

**FAMILY LAW COMMISSION MEETING**  
**APRIL 17<sup>TH</sup>, 2008**  
**MINUTES**

The Family Law Commission held its monthly meeting on Thursday, April 17<sup>th</sup>, 2008, in the Senate Hearing Room in Legislative Hall. The following members were present: Senator Liane Sorenson, Chair of the Commission, Senator Bruce Ennis, Judge William Walls, Lynn Kokjohn, Harry Gordon, Peggy Smith, Dana Harrington Conner, and James Morning. Guests were Chuck Hayward, Director of Child Support Enforcement; Beau Biden, Attorney General; and Pat Daly Lewis from the Attorney General's Office. Also, we were pleased to have back with us our liaison from Family Court, Jody Huber.

Senator Sorenson called the meeting to order at approximately 9:30 a.m. She asked if anyone had any corrections or additions to the March 20, 2008 minutes. There being none Harry Gordon made a motion to accept the minutes as reported and Dana Harrington Conner seconded the motion.

Senator Sorenson began by addressing the topic of *false paternity* which was an issue that was addressed at our Public Hearing in January. Drew Slater went on the internet and found a document that addressed this issue. It is entitled *Who is your daddy?* In 30 states, pharmacies can do a DNA paternity test by having a parent bring in the baby's pacifier, and they are able to answer that question!

Senator Ennis commented that you must be able to produce this information within two years or you are barred from making any claim. Senator Ennis said that is why he has drafted a bill in response to the problem that has been encountered by one of our speakers, Roger Hall, who spoke at the Public Hearing in January?

Because of the schedules of our two speakers this morning, Senator Sorenson said that the Commission would address the new legislation. She called upon Senator Ennis to comment on his new piece of legislation which deals with 'false paternity'. Several other states already have this legislation. The purpose is to set up a method whereby a person can contest allegations of his paternity. In other words, sometimes a person later learns that he is not the biological father of a child. He has all of the obligations to support that child when in fact the real father has no obligation at all. This would be a process that would address this problem that does not exist in the State of Delaware.

Senator Ennis called upon Roger Hall to voice his concerns. He addressed the importance of knowing a child's medical history. He said he knows his family medical history and that of his children's medical history. The problem arose when the child he has raised thinking it was his child. It has been determined that this child has special medical needs and he is being held legally responsible for this child when indeed the child is not his. Senator Ennis said that when a child has a problem the first thing a physician does is ask for a medical history for the child in their quest to see where the

problem might be coming from. This is where the problem starts because sometimes a physician cannot determine the problem without the true medical history of the parents.

Professor Dana Harrington Conner said that she had to speak on the one concern that she has regarding this issue is how this would affect a child who thought that the man who he regarded as his father is not in reality his father. This could affect a child's future, and really traumatize the child. She wondered if this would be in the best interest of a child. She said she did understand the need for genetics and health problems and that sort of things, and she said you would have to weigh those factors also. As an attorney she felt this legislation would need to be looked at further, since she found one statement that she said should never be inserted in the bill and that was regarding a male *that has been accused to be a father* – that language should never go together.

Pat Daly Lewis stated that the U.S. Supreme Court has already addressed this issue. The case that she referred to was a biological father who wanted to obtain parental rights for a child that was his, and in that case the court found that the child was born to an in-tact marriage is the child of that union. She said the reason the two years was put into place was it was felt that two years was the appropriate time window where people could if they had any question should raise a question before that time in order to minimize the trauma to the child. There were some things in the statute that implicate the child's rights and it doesn't implicate any protection for the child. She felt it was the child's rights that are at risk in this statute.

Professor Dana Harrington-Conner came back to the issue of what was best for the needs of the child. She questioned when do we say that enough time has gone by that we now need to do what is best for the child, and put the needs and welfare of children above everyone else, because they will be the one who will be damaged the most. She said she did understand someone being on the other side of that problem, but she felt that there had to be some kind of time limit, and maybe two years is not enough, but to leave it at any time would really set up a situation whereby it would be very harmful for the child in question. She said she thought there would be some significant public policy concerns that they need to think about before they change anything.

