

**FAMILY LAW COMMISSION
MINUTES
APRIL 9, 2009**

The Family Law Commission met April 9, 2009 in the Senate Hearing Room of Legislative Hall at 9:30 a.m. Senator Sorenson, Chair of the Commission called the meeting to order and asked everyone to please introduce their selves: Those in attendance were as follows: Jean Ardis, Secretary for Family Law Commission, Bill Walls from Family Court, James Morning from Kent County, Diana Metzger a family physician, Jody Huber also from Family Court, and Curtis Bounds, a family law attorney. Senator Sorenson explained that we have several vacancies on the FLC due to the last election and that we would be filling the vacancies as soon as possible. We also have several members whose terms on the Commission have expired. She then asked if anyone had any corrections or additions for the June 19, 2008, minutes. There being none the minutes were approved as submitted.

Senator Sorenson asked Jody Huber if she would report on the new task force that has been formed by the Administrative of the Courts, which is entitled *Fairness for All*. This task force has been given the task of studying perceptions on fairness to pro se litigants in all the courts – not just in Family Court. They probably will bring a report in September giving recommendations for each of the courts on how they can better serve litigants who are representing themselves. She explained that they are holding public hearings in each county to try and elicit information from litigants who have represented themselves as to what their suggestions are on how the process could be made better for them. It is made up of members from all of the courts. Chief Magistrate Allan Davis and State Court Administrator Pat Griffin are the co-chairs of this task force.

Senator Sorenson then introduced our speaker for this meeting, Vivian Rapposelli, the new Secretary for the Department of Services for Children, Youth, and their Families (DSCYF), and she requested Secretary Rapposelli to talk about the Kids Department. She began by sharing with everyone some of her background. She was an attorney before taking this position. Her practice began about 15 years ago when she worked initially for Delaware Volunteer Legal Services, and she also worked and interned in Superior Court and Family Court. She also worked for Risk Management Assistant for the A.I. Dupont Children's Hospital. Over the last few years when her practice turned more private her pro bono work became more towards kids rather than victims of domestic violence. She has had an opportunity to represent litigants in many PFA hearings, and she worked through Family Court. Her regular practice has focused on Workmen's Compensation, and injured people. She stated that since she is able to speak Spanish a great amount of her work centered in Kent and Sussex County and some in New Castle County. She said that she has had an opportunity to work in all of the Courts in Delaware. During the last five years her private practice took her to Superior Court, but her civil work – her pro bono practice – took her to Family Court where she worked for the Office of the Child Advocate.

Secretary Rapposelli said her Department was established in 1984 and it is made up of four separate divisions. The first one is the Division of Family Services whose focus is protecting and serving abused and neglected who have been in State custody. This division also focuses on reunification, adoption, and termination of parental rights. It also handles the Office of Child Care Licensing. The second division is the Division of Child Mental Health Services. This division is the one that that we hear about a lot, because these are the kids who are in the Terry Center and Silver Lake. These are children that might have inappropriate sexual behavior issues and who may have some mental health problems that need treatment. These children might be the ones that you would find in the Child Mental Health Division. The third division is the Division of Youth Rehabilitative Services, which is essentially the arm of the Juvenile Justice System. This is where children who have been picked up after an arrest and put in a detention center, and then they go through the Family Court system – sometimes even the Superior Court depending on the level of the charge. Then they have the facilities that will put them in the different probationary levels according to their offense. The last division is the Division of Management Services. What this division does is provides the support for the department and it includes Information Services, Human Resources, and Education. She said that her department has a total of 1200 employees and they have over 26 locations. They have employees who are put into approximately 50 different schools in the state.

Secretary Rapposelli said that the major factor that they are facing, along with all of the State, is the loss of funds. They have to look at programs that have to continue, and other areas where changes can be made. She now participates in CPAC (Children's Protection Accountability Commission). She is also co-chair of the Juvenile Justice Collaborative along with Chief Judge Kuhn from Family Court, which deals with problems being experienced in our Juvenile Justice system.

