

**FAMILY LAW COMMISSION
MINUTES
MAY 14, 2009**

The Family Law Commission met on Thursday, May 14th in the Senate Hearing Room. Liane Sorenson, Chair of the FLC, called the meeting to order. The following members were present: Senator Liane Sorenson, Chair; Jean Ardis, Secretary; Judge William Walls; Lynn Kokjohn from Sussex County; Curtis Bounds, Esq.; James Morning from Kent County; Peg Smith from New Castle County; Dr. Diana Metzger; Eileen Williams from Kent County; Harriet Ainbinder, Child Psychologist; Dana Harrington-Conner, Law Professor from Widener University; Representative Michael Ramone, Representative Michael Barbieri; Senator Bruce Ennis; and Jody Huber from Family Court. Also present was Drew Slater Assistant for the Family Law Commission from the Senate.

Senator Sorenson suggested that we adopt a new category for the Commission and that was to appoint someone as an Honorary Board Member. It was decided that Harry Gordon could fill that position, since he is a CASA and has been a long-standing member of the FLC. Everyone agreed this would be worthwhile and would enhance the membership of the Commission.

Senator Sorenson reminded everyone that at our last meeting she had asked for us to keep Sunday Haffen in their prayers, as she was very ill. Sunday had faithfully attended many of our meetings. She continued by saying that she was sorry to report that Sunday had passed away. Senator Sorenson presented the family with a Memoriam Tribute in Sunday's name issued by the State Senate. Everyone will miss her.

Senator Sorenson asked if anyone had any corrections or additions to minutes of the April 9th meeting, which were sent to everyone by e-mail. Since there were no corrections to the minutes they are approved as submitted. She did comment that she had read in the minutes that we had appointed a new sub-committee at our April meeting to look at any issues that the Commission would like to address in future meetings. Since this new committee had not been able to meet, she asked if they could arrange to meet, or have a conference call, and bring a report back for our June meeting. The members that have been appointed to this committee are as follows: Jody Huber, Judge Walls, Diana Metzger, and Curtis Bounds. This meeting is being held so they can see if we would like to change the format of the meetings. Is there a better format that would work, and make suggestions on how we can become more effective.

Senator Sorenson introduced our two speakers for this meeting – Secretary Lewis Schiliro of the Dept. of Homeland Security and Bridget Poulle from the Domestic Violence Coordinating Council in Family Court. She explained that since we have received several comments on how the police handle family law issues, and she asked them to explain what their duties are. Secretary Schiliro also brought with him to this meeting Deputy Secretary for Public Safety, Elizabeth Olsen, who has had experience

with PFA's when a private attorney. He also brought with him Sergeant Randy Fisher who is the Domestic Violence Coordinator for the Delaware State Police. Secretary Schiliro said he thought they would be able to answer questions that he might not be able to. He stated that he was most appreciative to be able to answer questions that they might have regarding Protection From Abuse Orders. He said that he was sure that everyone was aware that the Delaware State Police has been placed under the Department of Homeland Security. Their mission is to promote and protect the safety and security of the people and property of the residents of Delaware. Of utmost importance to this department and the Delaware State Police is the protection of those individuals who are in the greatest need of protection including individuals of domestic abuse.

In 2007, the State Bureau of Identification reported that there were approximately 28,500 non-criminal and criminal domestic violence incidents. This reflected a 5.7% increase of domestic violence incidents in the State of Delaware over the last 10 years. Approximately 16,000 of the 28,500 were criminal in nature and approximately 16%, or roughly 2,600, involved some type of injury. The department in the Delaware State Police support and have made great efforts to support and protect victims of domestic violence. This includes the enactment of laws, which now give a victim of domestic violence the ability to obtain a Protection From Abuse Order through a civil proceeding in Family Court. We believe that PFA's are a valuable and necessary tool in keeping the abuser away from his or her victim. Because a PFA is a civil process it allows law enforcement to respond quickly in domestic violence situations and assist them in preventing a possible escalation of domestic violence abuse. Even of greater significance in the PFA order it requires the respondent to relinquish any weapons that they may have and where there is really a threat of deadly force it allows the police officer to confiscate any weapons through a writ from Family Court.

Senator Sorenson then said that the Commission has had over the years have had questions on how PFA's are handled. James Morning then said that they have seen the abuse of PFA's. He said that once a person has been charged with the abuse of a PFA they now have a record of the false charge, and James asked what happens to the person who has made that false charge?

Lynn Kokjohn interjected at this time and said that one of the concerns that had been raised at the Public Hearing was one that she said a member of the judiciary recently commented was that "*false allegations of sexual abuse have become the weapon of choice for mothers seeking to alienate their children's father in custody cases.*" We heard a lot about PFA's being used as a *weapon* as opposed to being used for the use they were created for.

Secretary Schiliro responded by saying that he thought that this was a valid issue. He said that one must understand that you have to separate the law enforcement function of this from the actual obtaining of the order. The order is obtained through the court where a person would state the facts and circumstances to the court. Once that order has been given and there is finding of abuse and once the police officer does show up it is one

of fact. He said he didn't feel it was up to the police to determine whether it had been appropriately obtained or not.

