To:          MEMBERS OF THE HOUSE JUDICIARY COMMITTEE

Date:       September 29, 2015

Re:         House Bill 380, P.N. 0417

Thank you for the invitation to Pennsylvania Bar Association (PBA) representatives to provide an explanation of the reasons and rationale for PBA’s support of passage of HB 380. The goal of this bill is simple: reducing the waiting period of a no-fault divorce based on separation, the Section 3301(d) divorce, from two years to one.

Attached is the five-point analysis prepared by the PBA Family Law Section. Mary Cushing Doherty, Esquire, and Maryann Modesti, Esquire, PBA members and Family Law practitioners will provide highlights of this analysis and insights based on their 50+ combined years of experience with couples and families facing divorce.

The second section of the submission provides excerpts from scholarly papers and articles many of which were suggested by Arnold T. Shienvold, Ph.D. His practice as a psychologist, custody evaluator, family therapist and forensic expert have provided him a broad range of experience working with children and families touched by divorce. He will highlight the literature and answer your questions based on his personal observations.

If any further insight or information is requested by the Committee, we will make every effort to respond promptly.

Respectfully submitted,

William H. Pugh, V, President
Pennsylvania Bar Association

Task Force Co-Chairs:
Carol A. Behers, Esquire
Mary Cushing Doherty, Esquire
PART ONE: WILL SHORTENING THE LENGTH OF TIME FOR A UNILATERAL NO-FAULT DIVORCE SERVE THE BEST INTEREST OF CHILDREN OF DIVORCE AND THE GOALS OF PENNSYLVANIA DIVORCE LAW?

A. JUSTICE DELAYED IS JUSTICE DENIED

If the philosophy of Pennsylvania law includes valuing marriage and minimizing the harm of divorce, is the current law serving those purposes? The answer is “No”. Is shortening the length of a unilateral no-fault divorce to one year creating a time period that is too short? One must answer “No”. If non-consenting parties must wait a year from the date of filing and service of the Divorce Complaint, one cannot argue that Pennsylvania would be allowing a “quick divorce”. Due to the time required to file, make service, wait one year and then wait for the mandatory reply period, no one would be forced into a quick divorce. If one seeks a divorce on fault grounds, it is still the right of the injured spouse to seek a divorce based on indignities if he or she is both injured and innocent.

A concern has been raised that by shortening the length of time for unilateral divorce, Pennsylvania is not valuing marriage. Sadly, allowing a unilateral divorce to be delayed for two long years appears to have the effect of valuing litigation. See, 23 Pa. C.S.A. Section 3301(d); See also 23 Pa. C.S.A. Section 3102 (a) relating to intent. It does not provide any real protection for marriage. Typical grief takes a year, and the person who is unhappy with the divorce will be grieving the loss of a marriage. Delaying the resolution to two years does not make the married years more valuable.

Is a two-year minimum for a unilateral no-fault divorce too long? The answer is “Yes”. This two-year delay means that we are fueling one spouse’s refusal to resolve the divorce
litigation. In most Pennsylvania counties, the litigants cannot even seek a preliminary conference with the Divorce Master unless grounds are established. Pa. R.C.P. 1920.51 (a) (2) (ii). If the parties are utilizing lawyers, this escalates the legal cost to negotiate and litigate interim issues. If the parties cannot afford lawyers, there is an escalation of *pro se* litigation appearing before the courts.

In terms of the effects of delay on the children, we are informed by research as follows:


The research confirms the statement of Frank Cervone, Executive Director of Philadelphia’s Support Center for Child Advocates, that a child’s development is suspended during divorce and custody litigation. As noted by Social Scientist Geoffrey Blainey, ‘Countries fight until they can measure their actual relevant strengths. Once such measurements are made, the war ends.’ Blainey, Goeffrey, *Causes of War*, 3d Ed. (1988) at p.2-93, 115-119. By delaying the divorce and lengthening the war, children will suffer for a longer time and attention will not be focused on them. Pennsylvania public policy does not support this consequence.

