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THE DIVORCE SITUATION

THE DIVORCE evil, so-called, is easy to demonstrate. In 1870, nationally, there was one divorce to thirty-two marriages. In the intervening eighty-three years, the rate of divorce has increased progressively year by year; in 1952 there was one divorce to 3.8 marriages.[1]

In Cuyahoga County last year our record was the worst in history. There were more petitions in divorce filed in Common Pleas Court than in all other civil cases combined —6229 to 4561—and one divorce granted to every 2.8 marriages consummated. Statistics[2] in other sections of Ohio are as revealing as they are disturbing:

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Franklin County (Columbus)	1 to 1.9
Lorain (Elyria)	1 to 1.7
Montgomery (Dayton)	1 to 1.8
Summit (Akron)	1 to 2.6
Licking (Newark)	1 to 2.6
Guernsey (Cambridge)	1 to 4.4
Ashtabula (Jefferson)	1 to 2.5
Stark (Canton)	1 to 2.7
Wayne (Wooster)	1 to 5.6
Clark (Springfield)	1 to 1.4
Muskingum (Zanesville)	1 to 6.0
Trumbull (Warren)	1 to 2.8
Lucas (Toledo)	1 to 4.4
Ashland (Ashland)	1 to 3.7
Lake (Painesville)	1 to 2.1
Fairfield (Lancaster)	1 to 3.2
State of Ohio[3]	1 to 2.8

These statistics clearly show that the problem of divorce in Ohio is state-wide. Moreover, the relationship between broken homes and crimes, juvenile delinquency and the like is well known. The sociological aspects therefore are apparent and the threat to our way of life manifest.

THE REASONS FOR DIVORCE

While serving as Presiding Judge of the Division of Domestic Relations of the Common Pleas Court of Cuyahoga County, Ohio, in 1951, I made a detailed study of the reasons for divorce in 1000 consecutive cases tried before me. The complaining witness sat in a witness chair on the same level and only a few feet away from me. I interrogated the witness informally and elicited answers to personal and searching questions which I tabulated unobtrusively on a yellow pad before me.

Approximately 95% of the divorces in Cuyahoga County are sought on the grounds of gross neglect of duty and extreme cruelty. These grounds are predicated on a course of conduct over a period of time and involve many malevolent acts and incidents which progressively impair the marital relations and culminate in an intolerable situation precipitating the action for divorce.

The reasons given for a divorce, generally, fell into four to eight diverse categories. These I summarized on a percentage basis.

1000 Divorces

817 granted women	81.7%
183 granted men	18.3%

Children

501 without	50.1%
499 with	49.9%
229 one 157 two 63 three 28 four 13 five 4 six 4 seven 1 nine	

Marriages

Years	*Number*	*Percent*
51	1	0.1
50 to 40	6	0.6
40 to 30	31	3.1
30 to 20	103	10.3
20 to 10	178	17.8
10 to months	681	68.1

[1] ENCYC. BRITANNICA 439 (Supp. 1953).

[2] Clerk of Courts of respective counties.

[3] Dept. of Health, Division of Vital Statistics.

The Reasons: (Women)

Major

		Number	*Percent*
1.	Failure to provide	591	72
2.	Repeated Physical Assault	365	44
3.	Lack of Companionship	353	43
4.	Mental cruelty[4]	334	41
5.	Drunkenness	322	39
6.	Consortium or association with another woman	253	31

Minor

7	Desertion	94	11.5
8.	Gambling	90	11
9.	Self-indulgence at deprivation of family (sports, clothes, auto, etc.)	26	3
10.	In-law interference	24	3
11.	Sexual (impotence-perversion-excessive-deficient)	19	2
12.	Imprisonment in penitentiary	13	1.6
13.	Bigamy	10	1
14.	Emotional instability	5	–
15.	Run-aways from high school	4	–
16.	Fraud	4	–
17	Hobby first	3	–
18.	Religious difficulties	3	–
19.	To obtain interest in property	3	–
20.	Political disputes	1	–
21.	Career first	1	–

The Reasons: (Men)

Major

1.	Neglect of home duties	109	59
2.	Consortium or association with another man	90	49
3.	Lack of companionship	85	46
4.	Desertion	63	34
5.	Drunkenness	55	30
6.	Mental cruelty	22	12

[4] Continual false accusations, jealousy, repeated vile and vulgar abuse, continued indifference, refusal to talk over a period of time, threats to kill, insulting and abusive attitude in presence of company, perpetual moodiness and sulking, refusal to have friends, living with in-laws under intolerable conditions, actions and words over extended period of time designed to humiliate and embarrass and intended to cause anxiety and distress, etc.

