Parvey, Larson, and McLean

Licensed in ND and MN

Shannon E. Parvey | shannon@plmfamilylaw.com
Kimberlie Larson | kim@plmfamilylaw.com
Jason W. McLean | jason@plmfamilylaw.com

February 10, 2025

Representative Lawrence Klemin
House Judiciary Chair
State Capital Building
600 E. Boulevard Ave.
Bismarck, ND 58505

RE: House Bill 1242

Dear Representative Klemin:

My name is Jason McLean. I am a family law attorney with Parvey, Larson, and McLean, PLLC, in West Fargo, North Dakota. I have practiced exclusively in the area of family law since becoming licensed in 2004. Prior to that time, I clerked for a family law attorney in Grand Forks. I have also practiced family law in Minnesota since 2003. I am a mediator in what I consider one of the most successful family law programs created, not only in our state, but perhaps in the whole of America: the Family Law Mediation Program. I chaired the Family Law Section of SBAND, co-chaired the SBAND Family Law Task Force with Judge Leah duCharme, both of which explored these very issues. Based upon this experience, I can tell you all, without a shred of doubt, that this Bill is the same flawed and dangerous bill that was roundly rejected twice previously by our voters and on various occasions by the Legislature. While it may seem new, the end result is the same: cookie cutter relief for individual families. It is with this background that I appear today and provide my testimony, as a private citizen, in opposition to House Bill 1242.

As I prepared my testimony today, I looked at the number of “in favor” submissions that were received. It is a daunting number for someone opposed to this Bill. However, I also noted that many of these submissions are telling you only one side of the story, their own side. We don’t usually make a sound decision without hearing both sides of anything. Our courts certainly don’t do that. And yet, that is what you are getting here, with one notable exception, the Gaubes. When you review the testimony received, please notice that two opposing sides of the same case provided testimony for you. Each party’s testimony tells a very different story of what happened and how it happened. Each side deserves to be heard equally, and not with the shield of the presumption favoring one of them. This is also a reason why these personal anecdotes, while powerful on paper, are only half the story and need to be viewed that way. For every person who claims to be wronged, there is another person who presented a valid reason why a court acted as it did. That is why the effects and words in this Bill, not the stories surrounding it should be what matters. That is why the many problems of this Bill should be the focus.

In looking at the presumption of shared residential responsibility, including the definition, the first problem is that shared parenting is not, nor to my knowledge has it ever been, considered to be equal time. Rather it is usually 35% of the time, give or take a few percentage points. Most of our courts understand this and have started to trend to that schedule for parents. Secondly, the methods for rebutting the presumption are vague in nature and will require litigation to determine if the presumption will stand. After all, who is to say what is harmful to a child or if it is feasible to allow exchanges at least every seven days between parties. These questions place our families in the courtroom. Lastly, the idea that the best interest factors of N.D.C.C. § 14-09-06.2 can be used to craft a parenting plan, but not to assess a residential responsibility decision, should be enough to reject this Bill. For example, what if a court looks at those factors and has concerns for an equal division because of emotional abuse of one parent by the parent. Is that Court allowed to then deviate for the schedule or is it required to provide equal time? Answering that question will lead to even more litigation.

Moreover, this Bill seeks to find a solution to a problem that does not exist. Currently, our Family Law Mediation Program is the envy of many States. While I have not seen the most recent numbers, and Cathy Ferderer at the Supreme Court will likely have them, I would estimate that over 80% of family law cases settle as a result, whether directly or in part, of the Program. Those are cases where families are kept out of Court and allowed to have control over their own lives. HB 1242 will dramatically reduce this number as there is no incentive for parties to attempt settlement of their child related issues. As a mediator, I cannot force anyone to make an agreement they do not want to make and I cannot advise them of a position to take. The end result is less attempts at compromise and more litigation for all of the families involved. That should not be our goal. Our goal in family law should be the opposite.

