

Bill as
Introduced

HB 1306 - AS AMENDED BY THE HOUSE

17Feb2010... 0466h

2010 SESSION

10-2101
09/01

HOUSE BILL **1306**

AN ACT relative to approval of recommendations of marital masters and judicial referees.

SPONSORS: Rep. Rowe, Hills 6; Rep. W. O'Brien, Hills 4; Rep. Gorman, Hills 23; Rep. Nixon, Hills 17; Rep. Emiro, Rock 3; Sen. Bragdon, Dist 11; Sen. Letourneau, Dist 19

COMMITTEE: Judiciary

AMENDED ANALYSIS

This bill requires the judge responsible for approving the recommendations made by a marital master or judicial referee to certify that he or she has read the recommendations and agrees that the marital master or judicial referee has applied the correct legal standard to the facts.

Explanation: Matter added to current law appears in *bold italics*.
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 1306 – AS AMENDED BY THE HOUSE

17Feb2010... 0466h

10-2101
09/01

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Ten

AN ACT relative to approval of recommendations of marital masters and judicial referees.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Recommendations of Marital Masters. Amend RSA 490-D:9 to read as follows:

2 490-D:9 Recommendations of Marital Masters. All recommendations of marital masters shall be
3 signed by a judge. *The judge signing such recommendations shall certify that he or she has*
4 *read the recommendations and agrees that the marital master has applied the correct*
5 *legal standard to the facts determined by the marital master.*

6 2 Recommendations of Judicial Referees. Amend RSA 493-A:1-a, II to read as follows:

7 II. A judicial referee may be assigned to take testimony, receive and review evidence, and
8 make recommendations for findings of fact and conclusions of law in any court specified in paragraph
9 I by the chief justice of the supreme court or superior court, from which the referee retired, or the
10 administrative justice of any other court from which the referee retired. All recommendations of
11 judicial referees shall be approved by a justice in regular active service or senior active service of the
12 court to which the referee is assigned. *The judge approving such recommendations shall*
13 *certify that he or she has read the recommendations and agrees that the judicial referee*
14 *has applied the correct legal standard to the facts determined by the judicial referee. A*
15 *judicial referee shall not preside over jury trials and shall not enter final orders in any case.*

16 3 Effective Date. This act shall take effect January 1, 2011.

Amendments

Amendment to HB 1306

1 Amend the bill by replacing all after the enacting clause with the following:

2
3 1 Recommendations of Marital Masters. Amend RSA 490-D:9 to read as follows:

4 490-D:9 Recommendations of Marital Masters. All recommendations of marital masters shall be
5 signed by a judge. *The judge signing such recommendations shall certify that he or she has*
6 *read the recommendations and agrees that the marital master has applied the correct*
7 *legal standard to the facts determined by the marital master.*

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11 I by the chief justice of the supreme court or superior court, from which the referee retired, or the
12 administrative justice of any other court from which the referee retired. All recommendations of
13 judicial referees shall be approved by a justice in regular active service or senior active service of the
14 court to which the referee is assigned. *The judge approving such recommendations shall*
15 *certify that he or she has read the recommendations and agrees that the judicial referee*
16 *has applied the correct legal standard to the facts determined by the judicial referee. A*
17 judicial referee shall not preside over jury trials and shall not enter final orders in any case.

18 3 Effective Date. This act shall take effect January 1, 2011.

Amendment to HB 1306

- Page 2 -

2010-0466h

AMENDED ANALYSIS

This bill requires the judge responsible for approving the recommendations made by a marital master or judicial referee to certify that he or she has read the recommendations and agrees that the marital master or judicial referee has applied the correct legal standard to the facts.

Speakers

Hearing Minutes

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 1306

BILL TITLE: relative to approval of recommendations of marital masters and judicial referees.

