



**Testimony at Public Hearing on the State of New York's Matrimonial Law
Before the
Senate Standing Committee on Judiciary
Standing Committee on Crime Victims, Crime and Corrections
New York State Senate Majority Task Force on Domestic Violence**

May 6, 2010

Sanctuary for Families is the largest nonprofit in New York State dedicated exclusively to serving domestic violence victims and their children. Each year, Sanctuary helps thousands of victims and their children build safe lives by offering a range of high quality services to meet their complex needs. These services include clinical, legal, shelter, children's and economic empowerment services. Sanctuary also works to end domestic violence and its far-reaching impact through outreach, education and advocacy. In the past year, Sanctuary provided direct services to over 10,000 victims and their children and engaged in extensive outreach, training, public education and advocacy, connecting with nearly 20,000 community members last year.

Through our work with clients, we have learned that it is impossible to break the cycle of violence in the lives of our clients and their children without addressing their economic circumstances and providing the assistance they need to break their legal ties to their abusers through a divorce action. Obtaining a divorce is an important step for survivors to sever the power and control that their abusive spouses held over them. Sanctuary for Families supports matrimonial reform legislation, including no fault divorce after the financial issues in the case have been resolved, counsel fees for lower income spouses, and post-marital income guidelines to improve the way what is currently known as "maintenance" is determined. We would like to

thank the legislators who have recognized the urgent need for reform and worked to craft these three important bills.

Domestic violence victims are often forced to make impossible choices between enduring continued abuse or becoming impoverished without the financial support of their abusers. With rising unemployment rates, job openings declining, and scarce affordable housing options, economic assistance is even more critical to domestic violence survivors—who may be less likely to leave and stay away from abusers if they have little hope of achieving economic stability on their own.

Under our current divorce law, thousands of domestic violence victims are without access to the financial support they need after divorcing their abusers, causing them to remain vulnerable to further abuse and exploitation. Sanctuary for Families believes that it is critical for the New York State Legislature to pass bills that address the economic issues in matrimonial actions, specifically, those that ensure access to counsel for litigants who have significantly less income than their spouses and those that establish clear, equitable guidelines to govern the parties' respective post-marital incomes.

Most low to moderate income New Yorkers cannot afford to pay the high cost of legal representation in a contested divorce matter. Sanctuary has one of the few free legal service programs in New York City that takes on contested divorces, routinely turned away by many providers due to their labor-intensive, time-consuming, costly nature—as well as the critical shortage of seasoned attorneys who have the training necessary to handle these complex cases. However, we only have sufficient resources to serve a fraction of the domestic violence victims in need of legal representation in contested divorce cases. This gap between the thousands in need and the scarce available legal resources causes many litigants to give up their right to seek financial support from their spouses, either by opting for an uncontested divorce or by settling

their divorce matter by waiving maintenance rather than engaging in lengthy and traumatic litigation that would yield uncertain results. Many victims call our Helpline every week who have exhausted their retainers with their current attorneys and can no longer afford to litigate their divorces. Some of them have spouses with significantly greater resources. To provide the less-monied spouse with appropriate legal representation, a law regarding counsel fees that provides more equity and evens the playing field should be passed. This law should explicitly state that fees can be awarded to non-profit and civil legal services providers who represent victims whose spouses have sufficient resources to pay their counsel fees.

The proponents of no fault divorce have asserted that it is necessary to reduce expensive and traumatic litigation. Sanctuary for Families shares this goal. Our clients' experiences have taught us that prolonged litigation is a way in which batterers can continue to abuse their victims. While no fault divorce may reduce delays for some litigants, a much larger portion of our clients would benefit from divorce reform that also makes resolution of the financial issues in their cases simpler and more equitable. While most divorcing couples who no longer wish to remain married can settle the issue of grounds, domestic violence victims seeking spousal maintenance can rarely resolve this issue favorably under the current law. Abusive monied spouses are often reluctant to agree to pay maintenance to their victims. With maintenance seen as a "wild card" due to the lack of discernible standards for determining its amount and duration, batterers are unlikely to agree to a settlement that provides adequate maintenance, preferring to engage in excessive and abusive litigation.

Case History: Perkins Family

Lorraine Perkins (not her real name), a 52-year-old client of Sanctuary for Families, had been married to her husband, John Perkins, for 31 years. The couple had two grown children.

During the marriage, the client stayed home as a full-time mother until her children reached the ages of 13 and 15. She then entered the workforce as a secretary, earning minimum wage. Her husband worked for the commodities exchange and later at a series of odd jobs.

