

FAMILY LAW COMMISSION 2006 YEARLY REPORT

Senator Thurman Adams, Senator Pro Tem
Representative Terry Spence, Speaker of the House
Legislative Hall
Dover, DE 19901

Dears Sirs:

The Family Law Commission has completed what it feels is another good year. We have had six meetings each of which was highlighted with a speaker from one of the agencies having to do with Family Court. A Public Hearing was held at Legislative Hall, Dover in January 2006. Attached you will find a copy of the issues that were extracted from comments made at the Public Hearing. A copy of this report was sent to all of the speakers at the Public Hearing.

Commissioners on the Family Law Commission are as follows:

Senator Liane Sorenson, Chair of the FLC, a. Judson Bennett, Senator Harris B. McDowell, III, Harry E. Gordon, Jr., Dr. Julia Pillsbury, Dr. Harriet Ainbinder, Ellen Meyer, Esq., Representative Pam Maier, Representative Teresa Schooley, Lynn Kokjohn, Allene Poore, James Morning, Curtis Bounds, Esq. and Dana Harrington Conner, Esq.

We have four members whose terms will expire at the end of this year, but have indicated their desire to serve another three years. They are as follows: Liane Sorenson, Chair of FLC, The Honorable Williams Walls, Judge of Family Court, Representative Teresa Schooley, and Allene Poore. Your approval is needed.

Due to the death of the required family physician member (Dr. Rhoslyn Bishoff), that position is now vacant, and the Family Law Commission members have no one to suggest. Your help is needed to fill this position.

Report submitted by, Senator Liane Sorenson, Chair FLC
Katherine Jester, Director FLC

The following is a summary of key issues that have been raised at Family Law Commission meetings held between January and June, 2006. Many of these issues were raised by more than one person.

The Role of the Family Law Commission (FLC)

The Family Law Commission was created in 1984 to study and evaluate domestic violence laws, rules and procedures in Family court, existing, and new legislation. The Commission is allowed to:

- disseminate information about family law
- hold public hearings
- receive written comments
- review legislation affecting family law

The Commission may not:

- engage in the practice of law
- give legal advice of any kind

For further information about the FLC please see its website at: www.state.de.us/flc.

Family Court Logistics

Testimony questioned whether standards, policies, and procedures exist that should be followed statewide. There were concerns about the consistency of logistics from one court to another. Two specific complaints inquired as to why Family Court mailings come from Baltimore – the feeling is that this practice delays notifications and further complicates the process.

Action: Judge Walls responded to the second issue at the April 6, 2006 FLC meeting. He indicated that all State mail is now routed through Baltimore. He noted that the Family Court had nothing to do with this protocol.

Training of Mediators

One person wondered why mediators are not required to be trained in domestic violence Issues.

Action: This issue was addressed during the March 9, 2006 FLC meeting. Frannie Haney of the Administrative Office of the Court (AOC) was identified as the Training Coordinator for the Courts – thus she is the contact person with concerns about this issue.

Family Court Reporting

Is the yearly Commission report available to the public? What is the status of research on "Regulations and Standards for Mediators?"

Action: The FLC Annual Report will be posted on the web site in the future. The questions about standards for custody evaluators were discussed at the February 9, 2006 meeting. Members, under the leadership of Harriett Ainbinder are continuing to investigate national standards and practices of other states.

Child Support

Specifically, there were comments related to clarification of child support laws. Generally, clarification was requested about much of the court system: what are the standard operating procedures that can be implemented to ensure that people know what to accept and have avenues to resolve issues.

Action: Testimony was referred to the Melson Formula Task Force. The Task Force is completing a report that will address this issue. Ellen Meyer and Lynn Kokjohn represent the FLC on the Task Force. In a letter to the FLC, Charles E. Hayward, Director of Child Support Enforcement at Delaware Health and Social Services (DHSS), stated that information on how often child support orders are modified up or down is not readily available to either DHSS or Family Court. While the Delaware Automated Child Support Enforcement System (DACSES) contains information, this specific data is not available.

Accuracy of Claims

Multiple persons testified about false accusations brought against them in various civil matters (particularly in custody cases). Concern seems to be around ensuring that claims are accurate so that an individual is not taken advantage of via the court system, in turn losing custody or visitation rights. The question was raised as to whether the proper procedure is in place to sanction those who bring false information to the courts. Furthermore, it may be too difficult for those being accused to prove their case in court.

*Action: Attorney General Carl Danberg responded to this concern by stating that the Attorney General's office is aware that false allegations occur. However, he indicated that there is "no real way" of preventing this from happening – especially since it is difficult to prove that allegations are false. He suggested that a Contempt Commissioner is needed in the Family Court process. *See below for comments on the need for a Contempt Commissioner.*

Plea Bargaining

A concern was raised that the plea bargaining process may be too lenient. It was suggested that the decisions of judges and commissioners should be reviewed as to make them accountable to someone. The victim in a domestic violence case does not have a right to appeal.

Action: Chief Justice Myron Steele responded to this issue at the March 9, 2006 FLC meeting. He stated that plea bargaining is driven by the Attorney General's Office, not the court. Thus, concerns about the plea bargaining process should be directed to the AG's office.

Dana Harrington-Connor of the FLC and the Domestic Violence Coordinating Council echoed the Chief Justice's statements when she noted that the plea bargaining issue is under the jurisdiction of the Attorney General's Office.

Contempt Commissioner

It was suggested that a "Contempt Commissioner" be assigned to hear cases of contempt where false accusations may have been made. This commissioner would respond to cases of perjury.