Judge Walls stated that once it becomes a PFA it basically is an issue for the court, and once the court determines when it should be issued the police officer is basically just serving or executing the writ or PFA. He said that anything that may transpire after that which may lead to false allegations is an issue that would lie squarely with the court or the Attorney General. It is not the police officer because it is a civil matter. Now if there was a criminal arrest involved and then they found that there were false allegations then the police officer would be involved with the criminal aspect of it because they would be dealing with more than what they were there for, and at that point in time the officer might have the obligation to go back and inform the Attorney General's Office, but the actual enforcement or punishment would be in the Attorney General's Office or the court. It is not the police officer's function. At times there also are more issues involved than a PFA issue. When the petitioner who is asking for the PFA fails to show up in court there could be many reasons such as assuming they did not show up because they were using it as a pawn, or that they were lying to the court.

Jody Huber then stated that one of the things that she thought was important to remember is that if a person makes an allegation of abuse and then they come to Family Court for a PFA and the Court finds that there is not enough evidence to issue that protective order, it that does not necessarily mean absolutely that it is a false allegation – it just means that there was not enough evidence for the court to issue the order. If an order is not issued, it doesn't mean that the person making the allegations was lying to the court. Senator Sorenson said it was like child abuse where the abuse cannot always be found. Jody said that she thought it is so difficult to determine if an allegation is false or not.

Senator Sorenson said that we have had someone from the Attorney General's office here at our meeting and they advised that the person should file a police report. Secretary Schiliro said that he was sure that there has been abuse of filing a false report. Many times he said abuse, or protection orders, are filed against police officers. When that happens and it is determined whether or not the police officer is permitted to carry a weapon. In that instance the job becomes an issue. Many times this is a powerful tool for the complainant to use against someone and perhaps there may be other issues.

James Morning questioned if there wasn't an automatic arrest policy when then was an issue of domestic violence and the police are called. Sergeant Fisher responded by saying that when an officer is called and they find probable cause they can make an arrest when he is able to determine whom the aggressor is. Senator Sorenson asked him to explain what a warrantless arrest is. Sergeant Fisher answered and explained that when the officer goes to the scene, they are able to go ahead and arrest the person.

Senator Sorenson said that before there were warrantless arrests the police would go there, and if the man who had beaten a woman was there; she wouldn't file a warrant,

because she was afraid to do so. With the warrantless arrest, the officer can go in and make the arrest without the person having to swear out a warrant against the accused.

James Morning questioned what the procedures are when there is a call made in regard to a domestic violence issue. He said he would like to know what is done when an argument is taking place and it becomes really heated. The person thinks it is time for him to leave the premises and the other person blocks their way. The person either grabs an arm or pushes the person out of the way and leaves. The police are called and the person is then accused of abuse.

Sergeant Fisher answered that when a police officer responds to that call, he is to make an investigation. The officer will question both parties, question any witnesses that might be there, see if either one of them have injuries. Also, he looks at their past history such as any domestic violence history and any PFA history. There are many things that the officer has to do when he arrives. He will not take just one person's word. Sergeant Fisher did agree that there are situations where there are no witnesses, no injuries, and the police officer has to make a decision. This is a very difficult call for the officer.

Secretary Schiliro stated that when a police officer comes into a situation such as this, where there is some indication of violence, and there has been an apparent injury, and if it has been the female that has been injured there is going to be a strong inclination to make an arrest. He said imagine yourself leaving the scene and having something much more serious occur. He said there would always be a propensity to make an arrest even though it would only be protecting the victim for that moment in time. They would always err on the side of caution.

James Morning asked if there were any statistics on children attacking their parents, and Secretary Schiliro said that they have do look at Elder Abuse, which has become a pretty significant issue throughout the country. Looking at it in the State of Delaware, there is a growing trend specifically where elders are being abused by their children who are people in their 50's and 60's.

Lynn Kokjohn said that she would like to be informed about the basic process all the way through in obtaining a PFA. She said she wanted someone to address the handgun issue, because there was a speaker at the Public Hearing who questioned why her abuser was able to obtain a permit to carry a gun.

Secretary Schiliro said he could answer the question regarding the handgun issue. When a permit is issued to Carry a Concealed Deadly Weapon, the person must be free from any order of protection. When someone who has a license to carry a gun and they become the subject of a PFA order, then technically the permit to carry a gun is no longer valid. The PFA order will allow the police to seize that weapon, and often times the PFA order will state that any and all weapons can be confiscated. Lynn said that a speaker at the hearing said that her ex-husband had a permit to carry a gun – he followed her around and they arrested him for 3rd Degree assault, and it was brought down to disorderly conduct and she was scared for her life. If she had a PFA her ex-husband would have

been prohibited from carrying a weapon, but the question arose whether there had been a PFA against him. Jody said she would look at the transcript to see if there was a PFA.

