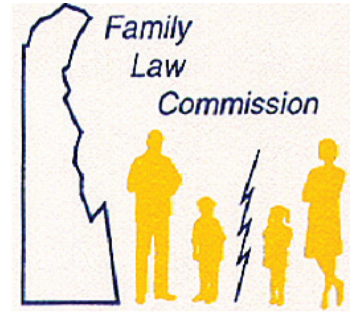


Delaware Family Law Commission Annual Report for 2014



The Family Law Commission was established on June 14, 1984 to (1) conduct public hearings, (2) invite written comments on family law from members of the public, (3) review and comment upon legislation affecting family law introduced in the General Assembly at the request of any member of the General Assembly, or on its own initiative and (4) disseminate information concerning family law to the public. The FLC meets in Legislative Hall once a month when the legislature is in session. The 2014 meetings were held on January 20, February 20, March 20, April 17, May 15, and June 19.

2014 Members of the Delaware Family Law Commission

Lynn A. Kokjohn, Chair
Senator Bruce C. Ennis
Senator David G. Lawson
Representative Stephanie T. Bolden
Representative Michael Ramone
Curtis Bounds, Esq.
Professor Dana Harrington-Conner
Lawrence Davis
Dr. Twain Gonzales, Psy.D.
Raetta McCall
Dr. M. Diana Metzger, M.D.
James Morning
Dr. Julia Pillsbury, D.O.
Peggy Smith
Judge William J. Walls
Eileen Williams

Assistants to the Family Law Commission

Dick Carter
Megan Sokola

A Summary of the Commission's work during 2014

The January, 2014 Public Hearing:

The Family Law Commission is guided in its work by the concerns raised by members of the public at the commission's annual public hearing, held at Legislative Hall each January. The areas of concern raised by members of the public at the January 20, 2014 public hearing were:

1. Fair treatment of involved fathers
2. Opening of Family Court proceedings,
3. The Sex Offender Registry and false allegations of abuse,
4. Property division,
5. The handling of "Protection From Abuse" orders,
6. Judges' education and discretion, their ability to make the right decisions, and
7. Focusing on children and the licensing of child evaluators, attorney conduct, domestic violence

Blue Ribbon Family Court Task Force (SCR 9):

In addition to the regular work of the Family Law Commission during 2014, several commission members also participated in the work of the Blue Ribbon Family Court Task Force, established at the commission's request by Senate Concurrent Resolution No. 9 of the 147th General Assembly to study the question of whether or not certain Family Court proceedings now closed to the public should be opened. A summary of the Task Force findings and recommendations, which were presented to the General Assembly on April 15, 2014, is included as an addendum to this report and may be found on Page 17.

A Summary of the Commission's 2014 Meetings (detailed minutes of each meeting are attached)

February 20 Meeting: Beginning discussion of "Voluntary Acknowledgment of Paternity" form and DNA testing

At its February 20 meeting, the commission discussed needed changes to the "Voluntary Acknowledgment of Paternity" (VAP) form and related documents, as well as the possibility of offering DNA testing to presumed fathers before they sign the VAP. Two major concerns the commission feels the need to address is 1) the fact that the language of the forms may be overly difficult for persons with limited reading ability; and 2) the fact that, heretofore, minors have been allowed to sign what becomes a legally-binding form without a requirement that they be advised by counsel or other competent authority as to the legal rights and responsibilities of paternity before doing so. Among those present at the meeting were four members of the staff of the Division of Child Support Enforcement, headed by Division Director Charles Hayward, and Ms. Brenda Sammons, the Deputy Attorney General who represents the division.

March 20, 2014 Meeting: Rewrite of the “Voluntary Acknowledgment of Paternity” form and related issues

The commission reviewed Dr. Metzger’s rewrite of the brochure detailing voluntary acknowledgment of paternity issues. A handout was presented to the members by Dr. Metzger with the definitions listed for different legal terms. It was thought that the definitions be used as an addendum to the brochure rather than rewriting the actual language in the brochure, mainly for legal reasons. It was also recommended that the phone number for where a potential father may obtain information regarding paternity testing be included.

Also discussed was the role of the Family Law Commission as it relates to the courts and the work of the Family Court Task Force was discussed. It was suggested that the commission could serve as a sort of “checks and balances” moderator between the legislature and the courts.

