

FAMILY LAW COMMISSION MINUTES JANUARY 24, 2008

The Family Law Commission held their meeting on Thursday morning, January 24, 2008, in the Senate Hearing Room in Legislative Hall in Dover, DE. Senator Liane Sorenson, Chair of the FLC, called the meeting to order. The following members were present at this meeting: Senator Liane Sorenson, Chair of the Family Law Commission, Representative Terry Schooley; Diane Metzger, family physician; Harriet Ainbinder, Psychologist; Lynn Kokjohn, James Morning, and Professor Dana Harrington Connor. Also in attendance was our guest speaker, Steve K.D. Eichel, PhD. from the Delaware Psychological Assn.

Senator Sorenson announced that they will have the transcript at the March meeting. She announced that today's meeting is taking the place of the February meeting. She stated it is easier to meet when the legislature is in session and everyone is here. At the March meeting, we will go over some of the issues that were brought to their attention at the Public Hearing such as false allegations, custody issues, a loophole in the law that allows someone to take the child out-of-state before the Custody Order is filed, parental alienation, whether pro se's are respected in court and what kind of treatment they receive. Also, there was a request for past minutes from previous years. We have some of the past years, but we are unable to find anything before Representative Buckworth. Someone also asked to have the same services in Kent and Sussex Counties as there are in Wilmington like the pro se center and the availability of meeting with an attorney for 15 minutes. A new issue that was addressed was *paternity fraud*. Someone also asked that Family Court change the term *Visitation* to *Parenting Time*. Also requested was public access to statistical data, timeliness of the mail, plus the problems encountered when trying to gain permission to appear in Family Court. .

Regarding the Open/Closed Court issue, someone suggested that maybe the cases should be presumed Open and that the better way might be that you file a request to have it Closed. Dana Harrington-Connor said that even then the Judge can also make a determination that the Hearing should be closed. In regard to the use of taped conversations - a person commented that he could not understand why he couldn't use a taped conversation to prove his case. Dana said she thought it could be permissible, but James Morning said you had to inform the other party you were taping the conversation, or it could not be used in court. There was some discussion on this issue, and it was decided to look into this further.

Harriet Ainbinder mentioned that someone at the Public Hearing mentioned the classes that anyone going through a divorce had to attend. This was a topic that the FLC had discussed last year. We had requested to have someone come to a meeting and supply us with some data informing the Commission what is being taught in these classes, who attends, how successful the classes are, and whether there is any follow-up in six months or even a year afterwards. In other words – just how successful are they?

Lynn Kokjohn stated that she understood that at the next meeting in March we would have a summary of the transcript, and Senator Sorenson replied that her intention was to have Drew Slater go through the transcript and complete a summary of the key issues. Senator Sorenson said we would start with the issues that have already been mentioned, and we could add to it any that had been missed.

Lynn Kokjohn said she would also like to go over again the Family Law Commission's purpose – *what we can and cannot do*. Even though their purpose has been stated repeatedly, time and time again at the Public Hearing, people accuse us of not doing anything! Senator Sorenson said we are not a government agency and are not funded as such.

Senator Sorenson requested Dana to explain who this group was. She said that the Melson-Arsht Inn is in essence the Judges and the Family Law Bar Lawyers – the bench and the bar. She is a member of this group as well as Curtis Bounds. Originally they had asked Senator Sorenson to speak, but she will be out-of-town in February, and she suggested that Dana and Curtis speak. They will be able to address some recent legislation that is coming up in the Family Law area. Dana is hoping to raise some of these issues at this meeting to see if there is some consensus among the bench and the bar, because just about every NCC Judge or Commissioner is a member of this group. She is doing this in hopes of building some interest in the Family Law Bar. Unfortunately this is only New Castle County. Lynn Kokjohn wondered if we would be able to learn their positioning on some of these issues. Dana stated this is a very friendly group and there is a great deal of exchange in the group. This is an invitation only group – you must be asked to join. They do not mind sharing their opinions – good or bad!

