

11:15-11:45

Testimony before the Pennsylvania House of Representatives Judiciary Committee, Subcommittee
on Family Law in Opposition to House Bill 418

October 1, 2009

Presenter – Ned Hark, Esquire

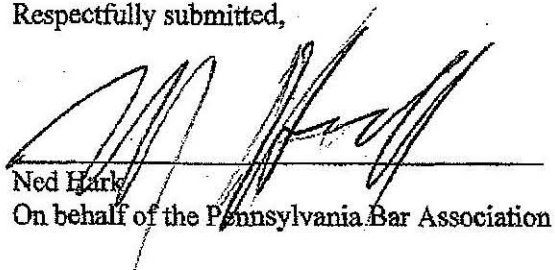
My name is Ned Hark. I along with Pennsylvania Bar Family Law Section Chair, Jeffrey Williams and Past-Chair, Mary Cushing Doherty am here to present the position of the Pennsylvania Bar Association. I am a Past-Chair of the Pennsylvania Bar Association Family Law Section and a Past-Chair of the Philadelphia Bar Association Family Law Section. I practice in the five counties of Southeastern Pennsylvania. The Pennsylvania Bar Association opposes a constitutional amendment that removes the Supreme Court's primacy regarding rules that govern family court.

House Bill 418 proposes a constitutional amendment that would remove the Supreme Court of Pennsylvania from its primary authority to make rules that govern the family law matters in the Courts of Common Pleas. The creation and implementation of rules for court procedure is a major function of the judiciary. The rule making authority should continue to be maintained by the Supreme Court.

The Committees and special task forces that have been appointed by the Supreme Court over the years have consistently monitored the Rules of Civil Procedure, Support Guidelines and Family Court Procedures generally and have recommended amendments, new rules and procedures that have enabled the Courts to adapt not only to new requirements imposed by law but also to implement change for Family Courts to meet the growing needs of the citizens of Pennsylvania.

The Pennsylvania Bar Association opposes the passage of House Bill 418.

Respectfully submitted,


Ned Hark
On behalf of the Pennsylvania Bar Association

**Testimony before the Pennsylvania House of Representatives Judiciary Committee, Subcommittee
on Family Law**

October 1, 2009

Presenter – Ned Hark, Esquire

My name is Ned Hark. I along with Pennsylvania Bar Family Law Section Chair, Jeffrey Williams and Past-Chair, Mary Cushing Doherty am here to present the position of the Pennsylvania Bar Association. I am a Past-Chair of the Pennsylvania Bar Association Family Law Section and a Past-Chair of the Philadelphia Bar Association Family Law Section. I practice in the five counties of Southeastern Pennsylvania. The Pennsylvania Bar Association opposes the legislation that creates a rebuttable presumption of an award of joint physical custody.

This type of legislation assumes that “joint” physical custody is the norm for all divorced and/or separated families, replacing the “best interests of the child(ren)”

During my more than 23 years of practice I have represented both fathers and mothers in custody matters. Central to the issue in any custody case is what is best for the child(ren). The determination by the Court of the best interests of the child is unique to each case due to the manner in which the families lived both before the separation and even after separation. An inquiry is made by the Court regarding the role of each parent in nurturing the child, the daily routine(s) of the child(ren), work schedules, etc. These inquiries by counsel, mediators, and ultimately by our Judges result in living arrangements and schedules that consider all factors that impact children’s lives.

Our society has evolved to the extent where lifestyles of families should not be confined to a presumption that an equal split of custody is recognized as the status quo. New laws and rules over the years have kept pace with that evolution. Examples of these changes are specific case law on the issue of relocation, rules that provide for alternative dispute resolution and implementation of processes for expedited hearings. These advances have enabled the Courts to begin to effectively deal with newly

separated and divorced families and to maintain continuity and, most importantly, stability for the children.

House Bill 1639 provides that the Court set forth the reasons for its decision on the record or in a written opinion. Therefore, the facts of each case must be considered by the Court in its determination of the best interests of the child(ren). Moreover, the parties will be aware of the basis of the decision at the time that it is rendered.

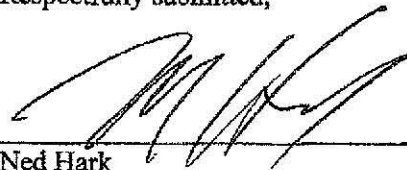
If this body were to impose the presumption of shared physical custody the courts and those who assist the courts in shaping living arrangements for children would be forced to impose a schedule which may not be reflective of the reality of the parental roles prior to separation.

This approach would reduce the rights of children by eliminating consideration of those factors unique to each family and create a prescribed model for custody without first deciding the best interests of the children. More weight is given to the rights of parents than to those children by overriding the best interest standard for determination of custody.

Our legislature will serve the needs of the Commonwealth's children by the passage of House Bill 1639 per my colleagues' testimony without a presumption of joint custody.

I thank you for the opportunity to speak with you today on this important topic.

Respectfully submitted,



Ned Hark
On behalf of the Pennsylvania Bar Association