

Family Law Commission Meeting February 18, 2010

The Family Law Commission met on Thursday morning, February 18, 2010 at 9:30 a.m. in the Senate Hearing Room of Legislative Hall.

Lynn Kokjohn, Chair of the FLC, called the meeting to order. She then asked everyone present to introduce themselves beginning with herself: Lynn Kokjohn, Chair of the FLC, Jean Ardis, Secretary, Harry Gordon, Honorary Member, FC Judge William Walls, James Morning and Eileen Williams from Kent County, Jody Huber from Family Court, and Drew Slater, Assistant to the FLC. The following guests were introduced, Renee Frazer from West Chester University who is helping in the Resource Center in New Castle County, Jim McGiffin from the Community Legal Aid Society, Raetta McCall, and Logan Anderson from the Delaware State News.

Lynn continued by addressing the issue that occurred at the Public Hearing where we had someone who insisted that he be allowed to videotape the Public Hearing. As Chair she told the gentleman that he would not be permitted to do this, because she felt it would be inappropriate. The Family Law Commission unanimously moved and seconded not to permit either audio or video taping of their monthly meetings, nor the annual Public Hearing.

Lynn said that her goal for this session of the FLC is not to just talk about the issues, but to make some real change. If it is found that there needs to be new legislation introduced, we have as members on the Commission legislators who would be able to do this.

The minutes of the June 11, 2009 and the January 12, 2010 Public Hearing were both approved by Harry Gordon and seconded by James Morning.

The Chair began the meeting by addressing the List of Concerns that had been extracted from the comments made at the Public Hearing on January 12, 2010. She stated that the result from the Public Hearing was not to assist any one speaker with their specific issues, but to look at the overall comments of all of the speakers and address the recurring themes throughout the speakers as a whole. She said that there were several topics that were addressed by many of the speakers. Drew Slater and Lynn Kokjohn, Chair, went over the minutes and were able to extract the main issues that the speakers had issues with. They were as follows: Child Custody, Child Support, False Allegations, Protection from Abuse (PFA), Family Court Commissioners, and Paternity Fraud.

Lynn then introduced our speaker for this meeting James G. McGiffin, Jr., Esq. Mr. McGiffin has been a member of CLASI, the Community Legal Aid Society, and has previously worked as a Family Court Commissioner. At one time, he had the

responsibility of hearing all of the PFA's in Kent and Sussex County. He shared with us his extensive background in dealing with Protection From Abuse orders in Family Court. His most recent experience has been in representing victims of domestic violence in Kent County.

He explained what the Community Legal Aid Society does. They are a private non-profit organization. They provide free legal services to certain groups of eligible clients who are people who live in poverty. They help people with housing issues such as eviction, welfare, Society Security Disability payments, Medicaid, and the Family Law area. In 1981, the Bar Association organized the Delaware Volunteer Legal Services, which is the pro bono arm of assistance. Since there are so few attorneys in the Kent and Sussex County there are not as many volunteers available. Therefore, he said that CLASI represents mainly victims of domestic violence.

They do their own fundraising for additional funds other than what they receive from the local and state governments. They actually ask every lawyer in the State of Delaware for an annual contribution. He stated that Delaware has the most successful annual campaign of any legal services group in the country. Most of the money that they receive comes with a particular restriction and that is that they cannot represent any person that has been accused as being a domestic abuser. This does not limit them to only representing women, but the majority of the claims of domestic abuse do come from women.

The question was raised regarding False Allegations which we continually hear someone have issues with. The most important thing the Commissioner bases his opinion on is the demeanor of the person who is being charged. One of the outcomes of when someone files a PFA order and the person has an ex parte order against them, the result is that the person filing the allegation sometimes goes in and removes anything of value from the residence. It was suggested that maybe there should be a restriction entered into the PFA that would not allow this to happen. This process is called a preliminary injunction, and this process is used when people file for divorce.