Senator Ennis said that since the Uniform Parentage Act was enacted, there have been amendments written. He said this bill would address a child for whom you have been ordered to pay child support – this would not pertain to a child that has been adopted, because this would no longer be an issue. He said this is just a procedure that many states have adopted, and it has to go through the court process and based on the evidence it would be granted or not granted.

Senator Sorenson suggested that we bring this up again in May. At that time, Dana Harrington Conner said that she would be happy to bring this up before the Family Law lawyers during their meeting. She said that if this was a process that could be done, it should be done at birth, do the blood test. Don't let someone linger with the belief that this is their father and a parent believing the child is theirs not then at some stage come back and say to this child who would be aware and knowledgeable that these who they thought were their parents were in reality not their parents.

At this time, Chuck Hayward of the Child Support Enforcement was introduced. He had with him packets of information which he distributed to the members of the Commission. He had with him Ted Mermigos, Deputy Director of the Division of Child Support Enforcement. In the packets of information he provided was information regarding their program and how it operates, a copy of the application for Child Support Enforcement. They are in the process of setting up direct deposit transfer of support payments that will be deposited directly to your child support case. Also included is the voluntary acknowledgement of paternity form which can be filled out in the hospital. He also included information about the CHIP program which is given out to people who do not have medical coverage for their children. Also included was a pamphlet that supplied information relating to the services that the Child Support Enforcement Division provides.

Basically, the Child Support payment program was established by Congress in 1975. It was established as a way for both the State and Federal government for the reimbursement of the cost for Aid to Families of Dependant Children, so all of the clientele was AFDC. In the mid 1980's the program was opened up to include non-public assistance clients. It begins with an order to the court, and the party is told to pay through the Division of Child Support Enforcement. In other cases they help to establish paternity, enforcement of the order after it is created. They collect both money and provide medical support for clients. They have a very large Medical Only population that they receive from DHSS every month where the goal there is to establish paternity or to get a medical order to reimburse the State for Medicaid services. Anyone can ask for their services – there is no income requirement.

Mr. Hayward asked if there were any questions, and Harry Gordon inquired if the Acknowledgement of Paternity Form was automatically provided to every mother at the time of birth. It is provided through the hospital and one of the things the Child Support Enforcement Agency is doing is trying to get the hospital to do a better job in getting in getting this form completed. He mentioned that if the couple is married, they do not ask to have this form completed. Mr. Hayward said that by law if the couple is married, there is a presumption of paternity. He said you can get a VAP (Voluntary Acknowledgement of Paternity) form at any time. This form can be done preferably at birth, but it can be done at any time. It is very important to get the child's father's name entered on the birth certificate. If the father is in the service the Armed Forces just two months ago began to accept the VAP forms because then the child is eligible for child care which includes medical. Mr. Hayward said the easy part is when the couple is together that is the easy part – the hard part arises when they are not longer together who is the parent that is able to claim the child as a dependant on their tax form.

Pat Daley Lewis explained the difference between a mistake or fraud. If the mother truly believes the child belongs to the father she names and then finds that is incorrect – that becomes a mistake, but if she deliberately says the child is someone's when she is really aware the child cannot be that person's – that becomes fraud.

Chuck Hayward addressed the issue that Sunday Haffen has raised many times concerning her grandchildren. The issue that she and her daughter have is not a Child Support issue - it really is a Custody issue. The Child Support Office would have no

jurisdiction in this area. Dana explained that it is a problem with the custody order that says that the mother has to confer with the father first. If she has joint custody, unless it is urgent, the mother has to confer with the father. They do have to agree.

In response to how Delaware's record compares to the National average for collections of Child Support payments, the national average is 60.4% and Delaware's collection rate is 60.5%. He continued to answer the questions that had been submitted before his appearance here today.

