

Family Law Commission Meeting Minutes

May 13, 2010

9:30 a.m. Senate Hearing Room

Members Present:

Lynn Kokjohn, Chair

Britt Davis

James Morning

Rep. Mike Ramone

Harry Gordon (Hon. Member)

Dr. Harriet Ainbinder

Eileen Williams

Dr. Diane Metzger

Rep. Michael Barbieri

Peg Smith

Others Present:

Jody Huber, Esq. Liaison to Fam.Crt.

Drew Slater, FLC Asst.

The Chair, Lynn Kokjohn, called the meeting to order at approximately 9:30 a.m. The speakers for this meeting were Guy Sapp, Family Court Administrator, and Chief Judge of Family Court, Chandlee Johnson Kuhn.

Lynn Kokjohn opened the meeting by going over the Rules and Procedures of the Family Law Commission. She took the opportunity to explain again what the Commission *shall do*, which is to study and evaluate the domestic relations laws of the State of Delaware; Study and evaluate the rules and procedures of the family Court of the State of Delaware; Review existing and/or suggestion for new legislation affecting domestic relations law and Family Court rules and procedures; Disseminate information about Family Law to the citizens of Delaware

The FLC cannot engage in the practice of law; Give Legal advice of any kind; Intervene directly or indirectly with any case pending in any court. The way we receive information is usually at the Public Hearing. The Commission looks at the information that they get at the Public Hearing and the comments made at the monthly meetings. – in other words *what were the key issues?* Then we summarized those findings. Then after this the Commission has focused on one of those topics. Today's topic is about Family Court Rules and Procedures. One of the points addressed was there anything that we could do in reference to what is going on in Family Court.

One major point is that there will be no electronic equipment used at the Public Hearing. Everyone is invited to attend either the Public Hearing or the monthly meetings. At the conclusion of the meetings and after the Commission has adjourned, the public is invited to make brief comments pertaining to their concerns with Family Court. Members of the public are requested to complete a Speaker's Outline form. When this form is completed it will help the Commission better understand what that speaker's concern is and how the Commission could resolve this issue. Lynn announced that James Morning would be the moderator of the Public Comment portion of the meeting – keeping in mind that it should be brief, due to the limited time we have in the Hearing Room.

It was moved and seconded to approve the Minutes of the April 22nd meeting without any changes.

Next on the Agenda was a sub-committee report, and the Chair called upon Rep. Mike Ramone. His committee was assigned to research what other States are doing to

solve problems that have arisen in Family Court of their States. He reported that he had received a great deal of information, which was supplied by a Legislative Aide for the House. Since his committee had not had a meeting, he asked the members to stay after this meeting in order to set up a meeting with all of the members on this Committee. The following members have been assigned to this committee -: Mike Ramone, Chair, Curtis Bounds, Esq., Judge Walls, and James Morning. Lynn requested that at the June meeting Mike Ramone's committee could report back on what they had found in other States, and how it could be used to solve the problems that have been encountered in our Family Court.

The other sub-committee gave their report at last month's meeting. This committee looked at the files of several of the speakers from the Public Hearing who had signed a form giving their permission to have someone look at their particular file. When the sub-committee completed their task they found there was nothing apparent that they could address. It was decided to recreate this form before the next Public Hearing in January and ask more specific questions. It would help for the Commission members to have more guidance in what they thought went wrong, and what was the specific issue in their case.

Pending Legislation.

SB 213 – This bill would allow the Division of Child Support Enforcement to disburse support payments electronically either by direct deposit to a bank account or to a stored value card. This bill is Out of Committee in the House, and Rep. Barbieri thought it would be passed when they come back in session.

SB 84 – This bill establishes de facto parent status in the State of Delaware by allowing a non-biological or adoptive parent to file for custody of a child. The bill will allow Family Court to consider evidence that the petitioner meets the requirements of a de facto parent.

SB 171 – This is an Act to amend Title 13 of the Delaware Code relating to parentage. A question was asked regarding this bill and wondered what is its current status. This bill has not been released from the House Judiciary Committee. *This is a bill that the FLC unanimously supported at their March meeting.* Rep. Barbieri said that he would see why it is being held up in Committee. He reported back that a legal question had been raised regarding paternity, and Rep. Schooley asked the House Attorney to review that issue and then bring his findings back to the House Judiciary Committee at their next meeting.

SB 52 – This bill addresses a new compact that is being developed as a joint effort among states to provide increased protection and services for children in the foster care system that may be placed in another state. At the present time Delaware is one of 10 states to enter into this compact, but 35 states must ratify this compact for it to be effective. Then the Interstate Commission will give the final approval.