DATE: January 14, 2010

LOB ROOM: 208 **Time Public Hearing Called to Order:** 11:10 am

Time Adjourned: 12:45 pm

(please circle if present)

Committee Members: Reps. D. Cote, Walt Potter, Hackel, P. Preston, G. Richardson, L. Weber, B. Browne, Nixon, Thompson, Watrous, Rowe, N. Elliott, DiFruscia, W. O'Brien, Hagan, L. Rerkins, Silva, W. Smith and Mead

Bill Sponsors: Rep. Rowe, Hills 6; Rep. W. O'Brien, Hills 4; Rep. Gorman, Hills 23; Rep. Nixon, Hills 17; Rep. Emiro, Rock 3; Sen. Bragdon, Dist 11; Sen Letourneau, Dist 19

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Robert Rowe, sponsor

Family court has to make some of the hardest decisions facing the courts. 70% of people are 'pro se'. Marital masters make recommendation, not a decision, that is certified by a judge who has read the recommendation. The judge should certify that he has read and approved the recommendation as if he were a sitting judge. Many are just signed by the judge, which leads to a perception problem by the public.

Rep. David Nixon: co-sponsor,

Judge who signed has not heard evidence. Judge can read notes of marital master and perception is important. The problem is that the judge who signs it has not heard the evidence. How do we respond to that? Ans. It is a matter of perception; bad to have a judge admit that he had not read or understood the recommendation.

Rep. Robert Mead: Aren't judges responsible for the orders they sign? Ans. Yes. Judges are responsible, but that does not mean they know anything about the case.

Rep. Frances Potter: Long recommendations take much of judges' time. How do we certify? Ans. The client needs to know that the judge read it.

Rep. Will Smith: Ans. Those subject to the decision of a marital master expect the judge to have read the report.

Rep. Gary Richardson: Testimony in past that judges have not read? Ans. Yes, testimony in years past.

Rep. Paul Hackel: Recommendation may be agreed to by parties in whole or in part? Ans. Sometimes in part.

Rep. Robert Mead: Have we made the process easier for the court but short-changed the public? Ans. Public gets a quality hearing before a marital master. Having master relieves burden on court. Believes marital masters are qualified, and one-half of salaries come from federal government. **Q.** Are we short-changing the citizens in order to get more money? Ans. Marital masters are specialized.

Rep. Frank Emiro - supports

There is proof that judges sign recommendations without reading them. Proof is in prior testimony in a Senate hearing, says Judge Kelly so stated that he trusts marital masters. SB 401 three years ago. The judge should read everything.

Rep. Al Baldasaro - supports

Judges rubber stamp the recommendations. Cites cases. We have good and bad marital masters. This bill is a step in the right direction.

David Johnson, Londonderry - supports

Cites case that imperiled child's school placement. Example includes instances where a judge was called up short in court for not knowing what he had previously signed. Has a long list of problems of his personal experience in which ten minutes saved in not reading led to hours of subsequent litigation.

Rep. Robert Mead: Judges claim to be accountable, but they aren't? Ans. When I report a problem, nothing happens. A difficult case should be held before a judge, not a marital master. **Q.** Will certifying that the judge has read the report solve the problem? Ans. It's a step in the right direction.

Nina Gardner, Executive Director, Judicial Council - opposed.

Marital masters do not have contempt power. Files are voluminous; in fact, someone else has to read the whole file in difficult cases. The bill, pragmatically, is hard to enforce. If someone has to read the file, the case needs to be heard before a judge.

Rep. William Smith: Ans. All cases should have some thoroughness of review.

Rep. Gary Richardson: Signing could suggest that the judges believe the marital master has applied the right law. Would that be acceptable? Ans. Thoroughness of the review is at question.

Rep. Lawrence Perkins: Is the Judicial Conduct Commission made up of judges who are supposed to be signing off on these reports? Ans. Not all judges; ask that question of Howard Zibel.

Rep. Robert Mead: What are the requirements (qualifications) of marital masters? Ans. I believe they have to have five years experience in family law, must be lawyers and approval of Governor and Council.

Rep. Nancy Elliott: What is the point of having judges sign the reports? Ans. Signature allows contempt proceedings.

