

Family Law Commission Minutes

Meeting of February 21, 2013

Senate Hearing Room

Members Present:

Lynn Kokjohn, Chair

Judge William Walls

Representative Stephanie Bolden

Representative Michael Ramone

James Morning

Lawrence Britt Davis

Dr. Twain Gonzales

Eileen Williams

Dr. Diana Metzger

Curtis Bounds, Esq.

Others Present:

Dick Carter , Senate staff

Megan Sokola , Senate staff

8 Members of the Public

The Family Law Commission met on February 21, 2013, in the Senate Hearing Room to discuss the testimony at the January 24, 2013 public hearing and the topics for upcoming meetings this year. The meeting began at 9:45am and ended at 11:32am.

Summary of Meeting

(1) Welcome/Introduction

Lynn Kokjohn introduced herself and opened the meeting at 9:45am.

(2) Senate Concurrent Resolution on Family Court Open Proceedings

Lynn Kokjohn brought up the Senate Concurrent Resolution which had originally been introduced during the 146th General Assembly and asked what would need to be done to have it reintroduced in the 147th General Assembly. The resolution authorized the creation of a task force to study the issue of whether or not Family Court proceedings should be open to the public at the discretion of the judge. (Note: The resolution, SCR 21, passed the Senate in March, 2012, but was not acted on by the House before the end of the legislative session. It therefore died with the end of the 147th General Assembly.)

(3) DNA Testing

Dr. Metzger asked that her remarks, as reported in the FLC 2012 annual report, regarding support by the medical community for DNA testing of all babies born be revised to clarify that she was not speaking on behalf of the medical community, but was rather expressing her own opinion of what their view might be. Her remarks appeared on p. 5 of the annual report. She wanted to clarify that she thought the medical community were supportive of the tests, but that most doctors would feel that the money that would be required to fund DNA testing could be better spent on other medical procedures and/or medicines for children. She stressed that this was merely her opinion and not a fact.

Ms. Kokjohn clarified that the information on page five should be stricken. She went on to discuss a trial study carried out in September 2012 in which free DNA tests were made available. The results of this were as follows: There were a total of 92 cases statewide, in which 101 children were tested. In New Castle County, 67% tested positive; in Kent County, 60% tested

positive; and in Sussex County, 77% tested positive, meaning that in New Castle, 33 % of those presumed to be the fathers of the babies proved not to be. In Kent, 40 % of those tested proved not to be the parent, and in Sussex, 23 % proved not to be the parent.

The view was expressed by Representative Ramone that the money is well spent because some degree of certainty as to a child's parentage is important for a variety of reasons, including medical history. There followed a discussion of the cost of such testing, with various reports ranging from a low of \$35.00 per test to a high of \$500.00 per test. It was generally agreed that if the \$35.00 figure was accurate, that would make widespread testing more feasible.

The Commission also discussed the possible effects of such testing on child support agreements in cases where the presumed father was found not to be the actual father. Ms. Kokjohn noted that under current Delaware law, a person listed on the birth certificate as the biological father has a period of two years after the child's birth in which to challenge paternity. After that period, the person listed as the father bears legal responsibility, even if it is later established he is not the biological father. There was some discussion that the two-year statute of limitations should be extended to six years.

The Commission also questioned what types of support or counseling might be in place to aid children who learn that the person they had always assumed was their father is not. Rep. Ramone expressed the view that this is another reason why it would be preferable to have the matter of paternity determined at the time of a child's birth.

(4) "Acknowledgement of Paternity" Form, Changes Needed

The Commission discussed the need for changes to the "Acknowledgement of Paternity" form presently in use by the State of Delaware because it allows a minor under the age of 18 to give consent legally that he is indeed the father. It was the general consensus that no minor under 18 years of age should be allowed to sign the document without the advice of a counselor or other trained advisor. Ms. Kokjohn also thinks that the form needs to be rewritten at the 5th grade reading level to be as easily understandable as possible for persons with limited reading skills.

(5) Discussion of Agenda Items for Future Meetings

March meeting: The Commission decided to devote the March 21, 2013, meeting to (1) a discussion of reintroducing the Senate Concurrent Resolution sponsored in the 146th General Assembly by Senator Bruce Ennis, to establish a task force to look into the possibility of opening Family Court proceedings at the discretion of the judge; and (2) a discussion of the handling of allegations of false testimony/perjury in family court proceedings.

April Meeting: This meeting will be devoted primarily to a fuller discussion of mandatory DNA testing at the time of the birth of a child to establish paternity and its various ramifications. A representative of the agency that carried out the September, 2012 trial will be invited to attend.

The topics of the May and June meetings will be determined at a later date.

(6) The Melson Formula

The Commission discussed the Melson formula for determining the level of child support and the fact that a significant number of persons, primarily the non-custodial parent, perceive it to be unfair. Mr. Bounds said that the chief complaint that he hears as an attorney is that a high

level of child support prevents a divorced father from adequately supporting his second family. He discussed the evolution of the legal concept that holds that the first family is given priority within the family court system. Ms. Kokjohn noted that the Melson formula is up for review in 2014.

Mr. Morning said it is his understanding that no one serving on the task force to review the formula has been subject to the Melson formula themselves. He noted that one contributing factor to perceptions of unfairness is that the formula does not take into account the effects of declining standards of living because of the poor economy on many of those subject to the formula. He noted that most (62%) of non-custodial parents who are in arrears make less than \$10,000/year. He believes that the formula needs to be updated and revised and that the task force reviewing it should hear testimony from persons subject to it.

Dr. Gonzales asked about cases where parents are put in jail for non-payment. Judge Walls noted that this is a last resort and only a very small percentage of parents end up in this situation. He said that in most cases those who are jailed for non-payment have paid nothing in years and have ignored repeated efforts by the state to collect it.

(7) Final Issues

Ms. Kokjohn raised two additional issues, both of which had been discussed at the January public hearing: (1) recording of public hearings, and (2) whether public comments from citizens in attendance at FLC meetings should be made part of the meeting minutes. She said that, relative to both, the Commission tries to be sensitive to the fact that personal matters, and, in some cases, unproven allegations, are made. If they are recorded or noted in Commission minutes, they become public.

Rayetta McCall, a member of the public in attendance, asked to speak on the topic of public comment, as this was an issue she had raised with the Commission. She wanted to know why public comments were not part of meeting minutes. Rep. Ramone explained that some of the information shared by the public is sensitive and should not necessarily be made available to the public at large due to its sensitive nature. He said that, because of Freedom of Information Act provisions, anything said in a commission meeting becomes public.

Ms. McCall stated that every public body should be subject to public oversight. She added that reference should be made to the fact that members of the public are present at FLC meetings. Ms. Kokjohn emphasized that all members of the public are welcome to attend FLC meetings, and that taking public comment is a courtesy, not a mandate. It was decided that the number of members present from the public would be recorded in the official minutes, but not the names of those in attendance or comments they might make after adjournment.

(8) Adjournment

Ms. Kokjohn adjourned the meeting at 11:32am.