Bridget Poulle of Family Court was our next speaker, and she said she would go through the process of obtaining a PFA. She began that when someone comes into her office and they have the paperwork for a PFA she proceeds to assist them in filing a PFA. There are three ways: you can have a consent order, default hearing, or you have a hearing. If you have a consent PFA order where the parties are consenting there is no finding of abuse. When you have a default hearing it means that the other person did not show up. Then you can go to the court for a hearing. Under the protection order again if the petitioner is saying that there are weapons, and that is acknowledged. There are two ways that they can confiscate the weapons – one is you have to bring an injunction, which goes before a judge who determines whether they need to do a warrant and they need to go out and confiscate the weapons – or the guns can be ordered to be turned into the Police Department. The petitioner has to acknowledge that the other person does have guns. Once the PFA has been ordered the other person does become prohibited from having weapons. This way they are not able to go out and purchase guns legally.

Lynn Kokjohn asked what happens after filling out the form? Ms. Poulle continued by saying that a person can go in and get an ex-parte' order, which is an emergency hearing, so in addition to filling out your petition you also fill out an ex-parte' and you are heard that day. The hearing is done by a Commissioner. The only time this is heard by a judge is when it goes to a Writ of Injunction to do the search warrant. Lynn asked about the person accused – are you bringing him in? Ms. Poulle said not on an ex-parte' order. Because it is an emergency that they have to have a hearing within that ten-day-window, so they can issue an emergency protection order where they are given exclusive use of the home, but that only lasts for ten days.

Dana Harrington-Conner spoke up and said there has to be some basis for that to happen there has to be allegations of abuse that are significant, because ex-parte's get denied all of the time and they might not even be heard if there is not sufficient basis in the allegation stating that this person is in real danger. She said you look at all of the victims that are out there that are in significant danger. It was mentioned that it really is a minor number where a false PFA is issued, because there are many instances where these orders really are protection from an abusive situation.

Lynn questioned whether there was any closure to these cases – in other words where does it end – does it come off of their record? The answer was that the PFA does not come under a persons' criminal history, because this is a civil matter. It is not like they have committed the crime of domestic violence, so the PFA expires in a year, and it goes out of DELJIS, and does not become a part of their criminal history.

Judge Walls added that not all PFA orders begin with police involvement. He said that he thought that the majority of them are between two individuals. Jody Huber said that the vast majority of people who come into our Intake Center to file a PFA they file as pro se – even if they are represented by an attorney. Most of them are not coming

right off an incident that has occurred where police were involved. Some of them are, and many of them have past histories.

Senator Sorenson noted that there is a Pro Se Center in Family Court in New Castle County for anyone who is coming into court to represent themselves. At that location you can obtain forms, you can get information, there are packets that will walk them through the process step-by-step on how to do different procedures in Family Court.

Jody Huber said that the Administrative Office of the Courts offers a program on Mondays where you are able to consult with an attorney for 15 minutes on a Family Law matter. The question arose concerning a case where one person is represented by Legal Aide, but the other person in the case is not able to receive any help even though they are financially unable to hire an attorney. Senator Sorenson said that she talked to someone in Community Legal Aide after that issue was raised at the Public Hearing. The response was that they are woefully understaffed and part of their mission is to serve victims. Senator Sorenson said if they were financially able they would represent both victims, but they have not. Also, some of their money is earmarked by the Violence Against Women Act for the specific purpose of representing women victims. She said Legal Aide is not purposely trying to leave them without representation – they are just very limited in the number of people that they are able to serve.

James Morning questioned what is done when a person is not supposed to have a gun, but he has access to one at the parent's home – does law enforcement go to the parent's home and remove the gun. Dana Harrington-Conner responded that the answer is no, if it is not your gun unfortunately and even if you are living in the parent's home. A comment was made that because of that issue there have been several domestic homicides. James asked if someone went out and purchased a gun for someone who was not supposed to have a gun could they be arrested for doing that? It was agreed that the person buying the gun could be arrested. Judge Walls said that if a parent knowingly allowed their son or daughter to have possession or control of a gun he said that the parent could be charged with interfering with the court order.

Senator Sorenson stated that a bill addressing the issue is one that the legislature has never been able to get through. She said she felt there is a need to close the loophole when purchasing guns at gun shows, because when you go to a gun shop a person has to go through a criminal background check in order to purchase a gun. but if you go to a gun show you do not always go through a background check and there are stories of people making straw purchases and being able to buy many guns. When this happens there is no paper trail – there is no record of where the guns go.

Curtis Bounds stated there is something called a *Dram Shop Law* – a law that has been around for many years. In this law if you were to serve alcohol to a person and that person goes out and kills someone the person that served the alcohol could be held liable, but that law has never been adopted in Delaware for liability, but other states have. He continued that the idea in Delaware is that you are not responsible for the actions of someone else.

Harriet Ainbinder said that she would like to discuss another issue that in some way correspond with the police. She said that we heard from speakers who were married to a police officer, or who had been married to one in the past. Harriet said that the speaker said that their ex-husband or ex-wife are in a family of police officers, or who were friends of police officers. This group of law enforcement has acted in ways that have caused the speaker to be afraid, or they have received threats made to them by an officer – none of which is made in a way that could be proven in court. She said that this is something wrong in the police department itself, and it is frightening to the person.

