that we're going to have to create
3 a system of guidelines much like the child
4 support guidelines in order to find some sort of
5 consistency -- an inevitable result of all of
6 this?

7 JUDGE DEL SOLE: I really don't know,
8 Representative. I don't see any reason why the
9 current -- if you're looking at what would be the
10 appropriate amount of support, the current
11 guidelines might serve some vehicle for it.

12 I do think that when I spoke of
13 guidelines in my earlier remarks I was thinking
14 about legislative guidelines on when, if the
15 General Assembly passes legislation in this
16 arena, guidelines which would trigger the right
17 to seek the relief as opposed to guidelines
18 establishing the amount of relief to be granted.

19 It may very well be that when you
20 consider whatever benefits enure to the benefit
21 of the unemancipated minor child through either
22 life insurance or Social Security benefits or
23 maybe pension benefits through an employer that
24 the needs of the child are met without invading
25 the estate or some trust.

1 And those are the kind of guidelines
2 that I was referring to, not any guidelines that
3 would specifically set economic requirements to
4 be imposed on the estate.

5 Now, the comments that I read from
6 Attorney Raditsky said one of the things you
7 could do is look at what the guidelines would
8 provide and then fund that kind of program.

9 That would be a vehicle for
10 accomplishing the goal, but that's not the
11 guidelines that I was referring to in my comment.
12 And I hope I've explained it.

13 REPRESENTATIVE CHADWICK: I could ask a
14 lot more questions, but I promised I would only
15 ask one. Thank you very much.

16 JUDGE DEL SOLE: Well then you're a lot
17 more unique than lawyers that appear before us
18 that say I only have one more question.

19 CHAIRPERSON CLARK: Any additional
20 questions?

21 (No audible response.)

22 CHAIRPERSON CLARK: We want to thank you
23 very much for your testimony and your time and
24 diligence in answering our questions.

25 JUDGE DEL SOLE: Thank you,

1 Mr. Chairman. It's been an honor to be here
2 today, and I wish you luck on this effort. It's
3 not going to be an easy thing to solve, and you
4 may choose not to solve it in the future because
5 of the problems.

6 But it is something that I'm really
7 thrilled to see that the General Assembly is
8 considering because it does serve the needs of
9 the people of Commonwealth of Pennsylvania.

10 CHAIRPERSON CLARK: Thank you.

11 REPRESENTATIVE REBER: Mr. Chairman, can
12 I just interject something?

13 CHAIRPERSON CLARK: Yes.

14 REPRESENTATIVE REBER: In light of the
15 fact that I was a little long in my questioning,
16 I think it's fair to say to the judge that I'm
17 retiring at the end of this term after 18 years
18 in the General Assembly and will be returning to
19 the practice of law full time so I can pay the
20 bills so my wife doesn't file a child support
21 action against me. So I just have to get back
22 into the lexicon, if you will.

23 JUDGE DEL SOLE: Thank you.

24 REPRESENTATIVE REBER: Thank you.

25 CHAIRPERSON CLARK: Maybe if we provide

1 elective shares for minor children you could be
2 the court-appointed counsel for the minor
3 children.

4 REPRESENTATIVE REBER: No. No. Thank
5 you.

6 CHAIRPERSON CLARK: The next individual
7 to provide testimony to the Committee would be
8 Professor Robert Rains from the Dickinson School
9 of Law. Professor Rains.

10 PROFESSOR RAINS: Good morning.

11 CHAIRPERSON CLARK: Good morning.

12 You may continue.

13 PROFESSOR RAINS: I'm Robert Rains. I
14 teach family law at Dickinson Law School, which
15 is now part of Penn State. And for the last 15
16 years, I've also been one of the supervisors of
17 our Family Law Clinic in which we have
18 upper-level students representing indigent
19 clients in family law matters.

20 I come at this issue, therefore, from the
21 standpoint of a family law professor and
22 practitioner. I'm going to disavow any expertise
23 in estate work. And I also want to have a second
24 caveat that I speak on behalf of myself and not
25 the University or any of the various bar groups

1 or organizations to which I belong.

2 It was a pleasure for me to hear Judge
3 Del Sole. And I think I should start out by
4 saying that I second everything that he told you
5 this morning.

6 This Bill was drafted directly in
7 response to Garney versus the Estate of Hain,
8 which is a case that actually arose out of
9 Cumberland County, the county where our law
10 school is located and where I practice.

11 And there was a question asked, How did
12 it come about that a parent in Pennsylvania can
13 disinherit a minor child? I tried to look back
14 through the cases going back into the 1800s.
15 This seems to be an historical anachronism which
16 really crept into our law.

17 We started out with the premise, which I
18 think is perfectly reasonable, that a parent can
19 disinherit an adult child. And issues were
20 raised in some later cases, well, what about the
21 situation where there's a disinheritance of a
22 minor child?

23 And if you look at the Fessman Estate
24 case, the court was able to get around that by
25 saying, well, we interpret a letter that had been

1 sent by the decedent through his lawyer as an
2 agreement to continue to support the child after
3 his death.

4 We don't have to hit it head-on, but
5 there's some unfortunate language in that Fessman
6 Estate case that gives rise to the notion that a
7 minor child can be disinherited just like an
8 adult child.

9 And if you look back through the old
10 cases, there doesn't seem to be any discussion in
11 them really as to why the rule that an adult
12 child can be disinherited should be stretched to
13 a minor child.

14 But, of course, it's pretty hard to go
15 back into the mind-set of 30, 40, 80 years ago
16 when we had -- we didn't have our current support
17 laws, we didn't have the current support
18 guidelines, illegitimate children were treated
19 differently, et cetera.

20 Now, even as the courts have most
21 recently in Garney applied this doctrine, the
22 courts have also I think made it quite clear that
23 the General Assembly is free to change the
24 doctrine.

25 And in the Sommerville will over 35

1 years ago, the State Supreme Court really gave
2 the Legislature an invitation to go ahead and do
3 so. And, in fact, there's similar language in
4 the Garney case.

5 I absolutely agree that this is a
6 problem in our law and that we need to change it.
7 The difficulty is, as the question this morning
8 already made clear, there are a lot of complex
9 issues that are involved here.

10 And although I fully agree with the
11 impetus behind this bill, the bill really in my
12 mind is not going to take care of a lot of the
13 problems. And as Judge Del Sole explained, I
14 don't think it would even have -- if it had been
15 in effect, I don't think it would have created a
16 different result in Garney itself.

17 The reason why is in Garney
18 because -- there are actually four children in
19 Garney, three by the first wife. The three by
20 the first wife had lived with the father until
21 his death with the exception of the middle child
22 who had left and gone back to mom just a couple
23 of months before he died.

24 There was no support order against him.
25 It makes perfect sense that there was no support

1 order running against him. And if a potential
2 client came in to us and said, gee, I've got one
3 of the three kids, should I file a support action
4 against the other parent, I think we would have
5 been pretty loathe to do so.

6 That would likely come under the heading
7 of shooting oneself in the foot even if there had
8 been time in those two months before he died to
9 get a support order, which probably is not too
10 likely.

11 The language that Judge Del Sole
12 highlighted is this language in the bill that
13 says the support obligation will continue. Now,
14 there is, of course, in the statute in 4321 a
15 general obligation to support minor children.

16 But here, the lower court -- my
17 court -- and the majority on the panel Superior
18 Court focused on the fact there was no support
19 order. It had never been quantified. There was
20 no order to continue.