For the last seven years, both parties had been employed by the same company. Ms. Perkins earned approximately \$22,000, and Mr. Perkins earned approximately \$50,000 annually. In her request for an interim maintenance award to carry her through until the divorce was final, she asked for \$500 per month or \$6,000 a year. Ms. Perkins badly needed the money. She had fled the marital home to escape abuse, and her husband had sold all of her possessions, including furniture, at a yard sale. At the time of the application, their daughter was 20 years old and Ms. Perkins was also seeking child support until the daughter reached the age of 21. The judge granted Ms. Perkins child support of \$160 per week (\$8,320 a year) and reserved a ruling on maintenance until the daughter turned 21 and the father would be free of child support obligations. After the child support order ended, the judge granted Ms. Perkins interim maintenance of \$250 a month or \$3,000 a year. Mr. Perkins was adamant that he would not settle the case for more than \$250 per month for one year. He could not be convinced to settle the issue of maintenance because nobody could show him a law that definitively established what the appropriate numbers should be.

The parties had a grueling four-day trial on the sole issue of maintenance at a considerable expenditure of judicial resources. It also created hardships for Ms. Perkins, who already had taken off substantial time from her job for court appearances. Fortunately, Ms. Perkins had the benefit of free legal services from Sanctuary for Families, so she could wage the fight for maintenance she badly needed without incurring counsel fees that she would be unable to pay.

At trial, Mr. Perkins called the parties' adult son to the witness stand after intimidating him into testifying, which Ms. Perkins and her counsel saw in the hallway. Her son's testimony was very traumatic for Ms. Perkins and, ultimately, his testimony was helpful to neither party. In addition, as Mr. Perkins chose to proceed unrepresented at trial, Ms. Perkins had to endure several hours of cross-examination by her abusive husband.

Many months after the four-day trial, Ms. Perkins received the Court's decision. She was awarded maintenance of \$550.00 per month (\$6600 annually) for ten years. At age 62, she will have to rely on Social Security and whatever she can save during the next ten years toward retirement. With Post-marital Income (PMI) Guidelines, Ms. Perkins would be entitled to non-durational maintenance in the amount of \$566.66 per month, or \$6,800 per year, more than twice what she was awarded under the court's *pendente lite* order and more than she received after trial. It would provide her with an annual income of \$28,800, while her former husband's annual income would be \$43,200. The award would last until the parties' actual retirement when it could be modified to reflect the parties' changed incomes upon retirement, which is the length of time her attorney requested in the pre-trial papers. Also, importantly, with PMI in place, the parties would probably have avoided the trial, and the attendant waste of judicial assets, financial hardship to Ms. Perkins, and opportunity for Mr. Perkins to continue his abuse of Ms. Perkins through the trial process.

To achieve meaningful divorce reform, the Legislature must pass a law that creates a formula for determining the amount and duration of post-marital income in place of the current multi-part test that courts use to determine maintenance. Using formulas for calculating post-marital income would allow even litigants without access to lawyers and those filing uncontested divorces to obtain this relief. Currently, establishing a right to maintenance is so complicated that it usually requires years of expensive litigation. Post-marital income guidelines would streamline

divorce proceedings, reducing trauma for domestic violence victims and other low income working families.

Setting guidelines would provide more equity between the parties after the dissolution of the marriage. Decisions made over the course of a marriage often have the effect of sacrificing one spouse's ability to earn money for the benefit of the entire family. Disparities continue to exist between women's and men's earning power, and this is especially true in cases of domestic violence, where economic abuse is widely used to control the victim. In families where there are fewer assets than debts to divide, the only resource available to support the parties post-divorce is the income of the breadwinner spouse. When faced with years of continuing litigation wherein abusers can use the legal process to continue to harass their victims, many victims choose to walk away with nothing.

Post-marital income legislation focuses on providing a fair solution for families with less wealth to divide. With a cap at \$500,000 of income, the proposed post-marital income bill targets families with more limited resources, allowing more discretion for the wealthiest families who can afford the litigation. Equitable distribution of income-producing properties will be determined first and the resulting incomes will be compared to determine the parties' income disparity before post-marital income is calculated using a formula. A post-marital income award to a lower income spouse will only be made when he or she earns less than 40 percent of the parties' combined income. Deviation factors included in the law will allow judges discretion to alter the awards where it is in the interests of justice to do so.

Post-marital income guidelines provide a measure of predictability that can facilitate settlement of divorces more efficiently. Even in cases in which both parties are represented by counsel, it is difficult to negotiate a settlement of maintenance. Because there is no predictability to the results, parties with more resources often decide that they are better off taking their

chances at trial than agreeing to pay maintenance in a settlement. Any advice given to litigants is a prediction based solely on the judge's personal attitude toward maintenance rather than any precise legal or factual analysis. The proposal is modeled on the system established by the Child Support Standards Act, which provides a formula that has made calculating support for children a much more streamlined and predictable part of divorce litigation that is frequently settled without a trial. Using a similar approach for determining post-marital income would make resolving what is often one of the most contentious issues in a divorce case simpler and fairer to both parties.

Providing for no fault divorce after financial issues are resolved, ensuring access to justice by ensuring that parties with fewer resources have representation of counsel, and establishing this new approach for calculating post-marital income will provide the divorce reform that New Yorkers, including survivors of domestic violence, need.

Thank you to the New York State Senate for making matrimonial reform a priority.