Secretary Schiliro asked for the opportunity to give an answer to this charge. He said that years ago the police protected one another. When you were called to a police officer's house and there were some issues of abuse you could use your discretion not to make an arrest. He said that there could have been an inclination to do that. He stated that he thought that today it is different, or at least that the tide had turned. He stated that mainly it is one a liability issue, and also because that more and more of these cases become the subject of PFA's and the discretion is being removed from the police officer. He stated that there would be substantial internal, or administrative action taken to the extent that a police officer ignored or failed the provisions that a PFA included. Secretary Schiliro said that they do get those kinds of allegations on occasion – not a lot – probably not as much as it was years ago. He said if anyone had a problem with the police, they could call his office. His telephone number is in the blue pages of the telephone book under Homeland Security, and that number is 302-744-2680

Lynn Kokjohn asked Harriet if she was referring to the allegations made regarding Sussex County? Lynn said that this hearing was different from ones that she previously had attended. We had numerous speakers who made charges against specifically the Lewes Police Department, along with Rehoboth Beach Police Department, and the Delaware State Police Troop 7. Secretary Schiliro said that he would not say that those things do not exist, but if he had police officers sitting in attendance right now before him he would ask them to think about the potential issues if they do not act appropriately and what could happen after they leave that house.

Sergeant Randy Fisher stated that if someone is having problems with any of these police agencies, they could call him directly. He said he would need a date, a time, and the person's name. He could start pulling reports to see just what has been going on down there. If it is inappropriate, he will be able to forward it to refer it to the Troop's administration department, or to Internal Affairs and have them look at it. Lynn said that what she really wanted was to be able to get back to the people and tell them what they should do in their situation. Sergeant Fisher said that the person could call him if it is domestic related.

Senator Sorenson said she would like to continue with the agenda, and took this opportunity to introduce our second guest for this meeting who was Bridget Poulle, from the Domestic Violence Coordinating Council. She said that she would tell them to call the police department, and if they are intimidated about reporting it to another police

officer, she said she would recommend that the person go to the Victim Service Worker at the police department. She said that there should be a Victim Service Worker at the local police and also the State Police. Bridget said that in some cases they are unable to resolve the complaint, and it is then referred to the Attorney General's Office.

Senator Sorenson asked if there were any members of the public who would like to ask any questions of Secretary Schiliro. Cynthia Smith stated that she had been arrested for criminal trespassing in her own house. The person who had her arrested was her ex-brother-in-law. After two years she went to the State Police, and had him arrested for making a false charge. She said that her concern was that when they got to the court, they dismissed it. She had the A.G. and a domestic violence police officer with her as well. She said they did not give her an explanation as to why they dismissed the case. Her concern is that it is actually showing to the public that a person can make false allegations and there are no consequences. Senator Sorenson questioned and asked if the police did go with her, and Cynthia replied yes.

Cynthia continued by saying that she felt the problem was that four years ago when her ex-husband made a false report saying that she abused one of her children. The detective at that time said that he thought the claim was b.s. The detective thought it was being used as leverage in the divorce custody. He did not get anywhere, so he called DFS, and they investigated child abuse. After extensive investigation they found no evidence of child abuse. They disappeared, so now I have no money – the money was gone – I had to borrow. Cynthia complained that there is no coordination of help for people like her. She asked Secretary Schiliro to look at her police report. She asked if there is any way that they could investigate this and make a precedent and show that we will not tolerate false reports? She was accused of trespassing on her own property. Do you have to show a deed showing your name on the property – they would not take her word that this was her home. She was arrested with no basis – none whatsoever. Secretary Schiliro inquired who arrested her, and she replied that it was Troop 3.

Sergeant Randy Fisher said that he understood that it was in 2005 and that there was a probable cause when the arrest was made – it was nolle prossed in court. The accuser was then arrested for falsely reporting it, but at that time it was nolle prossed or dismissed. Cynthia said she didn't know why – no one has ever explained to her why! This is showing to the public that they can do these things and there is no accountability. She said she would like to have some justice after four years. She questioned why the State Police take just any complaint and act on it. Senator Sorenson suggested that maybe Cynthia could talk to Secretary Schiliro and Sergeant Fisher and ask them to look into your case.

Senator Sorenson then recognized Kim Butcher another guest who asked to make some comments. She began by saying that she had a court hearing. Her W-2 and her pay information was given to the non-custodial parent and a week later after her hearing her information was mailed out all over the community. On it was her social security number along with everything on it. She called the police, and they took the report, but they suggested that there was nothing that they could do. She went to Domestic Violence and

called the Attorney General who also said there was nothing they could do. They told her that they had never heard of anything that had happened like this. She stated that she felt she was a victim in this situation. This person had taken her personal information – the same information that was available to the court. She is concerned about Identity Theft in regard to her personal information. She expressed her concern that she didn't want anyone else to go through this experience. She said that she does have a PFA, but it only says that nothing else will be sent out, but she wonders how she can be sure that it will not happen again. She will have to put a freeze on her credit report. She found the whole thing is absolutely ridiculous that she went to the police and received no help, went to the Attorney General and received no help, and went to Legal Aide and received no help.