*Action: *The Attorney General's response to the concerns raised about false allegations apply to this issue as well. Attorney General Carl Danberg indicated at the April 6, 2006 FLC meeting that having a Contempt Commissioner would be a good idea for the Family Court.*

Audio Tape Availability

Requests were made to have audio tapes of Court proceedings available to the public. There is apparently a good amount of support for a policy that would allow audio recordings of court proceedings to be made available to litigants. Such recordings are less expensive than paper transcripts and can be

made available more quickly. Furthermore, all testimony and discussions between lawyers and judges should be on the record so as to provide evidence of what has transpired.

Action: Chief Judge Kuhn responded to the availability of CD copies of court proceedings at the May 11, 2006 FLC meeting. She stated that there is some concern as to why a person would want to obtain a copy of the court's hearings. One stated reason for having recordings is for use in appeals. This does not hold water given that a transcript is required in all appeal cases. Furthermore, abuse could occur if someone obtained a copy of a recording that contained a child's interview with the judge, or if financial information was disclosed on the recording.

Representative Valihura and Senator Sorenson have introduced HB 540, which would allow for court recording to be made available on CD.

Enforcement of PFAs

As in prior meetings it was noted that PFAs are not being adhered to properly. When not being followed, there does not seem to be adequate prosecution. It is believed by some that part of the reason PFAs are abused is that going through the court system takes far too long.

Action: Attorney General Carl Danberg responded to comments concerning PFAs at the April 6, 2006 FLC meeting when he indicated that a downside of PFAs is that they can indeed be used as weapons in court. Nonetheless, there is no way of preventing "misuse" of PFAs, which remain necessary in domestic violence cases.

Speed of Response

On more than one occasion those present testified that the speed of the court system is too slow and tedious. The length of time it takes to go through the system and complete court dates only further complicates the process in many domestic issues. This prolonged process negatively affects all parties involved in domestic cases (children, parents, other family, etc...).

Action: Chief Justice Myron Steele responded to the concern over speed of response at the March 9, 2006. He indicated that there are two issues affecting response time. First, scheduling the various phases of a case (from filing a petition to having the case heard) is driven by staff, attorney schedules, the schedule of party's involved, the emergency nature of the issue at hand, courtroom space and availability, and witnesses and expert witnesses. In contrast, the criminal court schedule is driven by the availability of policy officers and vacations. Thus, there is inherently no simple fix to this problem as many variables come into play.

Chief Justice Steele noted that Family Court guidelines call for no longer than 120 days to pass from arrest to decision and no longer than 90 days from the time of petition of delinquency. These timelines are only guidelines and are not always met as a result of the many "actors" previously mentioned. Furthermore, there is a Speedy Trial Committee that reviews the compliance of all of the courts – reporting annually to the General Assembly on court compliance to these guidelines. One proactive step has been to request more staff to help with the efficiency and timeliness of the Family Court.

Chief Justice Steele then remarked that there is a directive calling for every judge to render a decision within 90 days once a case has been submitted. If this timeframe is not met, the judge must report to the Chief Justice on why it was not met and how the problem will be resolved.

Equal Treatment of Fathers and Mothers

One person testified that fathers and mothers do not get equal treatment in the Family Court system. Along these lines another person testified that there should be a reevaluation of the financial data used to calculate support amounts. Such data will allow judges to make more realistic decisions.

Action: Testimony was referred to the Melson Formula Task Force. The Task Force is completing a report that will address this issue. Ellen Meyer and Lynn Kokjohn represent the FLC on the Task Force.

Open Family Court

A request was made to allow a party to request that a case be closed to the public while in absence of such a request the court is presumed open. It was argued that an open court will better balance the parties in a case while improving the Court's standing with the public. A Family Law Commission sub-committee is currently examining the issue of an open Family Court. Additional persons testified the necessity for an open court so that standards improve and ethics become clearer.

Action: Attorney General Carl Danberg remarked on this issue at the April 6, 2006 FLC meeting. He stated that he would NOT like to see the Family Court opened in all cases – especially when children are involved.

At the May 11, 2006 meeting, Chief Judge Kuhn indicated the following policy exists for which cases are open and which are closed. This policy is dictated by the Constitution, statutes, and rules, not court policy. She made it clear that the Constitution supersedes statutes; statutes supersede rules; and rules supersede policy.

Closed

Adoptions
Paternity (presumed)
Divorce/Alimony/Property Division (presumed)
Custody/Visitation (presumed)
Termination of Parental Rights
Guardianship (presumed)
Dependency/Neglect (presumed)
Permanent Guardianship (presumed)

Open

Adult Criminal (presumed)
Juvenile Felonies (by statute)
Juvenile Misdemeanors (by Statute)
Child Support*
* This should be changed to presumed closed, by changing an administrative directive
Protection from Abuse*
* This should be changed to presumed closed, by changing an administrative directive

The Melson Formula

It was argued that this formula is confusing and may not be the most appropriate way to allocate money for child support. A possible fix to this formula is to require more formal procedure for gathering and presenting evidence so that accurate information is used to determine support amounts.

Action: Testimony was referred to the Melson Formula Task Force. The Task Force is completing a report that will address this issue. Ellen Meyer and Lynn Kokjohn represent the FLC on the Task Force.

All of these issues stem from specific testimony, but can be examined broadly in the entire court structure.

Sincerely,

Senator Liane M. Sorenson
6th Senate District