



**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**

InMotion is pleased to have the opportunity to provide testimony to the New York State Senate regarding the need for divorce reform in our state. InMotion provides free legal services in New York City to indigent and working poor women with very limited financial resources. Most of our clients are survivors of domestic violence, many are immigrants and most are mothers who are, or who become, the head of their family's household. All are searching for a way to handle matters that directly affect their own safety and economic security and the well-being of their children. One out of four of the women we help speaks a language other than English as her primary language and requires an interpreter to pursue her legal matter.

Since its founding in 1993, inMotion has assisted clients primarily with divorce, family and immigration law issues. We provide attorney representation for as many women as we can and we assist many other women who proceed in court without attorneys (i.e., pro se) by providing them with information, detailed advice and brief or limited legal services so that they have as good a chance as possible to obtain what they need in court on their own.

In the last five years alone, inMotion has given trained pro bono lawyers to over 3,000 women, of whom half (i.e., more than 1,500) were seeking divorces. Of the over 9,000 additional women who received pro se assistance from inMotion's experienced staff attorneys from 2005 to the present, well over 50% of them sought assistance on divorce matters. Thus, our observations and testimony today are based on direct experiences with a very large sample of people who have had to deal with New York State's current matrimonial laws. Without our help, the vast majority would have lost essential protections the law is supposed to provide.

InMotion strongly supports comprehensive, multi-faceted divorce reform and applauds members of the New York State Senate who have made it a priority to introduce and pass meaningful legislation that will improve the process of obtaining divorces in our state for all litigants, those with both substantial and very limited resources. We believe that people of moderate means, who make up the bulk of New Yorkers, will benefit most. According to U.S. Census Bureau figures, two-thirds of New Yorkers have household incomes under \$75,000 and only 20% of New York families have incomes over \$150,000.

The costs under our current statutory scheme, in terms of both time and attorneys' fees, of litigating a contested divorce are prohibitive for the vast majority of couples in our state. Yet the issues to be resolved upon the break up of a family partnership are frequently complex, so that most divorcing spouses would benefit enormously from having experienced counsel to advise them. We, therefore, support reforms that will simplify and streamline the process for obtaining a divorce. The goal of reform must be to assure that both divorcing spouses receive fair and predictable outcomes that recognize their contributions to the marriage partnership.

In order to accomplish these important goals, inMotion supports passage of a legislative reform package with three essential and interrelated components that, working together, will protect litigants from all economic strata, the rich and the poor alike, and not just those who have sufficient means for attorney representation.

We support, first, a streamlined no-fault statute that eliminates the need to establish grounds so long as all economic and child custody issues have been resolved before a divorce judgment is granted. The granting of a divorce does not occur in a vacuum, as the division of the family's financial resources or debts must be resolved first. The economic future of each member of the family is at stake. In addition, both parents' responsibilities for any unemancipated children must be addressed.

Second, we advocate for a limited, but absolutely critical right to appointed counsel for some divorce litigants. Reforms must ensure that litigants have as close to equal bargaining and litigation power as possible before a no-fault divorce is granted. The lack of access to counsel means that the most vulnerable litigants, those without financial resources, cannot adequately negotiate for the essential protections that our complex matrimonial laws and procedures should, but too often do not, afford them. And where there are sufficient family resources to pay counsel fees, the law must require that attorneys' fees for the less-monied spouse be paid by the spouse with greater access to and/or control over the family's financial resources, ensuring equal access to marital resources for both parties while their divorce case is pending.

Third, inMotion urges the Senate to pass a bill establishing guidelines for post-marital income awards (now known as “maintenance awards”). These guidelines will ensure that at the time a marriage ends, both parties’ contributions to the marriage partnership are recognized. This protection, we believe, will affect positively a great number of divorce litigants and many others affected by divorces in our state, including, first and foremost, their children and other family members.

With no statutory guidelines currently in place for maintenance, judges’ decisions are highly discretionary. They vary widely, even when cases present similar fact patterns. At present, attorneys can give their clients no assurance about whether they will owe or receive maintenance and, if so, how much and for how long. InMotion believes that the currently pending bill to establish post-marital income guidelines will be welcomed by litigants, attorneys and judges alike. These guidelines will function in divorce cases analogously to the Child Support Standards Act, a law that has been tested for decades and which has brought predictability and fairness to another critical issue for families living in our state.

As attorneys at inMotion have been part of the team of public interest attorneys who drafted the initial guideline proposal in 2005 and who have revised its provisions several times since then to improve and clarify how it will work, let me highlight a few specifics in that bill.