Jody Huber responded to Ms. Butcher and explained to her that they do not collect Social Security numbers on petitions any longer except on child support. They do not have any option, because when it comes to child support and a wage attachment or garnishment - they are required to collect that information, because we cannot process anything without the social security number.

Curtis Bounds responded that what has happened is that personal information was given to Mrs. Butcher's ex-husband, who is the father of her children. He said that Mrs. Butcher's ex-husband has the right to that information. He said that Mrs. Butcher had civil rights and that she could have put that information as confidential and under seal, so that the copies do not come out of the courtroom. He said the Division on Child Support is not doing the best job that they could do to protect this client's information. He explained that this is not something that the State Police would be involved in. It would be better to change the proceedings of DCSE (Division of Child Support Enforcement) so that they better protect the financial information.

Dana Harrington Conner said she felt this could be a training issue for the Bar Association, because she could see this happening in a PFA situation as well. She stated that this is someone's private information, and it is something that a perpetrator might use to continue to further abuse the person, and it would be harder to prove that they were responsible. Judge Walls said that this issue could be handled by an internal policy. He said he would take this problem back to the Court Administration Office.

Senator Sorenson then called on Bridget Poulle and asked her to speak to the Commission about the Domestic Violence Coordinating Council. She has been asked to look at the Domestic Violence Advocate as well as policies of officials. They looked at problems within the system and to initiate changes to improve the system. She stated that they do a great deal of legislative work – they do a great deal of training for law enforcement and judges. They also look at issues that come up with a PFA, and try to work with the community as well as the courts to see what they can do to help resolve any problems. They also collect data. They conduct fatality reviews on domestic violence, homicide and suicides that occur in the State of Delaware. Senator Sorenson said that means when there is a homicide they go in and investigate to see if there was anything that they could have done differently, and if there was anything that could be learned from that situation!. Bridget responded absolutely – it is to see what they could

have done better within the system and what they can do to improve the system. Her office hears complaints from victims as well as respondents as well.

She stated that in her opinion that there is not as much abuse of a PFA as people seem to believe. In their report of 2007, she said that of the 3,130 petitions processed 1,695 PFA's were never even issued. The reason why the PFA was never even issued in those particular cases 52% of the petitioners failed to appear and anyone who is familiar with the dynamics of domestic violence issue knows that this is fairly typical for the victim to change their mind. In 37% of the cases that were dismissed, the petitioner voluntarily withdrew it before the hearing. She said she thought it important for everyone to know a petitioner has changed their mind and decided not to come to court. She stated that 11% were dismissed following the hearing after a judicial officer heard the facts. She said that she wanted to state again that part of their job is to investigate the homicides, suicides, and domestic violence that occur in our State. She had just one more statistic to share, which is taken from their 2008 report. She said this report is on homicide victims who had a PFA. Unfortunately, of the 78 cases in this report 68, or 78%, did not have a Protection From Abuse order. She said she thought that this statistic is a very telling for establishing the usefulness of a PFA. She felt that we should have confidence in the judicial officers who hear the cases – in their having the ability to grant or deny a PFA order.

Judge Walls took this opportunity to help clarify the PFA order for Representative Michael Ramone. Judge Walls stated that when someone goes in and files a PFA you can file a routine PFA, or there is an actual hearing and you have a hearing within 30 days. But if you think the situation is so serious that you feel the court has to take immediate action – an emergency - and you can do an ex-parte' without the other side being involved. That day the person involved who has filed the PFA in ex-parte they can go before a hearing officer in Family Court whether it be a judge or a commissioner. That hearing officer will take testimony from the person filing the petition and based on that testimony in the affidavit the hearing officer makes the determination whether to issue the PFA, or sit it down by not issuing a PFA or sit it down for a court hearing at a later date. If it is issued, it is good for 10 days, because by statute you have to have full hearing with the other side present. The actual order expires in 10 days.

Secretary Schiliro commented at this time that more often than not when a PFA is issued, this is not the first time that the situation has come before law enforcement and normally that pattern escalates. He said he thought that everyone should be encouraging a person to seek help by getting a PFA or any other mechanisms that we have. He said that anything that hinders and keeps people out of the system unfortunately would only increase the amount of violence. Many times the victims are very very reluctant to seek help and we need to develop a process to overcome that. He said that many times we hear that law enforcement has been to that house many times. For the people who do not come to the hearings many times it is a matter of their being threatened or just plain frightened to do so.

Diana Metzger asked if you could ask for a PFA for child abuse? In other words – I am not being abused, but my children are. Dana Harrington Conner responded and said that yes you can, but it is not a good idea. It is better to file for divorce and custody, but the statute allows for that, but you have to prove it that day, and if you file for emergency custody there is time to investigate, but it is preferable to file emergency custody, or stay of visitation versus a PFA, which is a very short window and not a lot of opportunity to get evidence and you have to prove it that day.

