



## Delaware Family Law Commission Annual Report 2011

The Family Law Commission was established on June 14, 1984 to (1) conduct public hearings, (2) Invite written comments on family law from members of the public, (3) review and comment upon legislation affecting family law introduced in the General Assembly at the request of any member of the General Assembly, or on its own initiative and (4) disseminate information concerning family law to the public. The FLC meets in Legislative Hall once a month when the legislature is in session. This year's meetings were held on January 18<sup>th</sup>, February 17<sup>th</sup>, March 17<sup>th</sup>, April 14<sup>th</sup>, May 12<sup>th</sup> and June 9<sup>th</sup>.

### Members of the Delaware Family Law Commission

Lynn Kokjohn, Family Law Commission Chair

Senator Bruce Ennis

Dr. Julia Pillsbury, D.O.

Senator Liane Sorenson

Ms. Peg Smith

Representative Michael Barbieri – Stephanie Bolden

The Honorable William J. Walls, Jr.

Representative Michael Ramone

Ms. Eileen Williams

Dr. Harriet Ainbinder

#### **Liaisons to the FLC:**

Curtis Bounds, Esquire

Mr. Harry E. Gordon, Jr.,

Professor Dana Harrington-Conner

Bonnie Copeland c/o Family Court

Mr. Britt Davis

Judy Hodas, c/o Attorney General

Ms. WendyJean Matlack

Drew Slater, Assistant

Dr. M. Diana Metzger

Mr. James Morning

## Summary of the Minutes from the 2011 Meetings

### Tuesday January 18, 2011: Annual Public Hearing

The main points raised in the public hearing were:

- Child Custody
- Child Support
- False Allegations
- Protection from Abuse Orders/Domestic Violence
- Family Court Commissioners
- Family Court Policies/Procedures

These topics, along with continuing 2010 topics (evening hours) became the focus of the 2011 year for the Family Law Commission. Speakers were invited to address these topics and were given the specific questions that had been raised at the public hearing.

### Thursday, February 17, 2011: Review of January Public Hearing Comments and Path Forward; Evening Hours

**Speaker: Ken Kelemen, Family Court, Director, Pro Se Center**

The Family Law Commission met to discuss the January hearing and a list of concerns presented by Drew Slater, Assistant to the Commission.

The members discussed some of the main points heard at the hearing and began by talking about **Child Support** and the Melson Formula. One issue raised at the hearing was that if you are qualified for a different job based on your qualifications/education then the court can use the Department of Labor wage tables to determine what you should be making.

A question was raised concerning the **Melson Formula** about the possibility of having the Division of Child Support Enforcement (DCSE) perform the calculations instead of the courts since a large amount of the complaints are

with the formula and the issue of court discretion. This move would take the discretion out of the court and put the function of administering child support, as well as calculating child support, in the hands of DCSE.

Mr. Kelemen spoke about the new Family Court website and the great strides they are making to become more user friendly, as well as additional suggestions that originated from the Family Law Commission, which is the addition of **evening hours**. Currently, the Family Court is working on a “chat” that would be available online to help petitioners find the write forms to fill out. Depending on the need, the live chat could have the possibility of providing evening hours to those that need the pro se centers services after hours. Mr. Kelemen also noted that petitioners and respondents both have the same resources within the **pro se centers**.

**Thursday, March 17, 2011: Child Support and the Melson Formula**

**Speakers: Commissioner David Jones**

**Commissioner Andrew Southmayd**

**DAG Brenda Sammons**

The speakers for this meeting had taken part in the child support and Melson formula process. The first issue that was discussed was that Judges should not be part of the child support or Melson formulas. There was discussion about moving child support and the Melson formula and it was mentioned that there is discretion everywhere and that the child support formula itself provides for some discretion. An example of judicial discretion relating to child support was when the Valero refinery shut down. This was a special circumstance that the Judges and Commissioners were able to look at and review instead of just assessing the Melson formula child support. It was also mentioned that some states do in fact make their child support an administrative function; however, not all states use the Melson formula.

It was mentioned by the speakers that they are trying to make the Melson formula simpler so that everyone can understand how their child support is

calculated by providing a **child support calculator on the Court's website**. They are studying what other states are doing and are hopeful that they will be able to limit the formula outline to one page.

It was mentioned at this meeting that the biggest weakness of the Melson formula is that it does not look at **100 percent placement**. In the formula, there is no distinction between a non-custodial parent and one that has the children 100 percent of the time, or a parent who does not want to see their children.

The speakers also mentioned that the biggest increase in child support is **daycare expenses**. The speakers mentioned that they have had cases where one party says that they could watch the children and save the cost of daycare but that would be a custody and visitation issue and would have to be ordered if it is in the best interest of the child.

There was a guess by one of the Commissioners that about 80 percent of those coming into the Family Court go through mediation while another 20 percent find the mediation to be a problem. It was also mentioned that the minimum child support payment is \$130 a month for one child.

#### **Thursday, April 14, 2011: PFA, False Allegations and Domestic Violence**

##### **Speakers: Commissioner Blades**

**Adrienne Owen, DSP**

**Jim McGiffin, CLASI**

The speakers were introduced and the first question was related to a jury trial. The answer was that the Family Court does not have jury trials for civil matters.

The conversation then turned to the topic for this meeting, PFA, False **Allegations and Domestic Violence**. It was mentioned by Commissioner Blades that it is always the right of the petitioner to withdraw or not show up to the PFA hearing. It is important to note that this does not mean that the PFA was not justified or warranted.

