

## **FAMILY LAW PUBLIC HEARING MARCH 16, 2005**

The Family Law Commission held its annual Public Hearing at Legislative Hall in Dover, DE on March 16, 2005. Senator Liane Sorenson, Chair of the Commission, opened the meeting at approximately 7:00 p.m. She welcomed everyone in attendance this evening and introduced the members of the Commission in attendance. They were as follows: Ellen Meyer, Esq., Dr. Harriet Ainbinder, Judge William Walls, Lynn Kokjohn, Allene Poore, Jud Bennett, Dr. Rhoslyn Bishoff, and James Morning. We also had in attendance Katherine Jester, Administrative Asst. for this Commission, and Nicole Kennedy, our liaison from Family Court along with Jean Ardis, Secretary for the Family Law Commission, and Doug Greig the timekeeper for this evening. Representative Bruce Ennis was also present in the audience. Senator Sorenson explained that Senator Harris McDowell could not be here this evening due to previous commitments for St. Patrick's Day.

Chairman Sorenson explained that 13 Del. C. § 2002, states the Commission shall consist of 16 members – all citizens of the State of Delaware and it should be made up as follows: 2 citizens from each County, 2 domestic relations attorneys, 1 Judge from Family Court of Delaware, 2 members of the House of Representatives (one from each party) 2 members from the Senate (one from each party), 1 pediatrician licensed to practice in Delaware, 1 family practice physician licensed to practice in Delaware and 1 child psychologist licensed in the State of Delaware.

These members of the Commission are appointed jointly by the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

Senator Sorenson stated:

The Commission *may* do the following:

- 1) Conduct public hearings
- 2) Invite written comments on Family Law from members of the public
- 3) Review and comment on legislation affecting Family Law

The Commission *shall not*:

- 1) Engage in the practice of law
- 2) Give legal advice of any kind
- 3) Intervene directly or indirectly with any case pending in any court

Senator Sorenson said that she knew that from previous meetings there have been complaints regarding the length of time it takes a case to come to trial, and she stated that the Commission has actively supported Family Court when they went before the Joint Finance Committee to request additional judges for Family Court.

She explained the ground rules that will be followed this evening. Each speaker will be allowed to speak 5 minutes, and they will be notified when their time is running out. They are encouraged to leave their written remarks with the Secretary, or by placing them in the basket provided for this purpose. She then called upon the first speaker of the evening.

1. **John Parris** began his testimony by explaining that he knew nothing about the hearing, but Representative Pete Schwartzkopf called him to tell him about this Public Hearing tonight knowing that he would be interested. He introduced himself by saying he is a single father, who lives in Lewes, DE. His first encounter with Family Court was on December 23, 2003. He has claimed responsibility for his daughter, and he told the Court that he would be responsible for the remainder of his daughter's hospital bill of \$752 and that he would provide the medical coverage for his daughter. On January 22, 2004, there was a mediation hearing for custody which the mother did not attend. He was told by the court who said they needed all available numbers. He showed up an hour later, and he was told that they could throw out the petition, but could not grant custody. A short time after that he and the mother settled on their differences and agreed to joint custody. She moved back in with him, and they were together until 11/23/2004. When she moved out they continued shared placement with 50/50 support. She then applied for Medicaid which caused us to go to Court. He was to appear in Court on 2/22/05. On the 18<sup>th</sup> of Feb. he called the Court to inform them that because of his job he would not be able to attend. He asked them if there was anything that could be done to continue it, and they told him it was too late, because that Monday was President's Day. They did offer to do a teleconference. He said that was not something he could do, because he is manager of a restaurant in Dover and could not shut down the restaurant while he participated in this proceeding. He said he would try his best to get there. On the day of the mediation one of his fellow managers notified him that he would be unable to come in early for him. This was about 1 ½ hrs. before the hearing. He called three different numbers for the Court – no one answered and he left messages giving his work number and his cell phone number, but received no reply. He called the mother and left a message with her telling of his problem. He arrived at the Court late, and they gave him his Mediators direct line. He was 20 minutes late to that hearing. When he arrived they told him to sit down. They found him in default. They did not look at the record to see that he had joint custody/or shared custody/shared placement or anything. They changed his amount from \$401 child support per month, on top of the full medical insurance he already was providing for his daughter to that of \$700 a month. He said he doesn't mind, but he cannot understand this decision if this amount is supposed to be 50/50. To him it seems he has to pay everything. Needs explanation as to why they came up with this amount.
2. Next Speaker is **Richard Griffiths**. Mr. Griffiths said he was given sole custody of his three minor children in 1998 by the state of

South Carolina. The mother brought the children across six states to this state where she was given welfare, daycare assistance, food stamps, and Medicaid. He was then sued in court here to pay for all that assistance she was getting here while living with her parents in Hockessin, DE. By the time that all got settled, he decided to relocate here from South Carolina to the State of Delaware at the end of 1998 and early 1999. His case was not heard, or any custody issues settled until 2002. Meanwhile they granted her back support, because he was only paying what was issued by the state of South Carolina. He is in arrears of \$11,000, because of the differences between the two states. It is not fair. He said there is a lot more to being a parent than paying money on a monthly basis. He takes his children to the doctors, the dentists, Little League, to the things after school. He supports everything they do. He sees his kids about 45% of the time, and the only reason they do not have shared residence is because he doesn't live in their school district, which he said he thought was ridiculous. He is willing to drive them back and forth to school and make the 30 minute trip each day. The rules are not fair. They need to be changed. There are a lot of people out there who would like to be good parents, but they can't because they are restricted by these rules and procedures that are in your Family Court. He said he has been reading in the paper and said last year a woman applied for a PFA against her husband, or live-in boyfriend. She was gunned down by that person who was outstanding in contempt because of not turning in his gun to the New Castle County Police Department. She was gunned down in the Police's headquarters parking lot with 20 policemen standing around. He asked how are we protecting these people. There has to be something else besides what we are doing now. It's not right. His very first encounter with Family Court was in the old building in Wilmington. He said there was a sign there that indicated *they could not handle your complaints about the wait due to the cutbacks by Governor Minner*. (He waited about 1 ½ hour.) This was a sign posted in the window when you checked in. He said he thought it was a joke, and not very professional. The sign should not have been there. In the new building, you still have to wait, but you do not see that sign anymore. In one state, this case would have been considered as a kidnapping, but by the time this case was settled in Delaware, Delaware decided that he owed \$11,000 in back support to her. He asked how that could happen? This case was not even heard in our Court until 2002. He said that he feels there is a lot more to being a parent than just paying a monthly payment. He said he felt the rules are not fair. He said that with the rules now in force restrict you from being a parent. It becomes all one-sided.

3. Our next speaker was **Gary Cooke**. He began by saying that he would be placing his written comments in the basket, but he would like to make a few other comments. He said that been dealing with Family Court for the past 10 years. He stated that he is hearing the same age old complaints where you have victims who have been violently assaulted in their homes and when that person who has committed the assault comes to court he is not prosecuted as he should be and is allowed out again on the street. He said when an individual is not safe in their own home, then we have failed the Criminal Justice system in Delaware. He stated that he hoped in Family Court today that everyone is heard. All the people hear is that the Court has precedents, rules, formulas, etc. He said some of these precedents were established when Ozzie and Harriet were alive and well. He stated that he felt that Family Court has to grow and evolve in order to survive in this state. You have double standards where a child who commits a crime that would have been punishable with capital punishment at one time and now it is a counseling situation. You have husbands who brutally assault their wives that are ordered to seek counseling or anger management. He stated that they should do jail time.

I have forwarded Mr. Cook's written comments on to Nicole Kennedy at Family Court for her input.