The goal of the drafters was to create a simple and easily-administered remedy, something that would work similarly to the Child Support Standards Act. The proposed bill, therefore, borrows structure, language and definitions from this well-established law,

something that is extremely familiar to all New York family law practitioners and judges. The proposed bill also contains an important substantive protective provision, modeled after a similar provision in the Child Support Standards Act, requiring unrepresented parties to be informed of the presumptive amount and duration of the post-marital income obligation before any court order or judgment is entered on this issue.

Under this statute, post-marital income claims will be made very much the way claims for child support are, however with two formulas rather than one – one formula for the amount to be paid by one former spouse to the other and the second for the length of time payments will be owed.

The conceptual basis for payment of post-marital income awards under the proposed legislation will be the same as that for equitable distribution, another legal remedy that is extremely familiar to, and well understood by, courts and litigants. With passage of the comprehensive reforms we support, both post-marital income awards and equitable distribution will be awarded in recognition of the end of a partnership. This is an acknowledgement that, for however long the husband and wife have been married, they have made joint decisions and investments in expectation of their on-going partnership. When that partnership comes to an end, the law attempts to ensure a fair division between the former partners of what has been accumulated during the life of the partnership – its assets and its liabilities.

Judges and former spouses are used to divvying up the marital real estate, cash and securities, the debt and tax liabilities under equitable distribution analysis. The post-marital income guidelines proposal recognizes that divorcing couples rarely have

accumulated assets to divide. If they are fortunate, they will not be dividing marital debt. Thus, the most significant “asset” of the marital partnership which is ending is their future income stream.

Since the post-marital income guideline formula takes into account only two key variables, i.e., income and duration of the marriage, its application will produce results that for some spouses are inappropriate or unfair. So, like the Child Support Standards Act, the proposed bill allows deviations from the formula. Judges may vary the amount or duration of the obligation taking into account any relevant factors listed in the proposed bill. These include factors that matrimonial judges are already experienced in weighing when they set the amount of child support and/or maintenance. Half of the deviation factors in the proposal come straight from the current maintenance statute. Importantly, the proposed statute requires judges to explain in writing why they have deviated from the post-marital income guidelines (either dollar amount or duration).

Another goal of the proposal drafters was, to the maximum extent possible, to leave unchanged existing matrimonial law. Thus, for example, the order in which financial issues are addressed (i.e., first equitable distribution, next post-marital income amount and duration, and finally child support, if any) will not change.

It is important to recognize that rarely would a former spouse pay or receive both post-marital income and child support for very long. If children of a marriage are young and child support will continue for a long time, that marriage probably did not last for long, so the post-marital income award would be short. On the other hand, if a marriage has been long and thus the duration of a post-marital income award is long, the children of

the marriage are likely to be older and either emancipated or likely to be so soon, so the child support obligation would be short.

Post-marital income guidelines are needed to bring fairness, consistency and predictability to an area of the law that greatly needs it. InMotion believes that the very existence of statutory guidelines will foster settlements, creating efficiencies for parties and courts. A recent inMotion case graphically illustrates the need for post-marital income guidelines.

*InMotion provided pro bono counsel in 2007 to a client who was 44 years old and married for 19 years. There were two sons of the marriage, one of whom suffered from epilepsy and autism. The mother had not worked outside the home during the marriage but instead dedicated herself as a homemaker to her boys and husband. Her one son's special needs required her to be on call at all times, even when he was in school, in the event he suffered a seizure. When her husband filed for divorce and left the marital residence, he stopped paying the rent on the family's home, leaving the wife and sons in desperate financial straits.*

*As no guidelines existed in either statute or case law for either the amount or length of time the wife should receive spousal maintenance, negotiations for a financial settlement took nearly two years to conclude. At one point, the client, emotionally exhausted from the litigation, was ready to concede on important financial issues, but her attorneys urged her to reconsider for her own and the boys' financial security. Finally, in 2009, the husband agreed to pay spousal maintenance until he reached the age of 62 and to maintain a life insurance policy in an amount sufficient to cover both his child support and spousal maintenance obligations. With guidelines, we believe this case would have settled much more quickly and with less strain on all parties.*

In closing, inMotion applauds the New York State Senate for prioritizing the issue of matrimonial law reform. We urge the Senate to use this opportunity to address comprehensively the economic issues that accompany divorce. That means passage of legislation providing for payment of attorneys' fees and attorney representation to level the playing field for both divorcing spouses while the divorce is pending. It also means passage of post-marital income guideline legislation to ensure that the contributions of both spouses during the marital partnership are predictably and fairly divided when that partnership ends.

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