April 17 Meeting: Child Custody Evaluations

Present at the meeting were several invited guests: Dr. Ted Wilson, Psychologist & Custody Evaluator; Dr. Joe Zingaro, Child Psychologist & Custody Evaluator; and Shane O’Hare of the Child Placement Review Board

The commission was given an overview of the child custody evaluation processes and procedures by Doctors Zingaro and Wilson. Dr. Zingaro spoke to the specific measures and operations of a custody evaluation, emphasizing the difficulties of such a procedure for all concerned. Questions from the commission focused around three primary pieces of information: 1) are interviews of the children conducted; 2) should there be true guidelines and/or standards codified; 3) how often are mental health professional’s findings overruled in court. Both Dr.’s Zingaro and Wilson responded.

The second item discussed was an overview of the Child Placement Review Board (CPRB). Mr. Shane O’Hare, Executive Director of the Child Placement Review Board, outlined the board’s purpose. In short, the CPRB serves foster children in the State of Delaware and adjudicated children in out-of-home placements by involving trained citizen volunteers in regular reviews of where these children have been placed, how they are treated, and how their changing needs are being addressed. Mr. O’Hare estimates that approximately 600 children are currently in the foster care system in Delaware.

May 15 Meeting: The Court Improvement Project

The commission had several invited guests, including Family Court Judges Kenneth Millman and Peter Jones, Carrie Hyla, Director of Special Court Services for Delaware Family Court, and Shane O’Hare of the Delaware Child Placement Review Board

The conversation focused on the Court Improvement Project (CIP). Judge Millman began with the history of child welfare and other background information pertaining to the Family Court system. Judge Jones followed with more specific information regarding the CIP. He explained the process through which a child moves in foster care and state custody. The ultimate goal of the system in regards to these children is permanency. There seemed to be agreement that services are lacking, especially in Kent and Sussex Counties. These include child psychologists, other mental health professionals, and CASA (“court-appointed special advocate”) attorneys.

June 19 Meeting: Protection from Abuse Orders and False Allegations

Present at the meeting were several invited guests: Master Corporal Adrienne Owen and Victim Services Specialist Veronica Colombo, both of the Delaware State Police; Deputy Attorney General Patricia Dailey Lewis and Mariann Kenville-Moore, Policy Coordinator of the Delaware Coalition Against Domestic Violence.

The commission was provided with a detailed account of how “Protection From Abuse” (PFA) orders are issued an overview of the Delaware State Police’s handling of domestic violence cases. Putting a PFA in place is a civil proceeding, conducted in open court, and is a way in which a person threatened or abused by a family member or partner can keep that person away and out of contact through a court order. Also discussed was the problem and incidence of persons making false allegations of abuse and the possible misuse of the PFA process for reasons other than abuse, such as, to achieve an advantage in divorce or property settlement proceedings. “False Reporting” is a crime. If confirmed, such charges are forwarded to the Office of the Attorney General. Relatively few such cases are filed, and the penalty depends upon the nature of the incident.

On average, some 3,000 to 3,500 PFA orders are issued per year. Fatalities are relatively rare when PFA orders are in effect. It was noted that a total of 2,500 persons were injured in domestic violence cases last year. Out of 1,596 PFAs granted, 143 to 157 of the cases were determined to be unfounded. Of the total number of PFA proceedings initiated, 48 percent resulted in the issuance of orders, while 52 percent were dismissed. In some instances, the domestic violence victim does not want a PFA issued.

Note: For more information about Protection From Abuse orders in Delaware, here is a link to the program’s web page: <http://courts.delaware.gov/Help/PFA/>

Full Text of the Family Law Commission Meeting Minutes

Meeting of February 20, 2014

Senate Hearing Room, Legislative Hall

Members Present

Lynn Kokjohn, Chair; Judge William Walls; Raetta McCall; James Morning; Dr. Diana Metzger; Senator Bruce Ennis; Senator Dave Lawson; Representative Michael Ramone; Dr. Twain Gonzales; Curtis Bounds, Esq.

Others Present

Invited guests: Ted Mermigos, DCSE; Gwen Anderson, DCSE; Nichole Moxley, DCSE; Brenda Sammons, DOJ; Charles Hayward, DCSE

Dick Carter, staff; Megan Sokola, staff; **Summary of Meeting**

The meeting was called to order at 9:35am. Minutes from the January 2014 public hearing were approved.

The commission discussed open business from 2013, particularly the Voluntary Acknowledgement of Paternity (VAP) form and DNA testing. Dr. Metzger spoke about an acquaintance who writes professionally and is able to tailor the writing to a particular grade level. The three forms to be considered for rewriting are the VAP form, the Denial of Paternity form, and the brochure that explains the two mentioned forms. There was discussion as to which grade level the forms should be written. The members agreed that the brochure should be rewritten to between the 6th and 8th grade reading level. It should include a glossary of terms, in lieu of rewriting the other two forms, for which legal issues may be present.

