

Testimony in Support of LD 2142

Ed David, Farmington Maine

eddavid@jdhlawyers.com

(207) 491-8119

Senator Carney, Representative Kuhn, and members of the Judiciary Committee, my name is Ed David. I have been a Maine trial attorney for 50 years practicing family law almost exclusively. Now in semi-retirement I am doing family case mediations for CADRES. I have been a member of the Family Law Section of the Maine Bar Association for all of that time and was chair for, I think, 6 years. Now I am one of the two members from the Family Law Section appointed to the Family Law Advisory Commission (FLAC) on which I have served for 10 years. I strongly support LD 2142 and urge you to pass it.

I have been interested in the theoretical foundations of spousal compensation after divorce for many years and been involved on FLAC for the 5 years we have been studying it. You will hear opposition today. Yes, it is new and a change (but really a small one) to which the legal community will adjust. I believe we have heard, considered and indeed adjusted the proposal to meet those concerns. LD 2142 is an improvement to family law in Maine. It gives guidance, gives another tool to family law practitioners and then to Magistrates and Judges to fairly and equitably resolve one of the issues in one type of divorce case. It allows a choice to use a guideline for long term marriages in adjusting the economic loss to both parties as individuals after divorce. That is just one of 4 kinds of spousal compensation possible in our law.

In the shared enterprise theory of marriage after a long-term marriage the disparity in earnings between spouses tends to increase even as the standard of living also increases and the parties take on different roles. But it is a shared life, a shared enterprise. This means that the financial losses experienced should be equitably allocated between the parties on dissolution. That is exactly what section 2, A-1 says and we have built it into LD 2142.

We have substantial theoretical support on a national level for this view. I commend to you the American Law Institute (ALI), Principles of the Law of Family Dissolution, Chapter 5. The stated objective is to create guidance that is consistent and predictable. Incidentally, the ALI discussion favors using a factor of .02 and the multiplier with a cap at .4 of the net difference in spousal support income. Specifically in consideration of the comments we heard, we settled on the more conservative, .015 and a cap of .3 which results in lower awards.

In another context this Committee might be having an LD submitted to you on the topic which you might then refer, as you often do, to FLAC to analyze, comment upon, and then make a

recommendation back to you. We on FLAC have been feeling the need for this improvement for a long time. FLAC was created (19-A MRSA 351) for this function in part to bring to bear the specific family law occupations built into occupational requirements for the seats on FLAC. I urge you to review them; the scope of the input (the stakeholders, if you will) on FLAC is itself another recommendation for the result we put before you in LD 2142.

LD 2142 creates a simple and predictable calculation. But all the factors, A thru Q remain in the law (Section 8) as they may bear on justice in particular cases. Every case is different and there must be flexibility to consider all the factors in a particular case. It is what we have now, but without guidance on how to apply them to long term marriages with economic consequences created by the marriage.

Family law evolves with society; in Maine, in the last 50 years, to name a few I think of the creation of family law mediation, protection from abuse procedures and scope, Preliminary Injunctions, property division definitions, the creation of Family Law Magistrates, and the Child Support Guidelines. (I remember when there were none!). I have practiced, commented on, taught continuing legal education (CLE's), and now adjusted to them all. They all had dissent and controversy at the beginning. They all have been amended and improved, as will this one! But they have improved social policy and family law in Maine. I believe LD 2142 will soon be experienced in exactly that way and should be passed.

Thank you.