

**Testimony by the Legal Aid Society before the New York State Senate Judiciary Committee on
the Issue of Matrimonial Law Reform and Post-Marital Income Guidelines (PMI)**

May 6, 2010

Interest and Expertise of the Legal Aid Society

The Legal Aid Society is the oldest and largest provider of legal assistance for low income families and individuals in the United States. The Society's Civil Practice operates 14 neighborhood offices and City-wide units servicing residents of all five boroughs of New York City, providing comprehensive legal assistance in housing, public assistance, immigration, family law and other civil areas of primary concern to the poor. The Society's Family Law and Domestic Violence Practice provides legal representation regarding, custody, orders of protection, child support, divorce, economic justice and immigration remedies for undocumented survivors of domestic violence. Our Family Law and Domestic Violence Project staff often works in close collaboration with other areas of the Society's Civil Practice to holistically address the myriad of legal issues faced by immigrant survivors of domestic violence, in particular access to housing, public assistance and health care. Our Family and Domestic Violence staff work in close collaboration with many community based organizations to provide holistic services to our clients.^a The Legal Aid Society's Family Law and Domestic Violence Program Staff plays a leadership role in the Lawyer's Committee Against Domestic Violence (LCADV), a coalition of over 100 lawyers from the greater New York City area whose work supports victims of domestic violence and their children. Members of our staff helped found the New York

^a These organizations include New York Asian Women's Center, Sakhi for South Asian Women, Violence Intervention Program, Safe Homes Project, Project Hospitality, WHEDCO, Barrier Free Living, Garden of Hope, and Arab American Family Support Center.

State Post-Marital Income Guidelines Coalition^b, a group of approximately 35 organizations throughout the State who are dedicated to promoting economic justice for women and children who currently fall into poverty after divorce.

The Legal Aid Society's Family Law and Domestic Violence practice handles approximately 1000 cases per year. However, this number reflects only a small percent of the indigent and low income New Yorkers who seek our Family and DV services annually. A recent study we conducted shows that limited resources force us to turn away 8 of every 9 clients who seek help from the Society's Civil Practice. One of the many reasons we strongly support the enactment of post-marital income guidelines, as will be explained in greater detail below, is that it will provide a mechanism whereby even unrepresented non-monied spouses will be able to secure support post-divorce in much the same way they now obtain child support. This testimony is offered on behalf of our clients, mostly New Yorkers at or below 150% of the poverty level, as well as for the thousands of low income New Yorkers who are unable to access our limited resources.

We are grateful for the opportunity to testify before the Senate Judiciary Committee on the issue of Matrimonial Law Reform and the dire need for post-marital income guidelines to bring economic justice to thousands of divorcing women and their children by providing consistency, predictability and fairness.

The Need For Post-Marital Income Guidelines: Promoting Economic Justice

Access for Low and Moderate Income Spouses:

Currently, establishing a right to maintenance is so complicated it requires lengthy, expensive litigation. Most prejudiced by the existing law are moderate and low income spouses who cannot afford to litigate. Over 75% of divorces in New York State are uncontested divorces. A typical

^b For more information about the Post-Marital Income Coalition including a list of member organizations, see DivorceReformNY.org.

uncontested divorce will be between a home health worker earning \$15,000 per year and a State employee earning \$70,000 per year. If they have children, the Child Support Standards Act will proscribe the exact amount of child support the custodial parent will receive. If they own a home or if there is a pension, equitable distribution law will provide clear guidance on the division of that property. But, under current law there is no predictability whatsoever regarding what if any maintenance a court would award. In myriad situations like this, the home health worker will simply walk away from any maintenance award at all, understanding correctly that the cost of litigating for such an award would be prohibitive and the outcome far from certain. So, non-resourced spouses are forced to give up legitimate claims simply because they lack the resources to pursue their cases in courts. Yet maintenance is often necessary for households to avoid financial instability that disrupts lives and subjects families to hardship and stress. Using the formulas contained in the proposed Post-Marital Income legislation would be simple enough so that even litigants without access to lawyers could obtain PMI in much the same way they currently obtain child support awards.