**B. INTERPLAY BETWEEN DIVORCE AND CUSTODY TURMOIL**

Are we confusing the custody hostility with the delay in the divorce? Many families file for divorce and continue to live in the same household. While the divorce is pending, they have a right to go to court to resolve custody in anticipation of separation, but such custody arrangement will only be effective once the parents are no longer living in the same household, so the interim custody arrangement only deals with co-parenting within the same home.
23 Pa.C.S.A. Section 5323 (h). And many pro se litigants do not even avail themselves of this right. Without consenting to divorce, the family continues in limbo for two years. Therefore, the real resolution of the custody issues will not happen until the parties are separated.

Even in circumstances where the parties are living in separate residences during the pendency of the divorce, one or the other parent is usually in temporary housing, which will likely have an adverse effect on the children. Often both mother and father cannot arrange more permanent residency because the economic issues are not yet resolved.

During the interim time that litigation is pending for two years (often three years or more due to the time to process the two-year divorce) the family resources are diverted toward litigation, whether through legal fees or through pro se litigants taking time away from employment and requiring more child care expense to appear for court dates. The longer limbo during the separation period also has economic effects, as assets will not be repositioned for long-term planning until the final equitable distribution. Once the parties are finally divorced, and face the economic consequences, such as equitable distribution, realistic contribution to legal fees and alimony planning, they begin to resolve the economic issues as well as more long-term custody arrangements. In the high-conflict families, the intense custody conflict may just be starting. The two-year period for separation in a unilateral divorce has forestalled the inevitable, and again extended the stress on the children.

C. WHAT BENEFITS DOES A TWO-YEAR UNILATERAL NO-FAULT DIVORCE PROVIDE OVER A ONE-YEAR UNILATERAL NO-FAULT DIVORCE?

It is hard to say that there are benefits to a two-year delay in a no-fault unilateral divorce. Cynics may note that clients that can afford to pay their lawyers will be paying more for a longer divorce; yes, some lawyers will be benefitting.
But when an attorney meets a client who is devastated by divorce, that client, with his or her bitterness may realize that he or she has some control over their spouse’s situation, as they have a right to delay the no-fault divorce for a full two years. Such a party will make every effort to delay the overall resolution so long as the courts allow. Often times, the delay includes either a refusal to share information that will be necessary for the ultimate resolution of economic issues, or the filing of unnecessary motions and petitions. Surely, this is a pyrrhic victory, which is only addressing the anger and disappointment of the party who does not want to be divorced. And one can envision the cost to the courts.

Originally, it was possibly envisioned that a two-year divorce could facilitate reconciliation. Yet delaying the divorce means that the person who may be ambivalent about seeking divorce is simply delaying the reality of what a divorce will mean. If the couple has not thought seriously about the effects on the children, facing a custody schedule of living separately will be delayed an additional year if the law forestalls the physical separation post-divorce. If the economic consequences of divorce prompt one to reconsider divorce, those economic consequences are also delayed by the longer separation. Furthermore, Pennsylvania law provides that whenever a no-fault divorce is sought, the court can require the parties to attend up to three counseling sessions if requested by either party. 23 Pa.C.S. § 3302. Surely, those three counseling sessions can take place within one year and enable the parties to determine whether reconciliation is the right option for them, without the need for a second year to mull things over.

Most likely the legislature also thought there would be economic benefits to the dependent spouse due to the delay in the divorce. But the alimony case law has evolved since 1980 to recognize that post-divorce alimony will last for a term that is based on payments made from date of separation to the date of the final Decree. Hence, there is no benefit to receiving
pre-divorce support, as this will be counted against the length of the post-divorce alimony. Furthermore, the pre-divorce support often is not considerable enough to allow for post-separation savings. Rather, it is only once the dependent spouse is aware of his or her post-divorce assets, the amount and term of alimony, and the likelihood of counsel fee contribution, that the dependent spouse is finally able to plan for the future, both for oneself and the children, without the burden of ongoing litigation.

