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Memorandum in OPPOSITION to Judicial Restoration of Parent Education (JROPE) Proposal to Mandate Parent Education

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The Office of Court Administration (OCA) has requested comments on a proposal developed by the Judicial Restoration of Parent Education (JROPE). The proposal would amend 22 NYCRR § 144.3(b), which currently provides that in contested actions for divorce, annulment or separation "...the court may order both parties to attend a parent education and awareness program... ." This proposal would "mandate parents to attend the program unless the court exercises its discretion and determines that the program would be inappropriate, due to the existence of domestic violence or other enumerated factors; and that the Court must require proof of attendance before granting judgment in matters requiring parent education."

There is strong agreement that in certain circumstances parent education is useful and productive. However, we question whether making the proposal mandatory at this time is prudent. Prior to addressing the proper standard for ordering parental education, it is important to understand if adequate resources currently exist statewide to fulfill such a mandate. An examination of JROPEs materials in support of this proposal indicates that there are significant programmatic needs. These needs should be addressed prior to making such a program mandatory. For example, JROPE has requested OCA assistance with:

1. Establishing parent education programs in counties where **none** exists;
2. Approving and certifying new providers, including online programs;
3. Establishing administrative support for parent education within OCA as previously existed; 22 NYCRR 144.2(c)(f);
4. Coordinating with judicial and non-judicial personnel; and,
5. Maintaining statistical information on the programs.

We note especially that a significant number of counties have no parent education program available. Moreover, to date, no online programs have been certified. It concerns us that such services could be mandated if the services do not currently exist. Before mandating any such program, OCA should consider making available an on-line program that would be no-cost to litigants who are ordered to participate. Doing so would address concerns for those who cannot afford a program's tuition. Moreover, an on-line program would alleviate the financial burden related to childcare if litigants have to attend a program outside of the home.

As to the proper standard, we question whether mandating parent education with narrow circumstances for exercising judicial discretion is better than the broad discretion

to order parent education the court currently has. Perhaps the current broad discretionary standard to order parent education could be bolstered by adding a provision requiring the court to provide a finding as to why parent education is not ordered when those circumstances arise.

There are also potential jurisdictional issues related to mandating parent education. A parent's right to parent a child without government intrusion is a fundamental constitutional right.[1] It is only when a minor's health, safety or long-term well-being is jeopardized that a court may exercise its *parens patriae* obligation to intrude on that relationship.[2] As a result, a court in a neglect or abuse proceeding, may not order a parent to accept services if the court determines that no abuse or neglect has occurred.[3] The court loses jurisdiction to intrude in that parent-child relationship and must remain hands-off, no matter how advisable the court deems its intrusion to be.[4]

In addition, JROPE proposes that every court should have to "require proof of attendance [at such a parent-education program] before granting judgment." Considering the large volume of petitions and actions filed in New York State, including uncontested matrimonial actions, that are covered by this proposal,[5] preventing courts from moving cases off their dockets before the parent who is to be awarded custody or visitation presents proof of completion of such a parent-education class, would require either a massive number of adjournments or, unthinkably, the award of custody to a less suitable parent merely because that parent did attend the class. The requirement could also become a point of leverage for one parent to extract concessions from the other who is unable to attend such a class.

We support the goals of this proposal to restore and improve parent education statewide. We believe there are societal benefits to providing convenient and broad access to parent education. However, because of the programmatic needs and potential legal hurdles to making such a program mandatory, this proposal is premature at this time.

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[1] *Matter of Marie B.*, 62 NY2d 352, 358 (1984)(" Fundamental constitutional principles of due process and protected privacy prohibit governmental interference with the liberty of a parent to supervise and rear a child except upon a showing of overriding necessity. (See *Santosky v. Kramer*, 455 U.S. 745, 753; *Wisconsin v. Yoder*, 406 U.S. 205, 232; *Stanley v. Illinois*, 405 U.S. 645, 651; *Pierce v. Society of Sisters*, 268 U.S. 510, 534.) Indeed, this court has repeatedly held that the State may not deprive a natural parent of the right to the care and custody of a child absent a demonstration of abandonment, surrender, persisting neglect, unfitness or other like behavior evincing utter indifference and irresponsibility to the child's well-being. (*Matter of Male Infant L.*, 61 NY2d 420, 427; *Matter of Dickson v. Lascaris*, 53 NY2d 204, 208; *Matter of Bennett v. Jeffreys*, 40 NY2d 543, 544; *Matter of Spence-Chapin Adoption Serv. v. Polk*, 29 NY2d 196, 204; *People ex rel. Kropp v. Shepsky*, 305 NY 465, 468.) Legislation which authorizes the removal of a child from the parent without the requisite showing of such extraordinary circumstances constitutes an impermissible abridgement of fundamental parental rights.").

[2] *Id.*

[3] *See* F.C.A. § 841(a) (requiring "dismiss[al of] the petition, if the allegations of the petition are not established").

[4] *Id.*

[5] In New York City Family Court alone, 36,644 original custody and visitation petitions were filed in 2016, and 19,650 supplemental (modification) custody/visitation petitions were filed. Overall New York State Family Courts outside the city, saw an additional 139,180 petitions. That year 45,150 contested matrimonial cases were filed and 12,090 uncontested ones were filed. While we don't know how many of the matrimonial cases involved children younger than eighteen, between 195,474 and 252,714 cases (and couples) would potentially be effected by this rule change. Moreover, a significant portion of the almost 200,000 Family Court cases do not involve couples who were married or even cohabited together, so the segments of the program dealing with "the impact of parental breakup" "family change" or "family reorganization," *Procedures for the Administration of the New York State Parent Education and Awareness Program* I-B, and it's purpose to "help parents through the unique circumstances of separation or divorce," New York State Parent Education Advisory Board, *Proposed Guidelines, Standards & Requirements for Parent Education Programs* at 24, would not be relevant to them.