

**FAMILY LAW COMMISSION MEETING
MINUTES
JUNE 11,2009**

The Family Law Commission met on Thursday morning in the Senate Hearing Room of Legislative Hall on June 11, 2009. Senator Liane Sorenson, Chair of the FLC called the meeting to order at 9:30 a.m. The following members were present: Liane Sorenson, Chair of the FLC; Harry Gordon, Honorary Member and CASA; Judge William Walls, Family Court; James Morning, Kent County; Diana Metzger, Family Physician; Peggy Smith, New Castle County and CASA; Jody Huber, Family Court; Dana Harrington Connor, Professor at Widener Law School; Eileen Williams, Child Inc.; Representative Michael Ramone, and Lynn Kokjohn, Sussex County. Senator Sorenson announced that we now have two new members on the Family Law Commission. and they are Wendy Jean Matlack, New Castle County; and Suzanne Landon, Sussex County. With the addition of these two new members Senator Sorenson was pleased to announce that all of the positions are now filled on the FLC.

Senator Sorenson began the meeting by asking if there were any additions or corrections to the May 14th FLC meeting minutes. There being none the minutes were approved as submitted.

Senator Sorenson then introduced our speaker for the meeting Brendan O'Neill our new Public Defender for the State of Delaware. She stated that she had asked Mr. O'Neill to come to our meeting to explain their role as it pertains to Family Court. Mr. O'Neill began by saying that the previous Public Defender, Larry Sullivan, served in this position for 39 years. While holding this office, Mr. Sullivan expanded and brought the Public Defender's office up to what it is today. When Mr. Sullivan first took over the position in the Public Defender's Office it was very much a small time operation. When he started the office they only had one or two lawyers and one or so support staff from New Castle County. Today the Public Defender's Office covers all of the Delaware Courts. Presently they have 68 lawyers and about 62 support staff. Their statutory charge is to represent people who are indigent and who are accused of a crime. They interview all potential candidates for representation in an intake process and if they qualify for their service, they will represent them. For example, if you have a criminal case pending against you and the crime has the potential for jail; you will be entitled to a lawyer from the Public Defender's Office, but only if you make less than \$400 per week,

The Public Defender's Office represents all juveniles who do not have private counsel, and their eligibility is determined by their parents' income. They determine their evaluation on whether they are charged with a violation that has the potential for jail time, and if the parents qualify for services. He stated that they represent a lion's share of all the criminally charged juvenile defendants in Family Court. In addition, they represent adults who are charged in Family Court and these are people who have been charged with misdemeanor charges. If it is an intra-family crime such as a simple assault in the 3rd degree and the husband has been charged with assaulting his wife in a domestic

violence case and the person remains in custody and is qualified for their services, typically they will represent that person in the criminal charge against them.

In the juvenile context, their clients will be represented in both the felony and the misdemeanor charges that have been made against them. The Public Defender's representation begins at the time of intake through the completion of the case – in the adjudication phase and even through the appeal process if needed. Their office provides the lawyers for the accused.

In addition to having lawyers, we have a support staff in each of the Public Defender Offices such as the secretaries. They also have a staff of psycho forensic evaluators and Kerry Ferriter, who is with him this morning, is the head of these psycho forensic evaluators. They are typically Master Level social workers or Master Level Psychology people who meet with the client and evaluate them and their issues that would affect their legal status. They evaluate his family situation, his psychiatric history, his present psychiatric needs, and his substance abuse history. What they hope to do is to learn if there are some alternatives that could be presented by the court that could prevent them from putting the person in jail or in custody. They also try to present treatment alternatives in lieu of jail time. If the person is convicted, what their office tries to do is to try to have the treatment program that is already in place be a condition of the person's probationary sentence rather than a jail sentence, or in a juvenile case a term at Ferris School, or another custodial setting. They like to say that they represent the *wrongfully accused*. He said that is how the case begins, but that is not always how the case ends. He said he would like for the law to say is *proven versus not proven*. From their office's perspective the person is not guilty until he is proven guilty, and they try to make sure that their client's rights are protected. He continued by saying that the office realizes that the truth usually comes out during the court process, and many times their client will be found guilty of something. Knowing that they try to have these alternatives – to give to the court an option of something else rather than sending them to Ferris School, or into custody.