21 So I don't really -- I'm not really sure
22 that if 2267 were enacted in its current form
23 that you would have a different result than
24 Garney versus Estate of Hain.

25 It would presumably solve to some extent

1 the more common situation where the obligor dies
2 and there is some sort of support order, in fact.
3 Although, it still raises a host of issues, some
4 of which it seems to me the General Assembly has
5 to address in legislation.

6 Do we want there to be the right to have
7 an election against a will? And if so, what time
8 limitation would there be on election against the
9 will and who would have standing on behalf of the
10 minor child to file an election against the will?

11 What about funds that have been left to
12 the child's custodian either by way of a lump sum
13 insurance proceeds? What if there are Social
14 Security benefits?

15 The fact does not appear in the Superior
16 Court decision; but in the Common Pleas decision
17 in Garney, there was a stipulation that there
18 were Social Security benefits that were paid to
19 the minor children. We don't know how much those
20 benefits were. That does not appear in the
21 record.

22 I do a lot of Social Security work in my
23 disability law clinic, my other clinic. It
24 appears to me as if the benefits would be reduced
25 in this case. The reason why is there were four

1 minor children plus a divorced spouse who had
2 been married more than ten years plus a widow.

3 It appears to me that there were five
4 and probably six beneficiaries on the Social
5 Security account. And under the Social Security
6 Statute and Regulations, there's a family maximum
7 so that if there are too many -- they're called
8 auxiliaries on a Social Security account, then
9 by operation of the Social Security Act and
10 Regulations there has to be a reduction of the
11 benefits. We don't know how much those benefits
12 were in that case. That information we don't
13 have.

14 One of the issues that was raised with
15 Judge Del Sole and I think should be addressed in
16 some fashion is what about the current support
17 guidelines? We have, as you know, very detailed
18 support guidelines in the Rules of Civil
19 Procedure.

20 I think, but I'm not sure, that I would
21 like some language in the bill to say that the
22 court in determining an amount shall be informed
23 by the support guidelines.

24 I would hate to think that we would
25 enact a whole new set of support guidelines. The

1 ones we have now go on for many pages in the
2 Rules of Civil Procedure, and it would probably
3 create something of a nightmare to have a
4 duplicate and different set of support
5 guidelines.

6 The current case law in Pennsylvania I
7 cite on page 5 of my prepared remarks, Preston
8 versus Preston, indicates that in a regular child
9 support matter that normally there's a
10 presumption that an obligor will receive credit
11 for support payments paid on the obligor's Social
12 Security account to the children. To me, that
13 makes sense and perhaps there should be similar
14 language.

15 Another difficulty that should be
16 addressed is the support guidelines are based
17 upon income. It's actually an income shares
18 model. We look at the income of the obligor; we
19 look at the income of the obligee.

20 Well, how would you do that in the case
21 of a decedent? Very often people may not have
22 worked for several years before they die or
23 they're going to be working at some reduced
24 income.

25 Do we look at what their last income was

1 at the time they were working full time? That
2 may give us a fairly inaccurate picture of what
3 is available to the estate.

4 While I think the court can be informed
5 by the support guidelines, it makes more sense
6 after the death of the parent to look at the
7 totality of the estate and what monies are
8 available.

9 How is the money to be paid out? With
10 respect, I don't think that 2267 is very clear on
11 that subject. Are we talking about periodic
12 payments as we have under the support guidelines?
13 Are we talking about a lump sum?

14 If there is a lump sum, who administers
15 the lump sum? Does it stay with the court for
16 the court to administer? Does it stay with the
17 remaining custodian?

18 A potential problem with the remaining
19 custodian could be that custodians don't always
20 remain custodians until a child turns 18. That
21 could present a problem.

22 There's another issue, and it may be too
23 difficult to address in this bill. The current
24 case law in Pennsylvania says that support may
25 continue past the age of majority if an adult

1 child is incapable of self-support, the disabled
2 adult child, which makes a certain amount of
3 sense.

4 Of course, if we're dealing with an
5 estate and keeping estates open, that could
6 present the worst case scenario I suppose,
7 particularly if we're dealing with periodic
8 payments, because that disabled adult child can
9 live for an indefinite period of time.

10 So that's something to be aware of. I
11 don't know the answer to it. It may be that's
12 just beyond the scope of what can be done in an
13 initial piece of legislation.

14 I think the concept behind House Bill
15 2267 is a good concept. I think too often the
16 Family Law Bar and the Probate Bar don't talk to
17 each other. I think this is a good opportunity
18 for you all to hear from both of us.

19 Maybe it would be a worthwhile
20 undertaking to try to bring together
21 representatives from both the Family Bar, the
22 Probate Bar, the Orphans Court, Common Pleas, and
23 Domestic Relations section.

24 Because this is really a difficult
25 issue, as your questions this morning have

1 already indicated. And 2267 is a start, but I
2 think it provides so little guidance and doesn't
3 deal with all these issues that, with respect,
4 really needs additional work before you want to
5 put it forward to the full House. Thank you.

6 CHAIRPERSON CLARK: And thank you. If
7 we get out of the estate side and sort of don't
8 consider an elective chair for a minor child,
9 then we're over into the family law section.

10 And what would be your thoughts on when
11 a divorce decree is entered -- or before a
12 divorce decree is entered there is an
13 accompanying order which is enforceable against
14 the estate of each parent to provide support for
15 that child and the custodial parent's performance
16 of that order would be by providing the roof and
17 electricity and the food and the noncustodial
18 parent would fulfill that obligation by making
19 payments and then you would have two court
20 orders, one on each parent, upon the granting of
21 the divorce decree which could survive the
22 obligation and would survive the death of either
23 of the parents or both of them, the parents?

24 MR. RAINS: Well, our statute already
25 says both parents have a duty to support. Of

1 course, again, looking to the Garney case,
2 supposing you had an order that said he has a
3 duty to supply a roof and room and board, it
4 would still be necessary at some point in that
5 scenario to quantify that.

6 CHAIRPERSON CLARK: Let's reduce both of
7 those to number figures upon the granting of a
8 divorce decree. But the number figure is
9 satisfied by the custodial parent by providing
10 the roof so that you would have it.

11 Because isn't that what a domestic
12 relations officer does anyway? He sits down and
13 he says, okay, \$85 a week for this one, \$125 a
14 week for this one. Can't he reduce that to a
15 separate order and then modify it to the extent
16 that the hundred and \$25 is provided --

17 MR. RAINS: You're right, it's about the
18 next to the last step in working out the support
19 formula to figure out how the total obligation is
20 divided according to a percentage of the adjusted
21 gross income. So there's no reason why it's
22 theoretically impossible.

23 In addition, we don't have to limit that
24 to a situation of a divorce. Very frequently
25 it's done outside of a divorce. The people may

1 never have been married, the people may be
2 married and never get divorced, or the people may
3 be married and separated and she's going in to
4 get an order.

5 Now, there are always going to be those
6 situations where the custodial parent is content
7 with what's going on and has no impetus to go to
8 court at all. She just doesn't get an order.

9 Maybe he's paying her 500 bucks a month
10 and says to her, Look, if you go into court,
11 you're going to get less; so be happy with what
12 you've got. And she may feel for that reason or
13 perhaps for other reasons that she's not going to
14 go and get an order.

15 So there are going to -- we deal with
16 those situations. He may be blackmailing her in
17 some way, you know, I'm going to tell the court
18 thus and such; maybe she's afraid of him; maybe
19 there are Protection from Abuse Orders in effect,
20 whatever.

