

FAMILY LAW COMMISSION MINUTES
MINUTES
JANUARY 13, 2005

The Family Law Commission met at Belmont Hall on Thursday, January 13, 2005. Senator Sorenson, Chair of this Commission, called the meeting to order at 9:35 a.m. Other members that were present at this meeting were: Harriet Ainbinder, Ellen Meyer, Esq., Lynn Kokjohn, Harry Gordon, Dr. Rhoslyn Bishoff, Judge William Walls, Representative Pam Maier, and James Morning. Also in attendance were Nicole Kennedy and Katherine Jester.

After the members introduced themselves, Senator Sorenson asked our visitors this morning to also introduce themselves beginning with Karen Hartley Nagle, Jerry Ledwith, Frank Infanti, and John Flaherty Lobbyist for Common Cause, Marianne McGonigle, and the reporter, Mr. Parra.

Senator Sorenson asked for any corrections to the minutes of December 2, 2004. There being no actual corrections of the minutes they were approved as written.

Before calling on our speaker, Senator Sorenson called everyone's attention to the information handout that we had pertaining to '*which Family Court cases are opened and which are closed*'. This seems to be an issue that is misunderstood by almost everyone that has dealings with Family Court. Nicole Kennedy, our representative from Family Court, said that she has asked their computer personnel to make this information more understandable, or clear, on the Family Court site.

John Flaherty began his talk by declaring that Common Cause's position deals with OPENNESS. He referred to a Delaware State Bar Association article that was printed in 1998. "Until Family Court officiating takes place in Public, in the open, litigants have no meaningful way of finding fairness and ultimately peace in the system that determines where they will live, what they will earn, and who will raise their children."

After this Mr. Flaherty took the opportunity to thank everyone for serving on this commission. He then gave a little of his background. He said that he had worked previously for Senator Biden in Wilmington, and then began working as a lobbyist in 1996. In other words for the past 26 years he has been involved in public policy.

He then referred to the workshops that have been held by Common Cause. At one particular workshop last year he noticed that people were actually staying after the workshop and they were lobbying on issues that they had with Family Court. He then began lobbying regarding a lot of concerns that people have with Family Court. He said there seemed to be a variety of concerns, but after 3 or 4 meetings, they decided to narrow the problem down to one particular issue that seemed to generate a lot of concern and that was lack of openness that they perceived in the proceedings of Family Court.

Mr. Flaherty informed the Commission of the hearings that his group had in the different counties. These were hearings where the speakers were able to voice their reasons for holding Family Court proceedings either open or closed

At these hearings they heard from approximately 40 people who testified, with 25 others giving written testimony. Mr. Flaherty said he felt there are so many rules and procedures, that it is often unclear just what rule takes precedence. He said the Court should be presumed to be Open unless one of the parties indicated they did not wish the hearing to be opened. He read several excerpts of testimony where the people felt they were denied a hearing in open court. Ellen Meyer said that in NCC, Family Court is an *open* court, unless it is a TPR (termination of parental rights). Mr. Flaherty said that the overwhelming testimony that they heard at these hearings was frustration expressed at not being able to have family, or friends be with them.

He said that in summary what they had set out to do was to open this to the public based on the arguments of the people who came to their Common Cause meetings and the testimony that they received from the three hearings that were held in Dover, Wilmington, and Georgetown that the presumption should be that that the hearings should be *open*. If on the other hand there is a reason for the hearing to be closed there should be a procedure to close the hearing – which he said was the opposite of the manner in which it is handled now.

Harriet Ainbinder then informed Mr. Flaherty that this subject was taken up many years ago when Judge Poppiti was the Chief Judge of Family Court. After a great deal of discussion at that time the Court and the Family Law Commission came out in favor of an *open* Family Court. She said that anyone who is an objective observer in Family Court (who is not an actual participant in the trial) will see that it is a very well run court. She asked Mr. Flaherty that when he takes his findings to the Legislature that he will seriously consider the following question – “Do you want to take away the right of the people involved in that hearing to say that they want it *closed* – that they do not want other people in on this? She asked that the litigants still have a choice and not take that option taken away from them. Mr. Flaherty said that is exactly what they are asking of the Court.

Mr. Flaherty then was asked that he consider other statistics where attorneys have asked litigants if they would want their hearing held in an open court, and about 90% of them have said *no*. They said it was a great idea, but not for them! Mr. Flaherty responded that the statistics that his hearings have gathered has almost 100% of these litigants wanting the court to have *open* proceedings – they are very angry and confused – they say the proceedings are not open for whatever reason. They have the idea the Judge went behind closed doors and then came up with their decision. He said there should at least be the presumption that the court is *open*.

At this time Ellen Meyer did say that she felt that Family Court has a problem presenting itself to the public. She thinks the web site has helped, but maybe that needs

some changes. She said this could be an issue they can address with Judge Kuhn when she addresses the Commission.

After much discussion between Judge Walls and John Flaherty, Judge Walls suggested that Mr. Flaherty should come to a Family Court hearing to see for himself an actual Family Court hearing... When you decide to have the hearing open that would mean some very private information would be shared in open court. You have to be sure that is really what you want. Judge Walls said it is one thing to establish a procedure on whether it is open or closed: it is another thing to put it into a practical application. Mr. Flaherty said one of the problems that he sees is such a plethora of rules and regulations. He said he thinks there are so many conflicting laws.

Mr. Flaherty also made some references that it is felt by some that there is corruption in Family Court. If that is indeed true and can be proven, the Family Law Commission would like to have that information brought to them so they can deal with it.