Further on this discussion, the question was brought up of whether a minor should be able to legally sign the VAP without any form of counsel. This topic was discussed at length and the possibility of either requiring or offering genetic testing to minors at no cost was considered as well. An option of having a separate form to acknowledge that the minor was given the opportunity to have free genetic testing was put before the commission. Another option discussed was waiting until the age of 18 to confirm the signature, at which point the 2 year window to challenge the form would then start. With this option, the minor would be given access to the form from the child's birth, but it would not be binding until he was 18. There was discussion that the 2-year time frame has already been removed by statute for certain circumstances, and under those circumstances a father may request genetic testing after the 2 year window.

The topic of financial support was considered as well. It was determined that for a support order to be put in place, there must be establishment of paternity through the courts. DNA testing is not mandatory for this establishment. Representative Ramone brought up the child's right to know the identity of his/her biological parent.

The discussion continued on the VAP, and it was brought to the attention of the commission members that there is a federal mandate in place regarding this form. The Uniform Parentage Act (UPA) was considered from a legal standpoint. Mr. Bounds informed the commission that the legality of having a minor sign the VAP form has never been challenged through the full court system.

A further point was made that the results of DNA testing are considered evidence by the courts, not binding proof.

A copy of a Virginia statute was presented to the commission members as well as the DE VAP form (see appendix for copies of these documents). The Virginia statute has the purpose of keeping people out of court if it is unnecessary for their cases. The possible negatives to adopting language similar to Virginia's into Delaware

code language are that Titles 10 and 13 have possible conflicting language.

ACTION ITEMS FROM DISCUSSION:

- **Dr. Metzger: work on brochure rewrite**
- **Rep. Ramone: work on legislation similar to Virginia's that would conform to the DE Code**

The discussion turned to the note at the bottom of the VAP form (see *B on form in appendix A). According to Representative Ramone, this would not be upheld if challenged. Discussion ensued that a previous version of the UPA had language allowing someone who was a minor at the time he signed the VAP to reaffirm or rescind at age 18. However, the new version took this language out.

ACTION ITEM:

- **Ms. Sammons: send old vs. new UPA language to commission members**

Some background was given on the UPA in general - there is a Uniform Commission that creates laws that are adopted similarly in all states. Further, there is a federal mandate that determines language in the VAP. It is important to note that federal law trumps state law, but that family issues are not dealt with on a federal level. That being said, federal mandates require certain actions be taken by states in order to receive federal funding. These actions are not obligations – only required if federal funding is to be obtained. In the federal mandate, provisions are included for minors who sign the VAP. It was wondered if there is a way that the language can be changed back to include the provisions for minors to reaffirm or rescind their decision, but without violating the federal mandate.

ACTION ITEM:

- **Mr. Hayward: run UPA language by DCSE and get feedback**

There was further discussion on the legality of allowing a minor to sign the VAP. Mandatory testing was again considered as an option. The legality of this practice was also questioned.

The next item considered was testimony from the 2014 hearing. Dr. Metzger mentioned that open courts stood out as a topic of concern. There was discussion about the Family Court Task Force and its duties to report on this topic. Ms. Kokjohn gave a summary of the Task Force's work to date.

ACTION ITEM:

- **All members should review the documents sent in regards to the Task Force and come to the next meeting prepared with feedback**

Gender and the treatment of father's in court was also brought up as a possible topic of further discussion.

A final possible topic that was discussed was the licensing of child evaluators who work in the courts. Also open for discussion regarding this topic is the "best interests of the child" statute and shared parenting arrangements.

ACTION ITEM:

- **Staff will contact 3 child evaluators to determine their availability to be present at a meeting in the coming months**

The motion to adjourn was made at 11:50am.

VOLUNTARY ACKNOWLEDGEMENT OF PATERNITY

IMPORTANT

Read all pages of this form before you sign it. There is important information on the back.

1. If you have any questions, you should talk to your attorney or the Division of Child Support Enforcement before you sign this.
2. **Print** everything except your signature. Use a ballpoint pen and press hard enough to make the copies.
3. Fill in all of the spaces. List your insurance even if it will not cover the hospital bill for the child's birth. If you do not have any insurance, put "None" in that space.
4. Each parent must sign this form in front of a notary public. Show the notary identification that has your picture, such as your driver's license or school ID.
5. The mother should sign with the last name she uses on other important papers.
6. Below your signature, put the date you actually signed the form. It does not have to be signed on the same date as the other parent.
7. If you are completing this form at the hospital or birth center when your baby is born, tell the staff when you are ready to sign it. They will help you with the notary.

