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September 30, 2024

House Judiciary Committee
Pennsylvania House of Representatives

Re: HB 2303 Session of 2024

Dear Senator Howard and House Judiciary Committee,

Thank you for inviting Philadelphia Legal Assistance to this important hearing regarding HB 2303. Philadelphia Legal Assistances (PLA) is a non-profit organization that provides free legal assistance to low-income individuals on a broad range of civil matters, with expertise in protection from abuse, child custody, child support, and other areas of great need in Philadelphia.

We use our comments to provide both self-represented litigant's and survivors of domestic violence's view of HB 2303. For more than twenty-five years, the Family Law Unit at PLA has represented low-income survivors of intimate partner violence, child abuse and other forms of family interpersonal family violence. Annually, the Family Law Unit at PLA provides assistance to thousands of *pro se* litigants, helping them to better represent themselves in Family Court, as our resources for attorney representation are very limited in comparison to the need. PLA also assists in operating the Custody Help Center at Philadelphia Family Court, which assists self-represented litigants with custody filings. Jenkins Law Library staffs divorce assistance at the Help Center twice per week for simple, no-fault divorces with no equitable distribution for those unable to afford counsel.

We applaud the simplification of and increased access to the divorce process in the Commonwealth. An affordable means to divorce for the average Pennsylvanian as well as for the indigent is completely out of reach. Divorce has remained an extremely large unmet need in Philadelphia County for those who cannot afford representation. PLA prioritizes representation for survivors of family violence, and we do our best to provide holistic representation for the survivors we do represent, including divorce. However, as the largest provider of legal assistance in domestic relations matters in Philadelphia County, we have been unable to provide even basic advice to litigants for many years due to lack of capacity and there is no other legal aid entity to refer the majority of litigants. Several years ago, Jenkins Law Library took up the task to provide free divorce assistance to litigants seeking no fault divorces with no equitable distribution, and has operated a divorce Help Center two mornings per week. This is the only resource for litigants to receive assistance navigating this complex process in Philadelphia, and requires the litigant to make multiple trips to the Help Center over a period of months. The divorce assistance is in huge demand and staff must cap the number of litigants served to ten (10) each day.

To illustrate the large volume and great need, the Divorce Help Center assisted at least 597 unique individuals over 952 visits to the Help Center (litigants often need to return multiple times for help with various steps in the process) in 2023. While the exact number of litigants seeking assistance who

are turned away each day is not currently tracked, many litigants express it takes a few attempts before they arrive in time to be assisted that day. Before the 10 person cap was instituted, there were upwards of 15-20 people hoping to be seen each day, so we can estimate at least 5-10 people were not assisted each day the Divorce Help Center is operating. Some other statistics are as follows: at least 121 of the individuals we helped applied for and were granted waivers to proceed *in forma pauperis*; an average of 9-10 litigants as assisted per session; an average of 36 minutes is spent with a litigant per visit but that may be much longer, especially if using a telephonic interpreter to communicate with the litigant; approximately 62% of visits were regarding 3301(d) grounds for divorce based on one year of separation; approximately 31% of visits were regarding 3301(c)(1) mutual consent grounds for divorce and the remaining 7% were unsure or learning about their options. Thus, it is clear the need is great and any steps to ease the process, especially for self-represented spouses seeking a divorce, should be taken.

Section 3301 (c). Grounds for divorce Mutual Consent (C) (2)

We support the elimination of fault grounds for divorce. However, we are concerned regarding the removal of the current provision of Section 3301 (c) (2) which states “The consent of a party shall be presumed where that party has been convicted of committing a personal injury crime against the other party.” We have assisted many survivors of family violence who proceeded with a 3301 (c) mutual consent divorce under this Section. It is imperative for the safety and healing of survivors to keep this option available. We know perpetrators use litigation, particularly litigation regarding economic issues, children and divorce, to continue to harass and attempt to control their victim. Continued contact via court proceedings and the inability to legally sever the relationship can retraumatize a survivor. This option allows for a survivor to proceed with a divorce without waiting for further litigation to escape a violent marriage, and we would request consideration of keeping this option open for survivors.

Additionally, the current draft of this Section is unclear and may contain a drafting error, as it states the consent of a party to a decree shall be presumed if no answer has been filed, yet that would allow for a spouse to proceed with a mutual consent divorce with only one party having to consent.

Section 3301 (d) Irretrievable Breakdown

Section 3301 (d)(2) provides the court may order divorce proceedings 30 days after a party files an affidavit alleging the parties have lived separate and apart for more than 90 days and (i) the other party does not file a written denial of that allegation within 30 days of receipt of the affidavit. This provision is somewhat confusion and would benefit from clarification. It may be this provision was intended to state the affidavit alleges the parties have lived separate and apart for more than 1 year. Either way, we would want to be sure the Rules of Civil Procedure are also amended to ensure there are clear service procedures and proper proof of personal service to the non-moving spouse before proceeding under this Section.