4. Our next speaker was **Jerry Ledwith**. Mr. Ledwith has appeared to the Family Law Commission stating his case. He said he now has the paperwork to document the problems he has encountered. He said he is the court appointed guardian for the case he is involved in. He stated that everyone seems to be afraid of this person (the women's ex). This person has a total of 18 different crimes charged against him. Because of this case, the person he is representing is suffering from R.S.D (a stress related disability). Her ex-husband has stolen everything from this woman. He wanted to know the reason there were secret phone conversations between judges and lawyers with only one side of the party involved, he wanted to know why a lawyer would be involved in secret conferences with the Court. He has thousands of questions that he cannot find answers to. In the meantime, you have a permanently disabled woman who is disabled for life after 20 years of marriage who will never be able to support herself.
5. Senator Sorenson then called upon **Robert Van Pelt**. He said he would like to ask a question of the Law Commission. He wondered who on the Commission has been through the divorce process - meaning divorce, settlement, custody, and/or child support in the Family Court? He said it took 9 months for his, settlement took 20 months, and child support has been 5 months, and it is in

limbo, and custody as currently scheduled will take 11 months. He then proceeded to show a picture of his two children ages 6 and 3 ½. Right now he will have about 4 months to be with them until he loses them due to the processes of Family Court. He stated that is why he is here. He proceeded to give the following recommendations:

- 1) Get the court process to be presumed *open*! From his experience in the last two years he knows enough that we will not be able to get jury trials and the openness of the court unless checks and balances are put in place. He was told by his attorney that a lot of the decisions in court are based on your personality and how you look and act in the court. Facts are not that important. The court doesn't care about the details. He said he felt that there are procedures the court could put in place to protect privacy and still be *open*.
- 2) Research and pass legislation in the next two years that will limit the appointed term of judges to 8 years and not allow them to be reappointed. If it is good for the President of the United States, it is good for the judges. He said he had two truths supporting limiting the terms of judges.
  - A) First is that the judges have to sit there everyday and hear parties bitch and whine about their case. It's a *he said - she said* issue. They get tired of it all, and I don't blame them. He said that if he had this correct, even Judge Walls in the last FLC meeting said that he wished the cases were less than an hour. He stated that the judges grow numb to the people in the process everyday which translates to children not getting the best consideration and care. If you don't believe this, spend a day or two in the court. You will see the atmosphere. In his research of talking to more than 100 people, the judges that seem more open and listen to the case are the most recent appointees.
  - B) The second truth is that at \$147,000 a year, you will not have any problems getting judges to serve.

Now he said this is why his children will be taken from him. From day one, I have publicly stated that all I want is a fair chance in the court. I want a level field, a 50/50 chance. After years and thousands of dollars, I have learned that just does not happen. My belief that my children will be taken is based on what has happened so far and that is:

- A PFA (protection from abuse). I was served a PFA in Dec. 2002 from my ex-spouse, because I was kissing my son goodbye in her van one cold morning, and she thought I was going through her work bags/briefcase. Yes, there are more details, but this is the short of it or the point. After he got an attorney and paid \$1,800, the attorney stated to me before he

even heard the details of the events was – you will lose this case and the opportunity to be with your children. “Wait a minutes” he stated, “I have several facts that will prove the PFA was not an abuse case. I have evidence and a witness (which happened to be my son). “Mr. Van Pelt”, the attorney said, “the court doesn’t care about that.” He said, “From my experience in the courtroom, the commissioner/judge isn’t going to like your personality, and you will lose.” “They don’t care about facts or what your child has to say. If you want to see your children – you sign over your house to her.” That is what I did and she settled the PFA. I had my children back within 6 hours.

- Settlement – The following are a few reasons why the court should be *open*. In my case the judge looked at the income for both parties in the case. I am paraphrasing what my attorney told me, the judges stated **if the salaries were reversed, Mr. Van Pelt would be paying \$1,000 a month in alimony, but since it is the other way around; I’ll have to see what is in the case.** The second event was that the spouse, proven through obtained documents hid and deluded over \$40,000+ in retirement money. In the pretrial meetings on this fact, the judge stated as I paraphrase the attorney “I hear what you are saying, but I can’t let her go away from the marriage with no money in her pile.” The spouse filed a 16c that stated she had only \$10k in savings. This is a person that makes triple the average census salary for Sussex County. She made total salary equal to me for 18 years. There was no punishment for false information on the 16c and there was nothing on the 52d, but I want 50/50. There was no penalty for failing to comply with discovery. He said his attorney stated that to file a motion to get her to comply with discovery requests would just get the judges upset. He said he would not recommend it. Because of the judges pretrial statements, I had to settle out-of-court for tens of thousands paid out, because all attorneys consulted stated the court could and would possibly double the amount I would pay out even though I had 100s of documents proving my argument.

*My one sentence of whining.* At the same time this was going to trial and the other party claimed to have no money, she built an approx. \$180K home, replaced her van, hired a nanny for the children, bought the car for the nanny, and had a personal organizer working in the home for months. Somehow these facts and the 16c filing don’t match up.

\*\*\*Also in the settlement process, I would state that you strike Del Code section 1512, which says that you can’t get a higher education and ditch the spouse without the court compensating in some way. The attorney stated the judge doesn’t care about who paid for the education and related expenses. This law was not followed in my case. My spouse during the marriage with marital dollars received a Masters in Education, a Masters in Nursing, and a PhD in Nursing up until only the dissertation was remaining. I

settled my divorce with no spousal maintenance and was unemployed from a company permanent layoff.

How will I afford to retrain to provide for the children?

- Custody – If you take the cases where there is abuse, drugs, abandonment, parties leaving the state, and all the bad stuff out, his attorney told him how many times that a man has been awarded custody in the cases she has litigated with even attributes in front of his assigned judge – two in two years. The DCSE states clearly on their website 90% of placements are with the female. Is that fair? Where is equality in the law for gender? We spent years talking about HB99, but nothing on equal parent rights. All he asked for tonight was not to have the Law Commission to fix his case. He is asking for a 50/50 chance to see his children more than every other weekend. The nanny will get to see them more. He said he was 39 years old when he had his first child. When the custody case was filed on me, he told the attorney he wanted to stay home with my just turning three-year-old at the time and take care of her, since I was just laid off from a 20 year job. The attorney stated I could not do that. Why he said. For custody, the judge will not like that and it will go against you. **The judge believes that the child must be ‘socialized.’** He wants to see her in pre-school or daycare. So he was home for months, and his child’s impressionable years continue to be spent in preschool. This is totally unbelievable.

In conclusion, there are many recommendations that he has for the FLC. He said that he loves his children, and that he is here for his children, and that he will continue to fight to see his children. Thank you.

6. Our next speaker to testify was **Paula Q. (Tawes) King**. She has her attorney with her and asked that he speak at this time. Her attorney’s name is **Patrick Vanderslice** and he began by saying he wanted to address the PFA order. What he said was that he would be brief, but that what he would like to talk about was the PFA statute. In working in Family Court and dealing with the PFA’s being a Family Law attorney – specifically 10 Del. Code 1045 and some of the relief that is presented in that statute – actually being S.1045 – (9) specifying that a person may not transfer or hide property, he said he thinks this is something that should be clarified in regards to the PFA process. He said he was here to talk about the law and some of the frustrations with the Criminal Justice System as a violation of this section as dealing with the safety of the petitioner. One of the problems that they ran into

with this provision of the PFA is that the Attorney General decided not to prosecute, nor was there anything done through the Family Court process. He said he thought that maybe the PFA statute needs to be looked at maybe through a task force, or the sub-committees that are out there. The statute needs to tighten up some of its definitions or eliminate certain reliefs. He said that if there are certain things contained in them, and if they are not going to be enforced, maybe it would be better to remove them. He said the issue should really be a part of the property division process. It's hard on the attorney to properly advise their client, when provisions aren't enforced. Along with this is the question of how long does the PFA order extend? The Court is allowed under the Code to extend a PFA up to six months. What he has seen is if there is a violation the PFA could be extended if the violation goes against the safety of the petitioner, so there needs to be a clarification, because if there is a violation, where there was in this case, as property was given away, that isn't a reason to extend the PFA. What he was trying to say was that it needs to be looked at, and spelled out more, because you can't tell your client that yes there was a violation of the order, but even though the Code says the PFA can be extended - it won't be. When looking at Domestic Violence models, they have seen the taking of property and destroying of property, as part of the Domestic Violence cycle. He said that this is his biggest problem with the PFA statute, and he thinks it should be looked at, tightened up, and given more clarification to help attorneys and commissioners who hear it and clients who file so the protection under the order is actually there.