HB 350 – This bill addresses responsibility in the schools. The teachers are held responsible for their students, but parents should also share in that responsibility for their children in the schools. Some schools require parents to sign a form at the beginning of each school year entitled Parents' Declaration of Responsibilities. This is being done in

many charter and private schools, but would be hard to institute in the public schools. The members all thought this would be a real help to everyone involved in the schools.

Since there were several questions asked regarding the Pending Legislation, the Chair made a request of the four legislators on the FLC to address the Senate Bills or the House Bills for the June meeting and give a report on the need for the new legislation. This will allow the Commission to make an informed decision on whether or not the FLC would want to show its support for any of the new legislation.

The Chair, Lynn Kokjohn, introduced our speaker for this meeting Chief Judge Chandlee Johnson Kuhn of Family Court. She began by updating the FLC on the projects that Family Court has completed this past year, and some of the issues that have come before the court. She said she would then try to answer some of the questions that have come to the Court through the Commission, and then by Jody Huber who then brought them to her.

Judge Kuhn stated that in 2009 the Family Resource Center served over 60,000 unrepresentative litigants. She gave Jody Huber, who is the Director of the Pro Se Center credit for the fine job she has done with the Resource Center. The following is a list of the detailed instructional packets on all major topic areas such as: Divorce, Custody, Visitation, Modifications, Guardianship, Termination of Parental Rights, Motions, Adoption, Child Support and Emergency Expedited Relief

The Judge stated that one of their more popular instructional packets is entitled *How to Prepare for Your Own Court Hearing*. And includes instructions regarding courtroom procedure, admitting evidence and how to testify and cross-examine witnesses. Jody conducts seminars each month on custody, guardianship, and courtroom preparation. Because of these instructional packets and seminars, Judges and attorneys have noticed a difference in how better prepared the unrepresented litigants are in the courtroom. In conjunction with Delaware Volunteer Legal Services they hold training for court appointed pro bono attorneys. They also provide on going training for their In Take and Resource Center staff.

Judge Kuhn shared with the FLC a situation that had just arisen this past week. The court received an ex-part'e custody order filed by the mother who believed that her ex-husband was fleeing to a foreign country with their child. Judge Kuhn said her main concern was to get this person on the *No-Fly* list so he would be unable to leave the country. Thanks to Guy Sapp, Family Court Administrator, and Senator Kaufman this was accomplished in less than six hours.

Judge Kuhn stated that a question that comes up every year is for Family Court to hold evening hours at once a week. She said that she has Commissioners that would have no problem in working in the evening, but you would have to provide security along with the extra space, which the court does not have. If there were ever a time this could be accomplished, she would totally be in favor of this change.

Lynn Kokjohn asked why the court could not enact the same hours as Motor Vehicle? The hours worked would still be the same, except there would change when they are open in the evening – that day they would begin work at noon. Judge Kuhn said it would be difficult in New Castle County, since the Capitol Police would have to be there for the other courts, and then provide extra security for the evening hours. If it were

done in Kent and Sussex it would be less of an impact, because they are not shared with any other agencies. The Chief Judge suggested that if this is something that there is strong support to enact, she felt that it should come by way of the legislators.

Jody Huber said she felt that there could be different options when addressing evening hours. There could be evening hours just for the Resource Center, so that people could come in and get their paperwork, and file their pleadings etc. The other option would address holding Court Hearings and that could be when you would have to involve other agencies.

It was decided to form a task force made up of Rep. Ramone and Rep. Barbieri. These two Representatives are going to investigate ways that Family Court could adjust their working hours to better serve the working public. Lynn stated that she would work with the Representatives along with Jody Huber. At the June meeting they will give a report on their findings.

Chief Judge Kuhn said that there had been questions regarding the Contact guidelines. This issue was revisited and the guidelines were re-written and approved by the Judges of Family Court. She said that one must remember that they are not a Rule of Law – they are just *guidelines*. These guidelines are used in the mediation process and to assist litigants in developing consent orders and reaching agreements amongst themselves.

Judge Kuhn addressed some of the problems experienced with the Rule to Show Cause. There is the issue of getting into court timely, and there is the issue of the consistency of the judge or the commissioner ruling on the case – *the one family the one judge policy*. Some petitioners file many petitions of Rule to Show Cause, and if you get a different Judge all the time you will get different results. The ideal solution would be the *one family one judge policy*, but that cannot always be done.

Judge Kuhn said that there was a question regarding the Parent Coordinator Program and the coordination of the medical services for the child. This is operated independently of Family Court, but with cooperation of the Family Court. This is done through the Delaware Parenting Coordination Council. Any request for coordination of medical services would have to be done through this Council.

