



*Roger M. Fischer, Judge*

COURT OF COMMON PLEAS  
SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA  
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**MEMORANDUM**

**TO:** The Task Force on Domestic Relations of the  
Judiciary Committee of the House of Representatives

**FROM:** Roger M. Fischer, Judge of the Family Division  
Erie County Court of Common Pleas

**RE:** Public Hearing: August 24, 1998 - Edinboro, PA

**DATE:** August 24, 1998

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On April 1, 1996, pursuant to an Administrative Order of President Judge John A. Bozza, the Court of Common Pleas of the Sixth Judicial District of Pennsylvania (Erie County) had four of its eight Judges assigned to a Trial Division and four Judges assigned to a Family Court Division. The Trial Division handles all criminal matters and all civil matters other than those pertaining to Domestic Relations. The Family Court Division deals with all matters pertaining to the Orphans' Court, Juvenile Court dependencies and delinquencies, custody, support and Protection From Abuse.

Each of the four Judges of the Family Court Division has a primary responsibility: One dealing with Orphans' Court matters, one with Juvenile Court matters, one with Divorce matters and one with Custody and Support, but each assists the others so that matters may be resolved in a timely manner. All four of our Judges deal with Protection From Abuse matters on a four-month rotating schedule.

We have not achieved a One Family/One Judge situation but when a Family Judge has previously given attention to a matter, the Family Court Administrator attempts to assign new matters to the same Judge who has conducted the prior proceedings. I have served as the Judge assigned the majority of custody and support matters since the inception of the Division.

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In preparing my remarks, I have consulted with the other Judges of our Division and with some members of the Family Division of the Erie County Bar Association. My remarks, however, are based upon my own experience.

I respectfully suggest that the Task Force give consideration to possible legislative enactments to address revisions primarily in the area of Divorce, Custody and Protection From Abuse

**I. Divorce**

1) Section 3301(d) of the Divorce Act mandates a two-year period of separation before a decree of divorce may be entered in instances where the ground asserted is that of irretrievable breakdown [23 Pa. C.S.A. §3301(d)]. It is recommended that the two-year period be reduced to one year.

The animosity level between a plaintiff and a defendant increases with the length of time of the divorce proceedings and that animosity has an effect on the children of the parties and may have an impact upon support or alimony pendente lite matters. Further, when a defendant utilizes legal process to delay a divorce decree in order to maintain or gain economic advantage, avoidable difficulties ensue.

2) Section 3302 mandates that the Court require counseling where Indignities is cited as a ground for a divorce and either party requests it; where the grounds are Mutual Consent and either party requests it; and where the grounds are Irretrievable Breakdown after a hearing and the Court determines that there is a reasonable prospect of reconciliation and either party requests that counseling.

It is recommended that counseling not be mandatory in such cases but left to the discretion of the Court. Too often the request for counseling is made as a tactic of delay. If a plaintiff is adamant concerning the divorce, a requirement by the Court that that party attend counseling is meaningless. We have had circumstances where a party has complied with a Court Order to attend counseling and has read a book during the counseling session.

3) Consideration should be given to granting the Divorce Court discretionary authorization to mandate, after a hearing, mediation or counseling and, where children are involved, to mandate that the parents participate and complete a program or seminar dealing with the effect of divorce upon the children involved prior to the entry of a divorce decree.

**II. Custody**

Section 5305 of the Custody Act provides:

**General Rule.** The Court may require the parents to attend counseling sessions and may consider the recommendations of the counselors prior to awarding sole or shared custody. These counseling sessions may include, but shall not be limited to, discussions of the responsibilities and decisionmaking arrangements involved in both sole and shared custody and the suitability of each arrangement to the capabilities of each parent or both parents.

It is recommended that the legislature consider authorizing Judges to require as a condition of granting a Custody Order or - where appropriate, a divorce decree - that the parents attend a Court-approved program or seminar to educate the parents regarding the impact upon their children of the separation of the parents and how the parents may best address that impact upon their children.

It is not recommended that such counseling be made mandatory since a great many parents fortunately reach amicable agreements concerning the children and request that an Order be entered only to formalize those agreements.

**III. Protection From Abuse**

1) Protection From Abuse proceedings are civil in nature and there is doubt whether the Court has authority upon the entry of a Final Order to order defendants to participate in anger management counseling, alcohol and drug abuse therapy or, where children are involved, in programs which educate parents regarding the impact a separation of the parents has upon the children and how that impact might be lessened. It is requested that the legislature consider authorizing the Judge conducting the final hearing to order a defendant - or both parties - to participate in appropriate programs.

Violations of Protection From Abuse Orders are criminal in nature and subject a defendant to specific sanctions. Courts have utilized their authority to mandate that defendants participate in anger management counseling or alcohol or drug abuse therapy as a condition of probation or parole following a finding of guilt but such is available only after a violation of the Order. The same authority is requested to be given at the Final Hearing at which the Protection From Abuse Order is entered - when warranted - so that violations might be avoided.

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2) A recurring problem exists when a Final PFA Order has been entered and the petitioner/victim subsequently reconciles with the defendant without having the Order terminated or amended and then subsequently seeks to have the defendant arrested for Indirect Criminal Contempt of the Order when a recurrence of the defendant's behavior occurs. This permits a petitioner to make an Order effective at the petitioner's whim.

It is recommended that the legislature specify that reconciliation of the parties following the entry of a Final Order and during the terms of the Final Order constitutes either a defense to a subsequent charge of Indirect Criminal Contempt - or - constitutes a de facto voiding of the Order as of the date of the reconciliation upon a finding to that effect by the Court.

**IV. Court Authority**

It is respectfully suggested that the legislature afford Courts discretion in dealing with matters before them and refrain from mandating that in all instances a Court require that parties perform specific acts in domestic relations matters. It is the responsibility of Judges to deal with the specific parties before them and to attempt to make decisions and fashion remedies unique to those individuals. Judges are also bound to honor and follow legislative direction.

When the legislature mandates that Judges require certain actions to be performed - such as participate in counseling as cited in the Divorce provisions above - Judges will implement that legislative mandate even when the circumstances of a particular case demonstrate that the mandate will have no beneficial impact. By permitting Judges to exercise discretion, the legislature will afford Judges the tools needed for those Judges to perform their responsibilities.

Thank you for considering my comments.

RMF/jf