21 There certainly are situations where
22 parents are separated and the custodial parent
23 does not get an order of support. But, yeah,
24 what you're saying I think would go a long way to
25 solving a number of the problems.

1 CHAIRPERSON CLARK: Are there any
2 additional questions of Professor Rains?

3 (No audible response.)

4 CHAIRPERSON CLARK: All right. Seeing
5 no further questions, thank you very much. We
6 have had a new Member of this Committee who's
7 also the chairman of the Judiciary Committee,
8 Representative Tom Gannon, join us. Tom, would
9 you like to introduce yourself or welcome the
10 people, why, you certainly may.

11 REPRESENTATIVE GANNON: Thank you.

12 CHAIRPERSON CLARK: You're so welcome.
13 The next individual to provide testimony before
14 the Committee is Harry J. Gruener, Esquire.

15 (No audible response.)

16 CHAIRPERSON CLARK: Not here yet.
17 Apparently he isn't going to show up. But he's
18 provided us with testimony to the Committee, and
19 we'll certainly consider that.

20 The next two individuals to testify
21 before the Committee is Palmar Lockard, Esquire.
22 He is the Director of the Civil Law Clinic at
23 Widener University School of Law and also
24 Professor Mary Kay Kearney, who is an Associate
25 Professor of law at the Widener University School

1 of Law. Welcome to both of you.

2 PROFESSOR KEARNEY: Thank you, and thank
3 you for the opportunity to be here and to speak
4 about House Bill 2267. Professor Lockard and I
5 both teach family law at Widener University, and
6 Professor Lockard also directs the Civil Law
7 Clinic at the University.

8 We've divided our prepared remarks into
9 two parts. Professor Lockard will start out and
10 talk a little bit about what some other
11 jurisdictions have done in terms of this issue
12 of addressing continuing child support
13 obligations after the death of the obligor
14 parent, and then I'll discuss some of the
15 policies behind the bill along with some issues
16 that we wanted to raise in terms of the drafting
17 of the legislation.

18 And then, of course, we'd be happy to
19 answer any questions that you might have.

20 CHAIRPERSON CLARK: Professor Lockard.

21 PROFESSOR LOCKARD: Thank you, Professor
22 Kearney. Good morning, Members of the Committee.
23 As Professor Kearney noted, I teach Family Law
24 and I am also the director of the Civil Law
25 Clinic at Widener University.

1 CHAIRPERSON CLARK: Excuse me. You
2 might need to get that microphone a little
3 closer.

4 PROFESSOR LOCKARD: I'm sorry. Thank
5 you. I do teach family law and I'm also the
6 Director of the Civil Law Clinic at the
7 Harrisburg campus of Widener University School of
8 Law. And the Civil Law Clinic does do some
9 family law work. We work with people on support
10 matters.

11 And so I come at this with some of the
12 practitioner's point of view and also some of the
13 academician's point of view. And I really want
14 to talk a little bit today about the present
15 Pennsylvania Rule and the roots of that rule and
16 then talk about the rule that prevails in some
17 other jurisdictions.

18 At the present time, it's my
19 understanding that Pennsylvania follows the old
20 Common Law rule with respect to the obligation of
21 the deceased parent's estate to provide support
22 to the children of that deceased parent.

23 And that rule actually evolved several
24 centuries ago. And at the time it evolved, it
25 made sense because of the way in which custody

1 matters were handled at that time.

2 Prior to the 19th century and for part
3 of the 19th century, custody of the minor
4 children was invariably placed with the father.
5 There was a presumption that custody would go to
6 the father.

7 And because the father had custody,
8 there was a belief that a bond would form between
9 the father and the children and that that bond
10 would compel the father to make provisions for
11 the children in his will.

12 Therefore, there was a understanding
13 that there was no need to have a law that would
14 compel a father to provide for the children in
15 his will.

16 With respect to the mother on the other
17 hand, at the time the rule evolved, there was a
18 perception that mothers simply did not have an
19 estate that was worth bothering and that it would
20 cost more to enforce a rule compelling a mother
21 to provide for a minor child in her will than the
22 monetary rewards that would flow from that rule.

23 So the rule evolved at a time when there
24 was a perception that it really necessary to have
25 a rule. The father was going to make a provision

1 for the children anyway; and with respect to the
2 mother, there was just not an adequate financial
3 award -- or reward in pursuing her.

4 As we know that rules and the way
5 society deals with custody have changed a whole
6 lot since the time of that Common Law rule
7 evolved.

8 Certainly mothers' estates are no longer
9 so de minimis that it's not -- that it's
10 pointless to pursue support from those estates;
11 and certainly there is no longer a presumption
12 that custody of children should go to the father.

13 In fact, I don't have statistics; but I
14 assume it's probably more common that the custody
15 of the children would go to the mother. So the
16 rationale for the rule is probably not -- is
17 probably not as valid as it was at the time it
18 evolved. In fact, it's certainly not as valid as
19 it was at the time it evolved.

20 Consequently, many other jurisdictions
21 have moved away from the Common Law rule. And, in
22 fact, at the present time, Pennsylvania is
23 probably in the minority of jurisdictions in not
24 permitting courts to order support paid to minor
25 children out of the estate of a deceased parent.

1 The jurisdictions where the rule has
2 been changed can further be subdivided into really
3 two categories: In one category of
4 jurisdictions -- and it's probably the larger
5 category of the two and it includes Michigan, it
6 includes Virginia, it includes Vermont and it
7 includes New Hampshire -- the courts have taken a
8 general support statute much like the one that
9 exists in Pennsylvania at the present time;
10 they've looked at that support statute; they've
11 said there's nothing in this support statute that
12 prohibits us from ordering what I call postmortem
13 support; in other words, support to be paid out
14 of the estate of a deceased parent.

15 Then they looked at the rationale for
16 the Common Law rule. They've said that rationale
17 no longer prevails; therefore, we are going to
18 order the support payments from the estate of a
19 deceased parent.

20 And, again, the statute that those
21 courts have employed in doing that is a general
22 support statute not terribly different from the
23 support statute that currently exists in
24 Pennsylvania.

25 The problem we encounter in

1 Pennsylvania, however, is that traditionally our
2 courts have deferred to the Legislature in terms
3 of the parameters of when they will order
4 support; and, therefore, the courts have
5 expressed a reluctance to order support in this
6 area absent action from the Legislature.

7 And, therefore, the solution that seems
8 to have worked in other states will probably not
9 work in Pennsylvania. In addition to that group
10 of states that has utilized the general support
11 statute to impose a support obligation on the
12 estate of a deceased parent, there's a separate
13 group of states that have enacted explicit
14 legislation authorizing courts to impose support
15 obligations on the estates of deceased parents.

16 Most of those jurisdictions -- and I
17 believe there are six -- have enacted a Uniform
18 Marital and Dissolution Act, the Uniform Marriage
19 and Dissolution Act. And that Act provides
20 explicit language authorizing the courts to
21 impose support obligations on the estate of a
22 deceased parent.

23 The language in the Uniform Marriage and
24 Dissolution Act is not terribly specific in terms
25 of support guidelines. It leaves a lot of

1 discretion to the courts.

2 But it is somewhat more specific in that
3 it clearly indicates that there must be an
4 existing support order before the estate can be
5 held liable for support, and it also has some
6 more specific language than the Act that is
7 presently under consideration by the Committee
8 here.

9 And those -- I think it would be a good
10 idea for the Committee to take a look at the
11 Uniform Marriage and Dissolution Act and to
12 consider some of the language that was employed
13 in that Act as possibly being added into the
14 current legislation that's under consideration.