Minor

		Number	*Percent*
7	Refusal to live where husband established home	15	8
8.	Repeated physical assault	9	5
9.	In-law interference	9	5
10.	Career first	6	3
11.	Sexual (excessive-deficient)	5	2.7
12.	To obtain interest in property	2	-
13.	Bigamy	1	-
14.	Gambling	1	-
15.	Imprisonment in penitentiary	1	-
16.	Self-indulgence at deprivation of family	1	-
17	Run-away from high school	1	-

Some Observations

The category — failure to provide — involves:

1. Drunks
2. Gamblers
3. Men who carry on with other women
4. Men who are self-indulgent
5. Shiftless and lazy
6. Desertion

While chivalry and tradition play a part in the preponderance of women seeking divorce, their part is much smaller than generally supposed. Women by and large seem more mature in the appraisal of factors making for a happy marriage and consequently take the relationship more seriously than do men. Moreover, they display more initiative and determination in doing something about it when things go wrong. Furthermore, the wife no longer is dependent upon her husband for maintenance and a roof over her head. That dependency in years gone by enabled the male to rule the female with an iron hand. Today a woman can be economically independent if she so desires. This independence, coupled with her inborn appreciation of the implication for her of marital bliss, prompts her to seek a life partner who will look upon her as a human being worthy of respect, consideration and comradeship, as well as to seek love and affection in this great adventure of life.

Many a woman has no scruples about supporting a husband or condoning excessive drinking on his part, if treated with consideration and respect. She balks, however, if, in addition to such delinquency, he mistreats her physically, consorts with other women, embarrasses her before their friends, treats her with indifference or heaps vile or vulgar language upon her without reason or excuse.

Husbands seem more apathetic about family difficulties, and, in the main, hesitate to bring an action for divorce until matters become impossible.

The judge in divorce court sees life in the raw and at its worst with respect to the most intimate and what should be the most sacred personal relationship known to man.

In a busy court, he hears thousands of cases in a relatively short space of time. This gives him a perspective that is realistic and practical. He concludes that many divorces are justified and to the best interests of the persons involved and to the community, for often human beings are thereby emancipated from intolerable situations and released from unhappy surroundings. The evil in divorce to his mind, consequently, does not lie in the many that are properly allowed. The evil, rather, lies in the divorce granted which might have been prevented if some authoritative means existed to deal with the marital discord between the parties which could constructively resolve the conflict rather than grant a divorce.

The Ohio Divorce Laws

The divorce laws of Ohio hark back to the year 1804, when four grounds for divorce were enumerated. The grounds were increased to nine in 1840[5] and ten in 1853[6] and have remained the same, with minor changes, to this day.

Our legal concepts and procedure for divorce were borrowed from the ecclesiastical courts of England, which had a monopoly over matrimonial and divorce matters in England since the Twelfth Century. Under their laws a party had to be at fault to justify a divorce, and if both parties were at fault, no divorce was granted. A divorce, with respect to lawful marriages, was *a mense et thoro* — a mere legal separation from board and bed with no right of remarriage. To be ordered away from one's family in those days was a great shame and consequently was bitterly contested. Moreover, if the defending spouse was guilty of violating his marital duties, he would try his utmost to prove the other also at fault and thereby prevent the granting of a divorce. Divorce actions under such conditions had the effect of strengthening the bonds that held married people together.[7]

Ohio adopted the English system as its own with the lone exception as to the character of the divorce. Ohio grants one *a vinculo* — a legal nullification of the marriage with the right to remarry.

Divorce, therefore, originally under our court system was conceived of as a means of preserving the stability of the family, and a method of main-

[5] 38 Ohio Laws 37

[6] 51 Ohio Laws 377

[7] 1 Holdsworth's History of English Law (1922).

taining its sanctity and integrity. Divorce laws were passed, and courts of domestic relation established to carry out this important and useful purpose for society. That, *in theory*, is their high mission even today.

