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Appraising Change and Progress a Decade After the Report of the New York Task Force on Women in the Courts

A Report by the New York Judicial Committee on Women in the Courts
May 1996

and to give prospective clients a bill of rights. Also recommended were the establishment of a system for arbitrating disputed attorneys fees and limitations on the charging liens and security interests often used to compel payment of fees. But the court system itself also came under attack for tolerating the abusive tactics of lawyers and allowing divorce actions to become wars of attrition. Chief among the recommendations addressed to the courts was a proposal for preliminary conferences with both parties present, to be held soon after cases were filed, for the purpose of discussing possible settlements, defining and narrowing contested issues, and setting discovery schedules. The committee also advocated measures to encourage prompt decisions on requests for *pendente lite* relief so that dependent spouses were not left destitute while litigation progressed, routine awards of interim counsel fees, and the imposition of sanctions stiff enough to secure compliance with discovery rules and court orders.

Within months the bulk of these recommendations was adopted in amendments to court rules.[53] Not content, however, with changing rules, but determined to see that they had their intended effect of making the process of divorce less arduous and more fair, Chief Judge Judith S. Kaye appointed the Committee to Track the New Matrimonial Rules and named as the committee's chair Hon. Jacqueline Silbermann, Administrative Judge of the New York City Civil Court. This committee has documented instances in which compliance with the rules has met expectations as well as places where it has fallen short of the mark.[54] Consulting with bench and bar, through meetings and an attorney survey, the committee found notable success in achieving one of the primary goals of the rules: early and effective judicial intervention through mandatory preliminary conferences. Fee arbitration has gone forward in over 150 cases, and, even though, according to one study, lawyers have prevailed in the majority of cases, the process has been applauded by a number of clients and their advocates.[55]

Yet one critical problem stubbornly defies solutions: the reluctance of judges to award interim attorneys fees to economically dependent spouses. The committee tracking the rules reported that the "common practice of routinely denying or deferring such applications [for interim fees] ... does not seem to have improved in any significant degree."[56] In yet another attempt to change this practice, the Office of Court Administration included in its 1996 legislative program a bill to create a rebuttable presumption in favor of interim attorneys fees.

Child Support

Reporting "compelling evidence of human suffering" caused by the failure of courts to impose and enforce child support obligations, the Task Force documented the need for dramatic reforms in the legal mechanisms for securing financial resources from noncustodial parents for the support of their children.[57] The Task Force reported soon after the New York State

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53 The new rules created 22 NYCRR Part 1400 and amended 22 NYCRR Part 136, Part 1200, and 22 NYCRR § 202.16.

54 Office of Court Administration, *Status Report of the Committee to Track the New Matrimonial Rules to the Chief Judge and the Chief Administrative Judge*, June 1995 [*Status Report*].

55 "Divorce Lawyers Win Most Fee Disputes," *New York Law Journal*, Dec. 14, 1995, p. 1, col. 3.

56 *Status Report* at 62.

57 *Task Force Report* at 85-100.

Commission on Child Support had completed a comprehensive study describing the dismal failures of current laws. The Commission advocated changes not only to comply with federal mandates but also to create a system that would save children and their mothers from the hardship and, ultimately, the poverty that too often followed the departure of fathers from households.[58]

The principal reform that federal law required, and that the Commission and the Task Force recommended, was the use of numerical formulas rather than *ad hoc* determinations about the needs of children and the ability of parents to pay. In 1989, this suggestion was adopted with the enactment of the Child Support Standards Act.[59] Its key provisions established simple guidelines for all support orders. Using a broad definition of income, the statute set as the basic child support obligation for parents with incomes under $80,000, child support that was 17% of the income for one child, 25% for two, 29% for three, and 31% for four or more. Although much discretion was left in the hands of judges, the legislation went far towards eliminating the opportunities for bias that had so troubled the Task Force. The Child Support Standards Act also directed the court system to record and make yearly reports on compliance with the guidelines, another recommendation the Task Force had endorsed.[60]