D. **LENGTH OF SEPARATION PERIOD IN OTHER STATES**

If the Pennsylvania legislature shortens the length of time for a unilateral no-fault divorce from two years to one, will our law fall outside the norm? The answer is “No.” In the states surrounding Pennsylvania, as well as many across the country, the length of time that a spouse must wait to obtain a no-fault divorce is consistently less than two years. Based on a request for statistics, the Pennsylvania Bar Association’s Family Law Section has reached out to practitioners from various states to obtain more specific information about the respective waiting period, its affect on the divorce rate and its affect on families:

i. **New Jersey – Six Month Waiting Period**

Lisa Moore, Esquire, of Klehr Harrison Harvey Branzburg LLP was contacted about the waiting period for divorce in New Jersey. As noted by Moore, irreconcilable differences became a new basis for divorce in 2007. N.J. Stat. Ann. 2A:34-2(i). A spouse needs to plead that the irreconcilable differences had occurred for six months and that there is no reasonable prospect for reconciliation. Prior to 2007, one could not file for divorce based on separation until the parties had been living apart for 18 months. In practice, this caused many parties to claim extreme cruelty, which need only occur over a three-month
time period, instead of waiting 18 months to file for divorce based on separation. As a result, one or both parties often put exaggerated accusations in the divorce complaint, which were often divisive and hurtful. Arguably, the prospect of reconciliation dimmed in light of this practice.

Now, however, when a party files based upon the no-fault ground of irreconcilable differences, the case is immediately listed for case management with a judge who sets discovery and assigns the matter a date for a Matrimonial Early Settlement Panel, which is generally three to six months later. On the designated date, panels of two or three experienced attorneys are randomly assigned and settlement is discussed. If the case does not settle, it will be scheduled for a trial as quickly as two weeks or as long as twelve months later. If custody is a substantial issue in a divorce, it will be addressed first and must be tried within ninety days. In addition, New Jersey attorneys are required to include in each client’s retainer agreement a clear statement outlining options for alternative dispute resolution, and attorneys regularly ask the parties whether they have first sought counseling.

ii. Ohio – No Set Waiting Period

Amy Weis, Esquire, of Weis & O’Connor LLC was contacted about the waiting period for divorce in Ohio. According to Weis, in practice there really is no waiting period for divorce, as either party can file based upon any one of the various grounds for divorce. Such grounds include: incompatibility; adultery; cruelty; habitual drunkenness; gross neglect of duty; willful absence of the adverse party for one year; or when husband and wife have been living apart,
without interruption, for one year. 31 O.R.C. §3105.01. Thus, a one year separation is just one of many grounds upon which a divorce can be granted in Ohio, and is not necessarily a prerequisite if a party can establish another ground for divorce, including incompatibility.

Ohio also utilizes a “conciliation period,” which is up to the discretion of the court. Pursuant to 31 O.R.C. §3105.091, any time after 30 days from service of a divorce complaint, annulment or legal separation, the court or either party may request conciliation for a period not to exceed 90 days. If there is a custody component of the divorce then the court may order conciliation for a longer period deemed reasonable by the court. Conciliation can include marriage counseling, family counseling or individual counseling, and is ordered on a case by case basis. As a result of its laws, a divorce in Ohio can be granted in as little as 42 days. In fact, the courts across the state are required to have the divorce completed within a year. Therefore, when the courts in Cuyahoga County had a backlog of divorce cases, the Ohio Supreme Court issued a mandate to the county to hold hearings on evenings and Saturdays until they were caught up.

According to the Ohio Department of Health, from 1990 to 2011, the divorce rate has decreased in Ohio from 53.9% to 47.2%. It is important to note that the effective dates for the provisions of the divorce code mentioned above are from 1991 through 1994.

iii. Indiana – Sixty Day Waiting Period

Melissa Avery, Esquire of Avery & Cheerva LLP was contacted about the waiting period for divorce in Indiana. According to Avery, the state does not
impose any statutory waiting periods of separation on divorcing parties, but does require a 60 day waiting period from the date the divorce petition is filed until the divorce can be granted. Indiana Code 31-15-2-10. Although the Indiana state legislature recently introduced a bill that would increase the 60 day waiting period to 180 days, except in cases where there are no children involved or where there is domestic violence, the Indiana bar has unanimously opposed the bill. Indiana is one of the few states that does not keep any divorce statistics, so there is no information available as to the effect of the 60 day waiting period on the incidence of divorce in Indiana.

iv. **New York – Six Month Waiting Period**

Because New York publishes the state population and the number of divorces granted each year on their Department of Health website, it is relatively easy to analyze the actual divorce rate in New York. [https://www.health.ny.gov/statistics/vital_statistics/]. No local attorney was contacted for that information, however, if additional details would be helpful, a local attorney can be contacted.