Diana Metzger then questioned what sort of evidence would be needed? What is looked for in terms of evidence? Jody Huber said you do not need any evidence. All you have to do is to come in and get the petition to fill out and then file that with the court. She said they would never turn away any filing. Jody continued by saying that if a person is asking for an emergency hearing you will have to go before a hearing officer that day and testify, under oath, and prove your case. She said the person would need documentary evidence.

Senator Sorenson thanked our guest speakers for coming to the meeting. She said that obviously these issues have generated a great deal of discussion. She stated that if members of the FLC would think about some of the issues that were talked about this morning, and asked if there were any specific issues that the commission could address, or should address? Is there a systemic issue with PFA's, or how domestic violence is handled, and how the police respond. Is there some issue that the commission would like to further address? This could be something we could discuss at a future date. Before Secretary Schiliro left the meeting he was given the list of concerns that had been taken from our Public Hearing in March. In it he will be able to see some of the specifics that were addressed some of the police issues.

Senator Sorenson continued the meeting by addressing the List of Concerns that Drew Slater had taken from the complete transcript of the Public Hearing. Drew found the most frequent issues that had been addressed. Seven different speakers had concerns about PFA's and some of their issues with the PFA's. Other concerns that were addressed were Supervised Visitation, Community Legal Aide Society, No Contact for Both Parties, Paternity Fraud, False Allegations, Law Enforcement, Domestic Violence Counselors, Child Therapist, Children Coached Before Court, Foster Parents, Phoenix Management Services, Grandparents' Rights, Parental Abuse, Foster Care, Child Support, Judges, Childhood Mental Disorders, Lack of Openness in Family Court, Ability to Subpoena Witnesses, Women in Domestic Violence who are as violent as men, Lawyer Fees, Gun Permits, Family Court Transcripts, Insurance, Family Services, Visitation, Pro Se Issues, and Financial Information, which is the issue that Kim Butcher talked about this morning. Senator Sorenson said that the commission had quite a number of issues before it and asked if there were any that the FLC would want to discuss. She said that she wondered if there were any that the sub-committee would want to discuss, and come back and see if there is any legislation that the FLC would need to do, or any policy we would want to suggest?

Diana Metzger said that one of the issues that she is particularly concerned with was that the Grandparents, or other people who have concerns for the child should have an easier time in getting custody or guardianship. Senator Sorenson said we have learned it is preferable to get guardianship rather than custody. Jody Huber agreed. She said that there is a bill HB 104, which will make a lot of changes. If that bill passes, Third Parties will no longer be allowed to file for custody. This will help because they will no longer have the option to file for custody. It will force them to file for Third Party Guardianship, which is the intent of Family Court. Senator Sorenson asked Jody to explain guardianship. Jody said that the guardianship laws are fairly new, but currently schools, DMV, doctor offices all recognize the Guardianship Law. This gives someone who is not the parent – mainly times it is the grandparent – it gives them all the same rights and responsibilities as a parent would have. If a custody order were issued to the grandparents, they would only have the rights that were specifically delineated in that custody order, because the guardianship law would provide them with this umbrella of rights, basically all the rights that a parent has. Jody explained that when they have a grandparent come into the Pro Se Center and say they are asking for custody of a child they are given the guardianship materials. Guardianship is not permanent, but it can be, but there is a separate filing for Permanent Guardianship and that is something that a grandparent, or some other caregiver can file to make that relationship really unchangeable for a minor child.

Senator Sorenson said that we have S.B. 55 on the legislation list and this bill allows for guardianship and permanent guardianship children to petition for termination of parental rights for adoption. This bill has passed both houses. If this is the case, Diana Metzger wondered why anyone would want custody! Jody answered that many times parents file for custody, because custody is really for the parents of a child. Dana Harrington Conner said that the custody order only deals with where the child is going to live, who will make the decisions, and what the visitation will be. Parents file for custody when they are separated.

Senator Sorenson inquired if there were any other issues that we should talk about. Harriet Ainbinder said she felt that we should address Foster Parents and their issues especially the issue of payment, training, etc. Senator Sorenson said there is a certain amount of training for Foster Parents. In regard to Foster Parents' training and payment, Judge Walls said he thought that would all fall under DSCYF, because that is where the Foster Parent program is located. Senator Sorenson said that part of the problem with what the Foster Parent does not cover the incidentals, such as a class ring, or a prom dress, yearbook, etc. Many times because of the closeness that has been developed between the Foster Parent and the child the money comes from the foster parents' own pocket.

Peg Smith said that some Foster Parents that she has worked with through the CASA program have felt that they are not receiving sufficient support from DFS, and maybe this is something the Commission could look into. She suggested that there could be counseling support and research made available to them. One parent had requested

help and they have waited 3 or 4 months, but none has been made available, due to lack of staff. Peg Smith said that there are more and more children being placed in foster care.