Mr. O'Neill, continued by saying that in New Castle County they have a staff consisting of eight lawyers, and two psycho forensic evaluators to do strictly Family Court law. In Kent County they have two lawyers, and one psycho forensic evaluator that is part-time to Family Court. In Sussex County they have two lawyers in Family Court and one psycho forensic evaluator that is part-time to Family Court. When the lawyers are assigned to Family Court they are assigned to a particular court. In New Castle County they work on a calendar basis. Each attorney will go to the morning session of a Family Court session, and if they are doing trials that attorney will handle 7 to 10 cases that are on trial that morning. A different attorney will be in another courtroom doing the arraignments, or sentencing – whatever is on the calendar. The way we staff it is by calendar, and typically each day there is a morning session and an afternoon session – at least one of each. What happens sometimes is that we do not get to stay with their same clients from the beginning of the case until the end. This is something that happens due to the volume of the cases. They do assign a case to a particular lawyer, and if it is a complicated case or something unusual that lawyer will

stay with this case until it is finished. He said that this is more an exception rather than a rule.

Senator Sorenson inquired why they only deal with misdemeanors in Family Court, and not with felonies? Mr. O'Neill replied that the felonies go to Court of Common Pleas and then on to Superior Court. Harry Gordon inquired if the lawyer who is assigned to the case – is he responsible for that file to make sure that the complete file is appropriately given to any other lawyer that should handle the case? Mr. O'Neill responded by saying that this was a good question, and he answered yes. Mr. O'Neill said that each client has an assigned lawyer to that case. That lawyer's responsibility is to stay in communication with the client and the client's family, to prepare any motions that may be needed to be filed, to conduct any discussions with the prosecutor ahead of time to see if they would be able to resolve the case, or iron out any discovery issues that may crop up. This lawyer is supposed to do all the work noted in the file, and to stay in touch with the lawyer who it is handled off to. Their goal is to have the lawyer that is assigned to the case have it ready to go, and have it worked up with the expectation that it will probably be handled off to someone else down the line.

Senator Sorenson asked Mr. O'Neill if they handled Domestic Violence cases that are in Common Pleas Court and Superior Court. Mr. O'Neill said that they did, and said that this is a big part of the practice both in Family Court and the Court of Common Pleas. Senator Sorenson inquired to know the reason why they do not handle Civil cases. Mr. O'Neill replied that they are authorized by statute and the statute is the result of what the Constitutional requirement is. He explained that the person charged with a crime that has the potential for jail time has the Constitutional right to counsel under the Sixth Amendment of the U.S. Constitution. He explained that when you have a civil case you do not have the same right. What the law says such as in the Termination of Parental Rights there is no right for counsel, because there is no potential for jail time, since this is a civil case. Senator Sorenson said that the FLC hears about this when listening to comments made about PFA's where the women can get representation through Legal Aid, because they are victims, and there is money designated specifically for victims and there isn't any money for men to get help.

Dana Harrington-Connor asked Mr. O'Neill that when it comes to staffing in the Public Defender's office is there more staffing for Family Court in the Prosecutor's Office – what is the comparison? He said that the Prosecutor's Office has slightly more lawyers assigned to any calendar than his office has. This is in part because they bring in all of the cases to the office. They start up this process by filing the charges, but also they are not the only lawyers working these cases – there are private counsel who are working these cases also. The Public Defender's Office does not cover every domestic violence case on any calendar, because lawyers from the private bar represent some of the people who have chosen to hire private counsel. On the prosecution side, the Attorney General's Office handles every case. On the defense side, we probably handle the majority in every court. He said it was the client's right to hire private counsel, or to be represented by the Public Defender's Office. He explained that when someone expresses their wishes to have another Public Defender then they do have the right to hire

private counsel if they can afford to do so, but when you chose to be defended by the Public Defender's Office and one of the limitations to your right to counsel is that you do not have the right to your choice of an individual lawyer to be your counsel – there is a limit to your right-to-counsel.