New York was the last state in the country to permit the granting of divorces on no-fault grounds, with its new law being enacted in 2010. The state is now a mixed state, meaning that it allows divorces to be granted on no-fault and fault-based grounds. Pursuant to N.Y. Dom. Law §§ 170(1)-(4) the fault-based grounds for divorce include: (1) cruel and inhuman treatment; (2) abandonment for a period of one or more years; (3) imprisonment for more than three years; and (4) adultery. In addition, pursuant to N.Y. Dom. Law §§ 170(5) & (6), grounds
for divorce exist when the parties have lived apart pursuant to a decree or judgment of separation, or a written agreement of separation, for a period of one or more years.

The no-fault ground for divorce added in 2010, irretrievable breakdown, is found at N.Y. Dom. Law § 170(7). Under that section, one of the parties must state under oath that the marriage has been irretrievably broken for at least six months.

Unfortunately, the New York population and divorce statistics are currently only published through 2012 and the no-fault divorce law, which only requires a six month waiting period as opposed to one year or more, only went into effect in the middle of 2010. We therefore have less than two years’ worth of data to compare to the data from fault-only era, making it difficult to tell whether there is a significant relationship between the length of the waiting period and the divorce rate. What is clear from the data, though, is that the trend over the last two decades has been for the divorce rate to fall. In 1997, the population of New York was 18,571,800 and 62,010 divorces were granted, for a rate of .3339%. By 2009, the rate was down to .2549%. In 2011 and 2012, after the new waiting period of six months was introduced, the rate increased very slightly, to .2914% and .2992%, respectively. But again, it is unclear whether that is a statistically significant result of the shorter waiting period.

The waiting period for no-fault divorce in other states surrounding Pennsylvania include: six months in Delaware (Del. Code 13-1503 and 13-1505); one year (without cohabitation) in Maryland (M.D. Code 7-103); and no waiting period in West Virginia (W. Va. Code 48-5-201).
E. CONCLUSION

The Pennsylvania legislature should revise the length of a unilateral no-fault divorce to one year in order to better focus the courts on resolving the overall divorce issues, as opposed to allowing a system which facilitates and fosters delay that is both economically and emotionally costly. Some will face interim legal fees that are escalated during difficult economic times. In all of our counties pro se litigation has escalated and the burden on the courts has been overwhelming for jurists who want to encourage families to resolve the divorce issues and focus on their children. One of the goals of reducing the length of a unilateral no-fault divorce is to hasten the resolution of divorce to focus on the resolution of the difficulties in custody matters. This applies not only for the hostile families, but for the families who will do better resolving the custody on a friendly basis if the turmoil of divorce is behind them.

It is in the best interest of divorcing families in Pennsylvania to encourage less delay and less litigation by reducing no-fault unilateral grounds from two years to one. The court will be able to address families’ challenges with physical custody arrangements and co-parenting. In the case of the couples that are likely to reconcile, shortening the often bitter litigation phase would facilitate this by reducing the need for either party to make hostile accusations or use costly litigation as an impetus for settlement. In the case where the divorce is inevitable, allowing the family to focus on the challenge of co-parenting as divorced parents is better than the emotional toll of a delay in the divorce litigation.