7. After Mr. Vanderslice testified and **Paula Q. (Tawes) King** then began her testimony by introducing herself, and stating that she is a Domestic Violence Victim/Survivor. She said she was grateful for the opportunity to come before everyone this evening with her concerns, not only with regard to her own case, but more importantly, for other victims' rights, now and in the future. She said she had to speak from her experiences, somewhat, but more from her heart, at this point. She said she wished to speak to each of you regarding my concerns of the Protection From Abuse Order (PFA). She said she was troubled by her knowledge that it has been approximately eleven (11) years since modifications have been made regarding this law. She said she remembers the question that she asked Senator Joseph Biden, while attending a Congressional Fire Service's Institute Caucus Dinner in Washington, D.C. in April 2004. Her question was "Why does there seem to be no consequences for violation of a PFA?" These violations occurred for me seemingly on a regular basis during my nineteen (19) month experience, since it was placed into effect on my behalf. The intent of the content seems clearly stated in the

law, but as is evidenced in many situations, needs clarity in order for all parties to understand how it is to be used. She believes that we have become complacent in areas other than safety issues, yet to her, every detail of this law should be treated with the same regard. Failure to do so emboldens the defendants to continue their abusive cycle of power and control. Also, this shows little or no respect for the Judicial System. She specifically referenced Title 9 §3, procedure 1045, "Item 9 – RELIEF AVAILABLE". This prohibits respondents from transferring, encumbering, concealing, or in any way disposing of specified property, owned or leased by the parties. Obviously, she notes this because this was done despite being advised by my attorney in September 2003, and by the PFA wording, and by Judge John Henrikson of the Sussex County Family Court, by the respondent, David M. Tawes, her ex-husband. She immediately advised the Attorney General's Office, and was told they could not prosecute because this was not about a safety issue. Instead, she would receive relief civilly. However, I was later advised to present a list of all marital property items disposed of, and bank account statements indicating that Mr. Tawes had dissolved financial assets as well. One being a substantial account that she knew he had hidden from the Internal Revenue Service, because he owed substantial taxes accumulated during a time when she did not work. Subsequently, it was found in her favor, that she was not a part of this fraudulent attempt. This was accomplished through Innocent Spouse Relief. Since he has appealed this decision, further victimizing me, knowing full well that he filled out his own W-4 forms, claiming six (6) dependents during the 2003 Tax Year, when in fact, there should have been only two (2). She was told to take this information to the State Police at Troop 4, in Georgetown, for an investigation. She cooperated fully with this request. Unfortunately, on February 17, 2005, testimony was given by the State Police Detective, that this was not investigated, at the request of the Attorney General's Office, because it was not considered pertinent to my safety. Therefore, it would not be handled as a criminal matter. This State Police Detective, by his lack of investigation of such, was not even aware of the Judge's finding of contempt on August 24, 2004, with regard to this matter. This was also pending in the Commissioner's Court, waiting for a ruling from Judge Henrikson, for a finding of Contempt of the PFA. His testimony was truly unbelievable for my Attorney, as well as myself. She said she can assure you, as a victim, there is no difference between physical abuse, than stripping me of everything that I had contributed to the marriage of (16) years. In my former husband's case, this began of pattern of harassment civilly, emboldening him to continue his control of me. He received several contempts, but no sanctions. We proved threats against

myself, my attorney, and his subsequent arrests on Terroristic Threatening Charges in Kent County Delaware of my younger son, Jason, with third party contact to me. In Court, on February 17, 2005, regarding the continuance of the PFA, still no sanctions were imposed. Yet this Commissioner and Judge referred to Mr. Tawes as *“One of the most bizarre and objectionable behaved individual that they have ever deal with.”*

I tried to make a difference, leaving no stone unturned, and searching for avenues of remedy, to no avail. These were even divulged to Mr. Tawes by this State Police Detective, who had informed me earlier that he had just gone through a messy divorce himself, and found Mr. Tawes to be very personable. I find this outrageous, because my confidentially, as the victim, was compromised.

To those that listened, she said she was grateful. To Senator John Still, she expressed her thanks for his letter dated October 21, 2004. At no time, has anyone that I have discussed the matter with, found that I distorted the facts in any way. I understand now more of what he advised her. It is much harder to see the picture from inside the frame. Now, that I can see the full picture, I am where as you suggested in your letter that would be a start for prompt review. In Senator Still’s own words, “that what consequences or other remedies need to be added for knowingly, repeatedly, and willfully violating a PFA. Then, after a decision is made, for these to be forwarded to the General Assembly, for any possible relief”. She said she believes that any person that is found to have been victimized, when proceeding through divorce, without a doubt, needs assistance and direction, for ancillary settlement to be heard at the same time as the final divorce hearing. This brings closure, and unnecessary further abuse, to an end, for the victim. Make no mistake, I do not want to blame shift, in any way, she just wants help for all of us affected by this terrible unnecessary violence. She said she knows now why it is easier for victims to go back to their abusive environment. She said she has learned courage, from rising above the fear, and have broken the cycle of abuse. By surviving the system, she has learned that there is much for us to do. You hold our future, and those of future victims, in your hands. I realize when I was young, I was sure of everything. In a few years, having been mistaken a thousand times, I am not half so sure of most things, as she was before. At present, she is hardly sure of anything, except a journey she has endured, and the lessons that she has learned. Most of all, she has maintained her standards, that she thought were gone forever, because of my failure to use them as I had been taught. Even with all the education that she had, she could justify staying in this abusive relationship, when she knew that it was destroying her self-esteem, and smothering who she really was. This was

quite a price to pay, but she said she had the courage and strength, finally, to make the changes necessary to be free at last. My future, and closure, depends on my passion to change, and make a difference in the lives of other victims. She asked for your leadership, experience, and support in accomplishing this, because, as I have even noticed in our world this week, the safety of all is at stake within our society, and we can no longer take a chance denying potential threats in any way. She quoted from John Wesley who said, "We must do all the good we can, by all the means we can, for as many as we can, in all the places we can, for as long as ever we can, for all the people we can."

In closing, Ladies and Gentlemen, it will take every pair of our hands, each heart, and a deep desire to make a difference. This law needs reform, and time is of the essence. Then, statistics will show that we have made a difference, and a statement that our system does work. This will enable our victims, and the chance of anyone suffering or dying, due to domestic violence, would be greatly decreased. This *Protection From Abuse Order* reaches all walks of life, and we definitely need to send the message of zero tolerance, whenever, and however, it is violated.

She concluded by saying she thanked everyone for their time, and desperately hopes, that she can be of help in this endeavor to protect the innocent, so we have a plan that will help and protect each victim, and empower them to break the cycle of abuse.

8. Next on the list was **Frank King**, but he did not testify.
9. Senator Sorenson then called on our next speaker who was **Raetta McCall**. She began by saying that last year she stood here and told everyone that she would be back if her concerns were not addressed. They were not. She said she has printed out and attached her last year's address, as I know that you do not like to hear the same issues year after year even if you, as a commission, have not addressed them. In fact, I received NO response from you at all during this past year. She said she would like to quickly address one thing from last year's hearing. At the very beginning, you stated that Family Court was open to the public. You then handed out a paper that read divorce, alimony, property division, and custody and child support hearings were **presumed closed**. Does that make a bit of sense? So this year, I have spent considerable time researching YOU, THE FAMILY Law Commission. I went to the Delaware Archives, and I read the bill sponsored by then Representative Katherine Jester. House Bill 699 was passed by the General Assembly in 1984. I believe Mrs. Jester had the best interest of the public in mind.