Brendan O'Neill, the Public Defender, said that his lawyers are resolving about 468 cases a year. Harry Gordon asked him if the office was backlogged in terms of your services. He answered that this is something that falls under the court's calendar as to when the cases are scheduled for trial, and he said that Family Court moves things along very quickly. It has a high turnover rate – it is about three weeks in New Castle County beginning at trial through to arraignment. It is a very short cycle – much shorter than in the Court of Common Pleas and much shorter than in Superior Court. Harry continued that as he understood it the office will be down about 10 or 12 lawyers at the end of the fiscal year. He asked Mr. O'Neill if he will be allowed to replace his vacancies, or are you under the same constraints as the rest of the State? Mr. O'Neill said he has been told they are under the same constraints, although yesterday they received permission to bring someone into the Court of Common Pleas under a Federal Grant, which will be no cost to the State. We will be down about seven, and if they stay where they are, he felt they would be all right. If their staff becomes much thinner than that, he felt there would be a loss of quality services.

Harry questioned Kerry Ferriter, the head of the Psycho Forensic Department, and asked her about the staffing in her department. She replied that they have 12 psycho forensic evaluators statewide. She said they have been able to bring some people on with grants as well. They had the Family Court Mental Health Court running right now, so they have someone in that position right now with a grant. She said that they have managed to retain people – the people seem to like their job – and they have held onto those positions, but if the Public Defender's cases become higher – so will theirs.

Peggy Smith asked Kerry Ferriter if she would explain to the Commission just what her group does. She said that they have an intake process. When someone gets arrested they come into their office and go through an intake process where they meet with an investigator, or if they are in jail they receive an immediate intake as soon as they are incarcerated. Their intake staff asks them questions such as have you ever been hospitalized for a mental health issue, are you on any medications, do you have a diagnoses, are you in treatment, do you have a substance abuse issue, have you ever had a head injury? Then sometimes someone will come in and they are apparently ill, so when those cases come before an intake person they will check that this person needs to be seen by a psycho forensic evaluator. That paperwork is then sent to their unit. We actually could never be able to handle the amount of cases, which come into us through intake, so we obviously take the ones who are most severe – the ones who have the most issues. They will go out and see these clients as quickly as possible. On murder cases or other serious cases, they are generally out within a few days after their arrest. Otherwise they consult with the attorneys and they try to guide them as to what kind of services will be helpful to their case. Once they are seen her office will do a full-scale assessment. They will coordinate with any treatment providers either in the prisons or out in the

community. They will try to put together a treatment plan for the client. She said they are seeing a tremendous increase in mental health clients that are in the Criminal Justice system. She continued that the person that is assigned to Family Court handled about 165 clients – not just cases, but people – that she touched within the last year. Most of them are juveniles. They are taking all the serious cases – all the sex offense cases. This person reviews them at intake. They try and do what they can in Family Court – it is very quick – getting records and coordinating with other people, which takes time. They work with other people such as the PAC teams, Youth Family Services, and Child Mental Health trying to get the person the appropriate services, but obviously money is an issue. Jody Huber added that especially with juveniles the Child Mental Health Court is so important, because this is a service that needs to be given as soon as possible where the focus is on rehabilitation. She explained that this is why the Mental Health Court is so significant, because getting this done as soon as possible helps the whole process.

Mr. O’Neill, the Public Defender, said that they have instructed their lawyers to be on the alert for mental health issues. Some cases get through their intake process with no referral through a psycho forensic evaluator. Sometimes he has a case come before him, that just doesn’t seem right – the facts don’t add up, or he just has unanswered questions. He will then contact Kerry Ferriter and ask her to have someone go out to the home and do a history on this case – look at all of the facts regarding this person and see if there is anything that they can do to help him and set up a plan for the client. They do try to identify most of the people at the initial intake process.

Dana Harrington-Connor asked if there were additional resources that would be helpful, but are not in place now for juveniles in particular. The answer to this was not any easy one. Kerry replied that they work through the system and she said that obviously the system is flawed. There are not a lot of services for the juveniles while they are living at home with their parents – DFS is overwhelmed – Child Mental Health is overwhelmed, so they are trying to look for creative ways to try and help these children. She said that as we enter into an unprecedented financial situation, they will have to be more creative, and they are trying to find different services. They are finding experts out in the community who are willing to do some work for them as well. The volume is overwhelming. She said that at one point they had a small stack of files that were being sent to Superior Court, and that is really increasing. She said they are dealing with cases of juveniles that are involved with much much more serious crimes.

