

Family Law Commission Meeting Minutes

March 21, 2013
Senate Hearing Room
2nd FL – Legislative Hall

Members Present

Lynn Kokjohn, *Chair*
Senator Bruce Ennis
Representative Stephanie Boulden
Representative Michael Ramone
Judge Bill Walls
Dr. Diana Metzger

Peggy Smith
James Morning
Britt Davis
Curtis Bounds

Others Present

Dick Carter, *Senate Staff*
Megan Sokola, *Senate Staff*
Ellie Torres, *Family Court*
Patricia Dailey Lewis, *AG's Office*
7 members of the public

Summary of Meeting

(1) Welcome:

The meeting commenced at 9:40am, with introductions of each member or guest.

(2) SCR 9:

Senator Bruce Ennis briefly discussed that Senate Concurrent Resolution 9 has been reintroduced into the 147th General Assembly. This creates a “Blue Ribbon Task Force” with 13 members to oversee certain aspects of family court proceedings.

(3) False Allegations/Perjury in Family Court:

Patricia Dailey Lewis from the Attorney General’s office gave some background on the issue of false allegations made during Family Court proceedings. She said that for the most part, people are going to sometimes lie in court, and that it does happen often. She made the analogy that lying in court is like speeding. Especially in such emotionally charged cases as are often in family court, lying happens, and often is somewhat objective. In order for action to be taken in such cases, it is very important that the “lie” be able to be demonstrated to be a “known falsehood,” i.e., that the person who made the false statement did so with the intention to deceive, and that such deception can be proven.

There are three categories of perjury in Delaware: “A” misdemeanor, “F” felony, and “D” felony. The burden of proof to show that perjury exists involves two aspects: 1) intentionally making false allegations or affirming the truth of a previous allegation or document known to be false; and 2) knowingly believing the allegations to be false when they are made. Perjury in the 3rd degree happens most often in child support cases, alimony spousal support, visitation and division of property cases in family court.

Most complaints in Family Court are simply hearsay or “he said/she said” types of complaints.

The procedure for prosecuting perjury is the same as any other Title 11 crime. Police are responsible for the primary investigation. There are three possible courses of action: 1) there is not enough evidence to bring the case to the Attorney General; 2) there is enough evidence to bring to the AG, but the AG does not prosecute; or 3) the case is brought to the AG and is then prosecuted.

There are eight factors that are typically weighed in Family Court decisions and those factors are given different weight depending on the credibility of the source. This factors into what the court considers "material."

The two factors that must be present to prove perjury are that (1) a false statement is made intentionally; and (2) there is sufficient evidence to prove that the person making the false statement knew it to be false.

The penalty for perjury convictions is up to 1-2 years in jail. A provable, major violation of a "Protection from abuse" order (PFA) may be prosecuted; however, a minor violation will most often not be. Prosecution is becoming tougher on this type of crime.

The burden of proof for perjury is "beyond a reasonable doubt." The burden of proof required to obtain a PFA is different and lesser.

Perjury is usually not prosecuted because the issues are of the "he said/she said" type, and one cannot dismiss something that is objective.

There was discussion as to whether there was anything that could be done by legislative action that could help with this issue. For now, it seems that the existing laws are sufficient and that, keeping public safety in mind, it is important not to discount what people have to say. The law, unfortunately, cannot be adjusted for each specific case.

The Domestic Violence Coordinating Council (DVCC) was discussed; information can be found at: <http://dvcc.delaware.gov/publications.shtml>

A discussion ensued as to whether more accessibility might be a possible remedy. It seemed that if the court was able to hear cases more quickly, it would help with the abuses within the system. This becomes a funding issue. Judge Walls mentioned that one idea to help address the problem would be to adjust the provisions having to do with judges' pensions to make it possible for retired judges to come back on a part-time basis without jeopardizing their pension benefits. This might be one way to address the case backlog.

The April Meeting will be held on Thursday morning, April 25, 2013, in the Senate Hearing Room, Second Floor, Legislative Hall, beginning at 9:30 a.m.

Adjournment was at 11:20 am.