Greater Equity:

Decisions, large and small, made over the course of the marriage often have the effect of sacrificing one spouse's ability to earn money for the benefit of the entire family. Who should work longer hours to advance a career? Who should work part-time to be available for the needs of the children?, etc. Disparities continue to exist between women's and men's earning power and setting guidelines to control maintenance awards would introduce greater equity. We need a fairer means of addressing these disparities as part of matrimonial reform. For most couples divorcing in New York, the only asset of the marriage is the ability of one of the spouses to earn significantly more money than the other. PMI guidelines will provide remedies for these spouses since they have no assets of significance to divide.

Predictability and Consistency:

Awards made under New York's existing maintenance statute differ widely for families that appear remarkably similar. Unlike equitable distribution and child support, which can be predicted with some degree of accuracy, lawyers do not know how to advise their clients about maintenance. Maintenance is the "wild card" in negotiations, impeding settlement, encouraging litigation or, most disturbing of all, forcing non-monied spouses to simply give up. PMI guidelines would provide much needed predictability and consistency while at the same time providing courts with the discretion to deviate from the guidelines in limited circumstances where equity and fairness would dictate deviation.

Less Trauma, Cost and Delay:

There is no question that divorce litigation in New York State is fraught with trauma, high cost and significant delays. Matrimonial Reform legislation is absolutely necessary to address these problems. No Fault divorce will address only one aspect of these problems. Even more substantively, PMI guidelines would streamline divorce proceedings. Spouses would know how much maintenance to expect, so they could settle more easily and avoid debilitating litigation.

Legal Aid Client Stories**Allen Family**

Sarah Allen (not her real name) telephoned Legal Aid seeking advice about a possible divorce. She was 24 years old and had been married for six years. Her husband, Martin Allen, was considerably older than she. She had not graduated from high school; he has a college education and worked for the Board of Education, earning an adjusted gross income of \$60,000 a year. The couple had two young children, a 4-year-old and 2-year-old. Mr. Allen had been physically violent to her, and Ms. Allen wanted to leave him. The Allens lived in a two bedroom apartment that rented for \$1,600 a month. They had no marital property to speak of.

Ms. Allen called to get advice about what would happen if she filed for divorce. Her biggest concern was financial. When an attorney at Legal Aid explained to Ms. Allen that her husband would owe her child support of no more than \$15,000 per year and that there was no way to predict what maintenance, if any, the court would award her, she decided against a divorce. The economic uncertainty was simply too great – even given the violent and potentially dangerous atmosphere she would have to endure for the financial security she needed for herself and her young children.

With Post-marital Income (PMI) Guidelines:

The Legal Aid attorney would have been able to tell Ms. Allen that she could likely expect to receive an annual award under the PMI guidelines of approximately \$18,000 for two years and five months. This would have been enough to allow her time to complete high school and get a job while staying in her apartment and paying minimal living expenses. She would also have been able to count on monthly child support payments of \$875 or \$10,500 a year for a total yearly income of \$28,500 for the household consisting of herself and the two children. When the PMI award ended in two years and five months, Mr. Allen's child support obligation would increase to \$15,000 a year.

During the two years and five months when both post-marital income and child support were paid, the household income for Ms. Allen and her two children would be \$28,500 per year, not quite two times the poverty guidelines. The household income of Mr. Allen alone would be \$31,500, over three times the poverty guidelines for a household of one.

With PMI guidelines, Ms. Allen, much more certain of what resources she could count on post-divorce, may well have decided to seek a divorce from her husband so that she and her children could live without violence.