One question was what are the measures that are authorized and actually employed to encourage, or force compliance? Some of the examples were lifting auto licenses or hunting licenses; jail; publication of dead-beat dads and pictures in the newspapers. They have a number of tools that they can use as administrative tools. The number one tool is wage withholding meaning via wage attachments. This is the most effective tool. This only works if the person is on the regular economy and not the underground economy, and those are the ones who don't work or who work for someone who pays them under-the-table. They can suspend driver's licenses, professional, hunting, fishing, and trapping licenses. He said he is always amazed that what causes one person to come forward and pay. Drivers' licenses don't seem to have an affect, because there are many, many people who are driving without a valid driver's license. Recently they had two people come in and pay their arrears. One man came in and paid \$3,700 the first week they started the fishing license program. He had already had his driver's license taken away, but when he had his fishing license taken away, he came to their office to make payment.

They also have passport denial is a tool that is becoming more effective, because the limit was dropped from \$5,000 to \$2,500 in arrears before your passport could be taken. Now with the new passport regulations you have to have a passport to even travel or go on a cruise ship, you must have a passport. Their office is getting more collections with that method. He has told his staff, that there is no compromise – the person has to pay all their arrears or they are unable to get their passport. The State Department does not revoke passports – once you have one, it is good for 10 years. They are able to obtain some fairly large payments from this tool.

They began a program last year where they are to access the Child Support Lien network and they are able to make claims against insurance payments and when someone has a personal injury such as a fall etc. that money can be intercepted and sent to the Child Support Enforcement office. Also, if someone is receiving money from a Workman's Comp. payment, they are able to do an Income Withholding Order, so they are able to receive payments through that method. This is relatively new. They are also able to do wage withholding from Unemployment Benefits. He passed out a copy of a Wanted Poster that they are now using. This has been effective also, since it has caused embarrassment on some of the people whose names are posted. On their website they are posting the top 100 people who owe money in Child Support, and that also is becoming a good tool. They are also working with the Police and the J.P. Court because many times the people are picked up on a weekend. Their goal is to obtain 10% of the bail to apply to the Child Support payments.

Senator Sorenson asked if Child Support continues when a person is in prison no matter what the charge is. Mr. Hayward said yes it does continue. The law says that just because you commit a crime, this will not get you out of paying child support. They can obtain a minimum order to be paid while they are in prison. If you have assets when you enter into the prison system, you must exhaust all of your assets, before you can obtain an order to make a minimum payment. If a person is sent to prison they can apply for a minimum order, but all of their assets must be exhausted, before they request a minimum order. This is done so that a person is not rewarded by going to prison and getting out of the debt that he owes. You cannot totally suspend payments, because you would be rewarding a person for bad conduct. You would be making the other parent 100% responsible when the parent who has committed a crime gets off without being responsible for paying anything toward their child.

Continuing with answers to questions that were asked, Mr. Hayward replied that they do tax intercepts for both state and federal taxes. They are expecting a bit of a bonus this year, because those rebate checks that are due beginning in May, their agency will be able to intercept those payments. They also do lottery intercepts, but this is not a big program, but they do receive a few a year. They also do financial institution data match. They are able to match their cases against commercial banks, savings and loans, and credit unions in the state. If someone has an account and they owe more than \$3,500 in arrears, they are able to put a lien against that account and they have an opportunity to come in and explain why the Child Support agency should not take it. Many times people will pay off all of their arrears, but it can put a dent into the amount owed. This is another way they have of collecting money that is owed.

Another question that was asked was *do the collected funds go to the individual accounts or does the department take a percentage for operating expenses?* For non-public assistance cases which are their regular cases, all of the money goes to the custodial parent. For public assistance cases the goal of the program was to reimburse both the state and federal government for the welfare cases that were paid, so when they do get a collection some of that money is divided between his agency and the federal government. Their agency collected a little over \$96M in child support collections, and the amount that the state kept was a little over \$3M.

Another question was *does your department become involved in the mediating disputes involving the Melson Formula?* When adjustments are in order, it would seem logical that your department could be helpful in these cases rather than having the parties go before a judge of commission. The answer is NO. Their agency is not authorized to mediate disputes over the Melson Formula outside of Family Court.

Another question that was addressed was *why doesn't the child support system help enforce the visitation order?* They are unable to do this because they do not have jurisdiction over visitation as access matters. The Custody/Visitation & Child Support issues are treated as separate issues by Family Court.