Submitted By:
William H. Pugh, V, President,
Pennsylvania Bar Association

Task Force Co-Chairs:
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Interparental conflict. Although clinicians have postulated an association between parental conflict and maladjustment in children for many years (Baruch & Wilcox, 1944; Minuchin; 1974), empirical attention to the effects of parental discord on children has increased only in the last two decade. From these recent controlled studies and from earlier reports of "broken" families, interparental conflict has been consistently identified as a major source of behavior problems in children across a wide array of family structures and settings (for reviews see Davies & Cummings, 1994; Grych & Fincham, 1990), including divorced and separated families (Hetherington et al., 1978). There is some evidence to suggest that parental conflict is the most salient influence on children's adjustment to divorce. In a recent meta-analysis, Amato and Keith (1991) compared the relative efficacy of three variables (parental absence, economic disadvantage, and parental conflict) to mediate the effects of divorce on children's adjustment. Although moderate effect sizes were found for both parental absence and economic disadvantage, parental conflict accounted for more of the negative consequences of divorce.

Studies involving between-family comparisons support the notion that separation per se is not necessarily as important to children's later development as the quality of the parents' relationship with one another. First, comparisons between two-parent and conflict-free, divorced families consistently have reported that children in the latter group have fewer emotional difficulties (Gibson, 1969; Hetherington, Cox, & Cox, 1979; McCord, McCord, & Thurber, 1962; Rutter, 1979). Second, several investigators have reported children from divorced families to experience more behavioral problems than children from families where a father has died (Douglas, Ross, Hammond, & Mulligan, 1966; Glueck & Glueck, 1950; Gregory, 1965).

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2 Daniel S. Shaw is the Director of the Pitt Parents and Children Laboratory and a Professor and Chair of the Department of Psychology at the University of Pittsburgh. Erin M. Ingoldsby is an Assistant Professor of Psychology at the University of Utah.
Conflict between parents is perhaps the most serious stressor a child encounters during this phase. During the initial stages of divorce, parents spend less time with their children and are less sensitive to their children’s needs. In most crisis situations, parents instinctively protect their children; but in the crisis of divorce, parents are frequently preoccupied with their own problems. This diminished capacity is quite difficult for children, who often feel the most needy, sad, and anxious during the initial stages of divorce.

In the “short-term aftermath stage,” which can last up to two years, the turmoil and shock of the first stage gives way to a deepening recognition of the realities of divorce. Conflict and hostility between parents continue to be common and serious sources of stress for children. Older children are frequently used by their parents as allies, pawns, or go-betweens. Many parents try to burden their children with private, adult aspects of the divorce.

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3 Originally published in Sonoma Medicine, volume 54, number 3 (Summer 2003).
4 Dr. Pickar is a child psychologist at Kaiser Santa Rosa and in private practice.
Children's Reactions to Parental Conflict

The extent of children's reactions is dependent on many variables, including:

- the age of the child,
- the intensity and chronicity of the conflict,
- the degree of violence or fear of violence associated with the conflict,
- the degree and length of time in to which the child has been exposed to all of the conflict or just fragments of it, and
- the psychological health of the child.

In general, a history of aggression and conflict in the family has been strongly and consistently associated with emotional, behavior, and social problems in children. While children from these families have more adjustment problems than normally expected, the range for individuals is broad. Kline, Johnston, & Tschann (1991) and Johnston (1994) suggest that a good parent-child relationship can buffer children from interparental conflict. Individual characteristics of the child (e.g. a more adaptable temperament or better coping skills) may help the child be more resilient to the conflict. Johnston (1994) found that "an association between joint custody / frequent access and poorer child adjustment appears to be confined to divorces that are termed 'high-conflict'."

Very young children may be partially protected from the negative effects of conflict because they do not fully appreciate the conflict experience, but even they are susceptible to emotional distress, somatic complaints and regression in their development. Older pre-school children may be more likely to understand the conflicts and the feelings of their parents. Their reactions may include regression, confusion, sadness, low self-esteem and fear. They may avoid peer relationships and withdraw from their care-givers.

School-aged children are much more likely to have a range of reactions, starting with guilt. Children of this age often feel responsible for the conflicts of their parents. They show a greater frequency of externalizing (aggressive or delinquent) and internalizing (withdrawn or anxious) behaviors. This is a group that is highly susceptible to school problems, regression, and poor self-esteem (Johnston, Kline, & Tschann [1989]). When there is violence associated with the high-conflict, boys in particular are at risk for delinquent acting out.