Mr. O’Neill said that something that he sees as exploding more is the sex offender issue. There is a huge growth in this problem – the charges, – and all the registration requirements, which makes the defense of these cases much more complicated. It is hard to settle the case if there is going to be a registration requirement as a part of the settlement. Literally, any sex offense now has at least a Tier One Sex Offender Registration requirement, and this fact makes it much harder to settle cases. Because of this, there will have be many more trials, which in turn will increase growth of the system even more. Mr. O’Neill said looking at New Castle County; it looked as if there had been an explosion in these cases. He asked Judge Walls if he saw this also in Kent County, and the Judge agreed with him. Judge Walls said what you have is the serious

underlined issues, and then you also have the 10 – 12 year-olds with sexual immaturity. Mr. O’Neill said that this offense does not fit all situations. Judge Walls said that what he finds troubling is when both the victim and the offender are under the age of consent – then you have the problem of deciding which one is the victim? Mr. O’Neill said that is answered by who first calls the police.

Peg Smith asked Mr. O’Neill how long the attorneys stay in his office. He said they have at least a dozen attorneys with 20 years or more. We also have some who have just joined them in the last several years. He stated that they have a very stable group of lawyers who have stayed with the office for a number of reasons. The work is certainly interesting, and right now the market on the outside is not good for private practice. He stated that he feels that they have a very stable workforce compared to the Attorney General’s Office, which is experiencing a great deal of turnover right now.

James Morning questioned Mr. O’Neill and asked what he thought about ankle bracelets on someone accused of a PFA order. Mr. O’Neill responded that he didn’t think that any one-size-fits-all remedy is appropriate. He said that his office is not really involved in PFA litigation, because they are not criminal cases. If the person is so intent on getting back to the party for revenge, he didn’t think an ankle bracelet would keep them away. He said he thought ankle bracelets were a great implement to be used instead of incarceration, and that they save the state a great deal of money, but they will not ensure anyone’s safety.

This concluded our speaker’s presentation. Mr. O’Neill said that if anyone had any questions for the Public Defender’s office, his office number in Wilmington is 302-577-5160 and he said that they would be sure to return the call. Senator Sorenson thanked both Mr. O’Neill and Ms. Ferriter for sharing with the Commission their responsibilities and how they relate to the Family Court.

Senator Sorenson continued with the agenda for this meeting. She stated that a sub-committee of the FLC had looked at cases of the people who had signed waivers to allow someone to look at their case file. They checked the files to see if there was anything that could be done by the FLC. She said they did not find any broad systemic issue that was thought could be addressed by the Commission. As far as they could see, the Court had done due diligence with the cases, and the conclusion was that there was no need for them to review them any further.

The sub-committee did talk about having pro-se counselors available to help those with mental health issues. She continued that the FLC’s mission is to study family relations in Delaware and the rules and procedures of Family Court. As they looked at the cases, they could find nothing that was glaring that we saw that the procedures weren’t working, or give them any ideas regarding anything that might need to be changed. Evidently, in these cases, the people were not happy with how they turned out, but in looking for fraud and systemic issues they were unable to find anything. Lynn Kokjohn suggested that it would be a good idea to send a letter to the people who had signed a waiver, and inform them of their findings.

Senator Sorenson asked Jody Huber if at their kiosk in New Castle County was there information available for someone to learn where they could go and receive counseling such as in a domestic violence case? Maybe someone might be in need of anger management counseling! Maybe it might be a good idea for someone to get counseling before there is a problem. Jody responded that they do have a lot of flyers, or brochures, available, which are supplied by any of the counseling agencies that send them to her – she is glad to make the information available.

Judge Walls suggested to Jody that it might be a good idea for the person staffing the kiosk in New Castle County to suggest to the person who comes to them for help in submitting a filing to Family Court, to also look at the varied services that are available that they might be unaware of.