However, this commission falls short of the expectations that may have been in the minds of the legislators when they passed the bill. While at the Archives, I read the transcript from the Commission's 1999 open hearing, which, by the way, was the only information in the Delaware Archives on our 21 years of existence. Interestingly enough, the same suggestions offered year after year for improvement in Family Court were offered in 1999. While the information I read was informative, I have not seen any improvement in Family Court or your commission in the past 21 years. While you may have tweaked some legislation, nothing has been done to make a difference in Family Court or in the lives of those having to trudge through its hellish halls.

She said she began attending Family Law Commission monthly meetings in 2002. At the very first meeting I attended, Harriet Ainbinder stated, "I think I've been on this commission too long". After seeing the list of who has been on the commission since 1983, she said she believes that she is right. But she said that she is not the only one who has overstayed their welcome. I see where there are "charter members". Does that mean you are appointed to this commission for life Supreme Court judges? How many years, exactly is your term? House Bill 699 creating this commission stated members would have 3-year-terms. Now with the possibility of one second appointment, those who have been on the commission over two terms should remove themselves as they may be going against the intent of what the commission's founder had in mind. This commission has been stagnant for years. The February 2005 meeting had at least two members and a new chair. It was a refreshing change as the new members asked serious questions of Chief Judge Chandlee Johnson-Kuhn. Still, there are commission members that need to step down and let persons with new ideas, new passion, and new energy step forward.

You are a public commission. Therefore, your records should be open to the public. Minutes of your meetings and transcripts of these public hearings should be open for the public to review. After the 2004 public meeting, Karen Hartley Nagle and I went to Representative Buckworth's office to request minutes of your past meetings. We were told that was not possible. Why not? Are we not hearing each person's address to you this evening? Why were the minutes not available? What were you hiding? Even your monthly meetings are open to the public, and she said to those here tonight, she encouraged them to attend them.

House Bill 699 states that there are to be judges and attorneys on this commission. That's fair. But the judges should be 'non-sitting judges.' The commission would still get the benefit of the expertise and knowledge of a judge even though they are retired from hearing cases. People come before you because they are concerned with some aspect of Family Court. That concern may be

a judge's behavior, the behavior of attorneys, or any agency that is associated with Family Court. A barrier is automatically created when a person coming before you sees the judge who will hear their case. There is a reluctance to speak for fear of retribution. It is a conflict of interest and the probable creation of bias against the litigant the next time the judge sees them in court.

She said she has listened to attorneys on the commission praise themselves and other attorneys in Delaware. Well, if Delaware Family Court attorneys are so great, why did Judge Chandlee Johnson-Kuhn state statistics show 75% of all litigants are pro se litigants? It isn't always a lack of money. Many times it is because of previous experience with unscrupulous, fraudulent, unethical attorneys. Believe me, no one chooses to walk into the Hell of Family Court alone without a very good reason.

Much has happened in the year since we last met in this room. John Flaherty of Common Cause sponsored public hearings in all three counties of Delaware, and the public is coming together to voice concerns and offer solutions.

She said that she concludes this year's remarks with more knowledge than I had last year. To all of you who are here seeking answers or resolution to your concerns...this commission cannot help you. They are a steam relief valve where we, the public, come and blow off steam; as with steam, our concerns go **nowhere**. Only we, the people, can make the difference by our standing together, calling our legislators, and insisting on accountability within the entire Family Court system. The Family Court system is broken. If you believe you will go to court and have justice, you will not. Opening the court and shining light on the deceptive practices, fraud, and corruption is the only way. Open court offers the chance for justice as judges 'may' be more inclined to follow the rules of law and procedure when they know they are being scrutinized. When an attorney says to you, do you really want your friends or enemies to hear your dirty laundry in an open hearing, understand that closed doors is what keeps Family Court able to operate as it does. People are too busy with their own lives to come and be voyeurs into yours. Delaware Court Reform Initiative, along with Common Cause, is concerned for the integrity and accountability of our court system. Each of **you** has the ability to stand up and speak up for change. She said she hopes that you will do that. This commission is not going to do it for you. I ask each every person here to join the efforts of opening the Family Court. Justice works best when exposed to public scrutiny. As she stated in the beginning, I would like a response to my concerns and suggestions from 2004. Because I do not believe I will get such a response, I am going to propose the Sunset Committee review the Family Law Commission in 2006. My recommendation would be to have you disbanded. It is a waste of

time for you to meet and a waste of time for the public to come and vent. As you are, you give false hope to hurting people. It is time for improvement in Family Court and change in the mindset of those on this Commission.

10. Senator Sorenson then called upon **Shellie Isiminger** our next speaker for this evening. She began her testimony by saying that She was here before us to speak about the aspect of the Family Court dynamics, the role of a forensic evaluator is custody determination. This deals directly with the issue of custody in Family Court and the long term effect that they have upon children's lives. She said she was requesting that the commission further research custody evaluations and to place this topic on their agenda. Protections need to be put in place for the well being of our children's lives.

First, she said she would like to pose the following questions for reflection:

1. In a courtroom setting regarding a custody dispute, who most often will carry the most weight? **A child custody evaluator**
2. Are there any standards or guidelines that these evaluators are held to in Delaware? No. As consumers we have more protection in the purchase of a car. Psychologists are wide open to be litigated.
3. Are these evaluators usually trained in domestic violence? Most are not – social workers and police often have more training.
4. Are these evaluators trained in the area of sexual abuse? Most are not.
5. What is the average cost of an evaluation? \$5,000 and up. I am aware of one individual in today's audience that has paid upward of \$12,000 and did not even receive a report.
6. Can an evaluator predict the future outcome of their recommendations? No, therefore should they be making recommendations"
7. Are the evaluators required to give a written report of their conclusions. No. The court sometimes has a report; often the parties paying for the process receive no report at all, even though a waiver of disclosure is often signed by all parties.
8. Are our children at risk for having a cookie cutter approach in these evaluations? Yes, we have no standards, uniformity, or guidelines for these processes.
9. Are these evaluators monitored in any way? NO– The only present recourse is to litigate and sue if the practitioner has been negligent.

Based upon just a few of these points that I have outlined, there presently are no consistent applications or uniformity set forth when a forensic custody evaluation is conducted. I recently attended the

Delaware American Psychological presentation on *Psychological and Legal Issues in Child Custody Determinations*. What I came away with was that among the psychologists themselves there were different methodologies and preferences in regard to testing and analysis. As a body, they agree that investigative techniques and principles were the most crucial in making an analysis. Within the community there is even discussion between the judicial entities and the psychologists as to whether the psychologist should even make the final recommendations as to the final outcome for the child. In a NY Times article, Dr. Wittman, the co-director of the Center for Forensic Psychology in New York State says “*Forensics do provide courts with useful recommendations on custody and visitation is inappropriate, even unethical. We have become like mini-judges.*” I have heard the commission discuss the extensive selection process of our judges and the continuing educational units and expertise that has been developed among the judiciary. I believe the citizens should have a return on their investment by having the judges **judge**, not the evaluators.

I would like to share a statement that was made by one of the psychologists at the Delaware APA seminar. To paraphrase, a statement was made that a psychologists’ recommendations were not allowed in a lower Delaware courtroom by a judge. I say kudos to whoever this wise judge was! A custody evaluator should not be the final word in a custody determination. Our courtrooms should have evaluators that are consistent with standards, only data not recommendations should be given. This is highly subjective and always open to interpretation by all parties.