James Morning questioned what is being done regarding the juveniles involved in the gangs such as the *504 Gang* and *M-13*. Secretary Rapposelli said that Youth Family Services has not done anything meaningful regarding the gang problem, because she thought that is something that has to be addressed by law enforcement in each county. It is especially hard to tell some of these young people that there is a better way to live their life when they know the money to be had selling drugs. She did say that one of her visions is to have more people in all of the schools, such as Division of Family Services, Youth Family Services, and Child Mental Health etc., so that they are there where the problems are being experienced and not just called upon when someone calls *911*.

Senator Sorenson said that one of the issues that come up when we have our Public Hearing is that in divorce cases there are allegations made of abuse on both sides regarding abuse or neglect and how it is handled by the department. She asked Secretary Rapposelli for her comments on this issue. She said she wasn't sure if a judge makes his decision by the findings of the Child Advocate, or by the department. She said that if anyone feels that a child is being abused or neglected they have an obligation they need to call the department and have them investigate the circumstance. The Secretary said

that many times it is unsubstantiated. Senator Sorenson said that doesn't mean that it is not true, but that they have no evidence to prove it.

Jody Huber stated that they have listened to a lot of testimony in the Fairness for All Task Force regarding people making false allegations of child abuse, and it is used as a sort of leveraging. This is a complaint that is made a great deal by litigants. Secretary Rapposelli said that the PFA is used many times as a pawn in a divorce case. She said she thought this was something that was filtered out by the courts. If DFS investigates and can find nothing to substantiate the allegations then they do not have to become involved. If they do become involved they make sure they are doing it for all the right reasons to protect the child, because this will be extremely disruptive to the child.

Judge Walls told Secretary Rapposelli what he has experienced with DSCYF has been the lack of coordination of services within the three divisions. He said that Family Court in Kent County have quarterly meetings with the KIDS department and have been able to iron out many of their issues, and it has gotten much better. As an example Judge Walls said that if a kid is in the custody of Family Services, and there is a need to have a psychological evaluation that sometimes it might take as long as two or three months due to a staffing problem. Other times you might actually want the same thing, but use different terms. For instance a CAS (case assessment) evaluation is a full-blown psychological evaluation. The court used to refer juveniles to the Child Mental Health Division especially in YRS in the criminal matters and the delinquency matters for a CAS evaluation. The whole purpose for this evaluation was to see what were the issues and/or problems with the child and what would be the best place to put this child. Child Mental Health was interpreting this as a full-blown psychological evaluation, so over the years it could take two or three months to have this done, but what they really needed was something the division called a *placement assessment*, which you could get in a couple weeks. He said that by just resolving the lack of communication, that problem has made significant improvements.

Senator Sorenson asked if caseworkers, or family service workers, have had training when dealing with children in a divorce. Someone sent her a letter and said that when the caseworker, or family service worker, came out to interview the children, regarding the charge of neglect against the father, the interview was done within the hearing of the father. Secretary Rapposelli responded that she knew they do have training, but did not know how specific it is. There should be training on *'how to interview a child.'*

Judge Walls said that sometimes he thought that the issues become cloudy as to the administrative procedures within the department and the court and the legal issues that they have to deal with. He said he didn't know if that was a training issue, or if it is a participation issue that the Attorney General's office and their attorneys that represent DFS need to be more involved with in their cases. Sometimes in a hearing there may be a court order, or a case plan for reunification that the division does not fulfill as part of the case plan, because of their internal procedures. A caseworker does not seem to understand the fine line between the court order and their policy. Sometimes when the

worker feels they do not have any authority, and the judge will ask how the court order should be worded. This sometimes will put the worker in the middle. He said that there is a problem when you have a worker who is timid and new and does not have the experience needed to obtain the information needed to make a decision in the case. Secretary Rapposelli said that this might be a good issue to address when they have mock trials. During the trials, this could be a good forum to educate the caseworkers, especially the ones who are more timid on how to ask the questions, so that the court is able to obtain the information needed for a resolution for the case.