Rep. Rick Watrous: Does a judge ever refuse to sign a marital master's report? Ans. Yes.

Howard Zibel, General Council, Judicial council - opposed

Problems in Lines 14 & 15, that is a big assignment. If judges have to sign off as in lines 14 & 15, that is a multi-million dollar matter. Cases are emotional and involved, and reviewing them would cause the system would grind to a halt. Reading a file is not looking at the witnesses and judging credibility. As a regular matter, judges do not read the files. Kelly's testimony was probably in 2006. Believes that judges read recommendations, not files, which they can't because of the time required.

Rep. Gary Richardson: Proposed wording might include "and the marital master has applied the correct legal standard". Ans. I believe so.

Rep. Nancy Elliott: Ans. Recommendation can be 1 line to very long in a complex case; gives example of one 38 pages long.

Rep. William Smith: How much court time is taken up by challenges? Ans. My opinion is that this bill will not change those challenges one iota.

Rep. Lawrence Perkins: How else can we deal with these issues (problems with marital masters). Ans. The JCC has no role in this. The answer is to appeal to appellate court.

Rep. Robert Mead: Is the level of justice is as good as with a judge? Ans. It is better with marital masters. Lawyers generally say they would rather appear before a marital master.

John Macintosh, New Hampshire Bar Association - opposes as written
Opposes "as if approving judge had been sitting" language. Does not think the "applied the proper legal standard" is helpful either. Should end at "approves the recommendations".

Denise Marie McIntosh - supports
Mother in divorce case and paralegal. The main complaint is that the judge should have reviewed the motion, the response and the order. Just signing off on the order is a rubber step. She has a restraining order. A second judge released the restraining order without adequate review. Marital masters cannot invoke penalties and jail time. Is now studying for her JD. It is not as complicated as the attorneys make it out to be. Her divorce cost \$100,000. Judges need to make sure the legal standard is applied appropriately. Restraining orders should not be taken away when there are witnesses. Appeals to Supreme Court cost \$20,000-\$30,000.

Rep. Dan Itse - supports
Caucus listens to petitions for redress. Judge has signed orders that marital masters issued on matters outside the scope of their jurisdiction. Some of the orders coming out are unjust and unconstitutional. Judges should do their job.

Greg Brede - supports.
Examples of what has occurred.
Marital masters have in some cases not enforced consequences or made inconsistent recommendations. Mr. Brede cited numerous concerns with his own divorce proceedings, which he finds inconsistent and illogical. Some awards of the court were unexplained and unsupported. He feels there was no meaningful court review. If the judge reviewed the order and approved it anyway, there is an even greater problem.

Respectfully submitted,



Philip Preston, Clerk

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 1306

BILL TITLE: relative to approval of recommendations of marital masters and judicial referees.

DATE: 1-14-10

LOB ROOM:

Time Public Hearing Called to Order:

Time Adjourned:

11:10
11:15
11:30
12:45

(please circle if present)

Committee Members: Reps. D. Cofe, Wal, Potter, Hackel, P. Preston, G. Richardson, L. Weber, B. Browne, Nixon, Thompson, Watrous, Rowe, N. Elliott, DiFruscia, W. O'Brien, Hagan, L. Perkins, Silva, W. Smith and Mead.

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TESTIMONY

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FROM: Rep. Philip Preston, Clerk
DATE: Public hearing January 14, 2010
SUBJECT: Meeting minutes on HB 1306, relative to approval of recommendations of marital masters and judicial referees.

HB 1306 relative to approval of recommendations of marital masters and judicial referees
11:10 am

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Family court has to make some of the hardest decisions facing the courts. 70% of people are 'pro se'. Marital masters make recommendation, not a decision, that is certified by a judge who has read the recommendation. The judge should certify that he has read and approved the recommendation as if he were a sitting judge. Many are just signed by the judge, which leads to a perception problem by the public.

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Testimony

HB 1306 Sponsored by Judicial @11:00 Room 208 1/14/2010

This bill requires the judge responsible for approving the recommendations made by a marital master or judicial referee to certify that he or she has read and approves the recommendations.