SUMMARY OF HOUSEHOLD INCOME LEVELS – ALLEN FAMILY

Outcome without maintenance:

Household with custodial parent and two children	Household with non-custodial parent
\$0	\$60,000
+ 15,000 child support	- 15,000 child support
Total \$15,000	\$45,000
(20% <u>below</u> poverty guidelines)	(4.1 times poverty guidelines)

Outcome with PMI guidelines:

Household with custodial parent and two children	Household with non-custodial parent
\$0	\$60,000
+ 10,500 child support	-10,500 child support
+ 18,000 PMI (for 2 yrs, 5 mos.)	- 18,000 PMI (for 2yrs. 5 mos.)
Total \$28,500	\$31,500
(1.6 times poverty guidelines)	<u>(3.0 times poverty guidelines)</u>

Gonzales Family

Elizabeth Gonzales (not her real name) is the forty-year-old mother of three children. Disabled, she receives supplemental security disability (or SSD) totaling \$11,500 annually. She has been married for 15 years to Richard Gonzales, the father of her three children. He is forty-four years old, works in the mailroom of a brokerage house in New Jersey, and has gross earnings of \$48,000 annually.

Mr. Gonzales, who had severely abused his wife, was excluded from the family's home pursuant to a court's order of protection. When he stopped paying the rent, Ms. Gonzales struggled to meet the costs of everyday life with her three children. Her parents, both on fixed incomes, assisted her for a short while, but they were unable to continue helping her indefinitely.

In the divorce case that followed, Ms. Gonzales's Legal Aid attorney asked the court for an award of both child support for the three children who remained in her custody and spousal maintenance. Her attorney related this interchange with the judge's court attorney:

“In our conference, the judge was very taken with the fact that the husband's net monthly income was only \$3,567 (\$42,804 annually) and from that he would be paying \$1,034 a month (\$12,408 annually) in child support for the three children, which would only leave him with \$2,533 for the month (\$30,396 annually) and he'd have to pay his rent and utilities and make his car payments as well as pay insurance on the car. Did I realize that, the judge asked me, when we were asking for maintenance?”

I mentioned that Ms. Gonzales's income averaged \$958 monthly (\$11,496 annually), and, although she received about \$250 monthly in food stamps (\$3,000 annually), she had to pay rent and utilities for herself and the three children, take them back and forth from

their activities, not to speak of buying food and clothing. While I acknowledged that \$2,533 was not a lot for the husband to meet his monthly bills for one person, I asked the court to look at my client with \$958 for four people – herself and three children.

In the end Ms. Gonzales settled. The uncertainty of getting a decent maintenance award made an agreement that required the husband to pay off the remaining debt on her car, about \$450 monthly (\$5,400 annually), and make the car insurance payments for five years look good. Mr. Gonzales agreed that those payments did not come off his income before child support was calculated, which would have reduced his child support payments.”

With Post-marital Income (PMI) Guidelines:

A presumptive award under the PMI guidelines would have been \$12,100 for 10.5 years. For the period of time for which both child support for three children amounting to \$12,408 annually, and the PMI award are paid, the household with Ms. Gonzales and her children would have an income of \$36,008, more than one and a half times the poverty guidelines of \$21,200 for a family of four.

The household with Mr. Gonzales alone would have an income of \$23,492, two and a third times the poverty level of \$10,400 for a family of one. Mr. Gonzales would also have the benefit of any raises or other increases in income as well as contributions to a pension fund, health insurance, and any other benefits of his job.

With PMI guidelines, either party might have argued to the court that there were special factors that required a different outcome, but the clear starting point for their negotiations and

discussions with the court would have been the assumption that Mr. Gonzales had an obligation to his former wife and the mother of his children that was substantially more than what she settled for in this case.