15 And that concludes my comments, and I'll
16 turn this over to Professor Kearney then.

17 PROFESSOR KEARNEY: Thank you. As Judge
18 Del Sole noted and I think as was evidenced
19 during some of the questions that were posed to
20 the Justice, there are countervailing policy
21 considerations. There are competing policy
22 considerations in considering this amendment.

23 As was noted during the questions, one
24 policy consideration is the issue of how estates
25 will be administered under this provision. I'd

1 like to talk briefly about three policy
2 considerations in support of this amendment and
3 then talk about a couple of drafting issues that
4 we would like the -- we'd like to note for the
5 Committee.

6 Many of the states, as Professor Lockard
7 noted, which have adopted a continuing support
8 obligation after the death of the obligor parent
9 have had to grapple with the same policy
10 considerations that are facing this Committee.

11 Those states both legislatively and
12 judicially which have adopted a continuing
13 support obligation have focused on three policies
14 supporting that obligation.

15 And the first is the notion that
16 underlies so much of the family law legislation,
17 particularly in the area of custody; and that's
18 the best interests of the child. That the
19 interest of the child should be paramount in
20 considering child support obligations.

21 Children, as other courts and
22 legislatures have noted, have needs for food, for
23 clothing, for shelter, and for medical care; and
24 parents have a legal obligation to meet those
25 needs.

1 In nonintact families when the child
2 lives with one parent, those obligations are
3 expressed in the form of payment of child support
4 during the obligor's life.

5 Because the needs of the child for food,
6 shelter, clothing, medical care do not terminate
7 with the death of obligor parent, the obligation
8 to continue to pay child support should not
9 terminate either.

10 One Florida court which examined this
11 issue almost 40 years ago noted the highest civil
12 and moral responsibilities of a parent is to
13 provide support and maintenance for their minor
14 children. The intervention of death does not
15 terminate the child's need for sustenance which
16 continues during their minority.

17 So we believe that because the best
18 interests of the child are served by a law that
19 we continue child support payments after the
20 death of the obligor parent the Committee should
21 carefully examine this amendment.

22 The second and I think corollary policy
23 behind the amendment is that the amendment would
24 reduce the likelihood that children in the State
25 of Pennsylvania would become wards of the State.

1 If child support ceases upon the death
2 of the obligor parent and the custodial parent
3 cannot afford to provide for the child, then the
4 State may be called upon to provide financial
5 assistance to the child.

6 The State, in effect, will be filling
7 the void where child support payments left off.
8 We believe that this void would better be filled
9 by continuing child support payments from the
10 estate of the obligor parent.

11 When faced with the option of supporting
12 the child through public or private funds, we
13 believe that the Legislature should opt for
14 private support, particularly when that support
15 has been forthcoming in the past from the obligor
16 parent.

17 A third policy that other courts and
18 legislatures have noted when they have adopted
19 this or similar amendments is an analogy to
20 debtor/creditor relationships.

21 As you know, under debtor/creditor law,
22 if the debtor dies, the creditors who have an
23 existing outstanding obligation -- or excuse me,
24 an existing outstanding debt have the ability to
25 take against the estate of the debtor.

1 Similarly, children should have the
2 ability to enforce that continuing obligation in
3 the context of child support. Given those
4 policies, however, we would like to note two
5 aspects of the language of House Bill 2267 for
6 the -- call them to the Committee's attention.

7 One unresolved issue with the language
8 of the proposed legislation is that it does not
9 clearly state whether the law applies only in
10 cases where there's a preexisting support order.

11 The proposed statute or the proposed
12 amendment states that the obligation of an estate
13 to pay child support shall continue. And it's
14 unclear whether the use of the word "continue" in
15 this context indicates the need for a preexisting
16 child support order. And so we just simply
17 wanted to call that issue to the Committee's
18 attention.

19 The second issue is the language in the
20 legislation which refers to children who are both
21 minors and unemancipated.

22 This limitation creates a possible issue
23 in the context of individuals who may be
24 unemancipated adults; for example, an individual
25 who during his minority had some sort of a birth

1 injury or some sort of a limitation which when
2 they become adults would not enable them to
3 become emancipated.

4 At present, parents of unemancipated
5 adult children in Pennsylvania may be liable for
6 support payments if the child remains
7 unemancipated because of a physical or mental
8 condition that arose before the child became an
9 adult.

10 And we would hope that if this
11 legislation in some form were to be adopted that
12 that provision would continue. We'd be happy to
13 answer any questions.

14 CHAIRPERSON CLARK: Thank you very much.
15 Professor Lockard, you said there were two groups
16 of states that have sought to resolve this issue.
17 And I was wondering in both of those groups, must
18 a court order for support exist before the
19 court or the Uniform Dissolution Act will extend
20 those to the payment of the estate?

21 PROFESSOR LOCKARD: Under the Uniform
22 Marriage and Dissolution Act, it is quite clear
23 that there must be a preexisting support order
24 before the obligation can be imposed on the
25 estate of the deceased parent.

1 With respect to the other group, it's
2 difficult to answer that question because those
3 jurisdictions have approached this on a
4 case-by-case basis. And unless that actual case
5 is going to be presented to the courts in those
6 jurisdictions, I don't think you can be given a
7 definitive answer.

8 CHAIRPERSON CLARK: And our problem with
9 looking at the Uniform Dissolution Act is that
10 doesn't answer two of our biggest problems. And
11 that's, No. 1, when the custodial parent dies and
12 the child goes back; and, No. 2, the situation
13 Professor Rains talked about where they neglect
14 or don't want to or don't want to pursue getting
15 a support order. So there will still be gaps in
16 those two areas.

17 PROFESSOR LOCKARD: That's correct.

18 CHAIRPERSON CLARK: Are there any
19 additional questions?

20 (No audible response.)

21 CHAIRPERSON CLARK: Okay. We thank both
22 of you very much.

23 PROFESSOR LOCKARD: Thank you very much.

24 CHAIRPERSON CLARK: Yes. Thank you very
25 much. I was checking with the stenographer to

1 see if she needed a break or if she wanted
2 us to continue, but she wants to go; so we will.

3 The next individual to testify is Robert
4 L. Freedman, Esquire. And he is from Dechert,
5 Price, and Rhoads.

6 MR. FREEDMAN: Representative Clark,
7 there are twelve copies for the people who are
8 all here of what I'm about to say. I've also put
9 other copies on the desk there.

10 I'm Robert Freedman. I'm a practicing
11 lawyer with 30 years' experience in a large
12 Philadelphia law firm. My work is largely in the
13 field of trusts and estates. I do know something
14 about domestic relations.

15 I am a member of the Advisory Committee
16 on Decedent's Estates of the Pennsylvania Joint
17 State Government Commission; however, I'm
18 speaking purely as a private practicing attorney
19 and I'm not speaking in any way on behalf of the
20 Advisory Committee on Decedent's Estates.

21 What I would like to do is not refer to
22 my written remarks which, of course, you can refer
23 to at your leisure; but I would like to highlight
24 what seems to me to be a question that's come out
25 of the hearing so far.

1 And that is the sense is we want to do
2 something. How do we do it in a way that does
3 not create an administrative morass and a
4 nightmare for the settlement of estates and also
5 just to make the Domestic Relations Courts more
6 burdened than they already are?

7 One possibility is to amend the Probate,
8 Estates and Fiduciaries Code. That's Title 20,
9 and that has a provision in it called the Family
10 Exemption.