The issue of domestic violence has been a subject that many have felt that the definition of it needs to be more defined. Many think that domestic violence only pertains to physical abuse when in fact it addresses several areas of abuse. The definition of abuse is #1 intentionally or recklessly causing or attempting to cause physical injury or sexual offense to another #2 placing a person in reasonable apprehension of physical injury or abuse #3 the crime of trespassing #4 child abuse as defined by statute is another. Others include interference of custody and coercion. The one that causes the most problems is the one where someone engages in an alarming and distressing conduct, which causes distress or fear in someone or results in a violent or disorderly response.

Mr. McGiffin was asked about the practice of changing commissioners who had previously handled a case. He agreed that it does happen. The commissioners rotate and take turns handling PFA's and when that occurs the new commissioner might not be familiar with what was done previously. It was suggested that the FLC could send a

letter to Chief Judge Kuhn asking if there was a way that a person could keep the same Commissioner throughout their case, because there has been a concern whereby a previous Commissioner ignored what had previously been ordered. We need to ask if this procedure would be feasible knowing the volume of cases that are heard.

The Chair stated that there were two actions that were relevant that she heard from the speaker that the FLC could address and one was the preliminary injunction that we could suggest be included as part of the order for the PFA, and the other one is to send a letter to the Chief Judge asking if there was a way the same commissioner could be assigned to a case who he had heard previously.

It was decided to address the following issues at the next meetings:

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| March 18th | Child Support & Paternity Fraud | Comm. Andrew Southmayd |
| April 22 nd | Child Custody & Child Custody Evaluators
(Jody will be responsible for speakers)
(Would like to have a tag-team) | |
| May 13 th | Open for Discussion | |
| June 10 th | Open for Discussion | |

Lynn said that we have two sub-committees working at this time. One committee is being chaired by Representative Michael Ramone, and his topic will be *“How Neighboring States are Addressing Issues that Our Family Court are Now Facing and How Other States are Solving Similar Problems.”* The second sub-committee will look into the cases that speakers at the Public Hearing have signed waivers giving permission to have their case looked at. The following members are going to serve on this sub-committee and they are: Jody Huber, Chair, Judge Walls, Eileen Williams, Lynn Kokjohn, Senator Sorenson, and Drew Slater. Judge Walls suggested that a member of Family Court also be present. Jody will ask someone from Family Court to be on this committee. Also, there should be an invitation sent to other members advising them they also could be on this Committee if they would like to volunteer.

Next on the agenda was Pending Legislation. Under recent legislation **H.B. 304** - this bill provides that a person who stands in a position of trust, authority, or supervision over a child who is at least 16 years old but not yet 18 years old and intentionally engages in sexual intercourse etc. will now be charged with Rape in the 3rd Degree a Class B felony. This is a change from Rape in the 4th Degree and a Class C felony.

H.B. 306 – This bill intends to encourage the reporting of possible sexual abuse of a child by providing immunity from civil liability for making such a report.

S.B. 166 – This bill clarifies that guardians ad litem appointed by the court through the Office of the Child Advocate or the Court-Appointed Special Advocate Program are entitled to absolute immunity from suit for acts or omissions occurring within the scope of their authority.

Lynn asked if there was any new business. Since there was none, it was moved and seconded to adjourn the meeting.

Next she asked if there were any public comments. Raetta McCall was then called upon to give her remarks. One of the most important concerns she addressed was that she did not feel that the psychologists should be in a position to make their personal recommendations to all courts – this should be the judge’s decision. She addressed once again her request that a person having a PFA filed in Family Court be allowed to bring in someone to the court for moral support. She said that the form that has to be filled out for a request is not easy to fill out. It would be appreciated if the request is denied that a reason be given.

The Chair said that she heard two things that should be looked at. One is that the form is difficult to fill out and maybe the FLC could look at it to see if there could be any suggestions to make the form easier to complete. The other is that the Commission could make a request to the judges to have them give the reason why a request is denied.

*Please note the next meeting of the Family Law Commission is March 18th, 2010.

Respectfully submitted,

Jean C. Ardis
Secretary