Whenever a presumption—**any presumption**—is involved in the law, there is only **one** option for party to refute that presumption: litigation. Similarly, the protections that are in place regarding domestic violence do not address one of the most prevalent issues in cases with violence: emotional and verbal/abuse along with threats. Our domestic violence laws do not address these issues or protect parties from terroristic threats like other states. They often fail to serve the most vulnerable people in our state. That said adding protections for emotional and verbal abuse to HB 1242 does not prevent litigation. If anything, it will **increase it**. Again, the issue here is the **presumption**. A court will need to make a determination to overcome a presumption, leading to increased litigation and caseloads for judiciary that is stressed to its max at this time

In his 2025 State of the Judiciary Message, Chief Justice Jensen noted that our district courts handle approximately 160,000 new filings and 20,000 reopened cases each year—180,000 cases. While not all of the civil docket involves domestic law cases, close to majority of the civil filings in the past have been family law related. The continuing nature of child-related issues in family law also causes most of the reopened cases to fall within this area as well. Currently, our system is struggling to handle the volume of cases. For

example, one of my clients was required to wait for nearly four months for an interim motion hearing in Stutsman County. Our Rules require a hearing to be held in 30 days, but there was no room on the docket. Now imagine that every single contested residential responsibility case needs to be heard by a judge to answer the questions I posed a few moments ago. The backlog for families—for children—in our state would be disastrous. That backlog means a need for more judges, more clerks, more staff, more everything just to handle the increases in our family law courts that would not exist otherwise. And that is before we deal with what is a ticking time bomb within this bill: "Section 3: Application."

The most telling part of the actual reason for HB 1242 is found in "Section 3: Application." The language in this Section **is** a retroactivity clause disguised as an "Application" clause. It essentially is opening the door to reopen **every** final and temporary order that does not already have an equal parenting time award so it may be relitigated with these presumptions. The only families this will help will be those of the attorneys who will have to take up these cases, certainly not the families who have already been through this process and will now be dragged into it again.

Which brings me to something else that should be clear in this Bill and should honestly raise some questions for you. I have just told you that this Bill will increase litigation and create the need for evidentiary hearings in nearly every case that comes along and reopen settled cases under the retroactive application. That raises the logical question: why would a family law attorney oppose something that will make him more money? Representatives, as I told your colleagues in the Senate on a similar bill, I'm not going to sit here and try to tell you that money isn't important, it is; but it is also not the driving factor for most of us in this profession. If we wanted to make money there are far less stressful areas of law to pursue. That said, if you want to increase my billable hours, this Bill is the perfect vehicle for you to do so. Yet here I am asking you **not** to do so. No amount of money is worth the amount of harm this Bill will cause to families in our State.

What will help North Dakota families is a complete and comprehensive overhaul of the family court system in our state. Currently, our judicial branch is composed of many judges who have never practiced family law or see it as something that is not meant to be dealt with in litigation. Some counties are so overworked that families cannot get court dates for over 12 months, often after they have already waited several months prior. This information is not meant to disparage our judges and our clerks, who are working as hard as they can, as best as they can, in a system that is in need of a reform. The gridlock is one of the problems that we face.

730 13th Ave E | West Fargo, ND 58078
Phone 701.532.0702 | Fax 701.403.8609
www.plmfamilylaw.com

Additionally, proponents of this Bill, and others like it here and around the United States, may claim that other states have implemented presumptions of equal time. This is not accurate. Only one state, Kentucky, has a presumption of equal time in family law cases, but Kentucky also has something we don't have: a family court system that handles only domestic law matters and nothing else. We do not have the infrastructure to handle the drastic change that comes with this Bill with its retroactive effect.

This bill is not the solution to the ills that the vocal minority claims ails us in North Dakota. It will not address the actual stress on the court system. What is needed is a full legislative study to assess the implementation of Family Courts in our state. These courts of limited jurisdiction would address divorce, parentage, child support, and modifications in the domestic relations realm. They would ideally be separate from the juvenile court system and not involve the areas of small claims, both of which could continue to be handled by the Judicial Referee program. Whether domestic violence and disorderly conduct cases should fall under this area would be part of any study. The judicial officers should be attorneys who have a minimum number of years as family law attorneys, not county attorneys or the like. These judicial officers should be people whose clients were and are the people that are affected by our laws.

This will not be an easy fix, and I expect that there will be costs that may be balked at by some of your colleagues. However, if this Body wants to fix what the actual issues are in North Dakota family law, this is the path forward. For these reasons, and the many more I do not have time to state here today, I respectfully submit that this Committee should vote Do Not Pass on HB 1242. I thank the Committee for its time and consideration and am happy to answer any questions you may have. Thank you.

Sincerely,

Jason W. McLean

730 13th Ave E | West Fargo, ND 58078
Phone 701.532.0702 | Fax 701.403.8609
www.plmfamilylaw.com