<http://www.gencourt.state.nh.us/house/committees/billtext.aspx?billnumber=HB1306.html>

I support this Bill as drafted.

Thank-You for considering this ~~public~~ input

Greg Brede
Chesterfield NH
603 363 4051

writer

Voting Sheets

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on 1306

BILL TITLE: relative to approval of recommendations of marital masters and judicial referees.

DATE: February 4, 2010

LOB ROOM: 208

Amendments:

Sponsor: Rep. G. Richardson OLS Document #: 2010 0466h

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Richardson

Seconded by Rep. Rowe

Vote: Voice Vote (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Richardson

Seconded by Rep. Rowe

Vote: 17-0 (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: 17-0

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Philip Preston, Clerk

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on 1306

BILL TITLE: relative to approval of recommendations of marital masters and judicial referees.

DATE:

LOB ROOM: 208

Amendments:

Sponsor: Rep. Richardson / Rowe OLS Document #: 2010-0466A

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Richardson / Rowe

Seconded by Rep.

Vote: 17/0 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Philip Preston, Clerk

JUDICIARY

Bill #: HB 1306 Title: _____

PH Date: / /

Exec Session Date: 02 / 04 / 10

Motion: OTP/A

Amendment #: 2010-04666

MEMBER	YEAS	NAYS
Cote, David E, Chairman	Y	
Wall, Janet G, V Chairman	Y	
Potter, Frances D	Y	
Hackel, Paul L	Y	
Preston, Philip, Clerk	Y	
Richardson, Gary B	Y	
Weber, Lucy M	Y	
Blaine, Brendon Read Robin	Y	
Nixon, David L	Y	
Thompson, Robert B	Y	
Watrous, Rick H	Y	
Rowe, Robert H	Y	
Elliott, Nancy J	Y	
DiFruscia, Anthony R <i>abs</i>		
Mead, Robert D	Y	
O'Brien, William L	Y	
Hagan, Joseph M <i>abs</i>	Y	
Perkins, Lawrence B <i>abs</i>		
Silva, Peter L	Y	
Smith, William B	Y	
TOTAL VOTE:	17	0

Committee Report

CONSENT CALENDAR

February 9, 2010

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on JUDICIARY to which was referred

HB1306,

AN ACT relative to approval of recommendations of marital masters and judicial referees. Having considered the same, report the same with the following amendment, and the recommendation that the bill OUGHT TO PASS WITH AMENDMENT.

Rep. Gary B Richardson

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	JUDICIARY
Bill Number:	HB1306
Title:	relative to approval of recommendations of marital masters and judicial referees.
Date:	February 9, 2010
Consent Calendar:	YES
Recommendation:	OUGHT TO PASS WITH AMENDMENT

STATEMENT OF INTENT

HB 1306 requires the judge who approves a master's report to certify that he or she has read and approved the master's decision. The bill as amended requires the judge to certify that he or she has read the recommendations and agrees that the master has applied the correct legal standard to the facts determined by the marital master.

Vote 17-0.

Rep. Gary B Richardson
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

JUDICIARY

HB1306, relative to approval of recommendations of marital masters and judicial referees. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Gary B Richardson for JUDICIARY. HB 1306 requires the judge who approves a master's report to certify that he or she has read and approved the master's decision. The bill as amended requires the judge to certify that he or she has read the recommendations and agrees that the master has applied the correct legal standard to the facts determined by the marital master. **Vote 17-0.**

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR MAJORITY REPORT

HB 1306, relative to approval of recommendations of marital masters and judicial referees.

RECOMMENDATION: OUGHT TO PASS W/AMENDMENT (0466h)

VOTE: 17-0

REP. GARY B. RICHARDSON

HB 1306 requires the judge who approves a master's report to certify that he or she has read and approved the master's decision. The bill as amended requires the judge to certify that he or she has read the recommendations and agrees that the master has applied the correct legal standard to the facts determined by the marital master.