Senator Sorenson continued that she had received a call recently from a grandparent who had the child for 6 ½ years, and then her daughter came back and wanted the child back. The caller was upset because the court gave the custody back to the daughter without any proof. The grandparent wanted legislation added to Section 10 - 908 of Section 8 to have wording added to say that the dependency, neglect, or abuse may be given by any party, and that verification of stable legal employment and an employment pay stub no older than two weeks of the court hearing – and proof of payment of mortgage and utilities be required of all parties present in the court at the time of the hearing. Dana Harrington-Connor said she thought that this would be very problematic due to people in domestic violence situations who might be in similar circumstances where they may not have been able to take care of their children for a period of time. These people will not have proof of employment, because they may not have been employed during the course of their marriage – they are staying in a shelter and it could be a confidential shelter, so they will not have proof of residence.

Judge Walls said that Senator Sorenson may want to go back to the caller and ask what they mean by actual proof – physical documents, but proof is also live testimony. You may have a situation where the other party just doesn't want to believe in the live testimony and they want to see it in writing.

Jody Huber asked to have a copy of this caller's concerns from Senator Sorenson. Jody said that from the information that the caller has given this is a prime example of perhaps a woman who should have gone for permanent guardianship. This person had her granddaughter for six years. If the grandparent had sought permanent guardianship, the mother could not have even come back and gotten custody.

There were several discussions regarding this issue. Representative Ramone cited a circumstance that he knew of where a mother left a child with special needs and went off on her own and left the child behind. Then she came back and thought that she should be able take this child with special needs. He didn't understand why – was it just because she was the natural born mother? Dana responded that they have standing, unless your rights had been terminated. Judge Walls said that you do have the right to

petition, but you do not have the right to win. Senator Sorenson said that as a parent that is a very strong right and others agreed that this was a Constitutional Right.

James Morning said he knew of a couple that had taken in a child for foster guardianship. The father is incarcerated, and he filed to have this couple to have guardianship of the child. He asked if at some point the mother came back and say that she wanted to have her child, would she be able to do that. Dana said not if they had permanent guardianship, not if the parental rights have been terminated. She explained that part of the issue is that people do not know what they can pursue under the law that they have a right to pursue – and therein lies the problem. If the party comes back they have the right to petition, but as the judge explained even though they have the right to petition it does not mean they have the right to prevail. Jody explained that with the litigants that she has worked with regarding guardianship, permanent guardianship, and TPR there are 3 main issues. The *first* is that people tend to get guardianship and then drop it, because they become comfortable with the situation. Unless a situation comes up, they will continue with what they have. The second one is that they often feel that by going through permanent guardianship or TPR they will destroy their relationship with their child. She explained that even though their child may be a drug addict right now that would sever any relationship with him or her. The *third* one is money. In order to get permanent guardianship or Termination of Parental Rights, there must be a home study and that could cost upwards to \$1,000.

Representative Ramone questioned if it is the constitutional right of the parent to come back and petition to get the child back, at what age does the child have a right to express his wishes. He wondered if we didn't have an obligation to support this child's rights. Peg Smith spoke up and said that this was why the CASA (Court Appointed Special Advocate) was started years ago. She explained that the CASA organization was begun by a Judge in Seattle, WA. The judge said that when children came before him, who are in DFS boundaries, no one is representing the child, and that is how it began. Judge Walls said that the balance will take place in the court hearing by applying the facts. He said to Representative Ramone that what he would like to see where they can not even get to that point, because they can't even file for it because of what they had done previously. Representative Ramone questioned if they even have the right to pursue disrupting the child – what about the child's rights? Judge Walls said that unfortunately the way the legal system is set up there is not much you can do unless you change the Constitution.

Dana Harrington-Connor said that she could add to this discussion. When she was appointed to represent a grandparent, the court found the child had been with the grandparent for a number of years – mom was dead and dad got out of jail x number of years later and wanted custody of this child. The grandmother had never pursued guardianship, and the court said no. It would be emotional and detrimental to this child at this point even if dad had rehabilitated himself now. We can presume that for the most part the court is going to make the determination and look at the facts and make the right determination. She said she felt that if we stop people before they even get to the

courthouse door that would really be a problem – not to allow people to pursue their rights – to have their day in court.

Senator Sorenson continued with the Agenda. She said that the first two House Bills deal with children and their families. The first one HB 22 is the one that deals with the CHIP program (the Child Health Insurance Program) and the coverage. The second one HB 169 w. HS 1 deals with the waiting period for a person who has successfully completed the Probation Before Judgment program, and the two-year waiting period for a person who has successfully completed the First Offenders Controlled Substances Diversion Program to obtain an expungement of the arrest and conviction records relating to the offense. This bill is to correct the inconsistencies between Family Court and Superior Court.