Therefore, I am suggesting than the commission seriously follow suit with the state of Florida and West Virginia in setting forth some basic guidelines for the evaluators. Both states have enacted legislation that follows the recommended guidelines that have been in place with the APA since 1994. The APA has applauded the efforts of these states for the benefit of both the psychologists and the clients. These guidelines can be viewed as a win/win for both the evaluator and the clients. For those evaluators that are already following the recommendations set forth by the APA, these will be welcomed. She concluded her testimony at this time, but the following is a continuation of her written comments - *This will provide protection from frivolous litigation to those evaluators that are following the APA Child Custody Guidelines already. From the perspective of those being evaluated, it will provide some guidance and protection to insure that the evaluations being handled in an ethical and consistent manner, not through a sound bite testimony or cookie cutter approach where one size fits all.*

*I believe this is a small beginning in this arena. This will not readily take care of many of the concerns that do and will continue to arise with these evaluations. There are many other alternatives that are currently available. These other alternatives have been deemed to be viable options and have addressed the exorbitant costs that are presently incurred with*

*these evaluations, the thoroughness in addressing family dynamics for the sake of the children, and a higher rate of efficiency.*

*The issue of custody evaluators and the long term effect that they have upon our children's lives is a serious one. Our children are the ones that must cope with the eventual outcomes of these custody disputes for the rest of their lives. For their sake, they deserve to have those that will dramatically affect their childhood to do so in a manner that will not cause further harm or trauma to them.*

*There is a cry of outrage over these evaluations across the country and more specifically in the state of Delaware. The issue of custody evaluations and the lack of uniformity and consistency have been recognized by the American Bar Association, American Association of Matrimonial Lawyers, and the Association of Family and Conciliation Courts. This topic is highly volatile and continues to be debated by all sides that are affected.*

*Briefly, I would like to mention some other methods that have been proposed or are being employed for arriving at custody:*

- 1. California requires specialized training and continuing education in the area of custody and family dynamics. Certification standards have been set forth by the state and only those that are certified may conduct as evaluation. This is a highly involved process, however the neutrality of the evaluations and costs are better maintained. The Washington D.C. family courts have just recently emulated California to address the issue of subjective evaluations.*
- 2. The following recommendation was made by Judge Newell at the DE APA seminar, to have fitness evaluations conducted. "A fitness evaluation is a determination whether one parent is fit to care for the child without regard to the amount of time he or she is to spend with the child." These are limited in scope but much less expensive.*
- 3. To use multiple methods of information gathering to investigate family members, criminal histories, substance abuse, neighbors, schools, instructors, therapists. To have personnel trained to investigate and report these finds. These finds may preclude the necessity of an evaluation. No recommendations, only facts, would be provided to the courts.*
- 4. The American Law Institute recommendations based upon the "approximation" or "proportionality rule" essentially, whatever proportion of time was spent with the child(ren) is to remain in effect for the children so that their lives will be disrupted in the least way possible.*

*Tonight I will be leaving some material with you. Our children's lives are being directly affected, so I hope you will take the time to truly review the materials that I am giving you. They are:*

*An Article by the APA monitor on West Virginia's legislation  
West Virginia and Florida statutes  
APA Child Custody Guidelines  
Journal of AAML on Custody Evaluations  
APA Child Custody Recommendations  
A N.Y. Times article*

*AFCC Model Standards of Practice for Child Custody Evaluations. An article on the ALI 2002 guidelines.*

12. The next speaker to be called upon was Jim Cresson, but he was here covering the hearing for the Cape Gazette, not as a speaker.

13. Senator Sorenson then called **Tom** and **Kathryn Hall**. Kathryn Hall was the person who came forward to give her testimony. She said her concern is the length of time the trial takes. She said she was not here for her children, but for her daughter. To give you an example of some of the things that go on she continued that it was grandparents' day at the school. She couldn't go, but her husband and her daughter planned to go. He kept the children out of school that day so they could not participate. The first time they went before a judge was in March of 2002. Then Judge Kuhn was promoted – and that was great for her, but that means that you have a six to nine month wait until you can ever hope to get before the court. Now keep in mind, this case began in 3/4/02 and it ended on 3/8/04. Then the papers came down on who was supposed to do what and it wasn't right – then you had to pay to have it corrected. It isn't right! Also, why can't these children be in front of the Court? Why does one person get to decide what their life is going to be? She said that this was what basically what her concerns were. Thank you.

14. Our next speaker was **Mike Dore**. He introduced himself as Michael Dore, and said he had recently run for office along with Frank Infanti. Along that road, on their run for office they spoke many, many people, in fact thousands of people and the common issue that was raised by these people was Family Court, child custody, real problems of abuse – sexual child abuse – all kinds of problems. It was amazing what they heard. The story of a woman 32 years old suddenly awakening from a coma because of what he liked to called trauma - during her childhood by going to the court and being returned to her home again and again to her former Marine Corp father. There are a lot of tragic stories out there. He said that what he would like to point out that a lot of the problems you are hearing, you are hearing nationwide. He said he had just gone to a conference – a Custody Conference in Albany. The problems you are hearing are not particular to Delaware. They are happening all over the country, so he doesn't know that it is just a Delaware problem. He did hand out some brochures, and he said he would just like to touch on a few of the points:

1. The number of Family Court judges is not growing at the rate the population is growing. He said they see that as a problem, as more and more people come to the State, more businesses relocating here, more adjudication in Family Court, but there has not been an increase in the Family Court Judges, so they feel that is something they look at during the next Budget hearing – see if that makes sense.
2. You know you go to Motor Vehicle on a Wednesday night, and get a driver's license or a registration for your car after hours. He said he

thought it might make sense to open Family Court to off hours to allow people who have to work to be able to make the court proceedings. They might inconvenience some judges and lawyers, but when you think of it being in the best interest of the children and the unity of the family – he thought that should come first.

3. He said they don't think there is enough education for the judges and support personnel in the court system. There is so much reliance on psychologists. There is a problem with that as they are making decisions more than the judges, and no one is checking to see if that psychologist is on the up and up. There are no checks and balances. You can't get a second opinion on a decision made by a psychologist.
  4. You said someone had addressed another problem and that is the Mental Health Evaluation Standards. You have a psychologist operating without a standard of conduct. There are no standards or guidelines especially when you are dealing with child custody cases. He said he thought that really needs to be looked at.
  5. They contacted the Attorney General's office to see if they would prosecute if there was an instance of perjury in Family Court. They were told they do not prosecute perjury in Family Court issues, which means you can go and lie in Family Court, mislead a Judge, mislead a court, mislead the outcome of a case, perjure yourself and get away with it according to the Attorney General's office.
  6. They spoke to an attorney from the Commonwealth of Pennsylvania, on the Family Law Commission, who by the way does have an **open** court. The attorney said it works well to have an open court, because the litigants witness who goes before them, they recognize the complication of those cases, and they say to themselves – 'You know what we are going to settle this ourselves. Let's go.' So you what you see is a decrease in the workload for the judges, less people going to Family Court - lawyers making less money, by the way. He said in all fairness that is the way it should work. He said he had a handout that he would like the commission to look at. There are 18 issues that he touched upon. Each one of those issues deals with a different problem that could be solved by some of this legislation. He said that you folks have a responsibility to kind of act as a lobbying group before the Legislature. Go to them and say we learned these things from the Public Commission Hearing. Here are some of the things that we think make sense and try to make those things happen in the Legislature. He said he would ask that they take a look at that and see if it makes sense to you. So please make your recommendations to them. Thank you.
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14. Our next speaker was **James A. Faline**. He began by saying that he has been involved in the Family Court System for approximately 12 years. In was just by accident that he even found out there was a Family Law Commission so he has a recommendation that somehow the word gets out the more people will know that there is actually