The next question she addressed was the request for litigants to be able to address the court. One of the requests has been why can't a litigant be given 5 minutes or so to speak to the court at the end or beginning of the hearing when they are represented by counsel. Judge Kuhn said that litigants must be sure they hire an attorney who they have confidence in and will be their voice in the courtroom. That is the reason the litigant engaged an attorney – to speak for them.

Next she addressed the issue of allowing a support person in the courtroom with the litigant. If there is no opposition to a support person one is allowed to be in the courtroom, but if that person is to be called as a witness many times the court will not allow them to be there. She said she finds in divorce cases many times it is good people in a bad situation, and usually is very emotional, and she said a support person really is not needed. She said though that in a domestic violence situation she would usually allow a support person in the courtroom.

At this time Judge Kuhn accepted questions from the Commission members. Harry Gordon mentioned that concern the FLC hears about all the time is the issue of PFA's and False Allegations. The other one is the question on whether the Court is open or closed. The Judge's response to that is she feels that the PFA is less abused now that it has been in the past. She said you must remember that a PFA is based on a preponderance of evidence, so if it is found that a person has committed one or more acts of domestic violence that person has to go to the Certified Domestic Violence Training program. The court is now tracking that individual, and if they do not attend the program they are now called back into the court. Judge Kuhn said she feels that the process is working much better than in the past.

In regard to the issue of the court being *open or closed* she stated that you can presume that any matter that truly touch children such as custody, divorce, dependency, neglect – anything that involves children – those cases are *closed*. PFA's are open, juvenile felonies are open, and some misdemeanors are open. She stated that it is thought to be a small minority of people that really want the children cases to be open to the public. She expressed her opinion that she thinks this issue should be addressed by the Legislature.

Another question asked was regarding a No Contact order. James Morning expressed the opinion that it should apply to both parties. Judge Kuhn said that as she understood the question this would be a situation in which the victim contacts the perpetrator. The PFA is not made against the victim, unless it is a cross PFA. She stated that she knows that this happens. One of her pieces of advice she gives in her courtroom is for the defendant (the one without the PFA) to get caller I.D and to never pick up the phone when the victim (the one with the PFA) calls.

If the defendant feels they are being stalked or harassed by the victim by showing up at places they never were before, Judge Kuhn advice would be to gather proof of said actions and file a report with the police.

Lynn Kokjohn said what could the FLC do to help in this situation, because there is some amount of unfairness in these cases. She asked if there were any recommendations that the FLC could make? Judge Kuhn said she knew that there were abuses made. Unfortunately, the people who are Domestic Violence Advocates are reluctant to give, up or make any changes, because it took them so long to obtain these protections for women.

One of the issues that came forth at the Public Hearing was the practice that some attorneys have that when someone comes to them and wants to file for divorce (especially the woman) the attorney would advise them to file a PFA immediately. It sounded as if this was an accepted practice. The Judge said that maybe this was a practice several years ago, but she felt it was not done as much today. Also, many of them when investigated were thrown out as frivolous complaints. She said that many attorneys in New Castle County do not handle PFA's, and they send those cases to the attorneys that do handle PFA's.

At the conclusion of Judge Kuhn's comments, Lynn said how much that she wanted to express the Commission's appreciation of Judge Kuhn's attendance to their meeting. The FLC has met with judges and commissioners throughout this year and the Chair stated she felt every one of our guests had been excellent. The speakers looked at

the minutes, and when they came in they addressed the issues and responded to the questions that had been asked. She said she thought the whole process had been very helpful.

Lynn stated she wanted to add two things to the new business for our June meeting. One is that the two Senators and the two Representatives will be dividing up the Pending Legislation for the next meeting and give a report on the background of each proposed bill and why it was felt there was a need for it. The other item is the issue of Evening Hours for Family Court. That committee will be comprised of Rep. Ramone and Rep. Barbieri. The last thing she wanted to address in June is the sub-committee's report that has been charged with how other states are solving some of the same issues in their state's Family Court. Jody Huber, James Morning, Judge Walls, and Curtis Bounds are on this sub-committee.

Lynn made a special request of the members – please be at the meetings before 9:30 a.m. It is important that we be able to start promptly at 9:30 a.m. This is very important, since other people have to leave at that time to attend other meetings. Since there was no other business, it was moved and seconded to adjourn the meeting.

The meeting was adjourned at 11:50 a.m.

Respectfully submitted,
Jean C. Ardis, Secretary FLC