

**FAMILY LAW COMMISSION
MINUTES
MARCH 20, 2008**

The Family Law Commission met on Thursday, March 20, 2008, in the Senate Hearing Room in Legislative Hall. Senator Sorenson, Chair of the FLC called the meeting to order at 9:30 a.m. The following members were in attendance: Senator Liane Sorenson, Chair of the FLC, Lynn Kokjohn of Sussex County; Harriet Ainbinder, Psychologist; Diane Metzger, James Morning, Judge William Walls, Representative Terry Schooley, Senator Bruce C. Ennis, Harry Gordon, and Dr. Julia Pillsbury, Pediatrician. Also in attendance was Drew Slater, Staff Assistant for the FLC. At this time, she welcomed the new member of the Commission, Senator Bruce C. Ennis. She announced that there is another new member that has been appointed, and that is Representative Robert J. Valihura, Jr., who was unable to attend this meeting, due to a conflict in his schedule.

After introducing the members of the Family Law Commission, Senator Sorenson began the meeting by stating again the purpose of the FLC. The Commission was created in 1984 by H.B. 699. This bill states what the Commission can do and what it is unable to do. She said that their purpose was to preserve the integrity of the law in Family Court; and to keep the family unit intact. Under what they shall do is the following; study and evaluate domestic relations laws in the State of Delaware, study and evaluate rules and procedures in Family Court, review existing or new legislation effecting domestic relations in Family Court, and disseminate information about family law and other activities. The FLC may conduct public hearings, may invite written comments from members of the public, and may review and comment on legislation affecting Family Law. She continued that what the Commission cannot do, and this is very important, is engage in the practice of law. She explained that if someone has a case in Family Court, the FLC cannot become involved by giving legal advice or intervening in any way. Senator Sorenson said that the Commission is made up of representatives of the House of Representatives, the Senate, and a citizen from each county, a child psychologist, two domestic relations attorneys, a pediatrician, a family doctor, and a Family Court Judge.

Senator Sorenson continued on with her Agenda by asking if there were any additions or corrections to the January 24th minutes. There being none, a motion was made by Senator Ennis to approve the minutes, and Harry Gordon seconded the motion. The minutes of the January 24th meeting were then approved as submitted.

Next on the agenda were the issues that were addressed at the Public Hearing on January 15, 2008. Senator Sorenson announced that the minutes of the Public Hearing were very lengthy and that she had asked Drew Slater to itemize all the different concerns that were presented at the Hearing. Senator Sorenson suggested that they go over each one and then allow comments from the members.

The first issue was the following: conflict of interest between ex-husband's lawyer for Family Court and representing DFS as a Parent Lawyer. Senator Sorenson asked Judge Walls his opinion on this type of situation. He replied that a person could always ask the Court if it was felt that there would be a conflict - you could petition and ask that the Judge be recused, if a true conflict exists.

The next issue was False Allegations of child abuse and the ease of obtaining a PFA. Senator Sorenson said we had three people who commented on this problem. This is an issue that has come up for the past several years. We have had Carl Danberg from the Attorney General's office speak on this in the past, but we would like very much to have Beu Biden, the Attorney General, come to one of our meetings and address this issue. This issue was discussed by several members. Harriet Ainbinder mentioned that this is something that some lawyers do routinely. The main problem with the PFA is trying to prove that abuse occurred. Another problem that Mr. Danberg cited was that they do not have the manpower to enforce the PFA, especially all the man hours it would take to investigate claims. Senator Ennis said that he was sure that most of the PFA's are valid, but knows there are some that are not. He said one of the real problems is that when the person goes to their PFA hearing they have to prove that they are not guilty. Senator Sorenson said aside from all the problems, the PFA's have saved many lives, and that we need to protect the victims. Judge Walls said that there are already penalties for false swearing, but they are not being enforced, but does not know why. It was suggested that when Attorney General Biden does come to our meeting that he be prepared to talk about the new section of his office that has been designated to deal with Domestic Law.

Senator Sorenson took this opportunity to say that when we bring speakers in it is not for them to come and tell how good they are, but that we can share our concerns to them, and hopefully the commission can make an impact by doing this. Senator Sorenson said she has a call into a national group to speak to the members on how our Family Court compares to other courts across the country.