something going on here tonight. You may get more people and get a broader prospectus on some of the issues that are happening. Senator Sorenson took this opportunity to inform Mr. Faline that the FLC did send out a press release which was picked up, but didn't get covered the way that we would like to have it covered. Mr. Faline responded that he had talked to a lot of people at work and they had no idea about it, and he said in the 12 years this is the first time he had heard by accident about it. He stated that he found it very difficult to summarize his 10-12 years in five minutes. He said he has been child support for 12 years and has been in the in the Division of Child Support system for 10 years. He said he has been to Family Court 10 – 12 times and has spent \$10,000 to \$12,000. He has done everything physically and emotionally possible in maintaining a relationship with his three children. In between the years between 1995 and 1999, after a Family Court Child Support decision I lost my home which has had a significant effect with the relationship he has with his children. The mother of his three children harassed him no end, but in order to see his children he went to court. He said he knew what it was like to receive prejudice. He is a non-custodial dead-beat dad when it comes to the Family Court system and the Division of Child Support Enforcement. He continually experiences rude treatment from both divisions – Family Court and the Division of Child Support Enforcement. He gets no help, get no answers. He has tried to get questions answered about different processes, arrears calculation. He has been working over the last three years since 2002 to try and get an error corrected in the way his order was entered in the Division of Child Support Enforcement, and he is still working on it. He said he has experienced what he considers as one-sided justice. There doesn't seem to be any accountability from anyone in Family Court – doesn't appear to be anywhere that he can turn. He has called the Governor's office with complaints; he has called Mr. Biden's office with complaints. It seems as if there is a blind eye and deaf ear to some of his concerns. He said he thinks some of these issues have already come up already tonight. It seems as if cheating and falsification and inflation of expenses on the custodial parent's part are not listened to. One example is that each time he has been to a modification the custodial parent will quote costs for daycare, and summer camp, and provide documentation for them; then after the hearing and his child support has been increased; she will pull the kids out of summer camp and day care. He said it is very time consuming and very costly to go back and to get the petition listened to. The mediators don't seem to want to listen; they don't want to do anything, especially if the custodial parent has a lawyer when he is unable to afford one. It seems as if the mediator listens to the lawyer and not to him. He said he didn't know if that is a common experience, but he has been there three or four times and that is

what has happened to him. It's just that it's so time consuming and very costly to force the issue and get someone to hear his concerns and look at his side. He said he has a couple of questions and or a couple of recommendations about the Melsom formula. It seems like the non-custodial parent is supporting two households, and he doesn't think that is fair. He thinks the non-custodial parent should get a higher allowance – whatever you call it – a living allowance. They also only allow 3% credit towards retirement and right now he is in a situation that he can't save toward retirement. I believe that a second job to be used primarily for retirement savings should or ought to be considered.

15. **Karen Hartley Nagle** was the next speaker for the hearing. She said she was going to speak on various issues such as the open court, the role of the Mental Health professionals, and the role of the Child Advocate, but that seems to have been covered quite a bit so she is going to deviate from what she was going to discuss. She received quite a shock yesterday, and she is absolutely outraged at what has occurred. First, years ago, she was a victim of domestic violence. It took her a long time to get here. She fought to get out of that relationship. He beat her for years, and she didn't tell. Victims usually don't tell. She grew up as a victim of domestic violence in her home. Family Court of Delaware placed her and her two brothers with her abusive father who molested her for a number of years. She said she dealt with that and had to live with that. She then married someone following the system; she married a batterer, just like her father. The kicker was that after she left him, ran away from him – he had been convicted of domestic violence, of battery, convicted of violating the PFA order after she left him. Then her children, her three and four-year-old little babies, say they are being molested by their daddy and their uncle. What does the Family Court of Delaware do – they placed those little girls with him, because she told. What did she do wrong? She reported what her daughters told her. They told her that Uncle Bobby is putting his finger in their pee-pee – daddy is making me touch his pee-pee. She did nothing wrong, except to report what her children told her. They were coming home red and sore from visitation which was supporting what they were saying. She told, and instead of getting help, she was forbidden from seeing her children and haven't for 2 one-half years. She filed in court two years ago for her hearing to be heard. It took a year one-half to get a hearing. She wasn't able to get any support, wasn't able to get an attorney, and she had no more money left. She did have \$86,000 to keep her kids before they reported abuse. Now she doesn't have her children with her; they've said they are being molested, she's being kept from them; she can't afford to feed them because she must pay for supervised therapeutic visitation at \$125 an hour, in addition to other counselors. She is

being told – ‘Karen, you need to get an attorney, and she said she tried to get an attorney. She went to every agency in Delaware. She went to everybody, and she couldn’t get an attorney. Yesterday, she got a determination – finally – it took her five months to get the Family Court of Delaware to make a decision. Nothing has changed! She is still under supervised visitation that she can’t afford; she still doesn’t have an attorney. It took her two years to get here. She has gone through eight counselors who have said she has no mental health problems. She has taken extensive mental health testing. She has shown it to numerous people. The only thing she has gotten out of it is a couple offers for dates, because they wanted to date a woman who was certifiably sane. Now after all this and thousands and thousands of dollars, she is still not seeing her kid on a regular basis. She pays \$125 for 20 minutes to see him, and she is paying for a full hour. The counselor was outraged. The counselor said – “Karen, I cannot believe this is happening. You pissed off the Office of the Child Advocate. You stood up and talked. You ran for Senate and exposed what was happening in the Family Court of Delaware.” This is an outrage. A month and a half ago, in therapeutic supervised visitation with a counselor, her five year old tried to French kiss her. When she redirected her and said honey we don’t do that. But she said daddy does it to me. This was in supervised therapeutic visitation – now can she do anything about this – no, because the allegations in this case have never been decided. It’s been flawed from the beginning. A counselor, Mr. Ted Wilson, diagnosed her with seven disorders. She has been told by Justice for Children in Washington, D.C. that is the most any counselor in the nation has ever done, the most she’s ever heard of is two. She has been told by all eight counselors, that she has none of these disorders. Five months ago, he diagnosed her with a seventh disorder – the seventh one. He hasn’t seen her in a year and a half, but he decided she had another one – on the fly. This is outrageous. You have a number of people here willing to help you, to bring you the experts from around the nation to make Family Court the best Family Court in the nation. Let’s raise Family Court to the standard of excellence that the rest of our courts are.

16. Our next speaker was **Elizabeth Slack**. She stated that she is the grandmother of three grandsons. Her son has been dealing with Family Court for the last five years. He has an ex-wife who has lied in Court. She said she is very angry – beyond words. She would love to speak to the judge. It’s almost like he was a phantom person. You can’t speak to him – you can’t talk to him – can’t be interviewed by him. They gave his son a court advocate who is the most biased individual she has ever encountered – doesn’t even have the courtesy to say ‘hello’ to her son in the hallway. Her grandsons are not protected. I have stated, openly, that they may as well

reserve three cells up there at DCC for her grandsons, because that is where they are headed. The oldest one is now 18, and the mother has used them as pawns in her evil games. They don't get to see them as grandparents. Her son does not get to see them, and she stated that it is wrong. The children are not protected. The last go round in the court the middle grandson was taken into the judge with the two lawyers. They are prevented from going into court. They came out. Her son's lawyer came out, his counselor came out. They said that John is going to cooperate and see if you can work things out. He went back in the waiting room with his mother and his other grandmother sat. 20 minutes to an hour later, he was back into the court. He tells the judge that he doesn't want anything to do with his father – that he hates him. I'm not going to try. I'm not going to do nothing. Now, she stated, something went on and she doesn't know where the judge's head is, but it's wrong, and something better be changed.