Adolescents who have been exposed to conflict and violence tend to be aggressive and have multiple behavior problems, including truancy, problems with authority, and revenge-seeking behaviors. They are at risk for drug abuse, promiscuity, social alienation, delinquency, and school failure. They may attach to destructive peer groups and gangs as a substitute for the family. Internalizing adolescents may feel suicidal, emotionally constricted, and numb to the pain that they feel.

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5 This article is excerpted and adapted from Philip Stahl's books Complex Issues in Child Custody Evaluations (1999) and Parenting After Divorce (2000). It was published in the Academy of Certified Family Law Specialists Newsletter, Winter Issue, 1999, Number 3, pp. 8 - 16.
6 Philip Stahl, Ph.D., ABPP (Forensic) is a licensed psychologist.
Deconstructing the Impact of Divorce on Children

Sol R. Rappaport

Five factors have emerged to explain much of the variance in children’s adjustment to divorce. After coping with the initial stress of the divorce, these five factors account for why some children have significant difficulty post-divorce. The divorce itself is not what causes long-term psychological difficulties for some children. Four of the five factors are associated with the divorce, while the fifth factor has to do with the individual differences of the children. The first factor is the level of conflict between the parents, the children’s exposure to the conflict, and the children’s perception of the parents’ resolution of the conflict…

A. Parental Conflict

One of the most studied areas of divorce is the impact of parental conflict on children. It is well documented that when children witness parental conflict, it increases the likelihood of a child’s having postdivorce adjustment issues. The more intense the conflict between the parents, the more likely children are to have internalized (e.g., depression) and externalized (e.g., acting out) problems. There also is evidence, however, that it is not just witnessing conflict between parents, but being put in the middle of the conflict that causes harm. Children whose parents put them in the middle of ongoing unresolved conflict face an increased risk of difficulties postdivorce. Research shows that the type of conflict, the child's level of exposure to it, and whether the child is the focus of the conflict affects a child’s postdivorce adjustment. Marital conflict that focuses on the child is more predictive of childhood adjustment problems as compared to intense conflict that is not focused on the child. More recent research indicates that it is not just the conflict the children witness or are in the middle of, but also how parents resolve their conflict. “Children whose parents argue but can resolve the conflict positively do better than children whose parents do not resolve the conflict well. Also, children’s perceptions matter, irrespective of the actual conflict the children witness. While parental conflict can account for many of the postdivorce adjustment difficulties, it is not an entirely straightforward construct…

One study found that exposure to nonviolent interparental conflict increased the likelihood of a young adult having post-divorce problems related to depression and alcohol abuse, even after controlling for demographic factors…

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7 Published in Family Law Quarterly, Vol. 47, No. 3 (Fall 2013) p. 353–378.
8 Clinical and forensic psychologist and partner in Counseling Connections, a group private practice in Libertyville, Illinois.
Interparental conflict has been consistently identified as a significant predictor of adjustment difficulties in children following divorce (Amato & Keith, 1991; Grych & Fincham, 1990; Guidubaldi et al., 1986; Jacobson, 1978; Johnston et al., 1987). Multiple aspects of interparental conflict have been hypothesized as leading to poorer outcomes in children of divorced parents. First, the level of interparental conflict has been found to be associated with child development. More specifically, research has shown that as the level of interparental conflict increases, the number of emotional and behavioral difficulties that children exhibit also increase (Sales et al., 1992). This finding extends to interparental conflict occurring before the marital disruption as well as conflict at the time of and after the divorce (Amato, 1993; Jekielek, 1998). The duration of conflict has been found to be associated with the child’s emotional and behavioral reaction. For example, Johnston et al. (1935) found that as the length of time parents are in conflict increases, so does the risk of behavioral and psychological difficulties for their children…