Senator Sorenson said that at the recent Public Hearing the person felt that there is a need for more training needed for understanding children with mental health problems. The speaker felt that there was a lack of understanding on what this mother goes through when dealing with the child who has serious mental health problems. The mother would have to restrain her, but then she had allegations made against her about abuse. The mother felt that there really was a lack of understanding as to what the mother has to deal with who has a mentally ill child.

Senator Sorenson said that a speaker from the Foster Parents' Association of Sussex County spoke on the problems they are experiencing regarding immigrants of unclear residential status whose children have been documented as U.S. citizens and are removed from their care. There is a tremendous amount of legal ambiguity in these cases. Foster parents are often caught between the state workers and the representatives for the parents and they are receiving conflicting information. Secretary Rapposelli said that she didn't fully understand the problem and would like to visit this later. She said that just maybe this is an immigration problem, which would then be a Federal issue.

Curtis Bounds said in his experience if there is an undocumented alien in the United States with U.S. citizen children, often the children go back home with their parents to their home country. These children have dual citizenships. Curtis said that the United States does not grant dual citizenships, but most of the other countries in the world do.

Senator Sorenson asked if there were any other questions for Secretary Rapposelli. James Morning asked if day care came under her umbrella and she said it did. James questioned when a person applies for a child care license do you go out and make an initial visit, and then do you do a follow up visit after they get the license at either 30 or 60 days? Secretary Rapposelli replied that there is continuing monitoring of the license. She said that she thought there were new Delacare Regulations that were put into place. She replied that what is happening right now is that they are allowing a little bit of a grace period to allow everyone to make sure they are in compliance with the new regulations. She said that her office not only issues the childcare licenses and approves them; they also make sure that everyone is in compliance with the regulations. They also take care of the renewals. You can now go online and see listed for each county all the large childcares listed. You will be able to see if they have a license and if there has been any problems or issues. If you do not see a particular Child Care site on the list, in all probability, that they do not have a license.

Curtis Bounds asked Secretary Rapposelli if she could make the Department less bureaucratic would she do so. She replied *absolutely*. Considering the economic situation we are experiencing, she said she feels that this is an opportunity to provide more for the kids. Eliminating a lot of the waste in government and streamlining many of the services that we provide will allow us to take advantage of this opportunity. She said she sees the opportunity at this time to do that, because they do not have a choice, which is really a wonderful way to get things done. She told Curtis that she not only has the authority to make these changes, but she also has the support and the backing of all to do what needs to be done. On behalf of the Family Law Commission, Senator Sorenson expressed everyone's appreciation for her visit.

Next on the Agenda was pending legislation. Senator Sorenson asked everyone to look at the listed pending legislation.

HB 77 – An Act to amend Chapter 9 of Title 10 of the Delaware Code relating to the Family Court of the State of Delaware. The synopsis of this bill is as follows: In domestic violence situations, family pets are often a barrier to a victim of domestic violence from leaving an abusive relationship. The pet can even become a tool of violence for an abusive partner or parent/guardian who is willing to injure or kill a pet as retaliation or as part of a pre-emptive strike designed to gain or maintain control by means of terrorism. This Act clarifies existing law to make clear that the Court may grant, among other relief, that a Petitioner be given possession of a family pet via a protective order.