17. The next speaker was **Willett Kempton**. Under current practice by Delaware Family Court, custody evaluators are treated as they were council. That is, each party in a dispute can pick an evaluator, and each presents their own finds in court. This leads to poor, even fraudulent, advice being given to the court, increases the burden on families in custody disputes, and creates a market for psychologists who 'conclude' what their clients want, regardless of professional standards. The dishonest custody evaluator has a market advantage over one who may be more competent, evaluate carefully, and present the truth to the court.  
In the words of a respected psychologists in the area, Jay Ann Jemail, a PhD who has specialized in child psychology, family counseling, and custody evaluation in the tri-state area for many years, the Delaware law creates incentives for the 'buying of psychologists' and the 'prostitution' of custody evaluation. In New Jersey, where she also practices, a single court-appointed person is assigned from a list provided by the court. If both parties feel this specialist is not appropriate, they can pick another from the list. Attorneys tell me that the Court prefers to hear from a single expert, rather than trying to weigh the advice of conflicting experts. My own experience may be illustrative. My own attempts to agree on a joint evaluator were rebuffed. My ex-wife, on the advice of her attorney, chose an evaluator with no therapeutic experience, who had a long record of ethical complaints against him from custody disputes. I'll call this evaluator '*Sam*' here. Because there were two hearings and *Sam* recommended that each parent bring the children to him independently, the children went to this evaluator four times, (plus two times to the evaluator I believed to have been honest and professional.) The older children seemed much more uneasy around *Sam* than the more professional evaluator; they asked what he was

doing and asked the purpose of all the visits, on the last trip, my oldest screamed in the car all the way to his office. They had no such reaction to the other evaluator. Knowing of his record, my attorney took a deposition from *Sam* upon completion of all interviews and testing, at which point *Sam* gave his 'final custody recommendation.' What I found out only in court was that they subsequently contacted *Sam* and said they did not like his evaluation, arranged for him to talk to the children on the telephone (*Sam's* fifth contact with each child now). This was arranged when the children were at their mother's house with their mother present in the background. This revised recommendation was then presented to the court as his professional opinion. Also new in this court hearing was his introduction of a personality assessment of the father based on tests conducted three years earlier. These conclusions had never been mentioned previously, including in the deposition, and were based on tests that cannot be used to diagnose the claimed personality attributes. After the hearing, I consulted both profession psychologists and written procedures of the profession to understand this; it was clear that *Sam's* personality assessment was invalid. However, *Sam* testified after the psychologist. My attorney and I, lacking expertise to know his conclusions were totally invalid by the standards of the profession, were not able to effectively rebut this surprise in court. *Sam* made his case forcefully and convincingly, and conveyed certainty. The court decision reflected his (revised) recommendation. However, neither I nor the other custody evaluator felt that it reflected the best interests of the children. In fact, the other evaluator was so appalled by *Sam's* practice and the outcome that she said she was considering terminating her practice of custody evaluation in Delaware.

I suggest that the Delaware Family Court establish procedures by which the parties are assigned, or agree upon, a single custody evaluator. The evaluator should be providing expert advice to the court, not 'representing' one side as a client. If the parties cannot agree on a single evaluator, methods can be used such as the court listing three, and each side can strike one. I also suggest that the evaluator be required to provide a written recommendation at the time of the hearing with the basis of the recommendation spelled out. He said that maybe this commission could establish a working group, and he urged them to do so maybe later this year, and he said there were several people who said they had custody problems, and that working group could review custody evaluation procedures and laws in Delaware compared with neighboring states. Thank you.

18. Senator Sorenson then called upon **Heidi Pugh Phillipson**. She began by saying - Good Evening. It's hard to believe it's been a

year since I first presented to the Family Law Commission. Just a few weeks ago, I realized I've been legally divorced for three years; the decree was finalized 3/05/2002. Today, her children are 6 and 4 years old, my oldest is now in half-day kindergarten. Hmmmm, let's give that some thought, for over half my children's lives.....I've been entangled in the Family Court and Child Support Enforcement systems. Life has educated me to believe, prior to any given person entering Family Court, Child Support Enforcement, or any other social service system, that the person is in crisis! What exactly do I mean by 'in crises? Here are some definitions. These were on an attachment *an unstable situation of extreme danger or difficulty (they went bankrupt during the financial crisis) or a crucial stage or turning point in the course of something such as 'after the crisis the patient either dies or gets better'. The point of time when it is to be decided whether any affair or course of action must go on, or be modified or terminate; the decisive moment; the turning point.* That is what she means by crisis. When 2 people have decided to divorce and their family consists of a 12 month-old and a 21 month-old, I believe I can comfortably state, they have already experience enough CRISIS. Therefore, the first point I'd like to bring to your attention is the need for mandatory ongoing crisis management trainings for every employee, from judges to casual seasonals. These trainings would be recorded and reviewed as part of the annual review process. Secondly, all guidelines, policies, and procedures need to be written, printed, and distributed. The information involved in Family Court and Child Support Enforcement is subjective. What she said she means is everyone interrupts things differently, not to mention, we've all had '*one of those days*'. I'd rather not be before a commissioner or asking for help in the resource center while the person providing a service is having *one of those days*. Subjective situations need a strong, consistent, published guideline explaining everything. Yes, everything, and in simple English, Spanish, etc. People finding themselves in these systems Pro Se (w/o a lawyer) are lost before they even start.

Examples: How to file your own subpoena, (not to mention spell it). Did you know you have to return it to the county where your case will be heard? No matter where you live or brought it from!

What are the guidelines/policies between Child Support Enforcement and Family Court? Who does what and when? What are the consequences if the guidelines aren't met?

Example – CSE will not accept placement parent if they have an open motion in FC, per Dover agency. Later on, the New Castle Agency said the Dover agency never knows what they are talking about. Later to be accepted, accompanied to mediation by CSE – then dropped because other parent had filed for modification of Child Support order, prior to placement parent being accepted.

Why are CSE correspondences, confidential, meaning why can't placement parent be copied on all correspondence?

Why isn't Child Support payments directly deposited into placement parents accounts?

It's been mandatory for state employees to have direct deposit since 1995. POC has it, they don't tell you nor do they have any guidelines for child care services.

Why aren't Family Court and Child Support Enforcement open late AT LEAST one night a week like Motor Vehicle, Employment and Training, and Social Services? Why doesn't the state of Delaware charge interest on child support arrears? Eighteen other states do! Why wouldn't we? It just makes sense!

Never mind, I answered my own question.

Why aren't transcripts available at a reasonable price?

I have over 3 years of documentation, and suggestions. I am formally requesting an invitation to present my findings to the monthly Family Law Commission meeting.

A person can only *exist* in crisis mode that is not 'in the best interest of our children?'

Which reminds me, I'm also requesting Policy/Guidelines, past minutes, members, and a charter? Also, a statement of the actual power the Family Law Commission has with Family Court and Child Support Enforcement. Another extremely questionable area is:

The Office of the Child Advocate who need to follow a case plan like the agencies that fall under the KIDS Dept. DFS/CMH/YRS to keep our children from falling through the cracks.

I want to share my information with you and work together to improve our systems.

Thank you for your time. Respectfully, - Heidi Pugh Phillipson

P.S. Also, how will COTS interface with all the other state systems?

Is the *Quality Counts Manual* an active guideline? She is referring to last years Family Law Commission's information. Thank you very much for your time. She said she does want to present a very well documented presentation.

19. Senator Sorenson called upon our next speaker for the evening, **Janett Green**. She began by saying that she was glad to be here this evening, because she had been under the understanding that the meeting was to be held March 17. She saw a notice in another agency stating this as the date of the meeting. An apology was made, and we explained that the Public Hearings are always on a Wednesday evening. She has been divorced for 17 years. She is Arabic and Christian, and where she came from they don't divorce. Everything that she has gone through, she had to learn for the first time. She has some points that she wants to talk about. She said that everybody cares about education, health insurance, teen-age crime and drugs. You said you could solve all of these with a good

Family Law. Then you would not have to spend so much money on improving all the other things. She has talked to a lot of legislators, but the only one who was responsive to her was Senator McDowell. She said she felt that the Court doesn't really care about the children. She said she feels they care more about lawyers, because every time she went to Family Court and asked questions, they asked her why didn't have an attorney. She asked why they couldn't give her the \$5,000 it would cost, because she didn't have the money to have an attorney. She said you can't seem to find out what you really need to do. She felt the Self Help Center is a good start, but it needs to be improved. From her experience it looks as if the lawyers and the Family Court Judges are all one family – all together. She said you are not treated in the same way if you appear in court without your own attorney. She went to a hearing in November, and she received a letter saying that she had to bring her finance report with her, and every receipt with her; your taxes and your tax return with her. She had to make many copies for her business which after taxes she made nothing. She said she was afraid she was going to lose her child support. Her ex-husband when he brought his tax returns showed that he made \$4,000 - \$5,000 a month. She said that you are told that they have to deduct your child support from that. She stated that she knew of nothing in the law that says that. In her case, she thought it was extremely unfair because her ex-husband made \$5,000 a month; she receives \$200 for her children for social security because they became 16 years old. She wanted to know why her ex-husband couldn't afford \$1,300 for his children. She stated that she thought there should be a lot of things looked at in Family Court.

