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New York State Senate Judiciary Committee on the Issue of Matrimonial Law Reform and
Post-Marital Income Guidelines (PMI)
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For 20 years the Service Fund of the National Organization for Women of New York City has been counseling women seeking a divorce as they enter what is often the most trying experience of their life. Every day we see first-hand the devastation caused to women and their families due to New York's difficult divorce laws, underpaid and overworked judges, and occasionally, corrupt and biased judges, as well as, an overburdened court system.

The fairness of matrimonial law would be greatly improved if the New York State Legislature enacted needed reform, such as guidelines for post-marital income (PMI) and upfront attorneys' fees for non-moneyed spouses. Worthy of consideration to further improve fairness in the court system is appointed counsel for poor women. The need for appointed legal counsel for poor women is critical.

Women seeking assistance for divorce is by far the No. 1 helpline call our organization receives. The volume of women who reach out to us on this issue far exceeds any other category of help calls. Most women call because they can't afford to get divorced, while others are broke and desperate and exhausted from their on-going legal battle.

Many women we've worked with spend years in court and all their life savings battling their husband only to have a judge find that they do not have grounds to divorce. The situation is more desperate for victims of domestic violence who are forced to stay married to abusive partners. I have met women who have spent five, seven, ten years trying to get a divorce. I have sat and listened to humiliated women recount having to say in open court that they asked their husband – repeatedly - to have sex with them for the full year in an effort to get a judge to grant them a divorce.

I spoke just this week with a woman who was denied a divorce by a judge who didn't think her case constituted cruel and inhuman treatment, one of the four grounds on which divorce can be granted in New York. She said, "Why does the government get to decide what's a deal breaker for me in my marriage? New York says adultery is grounds for divorce. If my husband had cheated on me, maybe we could have worked through that, but his pathological lying and stealing was OK? This is a man I cannot trust. That's my deal breaker."

There are many reasons marriages go bad, having four narrow grounds on which to get divorced can lead to lengthy, combative and costly litigation – all adding to the already emotional, stressful and difficult scenario that is the dissolution of a marriage. Having to allege grounds can be the very thing that ignites a combative divorce. I have seen situations where emotions become enflamed after the complaint is served and the examples of adultery, denial of sex, and cruel and inhuman treatment are in writing. For those who are trapped in marriages, the cruel and inhuman treatment is not being able to disentangle your life from someone you no longer want to be married to, often an abusive or vindictive person. The woman I mention above said to me, "I don't feel that far removed from the woman in a burka."

The women who walk through my doors need to know that yes they can get a divorce, but this is only half the problem. They also need to know the system is going to treat them fairly in court. Currently, so much of a woman's future depends on the luck of the draw, does she get a good judge. The women who attend my clinics spend a lot of time focusing on judges, who got which judge, followed by moans and groans. Rather than a system where there are clear outcomes based on what each individual contributed to the partnership that is marriage, the payment one spouse receives after divorce - often the woman – is at the mercy of the judge.

Post-marital income guidelines must be adopted so that women can have economic security for themselves and their children upon divorce. We'd like to see an end to an era where women are "maintained" by a man until other man steps up to take care of her. The monthly payments a spouse receives upon divorce should reflect that person's contribution to a marriage. If a

mother gives up her livelihood to be a homemaker on agreement with her husband, she is entitled to income for that contribution. We'd like to see the law reflect and acknowledge that work and agreement.

In divorce cases, post-marital income is the wildcard and it's the issue that leads to much litigation. Money spent on this litigation that could instead be spent on the household, on a college fund. We seek to secure legislation that would give judges concrete guidelines for granting post-marital compensation. With these guidelines, a woman seeking a divorce doesn't have to rely on the subjective opinion of a judge and because she can predict what her income will be, she doesn't have to burn through her divorce funds litigating post marital income.

Post-marital income claims will be made very much the way claims for child support are made. A formula will be used to arrive at a presumed amount. A second formula will be used to determine how long this amount will be paid. These guidelines would result in a more fair award, which does not punish the spouse who dedicated herself full-time to primary caregiver responsibilities for the children and does not reward the higher earning spouse with an increased standard of living after the divorce to the detriment of the rest of the family.

Reform must ensure that litigants have as close to equal bargaining and litigation power as possible before any changes in matrimonial law occur. Judges are given too much discretion and we see the negative results that has for women and families everyday.

In situations where one spouse is controlling the money, legislation is needed that provides upfront payment of attorneys' fees for the non-moneyed spouse. Only about one-third of motions for upfront fee reimbursement are granted. Judges aren't always sympathetic to women for various reasons. The motion on behalf of one woman who some would consider well-heeled was summarily dismissed by the judge. Even though she made less than one-quarter of her husband's yearly annual income of up to \$600,000, the judge said, "You'll get it later out of your equitable distribution."

The lack of counsel means women cannot negotiate a fair settlement and ensure they receive what they have a right too. Whether you are poor or a homemaker cut off from family funds, if you don't have a family member or friend to loan you the money or a credit card to put it on, you can't hire an attorney. Many women end up losing rights they don't preserve at the preliminary conference and they can be taken advantage of by their spouses who are able to hire attorneys who can then coerce settlements.

In conclusion, there is much opportunity to streamline and improve New York's matrimonial laws. Protections for the non-moneyed spouse and the children's standard of living must first be secured before any changes to existing matrimonial law should occur.