OPPOSITION TO LD 2142: "An Act to Establish Guidance for Awarding General Spousal Support" (Sponsored by Senator Anne Carney)

1. The Case Against The Legislation

LD 2142 "An Act to Establish Guidance for Awarding General Spousal Support" is not supported by the Family Law Section of the Maine Bar Association. The legislation proposed by the Family Law Advisory Committee was not submitted to the Family Law Section for comment. When LD 2142 was presented to the Family Law Section with a poll asking whether members approved of the statue, 25% of respondents approved and 75% of respondents rejected LD 2142.

Contrary to the legislation's summary, it does not clarify the conditions under which general spousal support may be awarded. The statute is riddled with rebuttable presumptions which, by their nature, create less predictability and greater incentive to litigate. Rebuttable presumptions often increase litigation because they create a shifting burden of proof that invites factual disputes rather than providing a definitive legal outcome. Rebuttable presumptions force the opposing party to produce specific evidence to defeat the presumption, effectively turning every case into a battle over the sufficiency and credibility of that rebuttal evidence. This structure encourages litigation by giving both parties a reason to fight: one party relies on the "shortcut" of the presumption to establish their case, while the other party is incentivized to invest heavily in discovery and experts to disprove the presumed fact.

Until there are decades worth of Law Court opinions providing guidance about how the presumption may and may not be rebutted, parties are less likely to settle, as each believes they can successfully tip the evidentiary scale in their favor during trial. The lack of legal precedent means the defeated party has no disincentive to appeal the Court's decision. The proposed legislation will cause more expense and delay in an already overburdened court system.

The "rebuttable" formula proposed in the legislation is very problematic for several reasons:

- It ignores several of the statutory factors which ***shall*** be considered in determining the spousal support award.
- The formula ignores the tax ramifications of the spousal support award to the payor, often resulting in a patently unfair result. By using the parties' gross incomes without adjusting for taxes, the payor's ability to pay spousal support is overstated by 17.5 to 45% (combination FICA, federal

and state income tax) depending upon the payor's tax bracket. In other words, the payor is paying spousal support from funds he/she does not actually have.

- The formula fails to realistically consider the financial effect of child support awards on the receiver's financial need and the payor's ability to pay spousal support.
- The formula unfairly considers only the direct expenses paid for the children in the receiver's home, ignoring the fact that in most cases the payor pays direct expenses for the children in his/her home in addition to child support. This is certainly the case where the parents provide the children substantially equal care. This flaw in the formula will likely cause increased litigation about which parent is the primary caretaker of the children because the financial stakes for the higher earner are so much greater.
- The formula discourages paying spouses from seeking higher earnings and discourages receiving spouses from becoming self- sufficient.
- Using the years of marriage as a multiple of the amount of support makes no mathematical or practical sense. The statute already recognizes that longer marriages deserve a longer duration of support. Under LD 2142, an individual married longer will pay more support for a longer period of time than an individual with the same income but married for a shorter period of time.
- Because in many instances this formula creates a spousal support obligation that will be unaffordable to the payor of support, there will be more post-judgment litigation through motions to enforce and motions for contempt filings. The courts cannot absorb the burden of this additional litigation.

Out of 50 states, only 8 have spousal support formulas (NY, IL, CO, PA, AZ, CA, FL, VT) and some of those states only apply the formula while the matter is pending or as a form of guidance. Most states, including several of the states with formulas, award spousal support based upon judicial discretion There is a good reason for this: one size does not fit all.

Recent cases continue to emphasize the balance between guidelines and judicial discretion. Cases like *In re Marriage of Mauer*, 874 N.W.2d 103 (2016) and decisions from the 2020s stress that while guidelines can inform judicial decisions, they cannot replace the statutory requirement for individualized factor analysis.

Appellate courts consistently reject mechanistic approaches to the calculation of spousal support that fail to consider the unique circumstance of the parties. See *Myland v. Myland*, 290 Mich. App. 691 (2010) in which the appellate court rejected a formula based upon the disparity of the parties' income and a multiple related to the number of years the parties were married. The formula presented in LD 2142 is similarly inappropriate.

Moreover, the formula is a solution in search of a problem. In Maine, approximately 95% of divorce cases settle without a trial. This means that in the vast majority of cases, family law practitioners successfully resolve spousal support cases without the benefit of a formula. They have figured out how to settle cases using the existing statute.

LD 2142 does little to assist *pro se* litigants in achieving a fair resolution. With all the rebuttable presumptions contained in the proposed legislation, the court is in no better position to determine spousal support than it is without the "guiding" formula. *Pro se* litigants already struggle to represent themselves in spousal support hearings without the added layer of complexity and confusion this legislation would create.

2. Proposed Alternatives

A subcommittee of the Family Law Section has been working on an alternate amendment to the current spousal support statute which will provide practitioners and the court greater guidance in determining the appropriate spousal support amount while eliminating the problems presented by LD 2142. The alternate proposal is ready to be submitted to the Family Law Section and FLAC for comment.

3. Conclusion & Call to Action

The purported goal of LD 2142 is to generate predictability, consistency, efficiency, and objectivity in divorce cases in which general spousal support may be appropriate. The statute as written fails to meet these objectives; will result in far more, not less prolonged and costly litigation; and, in many instances, the statute generates an unfair result.

An alternate proposal will soon be presented to FLS and FLAC which satisfies the objectives of LD 2142 without all of the problems presented by LD 2142. In the meantime, the current statute without amendment is superior to LD 2142, Accordingly, LD 2142 should not pass.