A commission member had asked about **perjury** in Family Court hearings and it was mentioned that legislators would need to fund investigators in the Attorney General's office. A follow-up question was whether there was anything that could be done to discourage **false allegations**. One of the speakers mentioned that frequently it is a "he said, she said" situation with no witnesses to the alleged abuse. The Commissioners/Judges have to make the decision based on relative credibility of the parties. The statistics from the Domestic Violence Coordinating Council show that **34% of PFA cases were voluntarily dismissed**.

The next issue was about how the State Police determine that a warrant is needed. Officer Owen stated that the State Police can look at a person's demeanor, clothing, speak with the children, look at the whole situation and interview both parties involved. Through these measures, and others, they determine who would be more credible and determine if a warrant is needed.

In regards to the public hearing testimony on the petitioner calling the respondent, it was mentioned that there is case law that would allow the respondent protection against this happening, which would be to file a cross PFA.

#### **Thursday, May 12, 2011: Open versus Closed Family Court**

**Speakers: Eileen King, Justice for Children**

**Tania Culley, Office of the Child Advocate**

**Shauna Hagan, Esq.**

The speakers for this meeting were introduced with Ms. King traveling from Washington, D.C. to speak about **Open and Closed Family Courts**. Several members of the public requested Ms. King as a speaker on this topic.

Ms. King feels that all the courts should be presumed open. A commission member asked if there were any courts that were closed. Ms. King said that Virginia is presumed closed. However, Ms. King said that public scrutiny allows the public to see regularity/irregularities that would allow for the review of

change. She also mentioned that she believes that Judges should be observed. Finally, **Ms. King said that her favorite phrase is “what’s watched works”.**

Ms. Hagan said that people are allowed into the courtrooms, such as foster parents, advocates, law clerks, support persons and mental health professionals, as long as both parties agree. Ms. Hagan also mentioned that she spoke with 3 psychologists about opening family court, prior to our meeting, and all three said no immediately and each one of the psychologists are in the courtroom frequently. Ms. Hagan said that **California recently noted that there is harm done by allowing the public into all courtroom proceedings.**

Ms. Copeland said that she surveyed some of the Judges about how frequently they are asked to open the court and most said that there are 1-2 cases in a career where they are asked to completely open the court.

It is important to note, that under the current statutes, all criminal hearings, PFA hearing and child support hearings are presumed open to the public. Custody/visitation, guardianship, adoption/termination of parental rights, dependency/neglect, paternity and divorce/alimony/property division are presumed closed.

Ms. Culley said that any statutory change should focus on the child and what is in the child’s best interest according to the eight best interest factors which are 1. The wishes of the child’s parents as to his/her custody and living arrangements; 2. The wishes of the child as to his/her custody and living arrangements; 3. The interaction of the child with his/her parents, brothers and sisters, grandparents and any people living in the child’s home or affecting the child’s best interest; 4. The child’s adjustment to his/her home, school and community; 5. The mental and physical health of all individuals involved; 6. How well each parent has in the past and currently satisfies their parental rights and responsibilities with respect to their children; 7. Evidence of domestic violence; and 8. The criminal history of any party or other resident of a household, including guilty pleas, pleas of no contest and criminal convictions.

The idea is that the court could either be open with the Judge having discretion or closed with the judge having discretion. It was also discussed that

someone can request a court be open but the Judges still have the discretion. In 1997, there were 16 requests and most of those were granted.

There was a suggestion that a **blue ribbon task force** be created to review this issue. The Family Law Commission was to write this legislation and present it at the June meeting. This issue has been raised for numerous years. The commission would like a separate task force to review the issue and recommend any changes, if necessary.

**Thursday, June 9, 2011: Review of Legislation, Joint Resolution Thoughts  
Update to Family Court Website**

**Speaker: Ken Kelemen, Family Court Director, Pro Se Center**

The purpose of this meeting was to get an update on the progress Mr. Kelemen has made with regards to the Family Court website as well as review the joint resolution written by the Family Law Commission regarding the creation of a blue ribbon task force to review open versus closed courts.

Mr. Kelemen said that the Family Court has created an entirely **new website** that launched on June 7, 2011 to help petitioners and respondents to navigate their webpage. In addition, Mr. Kelemen said that they are working to integrate a **live chat feature** that will be available during normal business hours for those that need help finding the correct paperwork.

Mr. Kelemen also noted that **it is possible to extent the “live chat” feature to include evening hours if the need justifies it.**

The new website now has resources for those responding to petitions on every page so that the respondents know what they are responding to and what the petition is for. In addition, the packets online are free, whereas, there is a cost associated with the packets in the Family Court. A petitioner and respondent can also complete the form electronically, which is a new feature as well.

The Family Law Commission then reviewed their **Joint Resolution** and it was determined that it should be made into a Senate Concurrent Resolution in

the hopes of getting the bill through the legislature in the final weeks of the session in June.

The legislation proposed a task force be established. It **did not** include a presumption of task force findings. The task force would review open versus closed court proceedings in Delaware and surrounding areas to determine if Delaware should update their policy.

This legislation was sent to the Senate Judiciary Committee. It did not have a committee hearing by the end of session and was not brought to the Senate floor for a vote. The bill will have a hearing in early 2012.

### **Legislation Pertaining to Family Court.**

At each regular meeting of the Family Law Commission members discussed pending legislation related to Family Court.

For a full list of Legislation from this past year please visit the Family Law Commission website at [flc.delaware.gov](http://flc.delaware.gov).