HB 182 - Provides Family Court with the discretion to determine whether it is appropriate to designate juvenile offenders who are under the age of fourteen on the date of the offense, but did not commit one of the offenses enumerated in Sections 771-778 of Title 11 (for which registration is required pursuant to the Federal Adam Walsh Act) as sex offenders. This would subject them to the registration and reporting requirements under Delaware law. A person who receives an expungement of a sex offense conviction can be removed from the sex offender registry. She said that there has been real concern regarding the juveniles that are being placed on the sex offense registry and staying on the rest of their lives for something that may not be that serious. This is one of the bills that are trying to deal with this problem. Dana said that the Judge could determine if he felt it had been a serious offense and that the person was a perpetrator or a predator he could make the determination that the person should remain on the sex offense registry. Senator Sorenson asked if there were any comments on this bill and since there were none; she asked if this was a bill that the FLC would want to show its support and everyone replied *Yes*.

SB 113 - Extends the jurisdiction of the Family Court for abused, dependent and neglected children. Senator Sorenson said she thought that this applies to children who are aging out of foster care. She stated that there is a real concern that kids who turn 18 who are put out on the street. They become an adult before they are ready to be responsible for their selves. There are some programs that will give help with their housing, medical, employment and training. The real concern is to try and get coordination between all the parties involved to get them as many services as possible. The problem with this bill is that this would require more services from the Office of the Child Advocate and the CASA program and they are stretched as it is.

SB 114 - This Act would authorize the Family Court to conduct national criminal background checks in civil proceedings involving minor children. This authorization would allow Family Court to clearly exercise its authority under the best interest standards of Title 13 involving sex offenders, and any other similar proceedings involving a minor child. Jody explained that the court can run the State checks, but they cannot run a Federal check. Jody Huber commented that she thought that this bill had a fiscal note. Everyone agreed that the FLC thought this was good bill and were willing to

show their support for it, even though it probably will not pass this session, since it has a fiscal note attached.

S.B. 144 – An act to Amend Title 11 of the Delaware Code Relating to Compensation for Innocent Victims of Crime. This bill comes from the Victims’ Compensation Board – it changes the name of the Board to the Victims’ Compensation Assistance Program. As of July 1, 2009 Program will be transferred from AOC to the Department of Justice. It was decided that this is one that did not need any action on the part of the FLC.

H.B. 77 - This bill addresses domestic violence situations in which family pets are often a barrier to a victim of domestic violence from leaving an abusive relationship. The pet can even become a tool of violence for an abusive partner or parent/guardian who is willing to injure or kill a pet as retaliation or as part of a preemptive strike designed to gain or maintain control by means of terrorism. This Act clarifies existing law to make clear that the Court may grant, among other relief, that a Petitioner be given possession of a family pet via a protective order.

H.B. 104 – This bill modifies some of the existing provisions in the Delaware Code relating to custody and third party visitation of children. Senator Sorenson asked Jody Huber to comment on this bill. Jody said that the one thing for her with pro se litigants that it does – it removes the reference to others than parents obtaining custody, which because they now have the guardianship laws really a third-party would have no need to seek custody. She explained that custody is between a biological mother and a biological father, but because the law does exist they do have some people come in and demand that they want to file for custody rather than guardianship even though they should be filing for guardianship. This bill creates a whole new chapter of Title 13 that has to do with Grandparent Visitation and visitation by other third parties. Jody said she felt that it would be helpful to have these provisions consolidated in one place and to have the laws pertaining to this very clear.

H.B. 136 - This act increases the penalties of a person who commits a sexual abuse against a child under the age of twelve years.

H.B. 147 – This bill adds “stepson” and “stepdaughter” to the list of what constitutes a family member for purposes of family court proceedings, including PFA proceedings. It was decided to support both H.B. 136 and H.B. 147.

Senator Sorenson continued with the agenda by asking for any new business for the Commission. James Morning commented that we had previously talked about presenting DNA regarding the false parenting issue. Senator Ennis has a bill that deals with this issue, but he was unable to attend our meeting this morning. Senator Ennis is now obtaining sponsors for this legislation and hopes to bring it before the Senate next January.