> The state has an even greater interest in maintaining the family than in creating it. It has the greatest interest in promoting healthy family life. It has, therefore, hedged the home about with a system of divorce laws looking to the permanency of the marital relation.[8]

The Supreme Court of the United States had the following to say:

> Other contracts may be modified, restricted or enlarged, or entirely released upon the consent of the parties. Not so with marriage. The relation once formed, the law steps in and holds the parties to various obligations and liabilities. It is an institution in the maintenance of which in its purity the public is deeply interested, for it is the foundation of the family and of society, without which there would be neither civilization nor progress.[9]

The Supreme Court of Minnesota stated it thus:

> The proper regulation and control of the marriage relation is of so much importance to society, the well-being of the community is so far involved in the permanence of its relation that the State, through its courts, exercises a peculiar guardianship over marriage and divorce.[10]

THE PROBLEM

It is clear to any one familiar with the situation that the courts, operating under laws and procedures inaugurated 150 years ago in Ohio, do not fulfill their historic function of preserving the stability and integrity of the family as originally contemplated. Why this is so, is readily understandable when you consider the changed social order existing today: transition from a tradition of indissoluble marriage to a form of marriage which is terminable; change from a religious concept of marriage to a secular view; change of public opinion from a sharp to a rather mild disapproval of divorce; legal and economic emancipation of women; the movement of so many of the populace from farms to cities with the attending complexity of an industrial environment and a greater mobility of life which, in turn, creates an existence more impersonal and less dependent on others and releases them from the force of public opinion; decline in morality and a growing sense of irresponsibility to family and community; the lag between the progress of scientific and technological development and that of human relations.

To attempt to restore the influence of our divorce laws and procedure as a constructive force in the preservation of the family, many circumstances

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[8] KEEZER, MARRIAGE AND DIVORCE § 299 (1946).

[9] Maynard v. Hill, 125 U.S. 190, 211, 8 Sup. Ct. 723, 729 (1887).

[10] Young v. Young, 17 Minn. 153, 159 (1871).

and factors concomitant with an outgrowth of the changed conditions must be kept in mind and given heed in order to bring about the result desired.

1. Marriage, juridically, is a contract between two sovereign individuals. When the relationship is once formed, it is considered a status. It is founded on the bed-rock of mutual understanding and embraces many privileges and corresponding obligations. Divorce, likewise, is deeply rooted in the law.

> Marriage is that ceremony or process by which the relationship of husband and wife is constituted. The consent of the parties is everywhere deemed an essential condition to the forming of this relation. To this extent it is a contract. But when the relation is constituted then all its incidents, as well as the rights and duties of the parties resulting from the relation, are absolutely fixed by law. Hence, after a marriage is entered into, the relation becomes a status, and is no longer one resting merely on contract.[11]

Society is protected and the stability and preservation of the marriage relationship enhanced by the maintenance of the legal foundation of divorce and full recognition of it by law. To permit a spouse openly to violate a duty imposed by law without requiring an ultimate reckoning in a court of law would tend to weaken the marital relationship and play into the hands of the unscrupulous and the sly.

In the syllabus No. 10 of *Senn v. Schukat*,[12] the court stated:

> Divorce is a creature of the statute and although to obtain a divorce the aid of the courts must be invoked by either the husband or the wife, the dissolution of the marriage is effected solely by judicial decree, and it is not an act of the parties but one of law, destroying the matrimonial relation which theretofore existed between the contracting parties and creating a new and different legal status both for the husband and the wife.

2. Marriage creates the family, which is the basic unit of our social order. Its success and stability is of prime importance for a virile, healthy and strong body politic. Divorce, therefore, has social implications and presents a sociological as well as a legal problem.

The Supreme Court of Ohio stated the following in the case of *Holloway v. Holloway*:[13]

> Marriage is not a matter of commerce, nor is it merely a contract between the parties. Marriage is a basic social institution of the highest type and importance in which society at large has a vital interest."

Justice Frankfurter of the Supreme Court of the United States said in *Sherrer v. Sherrer*[14]

> That society has a vital interest in the domestic relations of its

[11] Allen v. Allen, 73 Conn. 54, 55, 46 Atl. 242 (1900)
[12] 358 Ill. 27, 28, 192 N.E. 668 (1934)
[13] 130 Ohio St. 214, 216, 198 N.E. 579, 580 (1935).
[14] 334 U.S. 343, 361, 68 Sup. Ct. 1087, 1098 (1947)

members will be almost impatiently conceded its implication must be respected.