HB 104 – An Act to Amend Titles 10, 13, and 31 of the Delaware Code Relating to DSCYF custody and Third Party Visitation. Jody Huber said that HB 104 is actually coming out of CPAC. This bill has been worked on by various agencies and has been a fairly long time coming and represents a tremendous amount of work. It removes references to any other person other than a parent gaining custody. Rather than a grandparent asking for custody they would ask for the grandparent to ask for guardianship. She said that they prefer for the Third Party to ask for Guardianship, because it allows for them to have the authority over their medical care at a hospital. Diane Metzger said in her practice she has seen this become a huge issue. In instances where the parent is bipolar or on drugs and the grandparents who are loving grandparents can't really get the right to take care of that child. Jody said in the seminars that she conducts for grandparents, the grandparents are so married to the custody term, and it is hard to get them to file for guardianship. The question was asked what was the difference between guardianship and adoption? Jody said that in guardianship the parent's rights are not terminated – the parents still retain their parental rights. The guardian has care and control of the child, and they can make medical decisions, education, travel, welfare, upbringing, but the parent's rights are not actually terminated. In some situations, there is even parental visitation written into the order.

Curtis Bounds explained that when parents get divorced and argue over who has custody then the court steps in and says do you want to be joint custodians, or do you want to be sole custodians? This changes the legal dynamics. Guardianship is above

that. Guardianship is more powerful than custody –guardians have custody. Basically this term is applied to people who are not parents. Diane Metzger asked if the parents could get the children back. Curtis said that they can. She said how can this happen? Curtis said that dependency and neglect are not well defined under the Delaware Code and there has been lots of legislation and litigation in the last 10 years defining who can file and what they can file, but there has been very little clarification on what is dependency and neglect. He said right now it is very easy to get guardianship of a child under dependency and neglect, but it is also easy for a parent to get back the custody of the child, because they now have a job, a place to live, and now I can provide for the child. Diane said she wasn't sure that would be in the best interest of the child, especially if they were receiving good care and being treated right – they should stay with the people that they are used to. Curtis said he felt that this was the problem considering what is in the best interest of the child, versus what is the Constitutional right of the parent.

Jody Huber said that she would argue that if you have had a guardianship going on five years, that very well be a case for someone to file for permanent guardianship, which is much more difficult to reverse. Judge Walls said that you would first have to prove dependency and neglect and then you determine whether it is in the best interest of the child. He said that what you are looking for are good parents – not the best parents in the world. Jody said you can file for permanent guardianship at any time right at the very beginning. Judge Walls said that one of the reasons for permanent guardianship statute was so people would not have to take the drastic step of termination of parental rights.

Drew Slater said that SB 55 is on the agenda for today, which will allow guardians and permanent guardians of children to petition for termination of parental rights and adoption. Judge Walls questioned why don't they just amend the TPR statute and allow non-blood relatives. He said that one of the concerns you would have is to be granted permanent guardianship you would have to show that the grounds for TPR are present. Sometimes you are able to get permanent guardianship by consent. There was a lengthy discussion on this bill, and the consensus was that there might be a better way to address this problem. It was thought that there should be some more investigation on what led up to the need for the bill, and if the problems could be solved in a different manner.

Senator Sorenson asked if they had any problems with SB 32 and SB 33?

SB 32 says that currently abandonment of a child less than 16 years of age is a misdemeanor and abandonment of a child 16 years of age and older is not a crime. This would make all cases of child abandonment a felony, with children under 14 a Class E felony and those 14 or over a Class F felony.

Curtis responded that he has a problem with continually making things a felony. When you criminalize something and say it is wrong and make it a misdemeanor, which brings it into the Criminal Justice System – allows them to know that it is wrong – be punished – don't do that again – and if there are repeated offenses – there are repeatedly

penalties. Making things penalties so that people have to serve at Level 3 to a Level 5 just isn't necessary. The consensus seemed to be that this wasn't a bill that the FLC would want to show its support.

Senator Sorenson then address **SB 33** –This legislation qualifies that the child can be a witness to an act of domestic violence by sound as well as sight, acknowledging that a child may have heard the violent act from another room, but nonetheless be a witness who is emotionally impacted by it. Senator Sorenson said one of the reasons for this bill is so the child is able to get treatment if they have been traumatized.