Senator Sorenson then asked if there was anyone present who would like to address the Commission. She then recognized Kevin Patrick. Kevin began by saying, “I would like to talk about PFA’s and what happened in my case, and problems with the local police departments, and what I consider as conflict of interest in my case.” Kevin was also concerned with the filing of false PFA’S and the fact that only *victims* of domestic violence have free legal representation. Dana Harrington Connor explained that this is because the dedicated funding for legal counsel is only for *victims*.

Senator Sorenson wondered if students at Widener could provide help to someone like Kevin with representation. Dana replied, “Our students do provide representation, and they all work with the Public Defender’s Office, but it would not help in Civil PFA’s, because it goes back to the conflict issue. We are all part of the same law firm, and we can’t represent both sides of the case, because of the conflicts of interest.” Dana explained, “The rules of professional conduct do not allow us to assist someone, if we have information about the other party’s case.” She continued, “Even if they become a former client we still have a continuing conflict of interest if the matter is substantially related.” She explained, “Because of that and because of the resource issue – our mission is to represent survivors of domestic violence and if we start taking perpetrator’s cases – we in essence will have all kinds of conflict problems. So, for our purposes because we can take so few cases – we represent survivors – people who are seeking protection.”

Raetta McCall talked about child custody, conflict of interest and the need to look at the best interest of the child. Judge Walls asked Raetta what she would suggest, and she said she would like to have the wishes of the child considered. Judge Walls informed her that this is already done in the Statute under #722 – that is one of the specific factors that the court has to consider to look at the best interest of the child. It was suggested that maybe we need to consider extending the Office of the Child Advocate Office and the CASA program which are usually set up to hear dependency and neglect children – maybe we need to consider extending it to all types of dependency hearings between parents. The OCA and the CASA’s are basically statutory by their grant funding for dependency and neglect cases. Harry Gordon said, “I have had two like that. The court explained it to me beforehand that it was outside of the statute and formation of the office. The parents did agree. It was resolved through CASA.”

Dana Harrington-Connor stated, “I think there are several issues, and I can say just from my experience when I have asked for a judge to interview a child – I have never had a judge say no, but the more I practice the more likely I am not to have the judge interview the child. The reason why I do not is because how much information can you get in such a short period of time? It is really better for the child in really significantly difficult cases for the child to have their own counsel, and for that child to be interviewed and have counseling and have that person testify, because I find the children will not give the information that is needed in such a short period of time to someone – even if it is in chambers and is in a very safe and loving environment. The critical information that needs to be provided to the court is better served from an adult who has a long-time relationship, or at least an extensive relationship, with the child in terms of counseling and psychology.”

Judge Walls questioned, “Is it possible to have legislative staff attorneys look at the statute to see if there is a way to give the authority to represent in all matters like CASA or the OCA?” Dana replied, “But then those attorneys or CASA are representing the *best interest of the child*, but *not representing the child*. That is what is so fantastic about Fraser with termination of parental rights cases where these kids have actual counseling. When I represent a child, and I represent their wishes – not their interests – it is different.” Judge Walls said, “The OCA (Office of the Child Advocate) is not a Fraser attorney.” Dana said, “That is what I am saying; it is totally different.” Judge Walls said that there has been very few Fraser attorneys appointed in Family Court on request. An extended discussion commenced on a number of issues regarding representation of a child.

Judge Walls said, “Maybe we need legislative staff attorneys to address the issue regarding representation for a child.” Senator Sorenson asked Judge Walls if he could send her an e-mail and include some of the points you might want to cover and then we could give it to staff attorneys to work on over-the-break, and they could address it when we come back in January.

Raetta McCall expressed her opinion again that she felt that a sitting judge should not be a part of the Commission. Harry Gordon said, “I take the opposite stance, and I think that a current, sitting judge is experientially right there on what is happening today just as the legislation that is being passed today, on the culture and issues of today. I think there is every advantage to having a sitting judge.”

Senator Sorenson, Chair of the Family Law Commission adjourned the meeting and thanked everyone for coming this morning, and announced that there would be a planning meeting scheduled in the fall.

Respectfully submitted,

Jean C. Ardis, Secretary FLC