Senator Sorenson continued that at this Public Hearing and the one last year, one of the issues that had been brought to their attention was the Child Custody Evaluators. She said that one person was very frustrated with one of the Evaluators, but the FLC has no authority over this group. Senator Sorenson stated that Harriet Ainbinder, a psychologist and a member of the FLC, went to the Delaware Psychological Association with some of the concerns that the FLC has been hearing about ethical issues when the evaluator demanded payment and how much they charged. She then asked Harriet to introduce our speaker for this meeting.

Harriet began by saying the DPA is the Delaware Psychological Association, which is the professional association of psychologists. The Psychology and the Law Commission has written guidelines on what you can expect from a Child Custody Evaluator. John Flaherty was invited to their first meeting to hear directly some of the concerns that have been encountered. She stated that Steve Eichel is in charge of the Psychology and Law Commission. She then turned over the meeting to Steve Eichel.

Mr. Eichel began by saying that the concerns that had been voiced at that first meeting were taken very seriously. He stated that he realized that there is a great deal of confusion surrounding custody evaluations – not only among the lay public, but the

attorneys as well. He said what has been frustrating even among psychologists is that there are guidelines – they do exist, and they have been there for several years, actually 10 years. The DPA felt it was important to have guidelines that are accessible to the public that are written in language that the public can understand, but also to disseminate the two sets of guidelines – one that is by the American Psychological Association in 1994 entitled Guidelines for Child Custody Evaluations in Divorce Proceedings. Also, the AFCC (Association of Family and Conciliation Courts) has published guidelines entitled Model Standards of Practice for Child Custody Evaluators. Both of these standards are very similar to each other. He said that the DPA feels that these standards need to be very clearly disseminated among the psychologists who are engaging in Custody Evaluations.

Senator Sorenson questioned Mr. Eichel if there was a list of who are Custody Evaluators in Delaware. He said he knew of no central repository of names, or lists, who are Custody Evaluators, and to his knowledge there are only a small number who do this. He felt that legislatively it would be a good practice to have a voluntary registry of psychologists who engage in custody evaluations, and who would publicly swear that they would abide by the guidelines that are published.

Mr. Eichel said he would then take questions from the members. James Morning asked him if a psychologist has to be certified to be a Custody Evaluator. Mr. Eichel said that there is no certification. The body that certifies a custody evaluator is the court. Basically, the custody evaluator is whoever the judge appoints, or who they agree to testify. There are no consistent set of standards for Custody Evaluators.

Mr. Eichel stated that both the AFCC and the DPA clearly say that a Custody Evaluator should be trained in child development, and they should be well versed in and experienced in working with families and children. If they use any forms of psychological tests or instruments, they must be competent in using them. The purpose of the evaluator is to determine what is in the best interest of the child, or children, that are involved. He stated that unlike other fields where there may be a Board certification process there is no specific amount of experience that is required – there is no specific training that is required. There is just a more general guideline that you should be able to defend your level of competence based on experience, your education, and your training.

Senator Sorenson said that there had been questions raised regarding payment and the amount of payment and when it was requested. Some felt it was almost a form of blackmail. They had the feeling that if they didn't give them the money they would not receive a good evaluation. Mr. Eichel stated that the way that he practices is by retainer up front and everything has to be paid before the results are released. He explained that he states that this is for everyone's protection. The guidelines state that payment should be paid up front, so that and it is not perceived that an evaluator is going to make a recommendation based on who is paying for it. Harriet said that the other question was about the report itself – who gets the report and is there a report? He answered that the DPA guidelines state that the psychologist and the parent will enter into a written

agreement setting forth the fees, services to be preformed, responsibilities for payment etc. This should be very clearly stated beforehand.

