My name is Angela Arkin and I am a District Court Judge in the 18th Judicial District. I have been on the bench since August 1, 2000, and I have had domestic docket either exclusively or in combination with other dockets for 12 years. Prior to taking the bench, my of practice was significantly focused in the area of family law. I am sharing thoughts with you today as allowed by Judicial Canon Rule 3.2 which states in Comment 1: "Judges possess special expertise in matters of law, the legal system and the administration of justice, and may properly share that expertise with…legislative branch officials." I am not speaking for the Judicial Branch, or to support or criticize the bill you are considering. I thought it was important, however, to add some judicial context to the question of whether more guidance to the judiciary regarding maintenance would be helpful.

The way our courts address challenges facing children and families has a significant, ongoing impact on our society. Many families come to the courts in distress. Currently, in Colorado, one or both litigants in more than 60% of dissolution of marriage cases have no attorney, and little understanding of their legal rights and obligations.

The vast majority of trial judges worked as trial lawyers handling civil and criminal cases before moving to the bench. However, across the State, many judges begin their judicial careers in domestic relations court. The trial practice to which these judges were accustomed is primarily about the past. Family law is primarily about the future. The past is the context for the decisions the judge must render, but the present and the future matter equally or more than the past. By definition, if a judge is deciding a DR case, the parties are in high conflict. In these cases, the parties substantially disagree regarding the facts about their financial relationship.

Domestic relations judges have enormous discretion, but it is absolutely essential. This is because every family is unique, and every family comes to the court fully formed. The court had absolutely nothing to do with how that family was created. Two people decided how to run their finances: they decided to accumulate assets and debts, they were employed inside or outside the home, they worked for others or for themselves, until one or both adults decided that the intact family must end. That is how they come to the court.

When the family arrives, the judge must address these questions:

1. What were the decisions made by the parties that created this family?
2. How will this family move on?

The court must find an equitable financial solution for the parties, if the parties cannot do so themselves. The court must fully understand the societal realities the family will encounter, the parties' previous ways of conducting their financial business, the value and liquidity of their assets, and the nature and amount of their debts, so the court can equitably divide the marital estate and then ensure appropriate support for a dependent spouse and children.

Maintenance is one of the most contentious issues in DR cases. Currently, judges have no place to begin in determining the amount and duration of a maintenance award, if any is appropriate. For judges who are new to the bench and/or new to domestic relations, this feels very uncomfortable. If there were some guidelines from the legislature for judges to follow, judges' decisions would be relatively predictable from judge to judge, and litigants would have a better ability to settle their cases. The less time a family spends in litigation, the better it is for them and for their children.

A judge's maintenance award may vary significantly from case to case. This fact alone is not problematic, but informal and anecdotal evidence reflects that, given the same set of facts, the maintenance awards of different judges are wildly disparate. I have heard and served on numerous "maintenance panels" with colleagues whom I greatly respect, and our maintenance decisions for the same sets of facts were notably inconsistent. I can remember 1 panel of 7 judges where one of us awarded zero maintenance, and one of us ordered $5,000 per month for life, causing significant chagrin amongst the panelists and the attorneys in the audience.

This lack of certainty and consistency between judges may sometimes result in actual unfairness to the parties, but it also promotes the sense that the process itself is unfair. I strongly believe that having some guidelines or additional guidance for judges to use as a context for making consistent and equitable maintenance decisions would be a significant benefit to the judiciary, and to the people we serve: the citizens of the state of Colorado. Thank you.

Angela R. Arkin
District Court Judge