3. The great surge of divorces in a large measure is due to the uncertainties and anxieties of the times, as well as the complexities of an industrial civilization which thrusts a diversity of problems upon many individuals who are ill equipped mentally and emotionally to cope with them adequately. Psychiatrists tell us that one person in ten in present day society is suffering from some neurotic ailment deserving of therapeutic treatment and that the average mental age among the adult population is fourteen. Think of the many apparently insurmountable problems that must beset such handicapped persons in these times. Divorce to them must seem the only solution. The personality structure of the individual and the social forces affecting his life consequently play an important part in the divorce problem.

4. Divorces are also the result of the moral and spiritual deterioration of many persons in present day American life. A high percentage of those persons enmeshed in divorce proceedings exhibit a lack of any understanding or appreciation of the spiritual values that should exist in the intimate relationship of marriage. A judge presiding in divorce court senses a low standard of home life and a dearth of spiritual qualities in family relations among many of the persons seeking divorce. Character, moral fibre, right thinking and right living all play an important part in the divorce problem.

Divorces are an accepted social phenomena of the American cultural pattern of today. We must face up to that fact whether we like it or not, and no amount of preachment about it can be of much avail.

6. The average person of Ohio considers a divorce a prerogative that he should have the right to exercise under proper circumstances. As a matter of law, however, no person has a vested right to a divorce.[15] The state legislature may or may not provide for divorces. With the precedent of 150 years of liberal legislation on the subject, the citizens of this state clearly consider divorce laws as a normal attribute of life. They undoubtedly look with favor upon such legislation. There is no indication to the contrary. Future plans must be bottomed on that premise.

How then to modify our established divorce laws and procedure so as to integrate and give proper deference to legal, sociological, psychiatric, psychological and moral aspects, without derogation of the personal rights and prerogatives of the individuals involved and at the same time to protect the inherent interests of society in the matter, is the problem posed.

A Proposal

Our divorce laws and procedures are adequate to adjudicate marital situa-

[15] Worthington v. Dist. Ct., 37 Nev. 213, syb. 15, 142 Pac. 230 (1914)

tions in which the granting of a divorce is the proper and only disposition of the matter. They could, most likely, be strengthened by the elimination of certain out-moded defenses, but that is a subject beyond the scope of this article.

The area of marital relations in which our laws and procedures are woefully deficient is that of reconciliation. To the extent to which new agencies are evolved to further the cause of reconciliations, will they be a constructive force in protecting the stability and integrity of the family unit under modern conditions and circumstances. Therein lies their great opportunity to recapture this historic function. The field for such activity is broad and the possibilities for effective and rewarding effort is beyond belief.

The study above shows that 95% of divorces are caused by marital discord. Parties torn by such dissention struggle on until the situation becomes intolerable and then turn to the courts for a divorce and an adjudication of the related matters of property rights and custody of minor children. We decry the fact that people in most cases divorce themselves before coming to court, and that the court, in reality, gives but legal sanction to the dissolution of the marriage and makes a public record of the same. The fact, however, is that we have no provision within the frame-work of our laws to permit them to appeal to the courts for help to resolve the discord which causes the separation. Why should not a tribunal be established to maintain and protect the family, be empowered to deal with marital discord as such and do whatever is possible to reconcile the parties so involved? I can think of no more constructive program to help solve the divorce problem than a proceeding legally established to allow courts of domestic relations to deal with the basic cause for divorces. Such procedure would permit any person fearing his marriage contract in jeopardy to invoke the authority of the court to preserve it. The court, in such proceeding, would be in the position to strike at the very core of the matter causing family dissention and undoubtedly to save many a family from destruction.