Senator Sorenson mentioned how pleased she was that we had all four of the legislators on the Commission at this meeting with their varied backgrounds: Senator Bruce Ennis is a retired police officer that has a great deal of knowledge pertaining to law enforcement; State Representative Michael Barbieri who founded a Wilmington-based adolescent substance-abuse program and has been involved for many years in counseling and the problems associated with this area; State Representative Michael Ramone is the founder of the Delaware Swim and Fitness Center and through this he has been involved with children from six months until 18 years, and has 27 years experience of teaching children. Senator Sorenson said we have a good mix of legislators on the Commission who have been involved with children and their families.

Harriet Ainbinder said she wanted to remind everyone that previously we had the Attorney General here to talk about false allegations, and he told us that essentially he would not pursue that because of various legal issues. His suggestion was to go and file a police report. Jody Huber said this issue is very difficult to prove, and it is a resource issue, because they only have a very limited number of A.G.'s and how would they choose ones to prosecute. Senator Sorenson said that this is really a heartbreaking issue when you are asking for child support and custody and the person makes false allegations of abuse or lies about their resources are saying they have no money when in fact they do. This is a serious problem!

James Morning said that the topic of Paternity Fraud has been overlooked. Senator Sorenson said that Senator Ennis had a bill on this last year and asked him to comment. Senator Bruce Ennis said that it is still a concern of his that other states had moved on the Parentage Act. He said that three more states have acted on this since we last met. He stated that he planned to bring up this issue again, and he hopes he might be able to bring draft legislation to our next meeting. He said he thinks the issue is still out there – you are concerned about the welfare of the child and you don't know who the biological father is and you cannot get the DNA and the true medical background information to help the child. He took this opportunity to state one of the concerns with this legislation. He said some of the people in the State were concerned that if the biological father is eventually identified and the current father is supporting the child would the State have to take over the obligation from the reported parent to eventually support the child?

Curtis Bounds said he would like to answer. He stated why Delaware has this problem and had deviated from the Uniform Parentage Act. This is because of people coming along and causing children to become fatherless without being able to identify the real father who is capable of paying child support. When the change was made to the Uniform Parentage Act, you created the problem, which had been previously solved regarding false parentage. The way it was originally designed you could always establish parentage with DNA evidence at any time. The legislature came along and changed the Uniform Parentage Act to solve the problem of losing your father and put a two-year-

window in how long you could contest the birth certificate, which has created this new problem. He said that his advice would be to go back to the Uniform Parentage Act and the way it was originally constructed and have some sessions or Committee meetings – maybe bring Battle Robinson here, because she has been involved with this issue all of her career. They need to find out what they is needed to be done to the Uniform Parentage Act in Delaware to solve these problems, rather than pass another law to fix a previous law.

The next item on the agenda was Pending Legislation. Senator Sorenson said she had one other piece of legislation that she has a draft for. The Family Law Section of the Delaware Bar drafted this bill a long time ago. This would allow a judge to make part of the divorce order post secondary education child support part of the divorce order – in other words pay for college education for a child, if it was agreed to, up to the amount of in-state tuition at the University of Delaware in a situation where the family could afford to pay. She said she had a legislative fellow look to see what has happened in other states. There are 17 states, which allow courts to require post secondary education support. Senator Sorenson said she would like to know if the Commission would want to pursue this issue again and if the FLC would support it.

Harriet Ainbinder said she was sure we could come up with many reasons that there would be objections to this bill, but she thought it was time that we should pass this bill. She stated that she thought there would not be that many problems with it and that there are people who can afford to pay. She said she thought that college tuition is very difficult for families, but certainly for the children, and *if they have exhausted everything else* – their grades are good – you would be paying for just the college tuition – you would not be paying for an apartment, a new baby, the care of the baby etc. All you would be committed to would be paying for your child for four years of college at the level of the University of Delaware. She stated she thought it was a good bill and that the FLC should support it.

After several different members had comments and/or concerns regarding their support for this bill, there did not seem to be a majority that favored going forward with it. Curtis Bounds seemed to think it could have unintended consequences that might arise with the passage of such legislation.

Senator Sorenson continued by asking for everyone to look at the pending legislation. She had questions regarding S.B 84. Jody Huber said that she could comment on it. This legislation has been introduced due to a case that recently went to the Supreme Court. She said that the very first case that was presented to the Family Court was approximately five years ago. This situation arose when they had a same sex couple who had raised children together from the time the children were infants, and they were separated. The partners were seeking joint custody, and it was a question about whether the law would allow this – meaning would allow two people of the same sex to be parents as opposed to a man and woman. If the Family Court found that the trial level of the other parent had acted as a de facto parent and had stood in the place of a parent and had been financially as well as emotionally supportive of the child, Family Court

found the de facto parent should have standing to petition for custody. The Supreme Court found that Family Court was not allowed to do that. The result of this action by the Supreme Court is why S.B. 84 is being introduced. This bill will allow the court, if the situation warrants, and this person is indeed a de facto parent and has acted as a parent to this child, they should have the same rights and responsibilities. This bill allows the de facto parent to have the same rights as a biological parent.

Senator Sorenson asked if there were any questions regarding this piece of legislation. Representative Michael Ramone said he had a case that he was very familiar with. The biological mother was the actual breadwinner of the household. Her partner of three years was the person who had actually raised the child during that time. This became very traumatic due to the extended families involved..

