

WOMEN'S L · A · W PROJECT

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Testimony to the Task Force on Domestic Relations of the Pennsylvania State House Judiciary Committee. Presented by Debra L. Rubin, Program Manager Women's Law Project, Philadelphia, PA March 13, 1998

Good Morning. My name is Debra Rubin and I am the Manager of the Telephone Counseling and Referral Program of the Women's Law's Project. We are deeply appreciative to have the opportunity to provide testimony today.

The Women's Law Project, a public interest legal organization, is devoted to advancing the status and opportunities of women through high impact litigation, public education and advocacy. In the past twenty four years, the agency has developed strong ties with the political, legal and social services communities in the city of Philadelphia and throughout the state of Pennsylvania.

As the manager of the Law Project's Telephone Counseling and Referral Service, I supervise counselors who field approximately 7,000 inquiries per year, the majority of them regarding family law matters. We realize many of the problems we

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will be describing today are not within the purview of the legislature. We bring these concerns to your attention and urge you to take action that is appropriate to the legislature, particularly in relation to adequate funding for the courts.

I have two main points I'd like to discuss today:

1) There is a massive shortage of attorneys throughout Pennsylvania to represent low and middle income people in family law matters. Clearly, we need more family law attorneys. In addition, we need a system established in each county in Pennsylvania that enables people to represent themselves in family law matters. Individuals have a constitutional right to access to the courts, but many are unable to exercise this right because they lack the financial resources to do so.

2) Many judges simply do not follow the law. Statutes are strong, but some judges exhibit biases and lack of knowledge in their decision making. The normal judicial mechanism for correcting erroneous trial decisions--the appeal process -- is rarely used in family courts because of the scarcity of family law attorneys and the very high cost of appeals.

Before I elaborate on the above points, let me illustrate how our expressed concerns play out in a family's life. I would like to introduce you to Sharon. Sharon is a composite of a woman calling our service. Sharon is a mother of three young children. She has been married to the children's father, Ed, for the past eight years and their relationship had become increasingly violent. Sharon recently received a Protection from Abuse order. She asked the

judge to award her primary custody as a part of the protection order and did not get it. When she received the protection order, she immediately filed for custody. Three months after filing, she had a hearing. She went to court unrepresented, because she could not afford to pay an attorney and every organization she called for free legal assistance was unable to represent her due to a lack of financial and staff resources. She had been allowing her husband to see the children, with great fear and anxiety arising from his threats to take the children away from her. She wants the children to see their father and she also wants to follow the law. She is afraid for the safety of herself and her children. The children are in counseling due to psychological problems experienced as a result of witnessing the violence against their mother. The two older children express fear of their father. In custody court, Ed was awarded partial custody. He was allowed to see the children every other weekend and on Wednesday evenings. When Sharon told the custody judge she had a Protection from Abuse Order, the judge did not want to hear about it. She tried to explain about the violence in the home and how fearful her children were of their father. She wanted the court to order supervised visitation. Her request was denied. Sharon then told the court she was fearful about violence occurring when her husband picked up and dropped off the children. The judge became very impatient and said she would have to work that out herself. Sharon was intimidated and frightened and did not speak for the remaining time they were in court.

Sharon called the Women's Law Project after consulting with a family law attorney. The attorney, who charges \$150.00 an hour, said that an appeal of the custody decision could take two years and cost at least \$20,000. She could not afford to hire the attorney. Sharon felt that it was only a matter of time before Ed made good on his threats to file for full custody. Sharon called the Women's Law Project, hoping that an attorney would be available to protect her interests in court. The Law Project's counselor explained to Sharon that due to a scarcity of resources, its staff attorneys do not represent individuals. Sharon is distraught over the risks she believes she and her children now face. Even though Pennsylvania's custody statute requires judges to hear evidence of domestic violence, and even though Pennsylvania case law requires that the judge make a full and complete inquiry into all factors relevant to a custody decision, Sharon knows she cannot afford to appeal.

As stated earlier, there is a massive shortage of attorneys throughout Pennsylvania to represent low and middle income people in family law matters. For example, Philadelphia Family Court is a system that is both overwhelmed by the volume of pro se litigants and alarmingly under-funded to move people efficiently through the court system. Court Administrator Margaret T. McKeown has publicly stated there are currently 739,491 individuals in the Philadelphia Family Court system. That is half of the city's population. Of that number, only 27,000 have legal representation. The remaining 712,491 individuals must rely on court personnel to guide them through a confusing and complicated system.

From January 1, 1997 to November 30, 1997 approximately 8,000 custody pleadings were filed. Additionally, approximately 11,000 Protection from Abuse petitions are filed annually in Philadelphia. Clearly, Philadelphia Family Court desperately needs to have the financial resources to handle its case load. Additionally, more legal service attorneys should be provided. Many of these individuals have tried unsuccessfully to obtain counsel from the full-time, year round legal services community. Even if every family law attorney in Philadelphia took on one pro bono family law case, there would still be people who would be forced to represent themselves.

To our knowledge, Philadelphia County and Allegheny County are the only court systems in the Commonwealth which allow people to represent themselves in support, domestic violence and custody courts. Ms. McKeown also said that 92% of these litigants do represent themselves out of economic necessity, certainly not by choice. For our callers who live in suburban areas and who need private attorneys to represent them in custody matters, the only referral the counseling service can give them is their county bar association. While we cannot accurately report to you if these suburban callers get attorneys as a result of such referrals, we do know the Philadelphia Bar Association simply cannot find enough attorneys for all the referrals to them. Even if they had enough attorneys, the high cost of counsel makes this prohibitive for the people who call us.

The sum total of above stated problems prevents Family Court from carrying out its mission. In custody and domestic violence courts, the effect is to put women and their children in real danger. Because of the resource deficits and judicial bias, some of the problems that arise include:

- awarding custody or unsupervised visitation to a parent when there is evidence that this parent has sexually abused a child;
- ignoring evidence of ongoing sexual and physical abuse;
- failing to issue clear custody orders that protect victims from ongoing domestic violence during the exchange of children;
- failing to resolve custody and visitation, at least temporarily, through a protection from abuse order;
- and failing to include children on protection from abuse orders.

It is imperative that the needs of children and adults who have been victims of violence are understood by Family Court, through competent and sensitive lawyers who can be their voices and through judges who recognize and utilize their power to protect these children.

Family courts are truly the "people's court". They should be provided the same level of resources as received by other civil law courts. Pennsylvania families should know they can resolve their differences in smoothly operating, well-funded courts, staffed by judges, masters and other employees who are proud to be there and who are fully respected by their counter-parts in other courts.

For all the mothers like Sharon in Philadelphia and around the state, the Women's Law Project urges the state representatives to continue this dialogue and help the court systems and agencies such as the Women's Law Project to make the system work fairly for all our citizens. Clearly, the most harmed are the poorest.

We look forward to working with you.

Thank You.