Marital discord is a complex matter. It includes factors of mental and physical health, character, personality, family background, family relations, habit, personal idiosyncracies, education, mental and emotional instability, sex, social standing, religion and others. Courts in highly populated communities should have the right to employ trained experts to assist them in

[16] 17 AM. JUR. 154: "The public policy relating to marriage is to foster and protect it, to make it a permanent and public institution, to encourage the parties to live together, and to prevent separation." 1 NELSON, DIVORCE AND SEPARATION 17 (1929) "Public policy in the interest of good morals and the stability of society, requires the discouragement of divorce and the encouragement of reconciliation." 55 C.J.S. 808: "Marriage is favored by the law and the public policy is to foster and protect marriage, to make it a permanent and public institution, to encourage the parties to live together and to prevent separation."

coping with a problem presenting so many heterogeneous elements. These specialists should be under the absolute guidance and control of the courts at all times and should be called according to need. Many are available in the field of domestic relations today: psychiatrists, psychologists, marriage counsellors, social case workers, psychiatric case workers, investigators and others. The court, in addition, may call upon the clergy of all religions, social agencies and community resources capable of lending a hand in an undertaking which concerns the greatest social problem of our times.[16]

A PLAN

Upon the suggestion of the Cleveland Press, a Citizens Committee on Divorce Procedure was formed in the summer of 1951 in Cleveland. Persons affiliated with religious, welfare, civic and lawyer organizations banded together for the purpose of making a study of our divorce laws and procedures. A sub-committee, made up of the chairmen of the domestic relations, common pleas court and juvenile court committees of both the Cleveland Bar Association and the Cuyahoga County Bar Association, and a psychiatrist, psychologist and social worker, was appointed to formulate plans and submit them to the main committee for consideration.

After many months of study and deliberation, this committee recommended the following plan for adoption:

> I. Amend Ohio General Code to accomplish the following: A party may file a petition in reconciliation as a separate action or the matter of reconciliation may be confined with a divorce, alimony or divorce and alimony action. The Defendant may by way of answer or answer and cross-petition seek reconciliation as a separate action in addition to existing remedies. Such pleadings in reconcilliation whether as a separate pleading or in conjunction with the divorce, or divorce and alimony action, may state that such party desires the services of the court in seeking a reconciliation. In the event a petition in reconciliation is filed alone, service upon the other party shall be had as in a divorce action. If such petition in reconciliation is filed in conjunction with a divorce action or alimony action alone, or when filed alone, the matter shall be set for hearing promptly as it applies to reconciliation after service of summons.
>
> The hearing as it applies to reconciliation shall be informal and not subject to the usual rules of evidence and shall be held in chambers unless otherwise directed by the court.
>
> Admissions of either party, as well as the finding or report of the Department of Domestic Relations or of the court as it applies to reconciliation, shall not be admissible in evidence in any subsequent court hearing.
>
> Comment:
>
> A divorce is not a matter of an individual right. The State reserves to itself this right. The divorce courts shall function with the intent of preserving the marital status wherever possible; therefore, the above proposals of giving a separate and distinct status, from a legal point of view, to the matter of reconciliation, is a new concept under Ohio law. The granting of this right to seek reconciliation with the aid of the Court may

be done by a separate pleading or in conjunction with a divorce action or both.

It is deemed advisable that such hearing in reconciliation shall be informal and any admissions by the parties shall not be admissible in subsequent actions. This is similar to our existing law wherein an offer of compromise is not admissible in evidence.

II. Submit a bill to the General Assembly of the State of Ohio to permit the creation of Departments of Domestic Relations in any common pleas court in the State. The Court to appoint such employees as it determines it needs for the purpose of investigating marital problems and making recommendations in custody, support, alimony and reconciliation matters.

Comment: Under Ohio Revised Code Section 3105.08, it is mandatory that an investigation be made in all divorce or alimony matters wherein children under fourteen (14) years of age are involved. The existing Department of Domestic Relations in our county and in other counties is without statutory basis. Under the proposal contained in such Bill, the judge or judges of the common pleas court may establish a Department of Domestic Relations and may provide for psychiatric, psychological and social work services as well as other employees; a marital clinic could be established. It is not the intention to substitute a Department of Domestic Relations for the Court, but it gives the Court a more effective and competent Department of Domestic Relations.

III. The proposals hereinabove set forth shall be state-wide and not limited to any county having a population above a given number.

Comment: Under the proposed Bill, establishing a Department of Domestic Relations, the proposals make it permissive rather than mandatory that the court of each county establish such a department. This will eliminate any objection from the counties having a small population to the state-wide application of the establishment of a Department of Domestic Relations. It is obvious that the proposals pertaining to reconciliation are equally good in all counties regardless of population. In the counties having a small population the judge of the common pleas court could if necessary, handle the matter of reconciliation without additional assistance.