Another issue was *why doesn't the Child Support agency notify the non-custodial parent when the child reaches 18?* They do send out two emancipation letters to parents of child or children on a child support when the youngest child is 6 months out from their

18<sup>th</sup> birthday and 3 months from the 18<sup>th</sup> birthday. For anyone who is the non-custodial parent they can begin the procedure to close the case, or if the child will still be in school, it allows the parent to notify their agency to extend the date of the order through the date of graduation or the child's 19<sup>th</sup> birthday, whichever comes first. These notices are sent out to people who are absolutely up-to-date with their payments.

Next question was *will the division repay the paying parent for an over-payment?* No, the Division will not repay an overpayment to the paying parent. The Division will attempt to work out an amicable repayment plant with the recipient to recover any overpayments that were made in error.

*What happens to undelivered payment?* In other words, what happens to the payments that the Division is unable to find the custodial parent, the money is eventually refunded to the non-custodial parent. They are really pushing the Direct Deposit option; because people always keep their bank know where they are.

*What is the Division doing to help non-custodial parent find work?* They have held career/job fairs in the past few years and invited non-custodial parents to attend. They have tried to apply for grants, but haven't been successful with this project. *How many downward modifications have there been?* The Division does not track order modifications

*When a mistake is made in payments, why does it take six months to clear up?* He replied that each case is different and that it depends on the circumstances of each case. When a company is doing the right thing, and the money is coming in consistently they do not go after that employer. But there have been instances where the company is having their own difficulties and they are taking child support money, and they are not paying the Child Support and they are not paying their taxes, those cases are prosecuted in a whole different level. The Attorney General's office would step in at that time and prosecute those cases on their behalf.

One other question that Senator Sorenson wanted to address on behalf of Mr. Samluk was that she wanted to know if one parent pays significantly most of the child support, why are they not able to claim the child as their dependant or why aren't they able to list the child on a medical spending account? The IRS answer to that question is that they say that the person who has primary custody of the child is the person who is able to claim the child as their dependant.

*What is the Division doing to help fathers share in the legal, financial, and emotional responsibilities of parenthood?* Mr. Hayward said that they are working with Head Start, the Kids Department, and the Delaware Fatherhood Coalition to help establish fathers to be able to obtain a better working relationship with their children. This concluded the presentation of Chuck Hayward, and he said he would forward the Commission further information regarding several of the questions that had been asked. Senator Sorenson thanked him for coming to our meeting.

At this time our Attorney General, Beau Biden arrived. Senator Sorenson said we had already introduced Pat Daley Lewis who is also from the Attorney General's office.

Senator Sorenson expressed the Commission's appreciation for Attorney General Biden arranging his busy schedule to be with us this morning. Senator Sorenson said that what had been requested of Attorney General Biden was for him to share with us what your office is doing and what your new Family Division is doing, and the issue that keeps coming up at our Public Hearings once a year and also by members of the public is the issue of False Allegations. She said the public has asked why people get away with lying about their incomes, or claiming abuse when it really didn't happen.

Attorney General Biden began by thanking Senator Sorenson and members of the Commission for the opportunity to be here with them this morning. He said he hoped to be able to answer any questions that they might have and to give some information about their new Family Division in Delaware Department of Justice. He said that Pat Daley Lewis have been named as head of this new Division which is something that Attorney General Biden is extremely proud of. He said that this is the first of its kind – at least that they are aware of. He said that other D.A. offices have similar units. A.G. Biden said that this new Division's core mission is for the members of the Delaware Department of Justice to connect the dots on crimes and issues that affect families. Also, an issue that is very important to him is Domestic Violence, but the impact that Domestic Violence not just on the victim of the crime, but there are other victims of domestic violence under any group starting obviously with the abused person, but also the child. He said it is his believe that one of the ways that they are going to begin to battle crime in the State – Delaware is now the 7<sup>th</sup> most violent State in the Nation. We have a homicide rate that was not limited to the city of Wilmington – it was throughout the State. He explained there is crime in Bridgeville that wasn't there 10 years ago; there is crime in Sussex County. There is crime in Smyrna that wasn't there 10 years ago. There is a level and degree of violence that is fundamentally different than it was five years ago. He stated that they cannot just prosecute the cases that are being brought to them – in other words not just being reactive. That is their job to prosecute cases that are brought to them and enforce the law. They would like to be part of the process where they prevent and hopefully protect people working alongside the 37 or 38 different police agencies in the State. This is why he is excited about the new Family Division. Sometimes they are overwhelmed with the volume of arrests that are brought to them that they have to pursue – the Family Division will be able to get in there earlier and in a little more intimate way with the various components that work under the Family Division to begin to get in there and help that child, or that family, to help them, or lead them down a better, safer, and healthier path. Attorney General Biden said that as many of the members already know a child that is witness to prolonged to domestic violence, or other violence, is more likely to be the kid that is regularly before a Family Court Judge, and is ultimately before a Court of Common Pleas Judge, and before a Superior Court Judge facing felony charges – whether it be felony charge for domestic violence, or for beating their spouse, or girlfriend, or just random assaults.