Elimination of Section 3332. Opening or vacating decrees.

We are also concerned about the elimination of the ability to challenge a decree due to extrinsic fraud, in particularly. Over almost three decades PLA’s Family Law Unit has been providing assistance to

Philadelphia's low-income population in divorce matters, we have seen hundreds of cases in which a spouse learned of a divorce decree after the entry of a decree, whether in Philadelphia County or another county, such as Cameron County. Several counties in the Commonwealth have much lower filing fees for divorce actions, thus many litigants attempt to take advantage of the same and file in a county in which venue and jurisdiction are not proper. Additionally, decrees are often entered without proper notice and service, as litigants will engage in improper procedures, forge signatures, use an address known to no longer be the other party's residence, ect. It is imperative spouses have a mechanism with which to challenge a divorce decree. We would urge consideration of keeping this provision in the statute.

Section 3321.1. General order of divorce proceedings.

We are in full support of simplifying the divorce process and attempting to ease the burden of the domestic relations courts, and applaud the creation of this more stream-lined procedure. There are some areas which we would suggest amendments.

Section 3321.1 (a) Written agreements.

Again, we applaud efforts to simply the divorce process, particularly when both spouses wish to be divorced. A clear and simple procedure for divorce agreements should be implemented. We also appreciate the intent to take some of the burden of the volume of divorce proceedings from the common pleas courts but are very concerned if involving another court, such as the municipal court, to accept agreements. There are many reasons for this concern, but particularly in Philadelphia County we are fearful of the confusion such a procedure may cause for litigants, as well as for court administrators and the Clerk of Courts. Many litigants and even attorneys are completely unfamiliar with Municipal Court. Instructing litigants to file one type of divorce document, i.e. an agreement, in one court building while all others are filed with the Clerk of Courts in another building would create great confusion. We are concerned regarding how the agreements would be consolidated or sent to the commons pleas court clerk and worried pleadings may get "lost in the shuffle" as the saying goes. We would suggest all divorce pleadings be accepted only at one location, the clerk of court (otherwise known as prothonotary) to avoid confusion and delay. The lack of electronic filing in some jurisdictions, including Philadelphia, exacerbates these concerns.

Sections 3321.1 (b) and (c) Economic issues and Hearing officers.

We are very pleased to see the additional of 3321.1 (b) to allow the court to quickly address the preservation of assets and the need for discovery. This is a tremendous improvement that is much needed.

We would like to raise the possibility of amending Section 3321.1 (c) to allow for record hearings only held by hearing officers, and the consideration of an alternate procedure for equitable distribution proceedings. One possibility may be to employ a similar procedure many of the Commonwealth's counties employ for support matters. This procedure includes a record hearing before a hearing officer, issuance of findings of fact and conclusions of law and a recommended order by the hearing officer, and the ability of each party to then file exceptions to that proposed order. While the current procedure is sometimes productive and the parties may agree to follow the hearing officer's recommendation, in

many instances the process is quite burdensome. Litigants often many, many months before a hearing with a hearing officer is scheduled. In Philadelphia, it may take up to or over eight (8) months to one year for hearings with an hearing officer to be scheduled. Anecdotally, one of my colleagues has a current divorce matter in which one hearing was held before the hearing officer, testimony was not completed, and the parties have now been waiting for over 8 months for the second hearing to be scheduled. If either party does not agree to the hearing officer's recommendation, there is usually another very long delay until a judge's hearing may be held. Considering the length of time these hearings take to conduct, it seems it may be prudent to eliminate the de novo hearings and institute only record hearings when agreements for equitable distribution can not be reached. It appears this would save the courts invaluable and scare resources of the hearing officers time, and would eliminate the need for parties to invest their efforts and attorneys fees into proceedings that often bring the parties any closer to a resolution and often cause significant delays.

In conclusion, we strongly support the majority of the changes to the divorce statute, including the changes to the definitions, the elimination of fault grounds, the simplification of divorces under grounds of irretrievable breakdown, and the additional general divorce proceedings provisions. We are opposed to the changes eliminating ground (c) (2) under the mutual consent section, and the elimination of Section 3332 regarding the ability to open or vacate a divorce decree, and would urge retaining these important provisions in the Commonwealth's divorce statute.

Again, I thank you for the opportunity to participate in this important discussion and for your great efforts to increase access to justice for Pennsylvanians.

Respectfully,

A handwritten signature in black ink, appearing to read 'SPearlstein', with a long horizontal flourish extending to the right.

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