These proposals were adopted by the Citizens Committee in the late spring of 1952. An active campaign thereafter was waged in an attempt to have them enacted into law.

It was the belief of the sub-committee that its proposal with respect to creating a legal status for reconciliation was a novel one in the realm of divorce jurisprudence. But upon research of the matter, it was found that a petition in reconciliation was permitted by the Code Napoleon in 1886.[17] Under it a spouse was permitted to apply to the President of the Court to summon the other spouse for conciliation before engaging in a divorce procedure. It was administered by the highest presiding officer—in private chambers, no lawyer being present.

The State of California as far back as 1939 permitted the filing of a petition in its "Children's Court of Conciliation." A part of the law with respect to it reads:[18]

[17] LEMKIN, ORPHANS OF LIVING PARENTS (1938)

[18] Chute, *Divorce and the Family Court*, 18 DUKE L. Q. 1 (1953).

> Prior to the filing of any action for divorce, annulment, or separate maintenance, either spouse or both spouses, may file in the conciliation court a petition invoking the jurisdiction of the court for the purpose of preserving the marriage by effecting a reconciliation between the parties [19]

By virtue of this statute, California reports 482 reconciliations from 1743 new cases (June 30, 1952)

The State of Washington in 1949 likewise provided a legal status for reconciliation:

> Whenever any controversy exists between spouses which may result in the dissolution or annulment of the marriage or the disruption of the household the family court shall have jurisdiction over the controversy and over the parties thereto and all persons having any relation to the controversy as provided in this Chapter.[20]

Minnesota in 1949 gave Governor Youngdahl legislative authority to appoint a commission of the legislature and leaders in the legal, judicial and social welfare field to study the divorce problem. The basic recommendation of this commission to the legislature of the State, submitted in a report in 1951, reads as follows:

> Either party in any domestic controversy, before filing for divorce or separate maintenance, may file a petition for an informal hearing before the judge. Respondents and witnesses may be cited to appear and no fees may be charged. The hearings are private and confidential. With the consent of both parties, the aid of physicians, psychiatrists, clergymen and others may be invoked. The filing of a petition for reconciliation proceedings is mandatory before any action for divorce or separate maintenance can begin, and a "cooling off" period of ninety days from the filing of the petition may be required.[21]

NEW LAWS

I.[22] To provide for reconciliation procedure in actions for divorce and alimony and to enact sections 3105.011, 3105.012, 3105.013, 3105.014, 3105.015 and section 3105.016 of the revised code.

Be it enacted by the General Assembly of the State of Ohio:

> Section I. That new sections 3105.011, 3105.012, 3105.013, 3105.014, 3105.015 and section 3105.016 of the Revised Code be enacted to read as follows:

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[19] CAL. CODE CIV. PRAC. ANN. § 1761 (1949).

[20] REV. CODE OF WASH. § 26.12.090 (1952)

[21] State of Minnesota, Report of Interim Commission on Domestic Relations Problems, St. Paul (1951).

[22] This bill, known as H.B. 75, was introduced in the House of Representatives of the State of Ohio during the 100th General Assembly, regular session 1953-1954, by Mrs. Clara E. Weisenborn of Montgomery County. It was recommended for passage by the Judiciary Committee of the House and sent to the Rules Committee to be placed upon the calendar, where it remained until adjournment.

Sec. 3105.011. Either party to a marriage may file a petition for reconciliation. When such a petition is filed, the other party need not answer, but may file a cross-petition for divorce or alimony "providing that the requirements of section 3105.03 of the Revised Code are satisfied." A cross-petition for reconciliation may be filed not later than thirty days after service of summons upon a defendant in an action for divorce or alimony. The pleading shall state that the marriage contract is in jeopardy and the authority of the common pleas court is desired to effect a reconciliation.

Sec. 3105.012. The provisions of section 3105.03 of the Revised Code, as they relate to an action for alimony alone, shall apply in like manner to reconciliation.

Sec. 3105.013. Personal service must be had upon the opposite party to any pleading in reconciliation in this state. The clerk of the court of common pleas shall issue a summons directed to the sheriff of the county in which such party resides or is found which shall be served upon him together with a copy of the petition or cross-petition.

