

## FAMILY LAW COMMISSION MINUTES JUNE 9, 2005

The Family Law Commission met at 9:30 a.m. on Thursday, June 9, 2005 in the Senate Hearing Room of Legislative Hall. The following members were present at this meeting: Senator Liane Sorenson, Chair of FLC., Ellen Meyer, Esq., Dr. Julia Pillsbury, Curtis Bounds, Esq., Representative Pam Maier, Representative Terry Schooley, Jud Bennett, Judge William Walls, Lynn Kokjohn, Dr. Rhoslyn Bischoff, and James Morning. Also in attendance were Katherine Jester and Nicole Kennedy.

Liane opened the meeting by asking if there were any corrections to the minutes for May. Ellen Meyer said that even though she wasn't present she was credited with several remarks. The person making those comments should have been Harriet Ainbinder. Noting that correction, the minutes were then approved.

Senator Sorenson asked for the secretary to give a report on the continuing efforts of FLC having a website of its own where our minutes will be able to be viewed by those interested. Also, there will be other valuable information posted. She has met with Greg Hughes of the Government Information Center who was very enthused about this project. The site is called the Delaware Statewide Calendar. When we are ready they will send someone over to show me how to post our minutes, and also note any other pertinent information, such as meeting dates, or notices of the Family Law Public Hearing etc. It seems that this is an area where they are presently just getting started and would be most interested in having our site be a part of their new project. It has been decided to proceed with this after June 30<sup>th</sup>.

Dr. Bischoff made a suggestion at this time stating that he would be very interested in having children come to the FLC meeting – maybe in September – to show them that they are not forgotten and that we have an interest in their concerns. Dr. Pillsbury commented that she could see where that could be of benefit, since the children sometimes feel *their* needs are not addressed. Senator Sorenson said that what she thought was appropriate was to consider this project at their planning meeting in the fall. It was noted that we do have the CASA program and the Guardian Ad Litem which deal with these problems.

Jud Bennett questioned the qualifications of a Custody Evaluator. Senator Sorenson said that it had been decided to do a letter and ask for the criteria for a Custody Evaluator. Ellen Meyer said that in her experience that person is a licensed psychologist. It was suggested that maybe this position should be refined and maybe set standards for this position.

Senator Sorenson said that next on the agenda was the annual report that is sent to the Senate Pro Tem and the Speaker of the House. Katherine Jester has been doing this in the past and said she will continue to do this. Next Senator Sorenson read the draft of the letter that is to be sent to each of the speakers who spoke at the Public Hearing in March. A copy of this letter was also sent to Chief Judge Kuhn along with the list of the speakers at the Public Hearing held on March 16, 2005.

A discussion was held regarding changes to child support orders and how long it takes to have them changed. Liane said the FLC needs to write to Child Support Enforcement to find out how often Child Support Orders are changed. Next Liane said another concern was in regard to Grandparent's rights. It was stated that when the parents are together, they have the right to deny visitation to the grandparents. It is presumed that the parents know what is best for the child. It's only when the parents are separated or have never been married that the grandparents can petition the court for visitation over the objection of one or more of the parents. The law in Delaware now says that if the parents are together, they have the right to deny visitation to the grandparents. The law would have to be changed. Representative Maier said there is a group called *Grandparents' United* that is working on this issue. There is legislation that is being promulgated to address these issues. An individual letter needs to be written to the person who spoke at the Public Hearing advising her of the current law and advise her of the group called *Grandparents' United*, and suggest she could contact them to learn of ongoing efforts by this group.

The next item to be addressed was enforcement of PFA's. There are complaints that orders are not being enforced by the police, or prosecutors. Liane said the Domestic Violence Coordinating Council has been giving training on this to the police this year. This is an item that is to be included in the letter to the Attorney General and ask for her response on this issue.

The next issue was the problem concerning how long it takes a Judge to issue a ruling on a case – should not be more than 90 days. Letter is to be

written to Family Court addressing this concern. The Commission is going to ask what the Court does to judges who routinely take too much time to issue a ruling. Liane stated that the request of two additional Family Court Judges for New Castle County has been approved in this year's budget. Ellen said this should help a great deal.

Another problem litigants encounter is the high cost of getting information regarding their cases. In the letter to Family Court, the Commission is going to ask that cases be recorded on c.d.s. This would allow the litigant to be able to get a copy of their case for a nominal charge of \$3 to \$5. This is a service that other states provide, and Delaware should also be able to offer this. This is necessary since several people have needed copies of transcripts from several years ago, only to find out they are no longer available – even though the case is still active in Family Court.

In regard to having a case heard in Family Court by a jury, it is important to note that this is the law and not something to be addressed.