11 The Family Exemption has been with us
12 for approximately a hundred and fifty years or
13 more. It's found in section 3121 of Title 20 of
14 the Pennsylvania Statutes.

15 Essentially, in the old days when people
16 had a family farm, the Family Exemption said when
17 a person died his spouse if living with him or
18 his children if living with him in the same
19 household on the farm would have the right to the
20 first \$500 worth of farm implements; the idea
21 being that they could continue and support
22 themselves.

23 That number gradually got increased and
24 it became not just farm implements but any kind
25 of personal property. It can be a sewing

1 machine, for example; or perhaps in today's world
2 it could be a personal computer.

3 The number has gradually been increased
4 by the Legislature. It's now \$3,500. This means
5 that no matter what you say in your will, if you
6 have under present Pennsylvania law children
7 living in your household and you die and you
8 leave in your will nothing to your children,
9 they're still entitled to \$3,500.

10 In that sense, which is a very limited
11 sense, we have forced heirship in Pennsylvania so
12 that you cannot disinherit those children. The
13 suggestion I have is that's something that the
14 probate lawyers are already very familiar with
15 and it works pretty well. Why not simply change
16 it around a little and enlarge the number?

17 So instead of being \$3,500, which is
18 essentially nominal in today's world, it was,
19 let's say, \$25,000. Many of the states have done
20 exactly that, and they have provisions analogous
21 to our Family Exemption; and in recent years,
22 they've increased the number so it's very
23 substantial, anywhere between 10 and \$50,000.

24 If we did the same thing in
25 Pennsylvania and we said that unemancipated

1 children would have a right to the family
2 exemption whether they lived in the same
3 household or not -- see, the present law is you
4 have to be in the decedent's household; but that
5 could easily be changed.

6 It seems to me that would be a way of
7 doing things in an administratively easy way.
8 Let me mention some other things that you all
9 have mentioned earlier.

10 The Family Exemption is deductible for
11 inheritance tax purposes, so there's no
12 inheritance tax complications. Family Exemption
13 is something the probate lawyers are used to, so
14 it's not going to hold up estates.

15 It's particularly not going to hold up
16 estates because, if you follow the present
17 pattern, it's a fixed-dollar amount. Let's just
18 take \$25,000, whatever number you decide. That's
19 it. The rest of the estate goes on its merry
20 way.

21 And the problem is not one where the
22 executor of an estate says, well, I have to wait
23 until the Domestic Relations Court figures out
24 some lump sum equivalent of what the amount I owe
25 in child support will be and that's a debt of

1 the estate and I can't distribute anything else
2 in the estate because I don't know how big that
3 debt is going to be and it might take a year or
4 more to have that issue resolved. It completely
5 solves that problem.

6 It also eliminates the distinction
7 between a court order for support and somebody
8 who is not under a court order because the Family
9 Exemption could apply regardless of whether
10 there's a court order outstanding. So it solves
11 that problem.

12 In addition, it makes the job of the
13 person drafting a will easier. Because if you're
14 drafting a will for a client and the client has a
15 support order outstanding against them, you as
16 the lawyer might have to say to the client, let's
17 see if we can figure out what a Domestic
18 Relations Court would say if you die, the amount
19 of support your estate would owe.

20 Then we'll have to figure out what a
21 lump sum equivalent of this number is and then
22 we'll figure how much of your estate is left that
23 you can give to the people you want to give it
24 to.

25 Well, that's a hopeless task. There's

1 no way of knowing and it will change all the
2 time. The support guidelines are not helpful in
3 this point because they're essentially based on
4 income.

5 And for the average person when you die,
6 your wages stop. Most people, their income is
7 their wages. They will have some insurance.
8 They may have a pension plan. But,
9 fundamentally, the support guidelines don't
10 really work.

11 So the Family Exemption would make it
12 easier for practicing attorneys to deal with this
13 issue for their clients because all they would
14 say is there's \$25,000, or whatever the number is;
15 that's the family exemption that you cannot
16 dispose of in your will.

17 Everything else you can dispose of. And
18 how that \$25,000 is going to be given is going to
19 depend on the statute and there's nothing you can
20 do to change it. So it simplifies life for
21 people who are advising potential testators.

22 Now, you still could disinherit your
23 children, minor or not. You could still have a
24 will that says I leave nothing to my children.
25 They're bad, I don't like them, and I'd rather

1 leave my money to charity, or whatever.

2 You could still do that, but the
3 children would still get the \$25,000 or whatever
4 the number is that the Legislature decides is
5 the right amount for the Family Exemption.

6 The present statute -- the present
7 Family Exemption Statute would have to be
8 tinkered with because it doesn't really talk
9 about minor or unemancipated children. It just
10 talks about children living in the same
11 household, but it was the same idea behind it.

12 You lived on the family farm with your
13 parents, presumably you were unemancipated. But
14 that language could be tinkered with and it
15 wouldn't upset the probate lawyers, in my view, in
16 the least bit.

17 If you wanted to go farther, you could;
18 and you could say, well, the Family Exemption
19 only applies to probate property that passes
20 under the will.

21 So if somebody really wants to
22 disinherit his children and really doesn't want
23 them to get the Family Exemption, he's going to
24 put his assets in joint names or an irrevocable
25 trust or in some other methods to avoid probate.

1 And if that was a realistic concern, you
2 could always say that the courts would have
3 discretion to the extent there are not enough
4 assets in the estate to satisfy the Family
5 Exemption to on behalf of the children follow
6 principles analogous to those in the Spouse's
7 Elective Share Law, which is in chapter 22 of
8 Title 20, but follow those provisions on behalf
9 of the minor children to get enough money back in
10 the estate so there would be \$25,000 or whatever
11 the number might be in order to take care of the
12 children.

13 One of the other questions that's come
14 up here is if there is some amount that the
15 estate owes, to whom does the estate make the
16 payment?

17 If, for example, there's a minor child
18 that's 1 year old when the decedent dies, does
19 the estate have to be kept open for 17 years in
20 order to make payments every week for 17 years?

21 And I would think that problem could be
22 solved by simply saying that the Orphans Court
23 could pay the Family Exemption directly to the
24 minor, which might be appropriate if a minor was
25 17 and there was only one year's worth of support

1 to go; or to the other parent of the minor if
2 under the circumstances that was appropriate or
3 could direct the executor of the will to make the
4 payments or could pay a lump sum into the
5 Domestic Relations Court to be distributed as
6 they now do to or on behalf of the minor
7 children. So I think that problem could easily
8 be solved.

9 I would like to add one more comment
10 which is in my materials; and that is, to me, the
11 most important thing as I see it is not in the
12 details of how you solve the problem in a way
13 that doesn't create more problems and it's
14 administratively workable. The real point of the
15 legislation I think is that it will affect how
16 husbands and wives negotiate their divorce
17 settlements.

18 In other words, if there were a statute
19 on the books that said if you die you still owe
20 child support, that would affect the negotiations
21 between divorcing couples.

22 Whereas now, the lawyer representing the
23 wealthier spouse -- let's suppose that's the
24 husband as it often is -- can say in the
25 negotiations, I'm not going to leave anything for

1 child support after I'm gone because I don't have
2 to under the law.

3 Now often life insurance is used because
4 the dynamics of negotiations are if the wife is
5 the less wealthy spouse, she gives up something
6 in order to get that life insurance to cover
7 child support.