How children react to interparental conflict is unclear; there is substantial inconsistency in the research literature on this topic. For example, Johnston et al. (1987) found that children from high-conflict divorced families exhibit more externalizing (aggression, conduct disorders) problems than do children from low-conflict divorced families. A few studies did not support this conclusion. There, interparental conflict was found to be associated with internalizing (depression, anxiety) problems in children (Johnston et al., 1985). Finally, some studies have shown that children exposed to high interparental conflict display both internalizing and externalizing problems (Jaffe, Wolfe, Milson, & Zak, 1986)…

The children of high-conflict divorce are at increased risk for psychological maladjustment, including depression and anxiety, and aggression. For the adults, marital discord is associated for a subset of people with psychiatric disorders including depression (Rutter & Rutter, 1993). Psychiatric disorder in parents, like substance abuse, has the potential to interfere with the capacity to parent effectively…

Families with high marital conflict are more likely to have children with high levels of emotional distress…

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10 Catherine C. Ayoub, R.N., M.N., Ed. D. a nurse practitioner and a licensed psychologist, is a senior staff member at the Children and the Law Program at Massachusetts General Hospital and director of psychology at the Boston Juvenile Court Clinic. She is an assistant professor at Harvard Medical School and the Harvard Graduate School of Education. Robin M. Deutsch, Ph. D., is a licensed psychologist, senior staff member and director of training at the Children and the Law Program at Massachusetts General Hospital; director of training and clinical services at the County Juvenile Court Clinic; and instructor in psychology at Harvard Medical School. Andronic & Maraganore, Ed.M., is a doctoral student in human development and psychology at the Harvard Graduate School of Education.
A broad overview of our findings reinforces prior findings in the literature (Amato & Keith, 1991; Grych & Fincham, 1990; Jekielek, 1998) that indicate the tremendous negative influence of marital conflict on the emotional well-being of the child caught in an acrimonious divorce or custody battle. The negative impact of this conflict is not diminished by the child’s age and does not take a backseat to other serious problems experienced by the child, including child maltreatment, the presence of a mentally ill or substance-abusing mother, or the experience of witnessing physical violence between parents…
DON’T FORGET THE CHILDREN: COURT PROTECTION FROM PARENTAL CONFLICT IS IN THE BEST INTERESTS OF CHILDREN  
Milfred D. Dale

EXPOSURE TO CONFLICT THREATENS THE BEST INTERESTS OF CHILDREN

Conflict is the enemy. Early views that divorce negatively impacts children have been replaced with more accurate notions that parental conflict is the culprit. High-conflict custody cases seriously harm the children involved. Children caught in the middle of high-conflict cases face perpetual emotional turmoil. For several decades, protecting children from conflict has been a central goal for social policy and system reform in child custody matters. The state’s involvement in families post-divorce reflects its parens patriae obligations for protecting those most vulnerable and unable to protect themselves within the context of divorce and parental relationship dissolution. Numerous reforms have identified conflict as the enemy of children and transformed the court’s role from faultfinder to that of conflict manager, settlement facilitator, or administrator of therapeutic jurisprudence…

“Conflict” is a multifaceted factor that can come at different times and from different sources. The type of conflict, the child’s level of exposure to it, and whether the child is the focus of the conflict affect a child’s post-divorce adjustment. For example, in many cases, pre-divorce marital conflict can be a better predictor of post-divorce adjustment than post-divorce conflict. Even when motions are filed in court, conflict has often continued to harm children. One expert commentator noted:

Entering a courthouse to ask a judge to decide a parenting plan for children communicates an inability for one or both parents to work together in the best interests of children. . . . [B]y the time most parents face a judge, one can safely assume that they have had access to many friends, family members, counselors, lawyers, parent education programs, or mediators who have told them to work out their differences. Countless people would have told them that, while they are separating as intimate partners, they will be parents forever. Many people have told them that conflict hurts children. By this stage of appearing in court, the average parent should be starting to appreciate the emotional and financial costs of litigation…

11 Originally published in Family Court Review, Special Issue: Commentary on IAALS’ Honoring Families Initiative: Courts and Communities Helping Families in Transition Arising from Separation or Divorce, Volume 52, Issue 4, pages 648–654, October 2014.

12 Milfred D. (“Bud”) Dale is an attorney and psychologist in independent practice in Topeka, Kansas.