Senator Sorenson asked the members to discuss SB 55 now that everyone had been given a copy. She explained that this bill allows guardians and permanent guardians of children to petition for termination of parental rights and adoption. The question was raised as to whether or not this bill had been brought before the Family Court. Judge Walls said that there was a CORE legislative team, and he was under the understanding that this bill was supposed to be discussed at their May meeting. It was a surprise that the bill was released from committee one day, and the very next day be put on the agenda. It might be better to postpone this bill. Judge Walls explained that the CORE team chaired by Justice Ridgely is made up of representatives from the various courts, and the theory behind this was that legislation dealing with the Judiciary would be reviewed by this committee, and they would give their input. By this process when the Judiciary says that they are in support of any legislation, they have already looked at it, and can give their informed support. Judge Walls said that he thought that Judge Ridgely had plans to discuss this bill at their May meeting,

Senator Sorenson questioned whether or not there were any specifics or concerns that should be addressed regarding this bill. Judge Walls said he thought that some of the Judges in Family Court were concerned if it was necessary to grant that authority to a permanent guardian or to a guardian. He said that some of the ramifications would be in order for there to be a permanent guardianship you would have to establish or show the grounds for TPR is there. If you granted permanent guardianship you could then turn around and file for adoption. He said the whole purpose for the permanent guardianship was not to take the drastic step. Judge Walls asked should they look at that statute dealing with Termination of Parental Rights and expand that group and should they add others like permanent guardians and regular guardians?

Jody Huber said that in her line of work, she would have to do a pretty significant amount of education for pro se litigants if this bill were to go through. She said that what concerned her was it was not just a permanent guardianships that can file for guardian, the vast majority – she thought it was 85 – 90% - guardians that the court does are Consent, which means that they do not go to a court hearing. It is the parent saying yes I agree that at this time I am not capable of caring for my child or I am being transferred to a jobsite for six months, so I am giving guardianship to my parents. As a result of that the person would be in a position that they could then file a petition for a Termination of Parental Rights. Judge Walls said that what the person wants is custody, but they do not fully understand the difference between custody and guardianship. There was a thorough

discussion on the pros and cons of this bill with the thought there might be a better way of finding a solution to the problem. Judge Walls seemed to think the CORE legislative team should still look at this bill before going forward. Curtis said that he thought that this was a conflict between parental rights and non-parental rights. This is a conflict between the state and the courts having more authority to put children in better houses versus people who say no even if that parent comes back five years later and is now capable of raising the child – thank you very much for doing their duty to humanity, but this person who has turned their life around now has the right to resume the position of parenthood. He said these are two core fundamental conflicts. It was agreed that this is a huge issue.

Senator Sorenson said the next bill is SB 34. This bill deals with children who are abandoned by their parents killed or almost killed by their parents. It expands the abandonment age from 6 months to 6 years old where children are left in circumstances, which place the child at substantial risk of injury or death. It allows termination of parental rights, where the grounds can be proven, if a parent causes the death or near death of any child, and includes reckless conduct as well.

Senator Sorenson questioned whether there were any bills that the Commission would want to endorse or take any action on. No one thought there were any they should give support to at this time.

Senator Sorenson asked the Commission if they would like to do anything different with the format of these meetings. Should they continue to bring in speakers in order to keep up-to-date on what is happening in the different departments! Diane Metzger suggested that she would like to see where we address some of the problems that people bring up at the Public Hearings. Judge Walls felt they should be more pro-active. He said he thought it was good to hear from the various department heads, but they usually are reporting the same issues. He said maybe they could discover a theme in the comments that they could address and maybe there were issues that they couldn't solve, but there might be something that they could solve. It was decided to look into some of the files; such as the ones that we have received signed waivers. Senator Sorenson designated Judge Walls, Jody Huber, Diane Metzger, and Curtis Bounds to look into these files and come back with a report on their findings.

Senator Sorenson asked everyone to keep Sunday Haffen in their thoughts and prayers, because she was very ill. She was very faithful and attended many of our meetings.