8 But if the law said that the wealthier
9 spouse, both spouses, were liable for child
10 support after they die, that's going to affect
11 the dynamics of the negotiations between the
12 spouses when they separate and it's going to
13 affect those negotiations in a way that I think
14 is going to lead to more provisions being
15 voluntarily made for child support after death.
16 So that's really what I have to say. I hope it's
17 helpful.

18 CHAIRPERSON CLARK: We thank you very
19 much, Mr. Freedman. That fixed sum, in a \$30,000
20 estate with a fixed sum of 25,000, you gobbled up
21 a good bit of an estate. And if you put in
22 \$25,000 in a million-dollar estate, well, you've
23 hardly provided.

24 I was thinking and I'd like your
25 thoughts on it, make that a percentage of the

1 gross estate or indicate a dollar amount for
2 estates less than a hundred thousand, dollar
3 amount for estates less than 500,000, or some
4 kind of range and graduate that so that the
5 larger estates -- the more Family Exemption is
6 available to the minor.

7 MR. FREEDMAN: I think you could do
8 that. I don't see any problem with doing it. It
9 really is an issue of how fine you want to cut
10 it. The more you think about this, the more you
11 can think of issues or situations where any one
12 rule isn't quite right and you'd like to add a
13 little footnote to it to cover a different
14 situation.

15 And it just is a question as I see it of
16 how far along that route do you want to go? You
17 certainly could do it that way. If you did it as
18 a percentage, you could put a cap on it, a dollar
19 cap, so it could be as much as a third of the
20 estate but no more than a hundred thousand
21 dollars or something of that kind.

22 All that is easy enough to work out. To
23 me, the thing to do is to get something on the
24 books. It's not going to be perfect. It may
25 have to be tinkered with later. It won't be

1 perfect justice in every case.

2 The only way to get perfect justice in
3 every case in my view is to have enough judges
4 with enough resources and enough time and enough
5 effort so they can look at the particular
6 circumstances of every single case. And that's
7 really impractical.

8 So the question is, it's going to be the
9 law of the second best the way I see it. And if
10 it's close enough, it's good.

11 CHAIRPERSON CLARK: We thank you very
12 much. Are there any questions? Representative
13 Reber.

14 REPRESENTATIVE REBER: Just one
15 question. The exemption currently as structured
16 is per child at the \$500 level?

17 MR. FREEDMAN: No. The Family Exemption
18 is presently a total of \$3,500, and it's
19 presently payable first to the spouse. And then
20 if there is no spouse, then to the children who
21 live in the same household as the decedent.

22 So you have to change that law around so
23 it really would be for the benefit of the
24 children who are -- to whom the decedent owes a
25 support obligation.

1 REPRESENTATIVE REBER: Is the \$25,000
2 figure that you picked, is that based upon any
3 deliberation of the task force, the Advisory
4 Committee, or any of the associations or the
5 committees that you serve on?

6 Or is that just your own viewpoint on
7 this as being a compromise-type figure that's
8 been battered around in other states or falls
9 somewhere in between that?

10 MR. FREEDMAN: That's probably the
11 closest explanation. I did pick it out of the
12 air, but I didn't pick it out of the thin air.
13 There are a number of states who have similar
14 provisions -- which have similar provisions to
15 our Family Exemption; and they run from
16 somewhere, like, 10,000 to 5,000. So 25 is in
17 the range.

18 I could have picked 50. I could have
19 said 10. And of course, if you want to do
20 perfect justice, you could do it differently.
21 For example, one idea is you might say it's a
22 certain amount for each year that the child is
23 underage 18.

24 You see, if it's a fixed dollar amount
25 and the child is 17, he might get a windfall.

1 Where if the child is 1 year old, he might not
2 get enough. So if you wanted to start cutting it
3 fine, you could say it would be so much for each
4 year that the child is under age 18. That would
5 be another way to do it.

6 REPRESENTATIVE REBER: Very good. Thank
7 you.

8 CHAIRPERSON CLARK: Representative
9 Petrarca.

10 REPRESENTATIVE PETRARCA: That was my
11 question. Based on the age difference under your
12 example, it would be a fixed dollar amount
13 whether the child was 1 year old or 17 years old?

14 MR. FREEDMAN: That's correct.
15 Although, if that was a problem, it's easy enough
16 to have it couched in terms of so much per year.

17 REPRESENTATIVE PETRARCA: Thank you.

18 CHAIRPERSON CLARK: All right. We thank
19 you very much. And the last individual to
20 provide testimony to us today -- you might have
21 to help me with your name -- is John R.
22 Mondschein. Is John here yet?

23 (No audible response.)

24 CHAIRPERSON CLARK: Tell what you we'll
25 do. We'll take a break. We're running ahead of

1 schedule. And we'll come back about 12:15, about
2 a 45-minute break. We'll come back at 12:15 and
3 hopefully receive the testimony from John. Okay?
4 All right. This Subcommittee meeting is
5 adjourned.

6 (At which time, a break was taken.)

7 CHAIRPERSON CLARK: Okay. I think we
8 will reconvene and bring to order the Judiciary
9 Committee's Subcommittee on Courts. And today
10 we're receiving testimony and hearing from
11 individuals regarding House Bill 2267.

12 Previously we've conducted a morning
13 full of hearings, and the last individual to
14 testify and provide some input to the Committee
15 is John R. Mondschein, Esquire, from Mondschein
16 Associates. How'd I do, John?

17 MR. MONDSCHHEIN: Fine. Do you want me
18 to come over here?

19 CHAIRPERSON CLARK: Yes, you can come
20 right up here by the mike and flip the switch
21 till the red light's on just like on the radio.
22 I read your resume here; and I said, well, we're
23 not going to have a problem here.

24 MR. MONDSCHHEIN: No, you won't.

25 CHAIRPERSON CLARK: I'm going to go back

1 to my district office and get all the matrimonial
2 questions that people call and ask me. I should
3 have brought those along.

4 MR. MONDSCHHEIN: You should have.

5 CHAIRPERSON CLARK: You may proceed.

6 MR. MONDSCHHEIN: This is it?

7 CHAIRPERSON CLARK: This is it.

8 MR. MONDSCHHEIN: Okay. I don't know
9 if -- I did prepare something and I did bring the
10 requisite 30 copies. And if you want me to read
11 it into the record, I will. If not, then I'll
12 just make comments. What would be your
13 preference, sir?

14 CHAIRPERSON CLARK: Tell you what, why
15 don't you make comments and discuss it and we can
16 read your testimony word-for-word at a later
17 date?

18 MR. MONDSCHHEIN: Okay. First of all --

19 CHAIRPERSON CLARK: I think maybe what
20 I'll do is maybe bring you up to date on a little
21 bit of what we've talked about earlier today.

22 MR. MONDSCHHEIN: Okay.

23 CHAIRPERSON CLARK: And as you indicated
24 in a short discussion with me earlier that this
25 is an issue that you can hardly be against and

1 that you want to try to support, you know, the
2 best interests of children who slip through the
3 cracks because of some problem or being
4 disinherited by a custodial parent; and we talked
5 this morning about giving a minor child an
6 elective share against the estate.

7 And the question came up, well, who
8 would represent that child? Would it be the
9 custodial parent and how vindictive would that
10 process get and how long would that hold up the
11 administration of the estate?

12 Would you have a court-appointed counsel
13 to represent the guardian and have him review the
14 assets of the estate, go through the elective
15 share process?

16 Another alternative was to every time
17 there is a divorce decree to enter a support
18 order against each parent so that if a parent
19 died there would be a court order which -- and
20 then change the law and make that court order
21 enforceable against that individual's estate.