Frank Infanti who just recently ran for a state-wide office stated at this time he didn't feel when the people were directly pointing their finger at the Judge, what they meant was they felt the system had failed them. He said he felt that quite often the witnesses are corrupt and some of these are considered expert witnesses and they are paid to be there.

At this time Senator Sorenson thanked Mr. Flaherty for coming to this meeting. She then stated that at the February meeting they will be hearing from Judge Kuhn, Chief Judge of Family Court. They hope to address a number of things and one of them is the length of time it takes a case to come to trial. They hope to address the issue of how badly they are in need of additional Judges. Last year, it was decided that the Family Law Commission would send a letter of support to the Joint Finance Committee in their request for additional Judges. Senator Sorenson reminded everyone that March's meeting is the Annual Public Hearing in Legislative Hall in Dover from 7:00 p.m. until 9:00 p.m. She also advised that we will have someone from CASA and also someone from Rehabilitative Services.

The Senator reminded everyone that the Commission could also draft legislation on a topic that they felt needed immediate attention. James Morning also mentioned that he would like to see something done addressing the topic of False Allegations made by someone. He would like to see a means of penalizing someone who is found guilty of making false charges against someone. Judge Walls suggested that it would be a good idea to have someone from the Attorney General's office come to address this topic.

Senator Sorenson announced that now have a second vacancy on the Commission as Dave Palmieri has had to resign. Dave was a representative from New Castle County, and we need to have another person from New Castle County. These two positions need to be filled. Anyone having any suggestions should submit the names to Senator Sorenson. Then she submits the names to the Speaker of the House, and the Senate Pro Tem for their consideration and approval. This was the conclusion of the meeting.

At this time a Mr. Jerry Ledwith took the opportunity to address the Commission. He began by saying that you hear all this discussion about corruption, but he didn't think they were referring to the Judges when those charges are made, but he said he thought the corruption occurs with the lawyers who understand the flaws in the system, and they manipulate it to the benefit of their clients. Mr. Ledwith is the court appointed guardian for the lady whose story he is sharing with the Commission. He said he had a letter with him from a Robert O'Neal of the Department of Justice voicing his concern for her safety, how the person he is representing has had her life threatened, has been forced from her home, and is now permanently disabled – she has R.S. D. a stress disorder. She has to rely on the help of the people in her community to get through a basic day. This woman was forced from her home because of domestic violence - stalking, vandalism whatever it took to get her out of the home. This was done by her ex-husband. She had a PFA against him from Family Court which he violated 15 times. The Department of Justice had so much concern for her safety they entered her in a shelter. She was only able to stay there 30 days. This was because the shelter wasn't designed for someone with a disability.

The stress that she has gone through for the last three years in Family Court has contributed to her now being in a wheelchair. There was numerous Contempt of Court orders filed to pay her support. On November 25, Judge Nicholas issued an order for Mr. Sharp to pay her for the month of November (the support should never stopped) and the payments should resume again on December 1st – she was never paid for November, and she did not receive payment for December, and on December 17th she was forced from her home. They cut off her electric. She filed an *ex parte*, but it was denied, because Mr. Jones decided there was no need for the hearing.

After she left the home and had to rent an apartment, the attorney filed with the court that she had abandoned the home even though Robert O'Neal from the Department of Justice called the attorney two days later and explained to him that his client was going to be arrested (he was indicted on 9 charges in Superior Court because Family Court did not stand behind the PFA). The attorney contacted Judge Nicholas stating that she had abandoned her home. A court date was set up for June 16th for a hearing – she was in the hospital. Dr. Dave Carter faxed information at 9:18 a.m. on June 16th to advise that she was in the hospital and would not be able to attend the trial. Judge Nicholas held the trial anyway. Judge Nicholas has denied her the transcripts of the trial. She had no attorney. Her family was in the court, but they were denied entrance to the court when her mother asked if she could explain to the Judge why her daughter wasn't there.

It's almost been two years now and there has been no finding of facts, no reasons of law, and no reasons for taking of this money. The case has never been explained, the hearing has never been explained – there have no documents on it. She recently filed in *forma pauperis* for the transcripts. On November 23 she received an answer from Judge Nicholas stating that she couldn't have the transcripts.

Harriet Ainbinder said that the Commission should ask Judge Kuhn when she appears before the Commission in February the following question – “If you are unable to appear in Court because you are in the hospital, or for another justifiable reason, shouldn’t there be some sort of conduit that immediately lets someone in the court know of the emergency?” There should be a means to address the Court and ask for a postponement. Mr. Ledwith said that he had an appointment with some members of the House of Representatives to tell them his story this afternoon. Mr. Ledwith said he thinks this case is an example of the manipulation that can be performed by attorneys who know how to get around the law. Judge Walls asked Mr. Ledwith to provide him with the name of the case which is Sharp vs. Carney - # CK0104441.

Karen Hartley Nagle then began to address the Law Commission and inform them of the problems that she has encountered. She said that something she wanted to address was the perception that the majority of the people did not want their cases open. She said that might be true for some, but for others they need the support of someone to be with them. She also has had her request to have another person with her in Family Court be denied. She expressed the opinion that when a person is giving testimony in Family Court, that maybe they would be less inclined to give false testimony if they had to face the person they are giving testimony against!

Karen said that Dr. Ted Wilson, a psychologist, who gave testimony at her trial in Family Court did not tell the truth when he was called upon as an expert witness. He is called upon as a Mental Health Specialist to give testimony in Family Court matters. A check on this psychologist’s record has revealed others who have also experienced this treatment when he has been called upon as an expert witness in their case. This needs to be reviewed, and a check done on this doctor’s record.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Jean C. Ardis
Secretary