Senator Sorenson then announced that they were having a Child Poverty Summit on April 22nd. This is becoming a bigger and bigger issue, especially with parents losing jobs and with divorce and people not being able to pay their child support. This is an all day event at Dover Downs and it is free.

As a suggestion for the next meeting Curtis asked if the Commission would be interested in hearing from someone in law enforcement, since the issue was raised

regarding the Lewes Police Department at the Public Hearing. He thought it was interesting, because he had an experience in his office with a police officer from another police department where their client had to remonstrate with the police officer for about one-half hour in order to have the officer enforce the PFA. He was arguing with her about the merits of it and other issues. When Curtis talked to that officer's supervisor that officer had come from the Lewes Police Department. Jody said she had received a complaint just a few days ago from someone who indicated that the police refused to enforce their valid custody order. Judge Walls suggested that what they might do is bring in the Secretary of the department – give him some background on what we would be asking of him, and he could then bring another person with him to help answer any questions that the Commission might have.

James Morning said he wanted to address paternity fraud, and he said that Delaware is dragging their feet on this issue. All of the states surrounding us have already taken action on this issue. Senator Sorenson said they had already looked at this bill and there seemed to be reservations regarding this bill. James said he thought that a child had the right to know their parent. In some cases the medical history is needed. He said in D.C., Maryland, Virginia, New Jersey, and Pennsylvania they have addressed to this problem to clarify this issue. The other point that James wanted to address was domestic violence. There is a different philosophy here. A lot of these kids that we are talking about in the home especially in a one-parent home, who are with their mother, the children are taught to defend themselves no matter what – they are being taught violence. This is a problem and they are saying that the courts are not listening. They are being taught to leave, but they are not able to leave without being attacked. They try to get out of the house to keep from fighting. Then you go to the court, because a warrant was issued for your arrested for assault on the individual. You have a public defender – you have the judge, and the question is asked '*did you put your hand on this individual*' and the reply is '*yes I did – I moved them out of the way.*' You know you are not supposed to touch – what are we telling these young men and sometimes-young women to do? Senator Sorenson replied that she serves on the Domestic Violence Coordinating Council and she thought that this issue should maybe be asked of them. She told James if he could fill out the form we have regarding the problem that he just addressed, she would follow through on this concern and try to get him an answer.

Senator Sorenson recognized Gordon Smith. He said he just wanted to say that he appreciated the opportunity to speak to the members. He said he had a personal interest in the whole PFA issue. He thought there is a bigger picture that he would want you to look at. He said that he was sure that the PFA has had a tremendous positive impact. Family Court has done this to protect the abused women and children, but he thought it has been used as a means of revenge. He said all was needed was a minute piece of evidence. He said if the PFA were a criminal situation you would have a public defender who would represent their client, but in a civil case PFA you can have your children taken away – you can have your vehicle taken away – you can have many things taken away, and if you slip up one bit. He stated that all PFA's are valid and not all accusations made by the accuser are true, but if you go in as the petitioner they are immediately referred to an agency called The Delaware Legal Aide Society. He understood that and

stated that he had no problem with that. His problem is that the respondent receives no help whatsoever. Senator Sorenson said was he saying that the respondent does not receive free legal aide? Jody Huber responded to this by saying that she believes that in New Castle County their board has agreed to only represent only petitioners, and that the petitioners have to meet certain income guidelines – basically it has to do with the poverty line in order to receive representation. In addition, they only take certain cases, because they are so limited in staff. They take cases regarding what the allegations are – etc. Gordon said that what he hoped would be that there could be an unbiased team of individuals who could look at possibly modifying the PFA’s – not only for the legal representation, but for the court to balance it out by allowing the other party to have the same asset. Thank you.

Senator Sorenson reminded everyone that our next meeting was May 14th, and she adjourned the meeting at 11:50 a.m.

Respectfully submitted,

Jean C. Ardis, Secretary