Attorney General Biden said that his goal is to have as many attorneys, and advocates in his office, social workers, and the entire team to begin to connect those dots because the kid they see in Family Court, is the kid the young Deputy sees in the Court of Common Pleas, and is the kid that they see either a young man or a young woman in the first case review for a felony. He stated he feels that they need to do a better job. He said that they need to do everything that they can at the Delaware Department of Justice

before he begins to think about what others could or should be doing. He said that what he does know is that despite how hard they are working at the Delaware Department of Justice with not enough resources sometimes and the General Assembly has been good giving them what they can give them and he does appreciate what they have been able to give them they still need to do more. They need to be more efficient and effective so they are not reactive, but rather be more proactive. He said that this new Family Division is their best answer in starting to accomplish this by getting in and intervening early and appropriately and aggressively as they can in some cases. He stated there is a time to be tough and also to think of other alternatives, and he said he is open to both.

At this time Attorney General Biden turned to Pat Daley Lewis for her comments regarding the new Family Division. He asked her to break down all the different components that are now in her new Family Division. And why it makes sense to have them all under one roof and one leader.

Before Pat Daley Lewis began Senator Sorenson asked if one of our problems that has come up repeatedly to the Commission from the public has been the filing of False PFA's, and would that come under this new Division? A.G. Biden said that he would answer that question. He said that PFA's and being aggressive regarding PFA's is very important to him. He said he realizes that there are stories out there regarding ones that are sought, but are false. He said he would rather rely on the fact that that their deputies in the Dept. of Justice are involved in the process to the extent that False PFA's are not the issue, because PFA's are essentially done to save lives. He said that in looking at everything that they do, he is aware that there are things that could be done better, but the overall theme that he wanted to leave everyone with is that PFA's are an essential component of saving lives, and the vast majority of them are sought in good faith and are granted accurately.

Pat Daley Lewis began by saying that she wanted to describe for everyone what the Family Division is and what A.G. Biden, Judge Gebelein, and the Chief Deputies conceived this idea – why it was conceived – and why they already see results from it. This was done because they had units in the Civil Division namely child support and child protection – they had units in the Criminal Division namely juvenile delinquency and domestic violence which includes criminal prosecution of child abuse that didn't talk. They had the same people – they had the same mothers in child support that were victims in domestic violence cases, and everyone went on their individual way. That was problem #1. Problem #2 was that Family Law and Family Court in the Department of Justice had turned into a by-pass. You came in – you cut your teeth in Family Court, and you got out of there as fast as you could. There wasn't a commitment on the part of the people who were there to stay there and have people who were dedicated to Family Law and Family issues. They were ones who came in and got through Family Court as fast as they could, because it is a very high pressure, high volume, very emotional area to be in. She said that along the way people had taken the attitude (some people) that I only have to be here for a short period of time so I don't become invested in these cases and these families even though they would see the same people over and over. They therefore had the problem of the family in all different parts of the Department of Justice not being connected – the victims of domestic violence not getting their child support cases being heard expeditiously. They had kids in juvenile delinquency cases which should really



have been in foster care, but whose cases were not handled. They had kids in foster care – large numbers of teens in foster care in the juvenile delinquency system where the prosecutor in the juvenile delinquency system did not know that the child was in foster care, did not understand what the child was going through in foster care, and why some of these situations were occurring. She said that most times when an attorney came into the A.G.'s office and you expressed a desire to stay in Family Law two things happened – either if you were in the Criminal Division you moved through there as a training ground, or if you wanted to stay the pay plan that was in place punished you for that – you were never allowed to be promoted, because what you wanted to do was Family Law – you were never allowed to get past a certain level in the pay plan because you weren't in Superior Court prosecuting felonies. This was one of the reasons for this new Division.