Legislation passed since 1989 has aided the enforcement of child support laws. In 1992 amendments to the Child Support Standards Act made the guidelines applicable to child support provisions in separation agreements and settlements as well as court-ordered awards.[61] The 1992 legislation also required judges to state on the record or in writing justifications for deviations from the percentage formulas.[62] More recently, the Legislature authorized as a sanction in child support cases the revocation of state-issued licenses, not only for driving but also for practicing professions and trades.[63]

The Court of Appeals decisions have taken a broad view of the Child Support Standards Act's reach and affirmed trial court rulings imposing sanctions on noncustodial parents who fail to make payments. In *Cassano v. Cassano*, decided in 1995, the Court of Appeals, remarking that the Child Support Standards Act "signaled a new era," described the Act's objectives expansively as assuring "that both parents would contribute to the support of the children and that children would not 'unfairly bear the economic burden of parental separation.' (Governor's Program Bill...)."[64] The Court in *Cassano* found no problem with the unexplained application of the Child Support Standards Act guidelines to income in excess of $80,000. In another recent case, the Court of Appeals reinstated a jail term imposed on a father who, a Family Court had found, had violated court orders willfully.[65] The Court of Appeals also has resisted efforts by noncustodial parents to free themselves of support payments by claiming

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58 *Report of the New York State Commission on Child Support*, Oct. 1, 1985.

59 Laws of 1989, Ch. 567.

60 *Task Force Report* at 100.

61 Laws of 1992, Ch. 41.

62 *Id.*

63 Laws of 1995, Ch. 81.

64 85 N.Y. 2d 649 (1995).

65 *Powers v. Powers*, 86 N.Y. 2d 63 (1995).

their obligations were met by disbursements to their children from government programs.[66]

Yet vigorous enforcement of the kind of child support obligations contemplated by the Child Support Standards Act still had not been fully realized by 1993 when an evaluation concluded: "It is apparent that New York must make greater efforts to fully and consistently implement all the provisions of the Child Support Standards Act if the purpose of this Law–to ensure that fair and appropriate amounts of child support are regularly ordered by the courts–is to be achieved."[67]

Litigants with Children

The Task Force heard testimony about the plight of parents, usually mothers, whose interests as litigants were compromised when they were forced to bring young children with them to court.[68] Compelled to wait through long calendars, told to keep still by people rightly focused on the matters at hand, children experience courts as unfriendly places, while their mothers find themselves distracted from critical business. Understanding the tensions restless children create for women making court appearances, the Task Force recommended that courts set aside places for children to wait while their parents attended court sessions.

In the years since the Task Force reported, the court system has embraced this idea. Working mostly out of regard for children, but aware too of the difficulties confronting their caregivers, the Permanent Commission on Justice for Children, co-chaired by Chief Judge Judith S. Kaye and New York University Professor Ellen Schall, has inspired the creation of a statewide system of children's centers that is the only one of its kind in the nation. Before the Commission began establishing centers, a few scattered New York courts, most notably New York City Family Court, had waiting rooms where children could stay, safe and supervised, while parents attended to court business. Sensing a critical but unmet need, the Commission secured a foundation grant for a study. Then, armed with firm data on the many children under the age of five, often in need of a variety of social services, who could benefit from temporary care during the hours their parents attended court, the Commission, with the support of the New York State Department of Social Services, began building a system of court-based children's centers. By 1995 the Commission had mobilized sufficient resources–not only from the public fisc but also from private agencies, foundations, bar associations, and individual volunteers–to build, equip, and staff fourteen centers serving over 25,000 children a year. Experiments have begun linking families with social and educational services, part of the original vision for the centers.[69]

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[66] *Graby v. Graby, NYLJ*, Feb. 9, 1996, p. 26, col. 3 (disability payments); *Commissioner of Social Services v. Segarra*, 78 N.Y. 2d 220 (1991) (public assistance).

[67] Marilyn Ray, *New York Child Support Standards Act: Evaluation Project Report* at 144 (1993).

[68] *Task Force Report* at 124-25.

[69] For a list of current Children's Centers, *see Appendix D.*