At this time Liane introduced Steve Wood from the Attorney General's office who had been invited to speak to the members of the Commission to address the topic of *false allegations* and the problems that the Attorney General's office encounters when dealing with this subject

Jud Bennett said that he wanted Steve Wood to know that there are many complaints by the public that the A.G.'s office will not prosecute cases where there have been *false allegations*. Steve supervises the Criminal Division of the A.G.'s office. His office does not investigate perjury cases except the ones that are referred to them by the Judiciary. He noted that his office has a limited number of prosecutors. In other states his office have police assigned to them, but they do not. Their prosecutors have many duties such as expediting prisoners back to Delaware, running background checks for Concealed Deadly Weapons permits, and public corruption cases.

He stated that the cases that are referred to them are rarely prosecutable, because they come down to the same issue. He said that the Delaware Code specifically addresses this item. It says that they cannot prosecute a perjury case if it involves solely on the testimony of one witness against the other.

At this time the question was asked that if a husband comes into court at a support hearing and testifies that he makes a certain income and brings documents to back this up and the opposing attorney has W-2's showing that this is false information., is this prosecutable? In other words, he is lying and he actually makes a lot more money than he claims he is making. Steve said that yes that would probably be prosecutable. He said to remember that there are many instances where you can prove anything you would like. He stated that in his experience there have been very few perjury cases that have been prosecuted. He said that prosecutors have a higher standard in criminal cases than ones in civil cases. They cannot prosecute unless they feel that this is a case that can be proven. Many times they come to the conclusion that in all probability that they believe that what is being claimed is true, but they have zero chance of winning this case at trial. He stated that they cannot use their time trying cases that in all likelihood they will be unable to win. They have to use their resources in the most effective way possible. You just can't prosecute a case that ends up being one person's word against another.

James Morning mentioned that he was particularly interested in child abuse cases. In response, Steve said this is one of the hardest things to prove, because the abuse never occurs in the presence of another person. The injuries that are seen are injuries that are consistent with both child abuse, or a completely accidental injury. You have to be able to prove it beyond a reasonable doubt, and that it was done intentionally.

Liane thanked Steve Wood for attending our meeting and sharing with us some of the problems that they encounter as prosecutors in cases that are held in Family Court. She said that she still intends to write to Jane Brady to share with her the concerns that are being raised regarding the enforcement of PFA's and *false allegations* that are made in Family Court cases.

Liane then addressed the planning meeting for the FLC that is held in the fall. She thought there should be a pre-planning meeting to go over some of the issues they would want to cover during 2006. The members that volunteered to serve on that committee are as follows: Harry Gordon, James Morning, Lynn Kokjohn, Curtis Bounds, along with the Chair, Senator Sorenson.

Next on the agenda was any pending legislation that would be of interest to the Commission. One item that was mentioned was the Uniform

Interstate Family Support Act that was released from committee yesterday. This is being sponsored by Representative Buckworth and Senator Blevins. Ellen Meyer said the purpose of this was to bring Delaware law into compliance with the national Uniform Law. Representative Maier said this was a project that Battle Robbins had been working on. They discussed the status of several bills that had just come out of committee. H.B. 171 and 173 were both out of committee. These two bills were supported by the new Clerk of the Peace and both deal with marriage. H.B. 171 deals with the age one can get married without a parent 's permission, which is 18, and H.B. 173 states the person that performs a marriage now will have 10 days in which to return the certificate to the Clerk of the Peace rather than the previous 4 days.

At this time, Liane had to leave for a previously scheduled meeting, and she requested Ellen Meyer to take charge of the meeting. Next to be discussed was H.B. 98 which deals with the relocation of the child in a child custody case. This bill has also made it through committee. Ellen said that this bill addresses standards in relocation which had been lacking in previous bills. Next was H.B. 167 which deals with adult abuse. That has also been released from committee. This allows individuals to be charged with adult abuse that has occurred to someone in the person's own home. There already was legislation protecting someone in nursing homes, but not in their own home where most abuse occurs. H.B. 124 was also released and sent on to Judiciary where Representative Valihura is Chair and he is the Representative who introduced the bill. This bill deals with posting a bond to ensure compliance with a Custody or Visitation order. A Senate bill that has no number deals with fetal and infant mortality review. This should come out of Senator Blevins' committee right away. It was part of the Governor's Infant Mortality Task Force Commission. This is a piece of legislation that came out of that commission. This will allow Delaware to become part of the Federal system of a review process that is nationally known. Senate Concurrent Resolution #7 was also passed which establishes a Family Justice Center to serve domestic violence victims. This Justice Center should serve both genders – it should not matter if it is a man or woman.

Ellen reminded everyone about their travel vouchers. James Morning took this opportunity to inquire if we had been able to get any information on child support regarding the times there have been any downward modification on a person's child support order. He had asked how many

have applied for this modification and how many have been granted this change. Nicole Kennedy said that the court's computer system does not have this capability to obtain this information. This would be very case specific. Representative Maier said that if someone had a problem they should call Senator Carper, Senator Biden, or Congressman Castle. They all have good staff that deal with issues such as this.