They have an extremely good relationship with Chuck Hayward head of the Child Support Enforcement Department. Pat said that they understand their responsibility in the Department of Justice to see that these Child Support payments are collected. \$90M was collected through the work of the Deputies Attorneys Generals in their office. They asked Mr. Hayward if he could provide their new division with a list of all parties owing over \$25,000 in back child support, and Secretary Hayward was able to provide a list of almost 200 people. Many of them owe over \$50,000. They will be working with the Child Support Division to prosecute criminally. If you are issued an order, and you do not pay a dime on it in three (3) years even though you are employed, you have already stated what you think about paying child support.

Beu Biden said this is twofold – they are able to collect the monies that are needed for the child, but also they want to send a loud and clear message and that is – 'laws are only good if they are enforced, and if you don't enforce them that sends a message to the community. He said that this was one area where the lack of enforcement was sending out a wrong message. It doesn't help to put these people in jail because it just doesn't work. They now have one of the best criminal prosecutors in the State, and she is now in charge of the criminal prosecution of child support orders. With this new program they are able to receive Federal money back for the prosecution of these orders. One of the things that they have done with the money they have received back from the Federal government has been to publish the *Most Wanted List and submit this to the newspaper* for publication.

The second problem area has been domestic violence and Pat said that Dana Harrington Conner is very aware of this. This was an area that the attorneys quickly moved through for a number of reasons. Some people have found too emotionally difficult, and another reason was that domestic violence cases are prosecuted in three (3) different courts – Family Court, Court of Common Pleas, and Superior Court. They combined those forces to make sure that all of the deputies in that unit are experts in all of the courts. They received child abuse cases in two different ways – one was through the Civil Child Protection case where a child has been found to be abused – they are in turn are put into Custody. There was no cross check on whether criminal charges were ever filed. She stated that they could have children that had been badly beaten, and raped, and no one was ever held accountable for that. Because of this there were child predators, child abusers who were never criminally held accountable. Now they have a system of cross checking when a child is brought in from the Child Protection Unit from

DFS, it is cross checked with the police to make sure there is a police investigation. She said under their new system Child Abuse and Child Protection are working together, and Domestic Violence and Child Protection are also working together. There are many reasons why the Civil and Criminal units need to be combined so the attorneys are able to get a complete picture of the case.

They now are trying to institute a unit to deal with the *abuse of the elderly*. They already are aware of two (2) important things – one is that the vast abuse of the elderly abuse is done by family members; two is that it goes unreported. Beau Biden stated that for each one that is reported – there are five more that are unreported. He said that elder abuse falls under three categories – physical, financial, and neglect. What many of the elderly do not understand is that they are able to obtain PFA's. They are training both the police and the deputies that they understand that the elderly person might not want to have their child put in jail, and they can offer a less drastic method for the person that will give them protection.

Pat said that in addressing the issue of PFA's their office is not empowered to prosecute the original PFA, but they are authorized by statute to prosecute the criminal Contempt of the PFA. They are in the process of making sure the different agencies know the difference between the Civil Contempt of a PFA and a Criminal Contempt of a PFA.

Attorney General Biden was a very gracious and answered several questions from our guests, but since we had extended the time of our meeting, the meeting had to be adjourned. Senator Sorenson thanked A.G. Biden and Pat Daley Lewis for taking time out of their busy schedules to share with us all the exciting new programs that have been initiated in the Department of Justice. The meeting was adjourned at 12:05 p.m.

Respectfully submitted,

Jean C. Ardis, Secretary  
Family Law Commission