Sec. 3105.014. After service upon the opposite party the cause shall be set down for immediate hearing to which the court shall cite such opposite party for appearance from any point in the state. The hearing shall be informal and not subject to the usual rules of evidence and may be heard by the court in chambers or after preliminary hearings by the court may be referred to the department of domestic relations, if one exists. The admissions of either party, the findings of the court and the report of the department of domestic relations, if any, in connection with the matter of reconciliation shall be inadmissible as evidence in any court proceeding subsequent thereto.

Sec. 3105.015. Sections 3105.14 and 3105.20 of the Revised Code shall apply to reconciliation.

Sec. 3105.016. The court may assess costs including reasonable attorney fees against either party as the justice of the case requires.

II.[23] To enact 2301.131 of the Revised Code providing for the establishment of departments of domestic relations in common pleas court.

Be it enacted by the General Assembly of the State of Ohio:

Section I. That Section 2301.131 of the Revised Code be enacted to read as follows:

Sec. 2301.131. The court of common pleas of a county, if it deems it advisable, may with the consent of the majority of the board of commissioners of said county, establish a department of domestic relations of said court. The establishment of the department shall be entered upon the journal of the court, and the clerk thereof shall thereupon certify a copy of such order to each elective officer and board of the county.

The department shall consist of a director and such number of other employees as may be fixed from time to time by the court. The

[23] This bill, known as H.B.345, was introduced in the House of Representatives of the State of Ohio during the 100th General Assembly, regular session 1953-1954, by Mrs. Clara Weisenborn of Montgomery County. It was recommended for passage by the Judiciary Committee and sent to the Rules Committee to be placed upon the calendar. The bill went before the House of Representatives and was passed by a vote of 97 to 6. It was recommended for passage by the Judiciary Committee of the Senate and sent to the Senate Rules Committee, where it remained at the time of adjournment.

> court shall appoint to positions within the department, fix the salaries of appointees and supervise their work, by adopting rules and regulations not inconsistent with law, which shall be observed and enforced by the director and the other employees of the department.
>
> The director and other employees so appointed by the court shall receive, in addition to their respective salaries, their necessary and reasonable travelling and other expenses incurred in the performance of their duties. The salaries and expenses shall be paid monthly from the county treasury in the manner provided by law for the payment of compensation of other appointees of the common pleas court. The salary of the director of the department of domestic relations shall not exceed eighty percent, and the salary of any other employees of the department shall not exceed sixty percent of that received by a judge of the court of common pleas of the county wherein a department of domestic relations is established pursuant to the provisions of this section.
>
> It shall be the duty of the department of domestic relations to perform such acts in relation to divorce, alimony and reconciliation actions as may be referred to it by the court. Nothing in this act shall authorize or permit the court to delegate to a referee or to any other person its authority to determine the merits of a petition for divorce or for alimony.

CONCLUSIONS

Our divorce laws have deep roots in the social conscience of the people of Ohio, and should not be uprooted. But new procedures should be developed to meet present-day needs. The change that should be made to keep our divorce proceedings abreast of the times and to fulfill the needs of our social order is to establish within their frame-work a new means looking to the reconstruction of broken or near-broken families.

I do not favor a mandatory requirement that reconciliation be attempted as a prerequisite to the right to file a petition for divorce. The law should take the position that married people are sovereign individuals dealing with their own lives and should be allowed to pursue the course they deem the best in matters affecting their innermost happiness. Marital discord contains subtle, imponderable and deep psychological factors within it, which cannot be resolved by dictatorial means. Reconciliation proceedings therefore should only apply where at least one to the marriage contract wants it, for it would be a great waste of both time and effort in most cases if neither desired it.

A pleading for reconcilation would accomplish much:

1. Give official notice of an imminent divorce.
2. Obviate the filing of an immediate cross-petition in a divorce action.
3. Alleviate emotional conflicts through the opportunity to unburden oneself.
4. Afford opportunity to deal with marital discord before accusations are formulated.

5. Discover neurotic persons who may be helped.
6. Allow expert solution of problems causing contention.
7. Allow time for frayed nerves to subside and reason to ascend.

One-third of all divorce actions are now dismissed because of the reconciliation of the parties. The procedure herein outlined could very well increase these numbers materially.

The laws advocated in this article conform to public policy in marital relations and constitute a logical evolution of Ohio divorce laws. Their enactment into law by the general assembly would be a long step forward toward the solution of this vexatious problem and would place the State of Ohio in the forefront of progressive divorce legislation in America.