Senator Sorenson then inquired who receives the report, and Mr. Eichel replied that the accepted practice is that the attorney, or if it is a pro se it would be that parent – it would be the individual acting as the attorney – they are the ones who get the report. Then it is up to them to share it with the parent. Custody evaluations are only conducted in cases where typically the attorneys or the parties have requested it. It is not common for the court to suggest this. Custody Evaluators are only used in about 10% of the divorce cases.

Harriet Ainbinder said she would like to take the opportunity to clarify an issue that came up in the Public Hearing. This Commission and DPA do not have the power to act against any psychologists. If you have a complaint about a specific person, you must take your complaint to the Board of Examiners of Psychologists which is a State body who has the ability to sanction or punish them in some way, or pull their license. This is where you take your complaint about a particular person – not the DPA or to the Family Law Commission. Dana Harrington-Conner thought this was something she could take back to ask attorneys when they are cross-examining a Custody Evaluator they would be able to ask if they have met the particular qualifications that the Delaware Psychology Association recommends, but that information needs to be communicated to the Bar. Dana thought it might be a good idea to have Harriet Ainbinder and Steve Eichel come to one of their INN meetings to discuss Custody Evaluators and their qualifications. Dana also asked if there were allegations of domestic violence, is the custody evaluator required to have some sort of training to deal with this issue. Mr. Eichel answered that there is no training required, but whatever you are evaluating you should have specific competence within that area – whatever you are evaluating. There are some states that certify someone as being able to evaluate the issue of domestic violence in the home.

Senator Sorenson then asked if anyone else had questions and she then recognized Sunday Haffen. Sunday expressed her thanks to Mr. Eichel for attending this meeting. She stated that she knew that there were some workshops for the Family Evaluator – she has seen them posted on the web. Sunday said that she did go to the Licensing Board, and they told her that it wasn't in their area of expertise that they should go to DPA. She said she and her daughter were betwixt and between. Senator Sorenson asked if she went with a specific complaint about an individual, and Sunday replied that she had. She stated that some of things that they had a problem with was that the evaluators seem to be endorsed by the court. Her daughter's evaluator caused a great deal of hardship within the family and he charged high fees. Sunday also was evaluated, and the evaluator presented her a bill. This was at a time when she played a large part in her grandchildren's life. She said that the evaluators are known to threaten that if you complain about something too much, they tell you that this is a way you will definitely lose the kid! Mr. Eichel said that when he is doing an evaluation he does not provide feedback to the parent – he is only there to evaluate. Sunday said that some of the evaluators are very threatening. This particular evaluator threw a book at a client, and he was told to get control of himself. When she took one of her grandchildren to the

session, he even threatened the children and the child came out hysterical. These were some of the issues that she brought before the Licensing Board, and she was told that this wasn't anything that they handled. Senator Sorenson questioned whether Sunday went to them with a specific name, and she replied that she did. When she submitted her complaint in writing, they returned her copies to her. She was told they only dealt with licensing situations.

Harriet Ainbinder asked to have a list of the people that Sunday spoke to and when did she go to the board. After finding out the formal way of submitting a complaint, then Sunday would be able to file her complaint in the correct manner. Harriet said she was previously on the board, and they had rescinded licenses in the past. Sunday said she would be able to get the information, because she still has the letter that the board sent to her in response to her complaint.

Raetta McCall then spoke. She said she also appreciated Mr. Eichel's attendance to the FLC meeting. Raetta questioned Mr. Eichel if there was a way to have access to the information on how to file a formal complaint. She said that one of the problems is that people do not know how to go about this procedure. She felt that if the Board receives several complaints things might get better. It would be heard in the psychology community that a person had a complaint against them, and the word would get out and they would do a better job. Could there be handouts or a link to the website to get this information so people would be in a better position to make their formal complaints. Mr. Eichel responded that there could be a link to the Board of Psychology Examiners. Harriet said that what the board needs is this list on how you go about filing a complaint, because that board would be the ones to adjudicate the complaint. Senator Sorenson suggested that even though Family Court would not want this on their website, it could be a good idea to have this information at the Pro Se Center.