SUMMARY OF HOUSEHOLD INCOME LEVELS – GONZALES FAMILY

Actual settlement:

Household with custodial parent and three children

\$11, 500 SSD

+ 12,408 child support

+ 5,400 car payments (until car is paid)

Total **\$29,308 (plus car insurance for 5 years)**

(1.4 times poverty guidelines)

Outcome with PMI guidelines:

Household with custodial parent and three children

\$11,500 SSD

+ 12,408 child support

+ 12,100 PMI (for 10.5 years)

Total **\$36,008 (while both child support and PMI are received)**

(1.2 times poverty guidelines)

Actual settlement:

Outcome with PMI Guidelines:

Household with non-custodial parent

Household with non-custodial parent

\$48,000 salary

\$48,000 salary

- 12,408 child support

-12,408 child support

- 5,400 car payments (until car is paid)

-12,100 PMI (for 10.5 years)

\$30,192 (minus car insurance for 5 years)

\$23,492(while both child support and PMI are paid)

(3.1 times poverty guidelines)

(2.3 times poverty guidelines)

In conclusion, for the matrimonial clients that The Legal Aid Society represents as well as the thousands who seek our services, but are turned away because of limited resources, Post-Marital Income Guidelines are a vital component of any meaningful matrimonial reform. PMI is an essential component of streamlining the divorce process in New York State by providing much needed consistency, predictability and fairness.



Testimony by
The Legal Aid Society

on the Issue of Matrimonial Law
Reform and Post-Marital Income
Guidelines

The Positive Effect of PMI



THE GONZALES FAMILY
PMI Calculations

30% of payor – 20% of payee
30% of \$48,000 = \$14,400
minus
20% of \$11,500 = \$2,300
PMI = \$12,100

40% of combined income
40% of \$59,500 = \$23,800

Therefore, PMI is \$12,100 (lesser of
\$12,100 or \$23,800 minus payee
income).



The Gonzales Family: Without PMI

- **Household with custodial parent and three children:**
 - Income: \$11,500 SSD
 - + \$12,408 child support
 - + \$5,400 car payments (until car is paid)
 - Total: **\$29,308** (plus car insurance for 5 years)
 - **1.4 times poverty guidelines**
- **Household with non-custodial parent:**
 - Income: \$48,000 salary
 - - \$12,408 child support
 - - \$5,400 car payments (until car is paid)
 - Total: **\$30,192** (minus car insurance for 5 years)
 - **3.1 times poverty guidelines**



The Gonzales Family: With PMI

- **Household with custodial parent and three children:**
 - Income: \$11,500 SSD
 - + \$12,408 child support
 - + \$12,100 PMI (for 10.5 years)
 - Total: **\$36,008** (while both child support and PMI are received)
 - **1.5 times poverty guidelines**
- **Household with non-custodial parent:**
 - Income: \$48,000 salary
 - - \$12,408 child support
 - - \$12,100 PMI (for 10.5 years)
 - Total: **\$23,492** (while both child support and PMI are paid)
 - **2.3 times poverty guidelines**



THE ALLEN FAMILY PMI Calculations

30% of payor – 20% of payee
30% of \$60,000 = \$18,000
minus
20% of \$0 = \$0
PMI = \$18,000

40% of combined income
40% of \$60,000 = \$24,000

Therefore, PMI is \$18,000 (lesser of \$18,000 or \$24,000 minus payee income).



The Allen Family: Without PMI

- | | |
|---|--|
| <ul style="list-style-type: none">○ Household with custodial parent and 2 children:○ Income: \$0○ + \$15,000 child support○ Total: \$15,000○ 20% below poverty guidelines | <ul style="list-style-type: none">○ Household with non-custodial parent:○ Income: \$60,000○ - \$15,000 in child support○ Total: \$45,000○ 4.1 times poverty guidelines |
|---|--|



The Allen Family: With PMI

- **Household with custodial parent and two children:**
 - Income: \$0
 - + \$10,500 child support
 - + \$18,000 PMI (for 2yrs. 5mos.)
 - Total: **\$28,500**
 - **1.6 times poverty guidelines**
- **Household with non-custodial parent:**
 - Income: \$60,000
 - - \$10,500 child support
 - - \$18,000 PMI (for 2yrs. 5mos.)
 - Total: **\$31,500**
 - **3 times poverty guidelines**