22 Then you have Domestic Relations
23 officers proposing two court orders, one for each
24 parent, to be approved by the judge and to be
25 part of a divorce decree.

1 That would help answer a few questions.
2 One individual discussed the Uniform Marital and
3 Dissolution Act, which requires that an order
4 must exist in order to be enforceable against the
5 estate and that criteria would help resolve that
6 problem.

7 And one gentleman testified about
8 amending the Family Exemption and making it
9 available to minor children and unemancipated
10 children or children with disabilities regardless
11 of where that child is residing and make that
12 25,000, \$50,000.

13 You could make it a percentage of the
14 gross estate or you could graduate it depending
15 on the age of the child or whatever. But let's
16 not deal with holding up estates through elective
17 shares.

18 Let's not burden the divorce process.
19 Let's just amend the Family Exemption part of
20 Title 20 so that the lump sum money goes to all
21 minor children of a parent.

22 Maybe with a little bit of that
23 background, why, you can expound on your
24 testimony and --

25 MR. MONDSCHIN: Okay. Yeah. That

1 means I also have something new to tell you --

2 CHAIRPERSON CLARK: Good.

3 MR. MONDSCHHEIN: -- having heard that.
4 First of all, I want to comment on the discussion
5 that you said that existed that took place on the
6 elective shares, giving children elective
7 shares -- the first item that you mentioned --

8 CHAIRPERSON CLARK: Yes.

9 MR. MONDSCHHEIN: -- in your discussion.

10 CHAIRPERSON CLARK: Yes.

11 MR. MONDSCHHEIN: Was that suggestion
12 that the Probate, Estate and Fiduciaries Code be
13 amended so that no minor child could be
14 disinherited regardless of whether it's a child
15 of divorced or separated parents or intact
16 families?

17 CHAIRPERSON CLARK: Well, that -- I
18 think that was the thrust of it to provide every
19 minor child --

20 MR. MONDSCHHEIN: I think that's true
21 because I think one of the flaws of the statute
22 and proposed bill, House Bill 2267, as drafted is
23 that it suffers the same defect that Act 62 did
24 of '93 which provided for college education,
25 support only for children of divorced or

1 separated parents.

2 And it fell because it was -- it created
3 a class of -- it did not protect the children of
4 intact families. I think you have the same
5 defect with this bill as drafted because it
6 favors -- it favors the children of divorced or
7 separated parents and no provision is made for
8 support of children of intact families where a
9 parent dies. I think it could be held
10 unconstitutional for the same reason.

11 CHAIRPERSON CLARK: And I think once you
12 open that -- the theory is that intact families
13 will provided for the minor children.

14 MR. MONDSCHHEIN: I know. But that was
15 the theory behind Act 62 also, which was that
16 intact families will send their children to
17 college whereas divorced or separated parents may
18 not unless the courts order them to. But the Act
19 still fell unconstitutional.

20 I know the same problems here that you
21 are -- you are giving -- you're doing pretty much
22 what you were saying. You're giving -- you're
23 giving rights to a certain class of children to
24 the estate.

25 You're giving the rights to the certain

1 class of children to the estate of a decedent,
2 but you're not giving rights to the children of
3 the intact family. I think that will cause the
4 thing to be fatally flawed. That's my two cents.

5 CHAIRPERSON CLARK: And to have an
6 elective share across the board for every minor
7 child would cause havoc in administering estates.

8 MR. MONDESCHEIN: Well, that may be; but
9 I'm just saying that I think that the bill as
10 drafted if you pass it is not going to stick
11 because it will be unconstitutional. So you have
12 to look at another way to do it.

13 And that's why I think people would come
14 up with the notion that you change the Probate,
15 Estate and Fiduciaries Code and provide that
16 children cannot be disinherited or all minor
17 children or children up to the age of 18 cannot
18 be disinherited regardless of whether they are
19 from intact families or divorced or separated
20 people and give them a share of some kind.

21 I think in my mind that's why you get to
22 that conclusion because you can't just carve out
23 children of divorced or separated people and say
24 we're going to give them some rights to the
25 estate but not do that for other children.

1 But I want to offer you something new
2 that I think there's just a logical progression
3 here. I don't particularly like the bill as
4 drafted because I think it creates administrative
5 nightmares for the Domestic Relations Office for
6 estates, and I think there's an easier way to
7 solve the problem.

8 I think most everybody would agree that
9 there's some sense of unfairness to a minor child
10 when the main support payor dies. We require in
11 support proceedings as part of support orders
12 health insurance. Health insurance is mandatory.
13 It must be made part of the support order for the
14 benefit of the recipients and beneficiaries of
15 the support order.

16 I was thinking that perhaps a law could
17 be passed requiring that the support payor carry
18 life insurance. It could be term life. It could
19 be decreasing term. It doesn't have to be very
20 expensive. It doesn't have to be whole life, you
21 know, that could rock the financial boat.

22 But we never even think anymore about
23 the fact that health insurance is mandatory in
24 all support orders. Thought could be given to
25 the idea that life insurance on the payor's life

1 be mandatory.

2 CHAIRPERSON CLARK: One of the
3 situations that came up that spawned this hearing
4 was the factual situation where the father was a
5 custodial parent; he remarried; he died and
6 willed everything to his second wife.

7 MR. MONDSCHNEIN: Sure.

8 CHAIRPERSON CLARK: The children went
9 back to the noncustodial parent, who became the
10 custodial parent; and the wife said, they get the
11 money.

12 MR. MONDSCHNEIN: Correct.

13 CHAIRPERSON CLARK: So if you say put
14 term life insurance on the payor, the situation
15 where the custodial parent isn't the payor.

16 MR. MONDSCHNEIN: I'm not sure I followed
17 that. But the -- the support payor obligor would
18 have the duty to carry the life insurance for the
19 benefit of the minor children.

20 CHAIRPERSON CLARK: Right. What if the
21 custodial parent was the parent that died? He
22 would have been the payor.

23 MR. MONDSCHNEIN: The custodial parent
24 would have had nothing to do with his life
25 insurance.

1 CHAIRPERSON CLARK: That's right.

2 MR. MONDSCHNEIN: And if a custodial
3 parents dies, that wouldn't be covered by your
4 proposed bill anyway because that's not the
5 person who's paying support.

6 CHAIRPERSON CLARK: That's right.
7 That's why we have sort of gone away from the
8 bill --

9 MR. MONDSCHNEIN: Oh, you've gone over
10 that.

11 CHAIRPERSON CLARK: -- and sort of
12 looked at other ways to make sure that it covers
13 the situation where the custodial parent or the
14 nonobligor passes away in making the rights
15 within the child.

16 MR. MONDSCHNEIN: I see you've gone
17 beyond where -- I should have been here this
18 morning and listened to it. I don't want to say
19 they can both carry life insurance, but I suppose
20 that's another alternative.

21 CHAIRPERSON CLARK: Well, that was what
22 we looked at by saying when the divorce decree
23 is enter, you enter a support order against each
24 parent, the custodial parent satisfies his
25 support order by providing a roof, you know,

1 electricity, and things like that.

2 However, if he dies, then that support
3 order is there to be enforced against his estate.

4 MR. MONDSCHHEIN: There's something
5 inside of me that says I don't like that at all,
6 and I don't know quite why. I'm going to try to
7 put this in words, but what is this doing to the
8 Domestic Relations Office?