Someone else spoke up and said it has become obvious that one judge always has the same evaluator, even though it has been said the court has nothing to do with the appointment of an evaluator. She complained about a custody evaluator who ignored proof of abuse to a child – there were two adult witnesses! That evaluator went to court and denied that this abuse had ever been discussed with him. She said regarding fees charged – this evaluator had a retainer fee of \$1,500 and it is now \$3,000. She said she spoke with someone at the last meeting that this evaluator is now charging \$5,000 for a retainer. She spoke of many different occasions that this particular evaluator made many false claims regarding payment of fees. They had proof that he did not tell the truth in his statement – he then recanted what he had previously claimed. Also, he over-charged on visits that didn't happen, and he had charges for them. There is a problem in regard to a refund that he should have made, but in two years this has not been done. She said there are a lot of concerns from the untruthfulness and the way that visits are conducted, and the fees.

She felt that there should be a fee schedule posted and accessible to an attorney. She said that she did not feel that it was a matter of the fee being paid up front so that the findings would not be biased, but she feels that there has to be some kind of consistency.

This particular evaluator just seemed to quote fees just off the top of his head – nothing was consistent. There were threats to the clients. She stated there are several families that have been linked to this same evaluator and having the same judge. There should be something done about that. When an evaluator has another person do a particular test, the evaluator should not be the person writing the report. In looking at his history in previous cases, he never makes his complaint on *what is best for the child*; it is always in favor of the *parent* – what works best for the parent and the attorney. She stated that she feels that is why this evaluator is constantly requested. She stated that this particular evaluator is a very dangerous person, and that he has disrupted many families. She said that when you do go to the Psychological Association to make a complaint you go round in circles.

Diane Metzger said that when you go to the Board of Medical Practice with a complaint they have a formal way of doing this, so that if someone can submit a complaint, and then it is dealt with. She said she didn't understand why the Psychology Board does not work in a similar manner. The speaker said she knew of a time a person making a telephone call, and after they were connected to the person in charge; they were told after naming the evaluator's name they were advised not to do it, because you will have a very difficult time. Don't do it until your case is completely over, because it will hurt you

Lynn Kokjohn spoke up and said that we need to know how to make a formal complaint. Harriet stated that if you send her the names of the people on the board when she lodged your complaint, plus the date of when you went to see them she said that she will *call* the head of the Board of Examiners and ask them how a person lodges a formal complaint. How do 2, 3, 4, or 5 people make a formal complaint? What if it is an important person in the community – will they consider the complaint? Also, why would they send it to DPA, because they do not have any standing in this kind of case at all? She said emphatically, none!

Harriet stated that it is nice that we have written up the recommendations, but we need to put this information on the website. People have to look at the recommendations and say this is what I need from you before I start. I need to know what you are going to do, what it is going to cost, who has to pay for this –me or my almost ex-husband, what tests you are going to use and will you doing them yourself? Then it becomes a matter for the public to know what questions that are needed to ask, and if you don't like the answers you then able to say – no I refuse to go to this person. There are two other names. Let me go to them and interview them! In this way the public has a way to protect themselves. Harriet said we cannot control every person in the State, and you cannot make people go to certain classes, you cannot make them respond a certain way, but what you can do is take their business away and say no we will not go to this person anymore. Remove this person from your list.

Dana suggested to Mr. Eichel that maybe the APA would be willing to have a list of evaluators on their website, because she thought this would be helpful for the lawyers

as well. Another thing that could be helpful would be if it was noted if a particular evaluator had particular expertise in an area such as domestic violence.

Senator Sorenson said that the next item on the Agenda is Legislation and she expressed that the key thing to do was to look at the new legislation. She began by saying that the first one is **HB 209** which relates to the guardianship of the child.