Lynn Kokjohn said she would like to have more background information before the FLC gave their support to legislation. Senator Ennis made a request that we send a copy of this bill as an attachment along with the minutes of this meeting.

Next on the pending legislation was S.B. 52. This is an interstate compact bill, which she said the FLC would support. Senator Sorenson said that bills such as this are done on the national level so that you can make custody agreements state-to-date easier to handle. This bill allows for the option of receiving testimony for hearings by telephone or audio-video conference, subject to the approval of the presiding judicial officer. This bill is a collaborative effort among states to provide increased protections and services for children in the foster care system that may be placed in another state.

Next was HB147 – This bill adds *stepson* and *stepdaughter* to the list of what constitutes a family member for the purposes of Family Court proceedings, including PFA proceedings. This is another bill that the FLC will support.

Next is HB 136. This act changes the penalty of a sex offender who has previously been convicted of a sex offense and is on the sex offense registry and then commits a sex offense classified as a misdemeanor against a child under twelve years of age to a *Class C felony*. This Act would make the penalty for a sex offender who commits a sex offense classified as a class C, D, E, F, or G felony to a Class B felony. Senator Sorenson stated that there are some issues with the sex offender registry. There are people on the registry that you would not think of as being a classic sex offender who would be dangerous to other children or to the community. These could be high school kids, or juveniles who have done things that might be classified as sexual offenses even though they are minor instances and do not make them a dangerous person.

James Morning said an issue that he has is that we have minors out there who are listed as sexual abusers – incidents have happened – and they can't play Little League – and some of them are fairly young. James said there are PFA orders out there where there are orders against another child. Judge Walls explained that when a child is registered as a sex offender, under Little League national regulations they are unable to

play. Senator Sorenson said that they are trying to make some sense out of the Sex Offense Registry – they are trying to make them more rational. .

During the public comment period, Senator Sorenson then recognized Gordon Smith who said he graduated from the University in 1992 in Tennessee, worked as a corporate investigator, probation and parole officer, etc. He asked for help from anyone who could help him how to file for F.O.I. He asked Jody Huber if he was correct in that a respondent could get 15 minutes of legal advice. He asked how you are able to obtain this information. Jody told him that she could give him the telephone number, but she told him it is not a Family Court program. Senator Sorenson explained that this is only offered in New Castle County. Gordon said he would like to have more factual information about the cases *rather than saying many of the cases, or most of the cases*. Senator Sorenson told him that the numbers from the Domestic Violence Coordinating Council actually came from the annual report. Representative Michael Ramone said that Gordon could go to the following website to look at the statistics and that website is www.dvcc.delaware.gov. Dana Harrington Conner told him that you are also able to go onto the Bureau of Justice website and you will be able to obtain National Statistics with a complete breakdown of all figures.

Gordon continued that he wanted to address PFA's, and he said he agreed that this is a civil offense, but it is the only civil offense where you have your children taken away and your property taken away. He stated that the no contact rule is a vital part of the PFA. He said the petitioner is free to call as many times as they like, or go to your home, but if you pick up the phone and say I love you and miss you – technically you could be in violation of the law. He said he thought there should be changes and there needs to be some equability in that No Contact Order. He said that men have feelings too. Regarding the ex parte' - your children can be taken away from you for ten days. This can be done without proof or any evidence. This can be done based on nothing but allegations, and he said he has a real problem with this procedure. He said he knows that there are cases of abuse and in those cases they should be dealt with strongly. He said he was not abusive to his wife. Gordon said that the word on the street is that you go and get a PFA – it is easy to get – you don't need any evidence – all you have to do is allege.

Senator Sorenson said that can be disputed, but the main thing that they are concerned with is saving people from violence and then they should go to a hearing after the ten days – then you need evidence. Gordon said there is a problem with the person filing a false PFA. When that happens, Senator Sorenson said then you have the opportunity to file a cross PFA.

Cynthia Smith introduced herself and said she was a stay-at-home mom who after 20 years of marriage was falsely accused of child abuse. She said she had a talking point she wanted to address and that was alimony. Alimony is an allowance that is made to one spouse from the other after divorce. A person's previous standard-of-living should be considered. There is a formula to be considered when determining spousal support. They should be able to be obtain health coverage from the divorced spouse's coverage, but many times the other person is left without any health insurance, because they do not

have the money for their own coverage. This causes the person to have no other alternative, but to rely on the state's resource systems. This is something that should not happen to the State when the other spouse has coverage and could be carried on their health insurance. The child support system of removing driving licenses from the person earning income is counterproductive for the person earning income for wage garnishment. She said she could not find any information on the cost to the taxpayer for incarcerating people for driving while their license is suspended. Judges overall feel that suspension is counterproductive by denying the non-custodial person transportation to and from work.

Senator Sorenson reminded everyone that our next meeting on June 11th will be our last for this session. She asked the members to bring any suggestions with them of any topic that they might want to address. She adjourned the meeting and thanked everyone for their attendance.

Respectfully submitted,

Jean C. Ardis, Secretary
Family Law Commission