The next concern to be addressed was documentation of an Ex-parte motion: Senator Sorenson was not sure there was anything that the Commission could do regarding this problem. The next question she asked was whether you should have the same person that was conducting the parenting class be the one who also was seeing her children. No one seemed to think this was a conflict of interest. Senator Sorenson said that we are planning to have someone from the parenting classes come in and give the Commission an evaluation on how they are doing. – not to give them numbers, but us some data on their results, and do they do any follow-up on people who have attended these classes. In regard to the evaluator in this case, she did not have to choose one of the three that were recommended to her, she could have chosen her own if she had made a request of the Judge. Judge Walls said this was not mandatory that she pick from one of the three.

The next item was Child Support Enforcement, and it was suggested by Senator Sorenson that we should invite Chuck Hayward who is the head of this department to come in and address the Commission. It was thought that he should be the one to answer

some of these concerns that was mentioned at the Hearing such as why a stay-at-home mom has to pay child support; why a spouse is allowed to go months at a time without making any payments; and why there is no follow-up on these issues; and why there is no enforcement of the court's orders.

Next a speaker wondered why the Judge could not make an early division of marital assets and orders of attorney fees. Judge Walls said that you could file a Motion pertaining to the attorney fees, but you have to file a Motion and ask for it, and then you have to show a need for it, unless the other party agrees. Judge Walls said that in Delaware you file for divorce first, and then do the property division, but in other states that is done first.

Senator Sorenson said that a gender bias study was also requested by a person who said in 32 other states this has been done and all found bias against women. She also requested to see the demographics of custody awards by children's gender.

Another request was that a gender bias study be done, because this person felt that this is being done against women, when in fact many of the men who gave comments at the hearing felt that it was the women who were favored – not the men.

Continuing on under the Melson Formula, one speaker thought he should be able to claim a deduction on his taxes for the support he gives to his children. Curtis Bounds said that this has to be done at an ancillary hearing.

Senator Sorenson went on to the topic of high cost of attorney fees which was something many people made complaints about. There was a suggestion of putting a cap on attorney and custody evaluator fees. She said she didn't think that was something that could be done. Curtis Bounds said an attorney may put in anywhere from 200 to 500 hours on a case. Many of those hours become uncollected fees for an attorney. He did say you are not allowed to take a Family Law case on a contingency basis.

At this time Senator Sorenson inquired of Judge Walls whether pro se centers were in all three counties, or only in New Castle County. He replied that there is a pro se center in all three counties, but the center in New Castle County is more advanced. They do have attorneys for someone to see on a very limited schedule at the New Castle Center, but they do not have them available in Kent and Sussex. Therefore, the employees in Kent and Sussex Family Court cannot give out legal advice. Senator Sorenson said that since the Commission is unable to do anything about attorney fees, they should do everything possible to obtain more help for pro se litigants in the other counties maybe through legal aide, or Widener Law School

The next issue to be address was the relocation of a child, and Senator Sorenson said that this one deals with a loophole in legislation that we might want to draft some legislation to take care of this. The person said that there was a loophole in the law that allows a person to leave the state with the child right before the paperwork is filed. She inquired if this was right. Curtis Bounds answered that under the Child Uniform Custody

Jurisdiction Act, this state retains custody over that child for six months. If either the mother or father still lives in Delaware and files an ex-parte partition, there is a very good likelihood that the judge will order that the child be brought back to Delaware, and if there is a situation where the judge does not order the child back there are reasons for it. H.B. 98 was also addressed. This bill was from a previous legislative session, and if it had passed it would have taken care of this situation. Curtis Bounds said that this particular bill would have caused too many other problems, and that the judges did not support the bill.