This Act permits a parent guardian or custodian suffering from a progressive chronic condition or terminal illness to make plans for interim or permanent future care of a child without terminating the parental or legal rights of the parent, guardian, or custodian.

Dana explained that this bill just allows them to give someone else guardianship without giving up their parental rights. It was decided to look at this further, since there seemed to be some confusion as to just what was the intent of this bill.

The next bill on the agenda was **HB183**.

This legislation codifies the Court's existing procedural authority to issue a Writ of Injunction/Sequestration in Protection from Abuse actions. New § 11 codifies Family Court's procedure to issue an order to any law enforcement agency to seize firearms of the respondent if the petitioner has shown that respondent has used or threatened to use a firearm against petitioner, or petitioner is fearful that respondent may use a firearm against petitioner, and respondent has possession of a firearm that the petitioner can describe both the type and location of the firearm.

James Morning said that in domestic violence issues they are required to turn weapons over, but Dana stated that they are not turned over. Senator Sorenson said that what this bill does is allow a state law enforcement agency to go in and take them. After much discussion, it was decided that the FLC would give their support to this bill.

HB 286 This bill relates to the Healthy Children Program and Senator Sorenson and Representative Schooley are both involved in this. Senator Sorenson stated that only about one-half of the children are eligible for child health and the S-chip program in the State of Delaware are enrolled in it, because we do not know who they are. This bill is asking that school districts and state agencies to share data for the purpose of enrolling the children in this health program. Diane Metzger said that she had just read that the fee of \$20 was too high for some families, and Rep. Schooley said there had just been a bill introduced to get rid of the premium.

Senator Sorenson said that this next bill **HB 294** is one that definitely relates to Family Law.

This Act ensures that our returning military armed forces members, including National Guard, who because of their deployment, had to transfer placement of a minor child, that it is rebuttable presumption that upon their return, shared custody is appropriate.

This bill relates to shared custody, and it is only giving it back once the service man or woman has returned home. Senator Sorenson asked and all agreed that this would be a bill that FLC would support.

Senator Sorenson said that the last new piece of legislation is **HB 212 w/HA 2)**

This Act expands the coverage of the Child Safe School zone Act to include other areas that children may be gathered such as parks, recreation facilities, etc. for sex offenders.

Senator Sorenson said she thinks that we have talked before that all these child safe laws particularly in a city setting - it would be almost impossible for someone to live. This pertains to bus stops, swimming pools, gymnasiums, everywhere children are. James Morning said that this causes other problems like in Florida where they live under bridges since they have no place to go. Then they disappear in the system and then you don't know where they are. Senator Sorenson said she felt the FLC needed to find out more about this bill and discuss it later.

At this time, Senator Sorenson had to leave since she was scheduled to present her paper at the Life Conference. She said the Commission could adjourn, or go to Public Comment or they can go over previous legislation. She left Lynn Kokjohn to take charge of the meeting.

James Morning spoke up and said he would like to discuss **SB 55** which gives one free birth certificate to the mothers of children born in Delaware. He said that we had discussed this, but nothing has been done. They give birth certificate to the birth mother only, and then you bring this guy into court for child support, why isn't his name on the birth certificate? Why not give him a free birth certificate too?

Also, he wanted to discuss **HB 54** about the computer technician. He said everyone is becoming a law enforcement spy. You take your computer in - it might not be your computer, or you might have bought it from someone else, and you take it in for repair. This person sees stuff (porn) on the hard drive which I would have no idea that it was there. Now they are going to come and get me because it is my computer. I do not support that.

Lynn Kokjohn then opened the meeting to Public Comment. She said that she hoped that those wishing to speak will follow the format for public speakers that was implemented last year. This was done so we could look at the purpose of the FLC, look at legislation and how we can influence legislation, and if you don't have a copy please obtain a copy. It talks about what is your issue – instead of having all of the emotion.

You are allowed 5 minutes to speak, so use your time to tell us what we can do to help you as opposed to venting; because that is something we can't react to.