She then asked if any one of guests would like to speak. The first gentleman was a Eugene Hazzard. He said their custody case has been going on in Family Court for three years. This concerns two things, one of them being a legal visitation order. His son passed away three years ago. They had this visitation order, but after the son died the mother came to him and said there would be no more visitations, so he and his wife have not been able to see the grandchildren since the son passed away. The last time they were in court which was in February the judge said they would have a date to settle this case in April. Well April went by, May went by, and now June has gone by and they still do not have a court date. Meanwhile the children are having problems in school – one child is going to repeat the 4<sup>th</sup> grade for the second time. Several members expressed the thought that the Hazzard's attorney is not earning his fee. The attorney should be the one that is going after the court and getting them to give the Hazards a court date. Heidi Pugh Phillipson suggested to them that they should contact the KIDS department of the state and get them involved. That should open many other avenues to them. Also, she said there is a new book out that is entitled Grandparent's Rights and that they should call 302-577-3000 in order to obtain a copy. Nicole Kennedy said she would meet with them after the meeting to see if there was anything that she could suggest for them to do.

The next person to speak was Sharon Burkett. Sharon is the daughter of Kathryn and Tom Hall who has appeared before the Commission previously. Sharon has been in the system for three years. Sharon agreed that the system is entirely too slow. She said that if there were advocates for children this could help eliminate some of the false allegations that she has had to deal with. She said it is so easy to lie in Family Court. She said it is so hard to address the allegations once they are out there. She and her entire family have been accused of abuse. She mentioned how difficult it is to have those allegations heard by anyone. Therefore the allegations which are very scathing and incriminating are simply out there. She said she has gone to DFS, but they will not get involved unless a child is being physically

assaulted. Sharon has had reason to believe that the Judge does not always consider what is in the interest of the children. She had a complaint with this particular judge – did not think he had an open mind when dealing with this case. Ellen Meyer said Sharon always had the option of going to Supreme Court if she was not happy with the judge's ruling. Also, Sharon was advised that if she had complaints about this particular judge, she should send a letter to Chief Judge Kuhn.

Next person to address the Commission was John Ingram. He said that there was a problem with the wording on the child support orders. He said there are a lot of grey areas on these orders, which leads to very open interpretation. Many times when you are due to have the children for visitation, the police cannot enforce the visitation, if it is not in black and white. They have had it occur several times when they were due to have the children for visitation, because the judge did not write the order out specifically, they were not allowed to have visitation. It has cost them \$4,000 to get the judge to write the orders specifically, so that they can have it enforced by the police. *Visitation orders need to be specifically worded in order to have them enforced by the police.* They had to go back to the judge to have the order rewritten.

Next Heidi Pugh Phillipson spoke for herself and problems encountered by Shellie Isiminger. She questioned how perjury was handled by the Attorney General's Office. Shellie was interested in what the Commission has found out regarding custody evaluator's guidelines and/or policies. Representative Maier said she has not gotten that report back yet. Heidi proceeded with showing everyone a copy of the Domestic Relations Code from the State of Tennessee. She said that Tennessee has made as part of their code the provision that the parents must create a plan for the future, which is presented to the court. This plan would deal with custody, visitation, support etc. This would necessitate a change in our law in order to do this. Maybe this could be something that the planning committee could investigate in the fall.

Heidi asked the Commission if they knew about the Quality Counts Manual for Family Court Performance and Measures. This has been on the Family Court website since December 2002. This is how Family Court wants to work toward being presented to the community. This is part of their Mission Statement – they have 21 performance standards and measures. She said she wonders just when they plan on putting them into

effect. This was a project that came under Guy Sapp who has since been given another job. These are all guidelines for the court to reach, but Ellen said you must understand that the court has been two judges short, but that is being remedied by the Legislature. It is the hope that when these two judges are appointed a lot of the problems will be addressed – such as the delay encountered in getting cases to court, getting decisions in a timely manner, opinions written, and the caseloads will be down. Heidi said she doesn't feel this has anything to do with the Performance Standards Policy, She said she thinks there are problems in the Child Support Enforcement Division. She said she thinks you cannot separate problems – they are interdepartmental. She questioned the fact that Child Support Enforcement hasn't even shown up at the Sunset Committee meetings on two different occasions. Heidi said that what she was referring to was that once the KIDS Department came into the system and was under the umbrella they had a case plan, they had a departmental policy, and they had an integrated service plan. This plan came into effect on November 2004. She said this is easily accessible on the computer. She questioned how different departments can claim to be a separate entity. They should all come under the same umbrella.

Phyllis Witcher spoke on divorce law and how it affects the cases in Family Court. She said she felt there was corruption in Family Court and Ellen told her the FLC is not charged with dealing with anything in that area. If there are changes she thinks that need to be made in our law, she should bring that to the attention of her legislator.

Next Ellen Called on John Flaherty from Common Cause. He addressed the issue of having Family Court presumed to be an *open court*. While that cause is going forward, there is another Legislative effort being pushed by the Courts to make Family Court a Constitutional Court. If that succeeds there will no longer be a problem, because the Constitutional Court mandates that the court be open.

Meeting was adjourned at approximately 11:45 a.m.

Respectfully submitted,

Jean C. Ardis, Secretary  
Family Law Commission