Senator Sorenson obtained a copy of H.B. 98 and read the synopsis of this bill. She read as follows: If an existing custody order or other enforceable motion does not expressly address the relocation of the principle residence of the child and a parent attempts to change his or her principle residence shall provide a written notice by certified mail or service to the other legal parent of the child. Reasonable notice is given as at least 45 days before relocation or a shorter period under the special guidelines of relocation. Proof of notice shall be filed in the court of record unless is made by the court. Senator Sorenson asked if the judges opposed this bill, and Curtis said the word that got back to him was that the judges did not think it was necessary. Curtis Bounds was Chair of the Family Law Section of the Delaware Bar Association when the Model Relocation Act was before them. Senator Sorenson asked if they could obtain a copy of this Act, and Curtis said it could be obtained on the website by going to www.aaml.org. It was drafted by the American Academy of National Lawyers.

Skipping to the concern regarding the judge not listening to the *psychological evaluations*, it was felt that one would need to know more background information on this case. This also pertains to the question about the *Children's Therapist!* There was a great deal of discussion on this topic, but no real conclusion as to what could be done.

Another concern was that the *Family Evaluators have no consequences for their actions*. Senator Sorenson asked Harriet Ainbinder if she had any information regarding this subject. Harriet said that she called the Board of Examiners. She was told that you could go to the Delaware Psychological Association to file a formal complaint. Harriet obtained a copy of this form, which she forwarded to Sunday Haffen to file her formal complaint.

Continuing on, Senator Sorenson introduced Matt Sondheim from the National Council of State Legislators who was with us this morning. She explained to the Commission that NCSL is a valued resource that we depend upon to furnish us information regarding different topics and what action other states have done when the same situation has arisen in their state.

The next concern was that children have no protection from sexual and physically abusive parents because judges refuse to look or act on evidence that is irrefutable, and Contempt of Court charges are never heard in a timely manner. Senator Sorenson said that these concerns are ones that we will take up with the Attorney General when he is

able to come to a meeting. Since these are concerns that are hard to substantiate without concrete proof this can be a real problem.

At this time Judge Walls made a suggestion regarding some of the cases that are heard in the Public Hearing that maybe it would be a good idea for the Commission to hold a meeting – maybe an Executive meeting – where they could actually investigate a case that has been brought forth at the hearing so the Commission is able to see just what actually happened. This would give a more thorough perspective of the case, because what is being portrayed as the actions in some cases is not what actually happened.

Also, a question was raised regarding paternity fraud. This would be covered under the Uniform Parenting Act, and explained by Delaware case law. The Commission would have to follow-up on this issue after looking at the Uniform Parenting Act.

One person suggested that Family Court change the name from *visitation* with one's children to *family time*. This seems to be a very good suggestion, and something that the FLC will look into.

Another concern that was raised was why the cameras are not turned on *all* the time in Family Court. It seems that the Capitol Police only tape when they feel there might be a problem. This speaker had a problem while waiting for her hearing in FC, and wanted a copy of the tape to show what had happened, and this was when she found out they do not tape all the time. This was an issue that the Commission wants to follow-up on.

Next on the Agenda was New Legislation that the Commission should be made aware of. The first on was H.B. 301. This bill extends Financial Assistance for Higher Education grants to foster children in the care of the State who graduate from high school, or turn 18 while still in foster care.

The next bill is S.B. 200 – This Act removes the provision that participants in the Delaware Healthy Children Program pay a premium to participate, while allowing the Department of Health and Social Services to consider instituting minimal co-payments for health services in order to recover a portion of the revenue that would be lost due to the absence of premium payments. Removing the premium payment may reverse declining enrollment in the program and increase the number of children in Delaware who have health insurance.

The last piece of new legislation was S.B. 198. This act would increase the time period for filing an appeal of a Commissioner's order to a Judge from 10 days to 30 days. This bill has already passed the Senate, and it is one the Commission does support.

Under public comments Dr. Irene Talley addressed the sloppy paper work completed on the case she was involved in. She said that she would have been dismissed from her job if she had done such a poor job.

Raetta McCall asked about a case regarding a child involving abuse or neglect. Why can't they go to someone to get help? Where does the permission come from? Senator Sorenson said that she will ask Jody Huber to pull the case law where counseling has been prohibited without permission from the other parent. This case is from a sharing custody parent.

The meeting was adjourned at 12:05 p.m.

Respectfully submitted,

Jean C. Ardis, Secretary
FLC