20. The next speaker to testify was **Carole Coleman**. Carole did not speak into the microphone. Therefore, she is very hard to understand. She said that many of things mentioned tonight seem to be things that she and her attorney have experienced. The one issue that everybody knows is that people perjure themselves in Family Court. This seems to be a very common ordeal that is experienced, and she feels that this issue really needs to be looked into by the Court.

21. Next to speak was **John Flaherty**. He began by thanking Senator Sorenson, Judge Walls, and the Commission by thanking them for their dedication and listening to every one tonight to help solve some of the problems we have in the Family Court system. He introduced himself by saying he is a lobbyist for Common Cause of Delaware, a nonpartisan, nonprofit citizens lobbying organization dedicated to government reform and accountability. He said he was here today to urge that Family Court proceedings be presumed open, with a provision to allow one of the parties to a case to petition the

court for closure. On July 16, 1977, Governor Carper signed House Bill Joint Resolution (HJR) #4, which stated in part that it is the intent of the 139<sup>th</sup> General Assembly that except as otherwise provided by statute, all Family Court proceedings and records may be open to the public unless the Court determines on a case-by-case basis that privacy is in the interest of the public, the parties, or the Court.

Last year, Common Cause held 3 statewide citizen public hearings during the fall of 2004 to respond to the requests of persons who have expressed concerns with the lack of openness of Family Court proceedings and the fairness issues implicit in closed door hearings. Some of those people are here tonight; Raetta McCall, Karen Hartley Nagle, and Jerry Ledwith. The speakers at the hearings represented a wide perspective of views and related their experiences regarding Family Court proceedings and why they believe openness will help bring more balance between the parties and increase Family Court's standing with the public.

Every one of the 40 people that testified in person indicated that Delaware's citizens should not have to petition the Court and possibly be denied their right to an open hearing as guaranteed by the Delaware Constitution, Article 1, Section 9: which states in part 'Courts shall be open.'

In one case, a citizen testified that she was required to pay an attorney and filing fees to petition the Family Court to have her hearing open. She was required to pay legal fees for a right that she already has.

In *Cowley vs. Pulsifer*, Justice Oliver Wendell Holmes states in part "It is desirable that the trial of causes should take place under the public eye, not because the controversies of one citizen with another are of public concern, but because it is the highest moment that those who administer justice should always act under the sense of public responsibility, and that every citizen should be able to satisfy himself with his eyes as to the mode in which a public duty is performed."

He said he hoped that the legislature will fulfill Judge Holmes' wise words.

He stated that at the last Family Law Commission meeting he believed this issue came up. The Chief Judge Kuhn stated that she indicated that she was neutral on this issue and wanted this to be settled by the policy makers. Mr. Flaherty said he thought the policy makers had already spoken. He stated that he hoped the Commission would take this idea under consideration. Thank you.

Senator Sorenson asked if there was anyone else in the audience who would like to make a few remarks. At this time **Frank Infanti** came forward. He said he wanted to talk about supervised visitation. He wanted everyone to know that he understood the need

for this. He said that when you are sitting on the *bench* he understood that there is a necessity for this. He stated he knew that there are some horrible things that go on especially by abusers. He said he has no sympathy for them. But there is a large group of people out there that are under supervised visitation for a variety of reasons – they are not violent people – they are not terrible people, and quite often they are people of modest means, and they are being told they must pay \$125 - \$150 a week for an hour to see their children. They are also being told they have to pay child support on top of that and what's happening is that they are not seeing their children at all. He stated that quite frankly he thinks it is the children that are suffering terribly – they are missing their mother, they are missing their father. Quite often these are 3 and 4-year-old children whose family has been torn apart. He said all he wanted to do was plant a seed. He stated that he couldn't believe that if everyone could put their heads together that there isn't something that can be done in this area where if people do not have the funds to do what they are being asked to do. There has to be a way around this. There are many services out there to help people. There has to be something that we can do – got to be a way to get these children to see their parent. We could put together a facility, whether it be at the Court House; where ever it has to be. He said he doesn't believe in a handout, but he felt that \$125 to \$150 an hour for someone who is making only \$7.00 and \$8.00 an hour is too steep. That is all he wanted to bring up.

Senator Sorenson asked if anyone else had any comments and **Jud Bennett** took this opportunity to introduce himself as the new Sussex County representative on the Commission. He commented that this had been one of the most interesting experiences he has had in a while. He said that there were some things that impressed him. He stated that he is extremely interested in having open and public minutes. He said he was extremely concerned about the perjury issue. He said he would be on the phone the next day with Jane Brady, to find out why perjury is not being prosecuted in Family Court. He is also concerned about the custody evaluator situation. He stated that he thinks this is something that needs to be reviewed by this Commission. He would like to review the molestation claims of the children why a parent is removed from the children if one makes the claim. He said he is concerned about if a Judge steps down, or dies, why does someone have to wait two years for a case to move forward. He said that it was inexcusable. He stated he agrees with the concept of a crisis counselor for all employees in Family Court. Also the PFA law also needs to be reviewed. That being said, he heard someone say that they thought the Commission should be reviewed by the Sunset Commission. He asked that now that he is on board, that they refrain from doing that. The last thing that he wanted was to be was part of an organization that was considered useless and

ineffective. He asked that they give him an opportunity to give his input to this Commission. He commented that he would not be at the meeting in April, but from May on he would be here in force. He said it was nice to hear their comments, and he hopes that he will be able to help them in the future.

**Paula Tawes King** asked to be recognized again. She said she only wanted to say a few additional comments. She stated that she definitely has a problem with the perjury portion. Her ex-husband has committed that several times in the course of their court participation. The other thing she wanted to talk about was that she had to disagree a little bit with the attorney situation because she knows for a fact that her attorney has gone out of his way to be sure that her rights have been protected. However, her ex-spouse has used the system in a way that once he found out that he did not have an attorney he was allowed more leniency in how he had to behave in the courtroom. He was bold in his abuse toward her by calling her names – he was called down by her attorney – yet the Judge allowed his testimony to continue. As far as Jane Brady is concerned she stated that she agreed with the previous person. When she complained why her hearing was not going to be held sooner than a year later, she was told that Jane Brady has nothing to do with Family Court, and they told her never to call there again. The worst thing that she has encountered is being questioned as the victim by the perpetrator. It took her actually two days to respond. He intimidated, he screamed, he yelled, he called names and it was all loud. She asked the judge if this was what she could look forward to each time she came into Court. The Judge responded that you have to be more lenient to those without an attorney.

Senator Sorenson interrupted the speaker at this time by saying it really wasn't fair to allow her to continue, because in essence no one else had been allowed to continue their testimony. If the speaker would like to send in additional comments, we would glad to accept them.

This concluded the Public Hearing. Senator Sorenson thanked everyone for coming this evening. She told everyone that after the minutes had been transcribed, the Family Law Commission would respond to their comments. The secretary reminded everyone present that they could still submit remarks until the end of March, and they would be included with the others to receive written answers.

The meeting was adjourned at approximately 8:55 p.m.

Respectfully submitted,

Jean C. Ardis, Secretary