Our next speaker had a question regarding 'The Healthy Children Program' and she wondered if they were canceling the free meal. Rep. Schooley responded no that was not going to be done. She stated that children who receives reduced lunches, and if the parents give their permission, that information that they would be eligible for the CHIP program would be shared with Health & Social Services, and they in turn will advise that family that they are eligible for the reduced price health insurance program. The speaker also advised that when a mother fills out the birth certificate she has the option of one or two copies when they fill out the original form. She also said she knew of situations that when they went to court for child support she knows that a judge will then order that the father's name be entered on the birth certificate.

Lynn then asked for additional public comments. She recognized Roger Hall.

Roger Hall – He said he wanted to thank everyone for being able to come to the meeting and for being able to share. He said he came before them as a reasonable guy in an unreasonable circumstance and kind of echoing what Mr. Morning has stated about false paternity and being married and then you are on the hook for child support when there is a whole lot more to the issue of child support. The medical aspect is what's of major concern. He said he would just define what paternity fraud is. This is when the mother of the child reports that a male is the biological father without advising him, government officials, or the courts that someone else could be the father. Right now there is no law that requires truthful disclosure of material facts to the alleged father. He said he is at the meeting to make a plea that you look at this and make equal statute of limitations in law. In our case the mother and he are in agreement that things need to be changed because the child is handicapped, and she was scared to death to tell him.

Now the reality is that they need to involve the biological father for medical support. He stated that in his comments at the Public Hearing he highlighted some of the most horrific things that can happen and some of those folks he has spoken to on the telephone, and by not having an accurate family medical history in hand to be able to navigate the child's medical care. He stated that he has been working with Senator Bruce Ennis on legislation, and he said he would like the FLC to look at it. He then said he would answers any questions that anyone might have.

Lynn asked if the legislation been written and he replied it has, but it does not have a number as yet. Lynn asked Drew if he could get a copy of this bill, because at the FLC next meeting, this could be an issue that we could address that was from the Public Hearing.

Mr. Hall said you are either the adoptive father or the biological father – there shouldn't be anything in between. There should be circumstances that govern that. The Delaware Uniform Parentage Act is very vague.

Right now the mother and I are working together to get things worked out and the court came against us and said that they couldn't do anything. We are taking issue with that. It has been through Family Court to the Delaware Supreme Court and back to the Family Court. He said it violates the fundamental rights of parents to be able to make decisions concerning their children. I have raised the child and I am not kicking him out. I am having to advocate for him, because, I have had him to the doctor and then I am asked medical history information repeatedly, and I cannot answer any of that. In my speech I spoke to the horrors of what that can do, and he said in this age of developmental disabilities and disease that we need to make medical history important here, and to be able to care for a child. In California, little Casey's parents – that was horrific what happened to her. She had cancer – leukemia, and there are over 30 types of cancer that can only be diagnosed with accurate family medical history. He said he wanted to note too that in Ohio that they have recognized this and there already is a law in place and it is HB 242. They did a judicial impact study that he wanted to share with the FLC. (I did not receive a copy of this) In closing he said he appreciated the Commission's time.

Lynn Kokjohn said she wanted to thank Mr. Hall for coming to the Public Hearing. She said that this is a new issue and not one that we have talked about before. She said that she appreciated that he brought this up to their committee. Diane Metzger said it was amazing to her that when she asked patients about their medical history, and they would reply that they did not know anything about their medical history. She said that there should be a way for everybody to at least get their medical information. Harriet Ainbinder said in this age everyone should know their medical history. You would not have to divulge the name of the parent, only the medical history. She mentioned how adopted children always feel this loss – they even feel that when they are grown, and she said if they were able to get their medical history that would help.

Lynn asked if anyone else had any comments to make. There being no additional public comments the meeting was adjourned.

Respectfully submitted,

Jean C. Ardis, Secretary
Family Law Commission