

Summary of Testimony of Joni J. Berner¹
At A Hearing on
“Custody, Family Court Reform, and
Achieving Economic Justice for the Dependent Spouse”
Before the Pennsylvania House of Representatives
Judiciary Committee

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¹Joni J. Berner
Berner & Klaw
123 South Broad Street, Suite 1710
Philadelphia, PA 19109-1098
(215) 790-8800

Ms. Berner graduated from Villanova Law School in 1978 and has practiced family law in southeastern Pennsylvania in one of Philadelphia’s largest law firms, as a sole-practitioner, and as the founder of a four woman law firm exclusively practicing all aspects of family law, including divorce and custody mediation. She has served on several committees and boards in the Philadelphia legal community, including the Family Court’s committees on support guidelines (1987-8), local divorce rules (1989), domestic violence reformation (1994-5), P.A.R.E.N.T.S. computer system (1994-5), Women Against Abuse, Philadelphia VIP, and the Women’s Law Project. She is a former chair of the Philadelphia Bar Association Family Law Section (1994) and currently a member of the Pennsylvania Bar Association, Family Law Section Task Force on Court Reform and the Philadelphia Bar Association, Family Law Section Custody Task Force.

In my twenty years of practicing family law and my eleven years of mediating divorce and custody issues, I have developed many theories about improving the current system. Four of the “truisms” I most often find myself sharing with clients are the following:

Premise #1: A judicial system based on the historic common law adversarial system is not conducive to addressing or resolving modern inter-familial legal disputes.

- The adversarial model promotes the notion that there is a “winner” and a “loser” of each contest, when the reality is that most aspects of domestic relations issues involve sharing (income, assets, debt, and time with children).
- Even with relatively relaxed procedural and evidentiary rules, the adversarial model is unfamiliar and confusing to the parties -whether or not represented by counsel- and leads to general dissatisfaction with the content and/or method of achieving a particular result.
- The adversarial model, coupled with bulging court lists and fragmentation of issue resolution, makes legal fees unaffordable to most litigants.

Premise #2: Early judicial intervention and the ready availability of a wide variety of personal, community, and judicial resources will produce more effective resolutions to inter-familial legal disputes.

- Appropriately trained Family Court personnel should perform a “triage” of all new matters and formulate a procedural plan for comprehensive resolution.
- Family Court resources should be broadened to include and/or coordinated with other agency’s resources in order to provide needed services (e.g., substance abuse intervention, employment counseling and job placement, financial planning, parental education).

- A “one family-one judicial team” model for start-to-finish disposition of inter-familial conflict will improve efficiency, enforcement, and client satisfaction.

Premise #3: Custody and support matters are inseparable in most cases, but the current fragmented system frustrates coordination.

- When both parents work outside the home, child care expenses must include “sick care” costs.
- Decisions about health care provided for children by one parent should include the other parent’s input.
- The routine attribution of an earning capacity to an unemployed custodial parent should factor in the cost of child care.

Premise #4: The one-way enforcement potential of custody orders (i.e., the non-custodial parent can enforce his/her schedule, but there is no readily recognized ability to require him/her to exercise physical custody) should be changed.

- Children suffer when a non-custodial parent fails to exercise partial custody or visitation rights, and a custodial parent should have the ability to insist on compliance with the custody rights originally sought and received by the other parent.
- The custodial parent often suffers financially (through lost wages or additional child care costs) when the non-custodial parent fails to exercise partial custody or visitation rights, and economic sanctions should be readily available.