9 CHAIRPERSON CLARK: Well, when the
10 Domestic Relations officer enters a support
11 order --

12 MR. MONDSCHHEIN: Right. It's for a
13 dollar amount based on a formula that's subject
14 to modification in the future.

15 CHAIRPERSON CLARK: That's right. But
16 he takes into account both parents.

17 MR. MONDSCHHEIN: Their incomes and
18 abilities to pay, right.

19 CHAIRPERSON CLARK: So we said, well, it
20 wouldn't be that hard for him just to, you
21 know -- he already recommends an order for the
22 noncustodial parent to pay.

23 Why couldn't he just say, well, you
24 know, the custodial parent if custody should
25 change, the dollar amount will be whatever? And

1 then if the custodial parent dies, then you have
2 the court order to enforce against his estate.

3 MR. MONDSCHHEIN: But this is all on the
4 assumption that we want the estates to keep
5 paying support. Did you get beyond that already?

6 CHAIRPERSON CLARK: Oh, yes. Then what
7 we would do is we would take that court order and
8 fund it similar to a structured settlement and
9 say we'll go to an insurance company or annuity
10 company and say how much money do we need to put
11 into this estate or to put into an annuity or
12 insurance policy to guarantee payments of so much
13 a month or a week till a child is 18?

14 MR. MONDSCHHEIN: The disadvantage of
15 coming in late, it seems like you've already
16 reached --

17 CHAIRPERSON CLARK: Well, we weren't
18 exactly real pleased with the additional workload
19 on the Domestic Relations Office in having all
20 these orders sitting out there and --

21 MR. MONDSCHHEIN: I have to say something
22 in that regard because at least back where I come
23 from, Lehigh and Northampton County, the Domestic
24 Relations hearing officers are underpaid and
25 undertrained and without any funds it seems to

1 improve their lot.

2 It seems like when you do something like
3 as I thought the bill proposed, you're creating
4 whole new procedures, maybe whole new files, set
5 up an additional burden on the Domestic Relations
6 officers without providing them with more funds
7 to hire more people and handle more accounts.

8 The system is slow, ineffective right
9 now; and I'd hate to see it get worse, frankly.

10 CHAIRPERSON CLARK: Yeah. And that's
11 why we were between -- you know, we don't want to
12 hinder the administration of the estate. And on
13 the other hand, we don't want to burden the
14 Domestic Relations Office.

15 And that is when the third alternative
16 was proposed about setting up a whole new Family
17 Exemption for minor children and put in a dollar
18 amount or graduate that or --

19 MR. MONDSCHIN: Is everybody of the
20 opinion that the concept of not being able to
21 disinherit your children is a good one?

22 CHAIRPERSON CLARK: I would say a
23 majority of the Members. At one time, this was
24 the most heavily attended hearing that I've seen
25 in Harrisburg. This morning we must have had 13,

1 14 Members.

2 MR. MONDSCHHEIN: I should have come.

3 CHAIRPERSON CLARK: We tried to get
4 a hold of you in the car.

5 MR. MONDSCHHEIN: I got the message. It
6 was speed, hurry up.

7 CHAIRPERSON CLARK: I think that the
8 concept was laudable and most of the Members
9 would like to provide, fulfill the concept and
10 that void; however, they don't want to create
11 more problems than what there are now and how to
12 do that effectively and efficiently without
13 muddying up the waters.

14 MR. MONDSCHHEIN: But is the thinking now
15 to get away from this --

16 CHAIRPERSON CLARK: I think so.

17 MR. MONDSCHHEIN: -- and not just limit
18 it to support situations and get into
19 across-the-board protection of all minor
20 children, intact families or separated families,
21 one way or the other?

22 CHAIRPERSON CLARK: Yes, I think
23 that's --

24 MR. MONDSCHHEIN: I can go along with
25 that. I had trouble with this the way it was --

1 CHAIRPERSON CLARK: So if we set up a
2 Family Exemption dedicated to all minor children
3 and assigned a dollar amount to that or
4 some kind of graduated amount to that, No. 1,
5 you'd have all children would be involved; No. 2,
6 there would be -- estate attorneys would have an
7 infinite -- or a finite amount of money that they
8 need to set aside; and then the question would be
9 to pay that out over a period of time to an
10 intermediary, be that a bank or guardian --

11 MR. MONDSCHNEIN: Right. But still be
12 able to close the estate.

13 CHAIRPERSON CLARK: And still be able to
14 close the estate.

15 MR. MONDSCHNEIN: Hard to argue with it.
16 Hard to argue with that concept.

17 CHAIRPERSON CLARK: Do you think you
18 could have something for after for us here in the
19 next week or two to take a look at?

20 MR. MONDSCHNEIN: Say that again.

21 CHAIRPERSON CLARK: Do you think you
22 could have something along those lines for
23 after for us in a week to ten days?

24 MR. MONDSCHNEIN: I'll stay -- I don't
25 think our Advisory Committee gets into this, does

1 it?

2 VOICE: No. The other one does.

3 MR. MONDSCHHEIN: The other one does.

4 CHAIRPERSON CLARK: I would think you
5 could just dictate that on the way home.

6 MR. MONDSCHHEIN: Actually, I could,
7 except I'm not an estate lawyer.

8 CHAIRPERSON CLARK: And then Dave had
9 brought up the fact that you're going to take a
10 deduction on Family Exemption on the inheritance
11 tax returns and then that's going to decrease the
12 state revenues. So you're still going to have to
13 cover that hole depending on how big that hole
14 could be.

15 MR. MONDSCHHEIN: Well, I'll let -- I'll
16 get out of here.

17 CHAIRPERSON CLARK: Is there anything
18 else --

19 MR. MONDSCHHEIN: No, not really. You've
20 made such great progress and I wish I would have
21 made the big show this morning.

22 CHAIRPERSON CLARK: We certainly thank
23 you for coming down. And I'm sure that Dave will
24 keep you abreast as to what, if anything --

25 MR. MONDSCHHEIN: I get more paperwork

1 from Dave than anybody else.

2 CHAIRPERSON CLARK: You do. You do.

3 MR. MONDSCHHEIN: Comes in reams.

4 CHAIRPERSON CLARK: And, you know, we'll
5 see where this goes and what the Members think of
6 it and how they want to try to deal with it or
7 have it resolved. But we certainly appreciate
8 your time and efforts in being with us today.
9 Like I said, we will keep you in the loop.

10 MR. MONDSCHHEIN: It's a nice day for a
11 ride. Thank you.

12 CHAIRPERSON CLARK: You're quite
13 welcome.

14 (At or about 12:50 p.m., the hearing was
15 adjourned.)

16

17

18

19

20

21

22

23

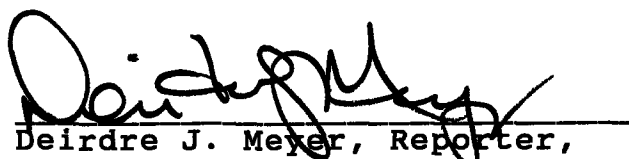
24

25

C E R T I F I C A T E

I, Deirdre J. Meyer, Reporter, Notary Public, duly commissioned and qualified in and for the County of Lancaster, Commonwealth of Pennsylvania, hereby certify that the foregoing is a true and accurate transcript of my stenotype notes taken by me and subsequently reduced to computer printout under my supervision, and that this copy is a correct record of the same.

This certification does not apply to any reproduction of the same by any means unless under my direct control and/or supervision.


Deirdre J. Meyer, Reporter,
Notary Public. My commission
expires August 10, 1998.