If you are completing this form away from the hospital, remember to sign it in front of a notary public. You may do this in any state. Leave all the pages together until both parents have signed. After this form has been completed and signed by both parents, each parent should keep one of the copies.

Send the completed white original form to:

**Office of Vital Statistics
Jesse Cooper Building
417 Federal Street
Dover, DE 19901**

Telephone: (302) 744-4549



Note: This Voluntary Acknowledgement of Paternity may be signed only for a child who is under the age of 18 (or under the age of 19 and still in high school) and was born in Delaware.

**VOLUNTARY ACKNOWLEDGEMENT
OF PATERNITY**

SECTION I. CHILD'S INFORMATION:

Name of Child - <i>First, Middle, Last</i>	Date of Birth - <i>(Month, Day, Year)</i>	Child's Social Security No.:
Place of Birth - <i>City, State</i>	Place and City where Acknowledgement is Signed (<i>Hospital, Birth Center, Vital Statistics Office, Child Support Office or Other</i>)	

SECTION II. MOTHER'S INFORMATION:

Name of Mother - <i>First, Middle, Last</i>	(Maiden)	Date of Birth - <i>Month, Day, Year</i>
Mother's Address - <i>Street, City, State, Zip</i>	Mother's Phone Number	
Mother's Place of Birth - <i>State/Country Only</i>	Mother's Social Security Number	Mother's Employer - <i>Name, City, State</i>
Race - <i>Specify (American Indian, Black, White, etc.)</i>	Mother's Medical Insurance - <i>Company Name</i>	Policy Number

SECTION III. BIOLOGICAL FATHER'S INFORMATION:

Name of Father - <i>First, Middle, Last</i>	Date of Birth - <i>Month, Day, Year</i>	
Father's Address - <i>Street, City, State, Zip</i>	Father's Phone Number	
Father's Place of Birth - <i>State/Country Only</i>	Father's Social Security Number	Father's Employer - <i>Name, City, State</i>
Race - <i>Specify (American Indian, Black, White, etc.)</i>	Father's Medical Insurance - <i>Company Name</i>	Policy Number

Check if correct: We declare under penalty of perjury that a genetic test has not determined that another man is the biological father of this child.

Check one of the two statements below:

- There **has not** been genetic testing of the man listed above to determine if he is the biological father of this child.
- Genetic testing has determined that the man listed above is the biological father of this child.

Check one of the two statements below (1A or 1B):

<p>(1A) No Presumed Father if (check one below):</p> <p><input type="checkbox"/> The mother was not married at the time of the child's birth or within 300 days prior to the child's date of birth, or</p> <p><input type="checkbox"/> There is a court order that states that the man the mother was married to is not the father of the child, or</p> <p><input type="checkbox"/> During the first two years of the child's life, no man continuously lived with the child and acknowledged the child as his own.</p>	<p>(1B) Presumed Father if:</p> <p><input type="checkbox"/> The mother was married to someone at the time of the child's birth or during the 300 days before the child's birth, or</p> <p><input type="checkbox"/> The mother was not married but during the first two years of the child's life, a man continuously lived with the child and acknowledged the child as his own.</p> <p><i>* If you have checked either box in (1B), a Denial of Paternity form must be executed (separate form). The denial is not binding until the presumed father has completed the Denial of Paternity form and it has been filed with the Vital Statistics Office.</i></p> <p>The presumed father is:</p> <p>_____ Presumed Father's first, _____ middle, _____ last name</p>
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<p>I declare under penalty of perjury the following: I am the biological mother of the child named above. I freely and voluntarily consent to this Acknowledgement of Paternity. I have read or had explained to me orally the statements on the back of this form. I understand that the acknowledgement is the equivalent of a judicial adjudication of paternity of the child and that a challenge to the Acknowledgement is permitted only under limited circumstances and is barred after 2 years from the date filed with the Office of Vital Statistics. Otherwise, I have 60 days after this document is filed to rescind.</p> <p>No other Acknowledgement of Paternity form naming another man as the biological father of this child has been filed. There is no court order naming another man as the biological father of this child.</p> <p>_____ Mother's Signature (Current Last Name)</p> <p>Date Signed _____</p> <p>Print Name _____</p> <p>State of _____, County of _____</p> <p>Sworn and subscribed before me on this ____ Day of _____ 20____</p> <p>_____ Signature of Notary Public</p> <p style="text-align: right;">My Commission expires on _____</p>	<p>I declare under penalty of perjury the following: I am the biological father of the child named above. I freely and voluntarily consent to this Acknowledgement of Paternity. I have read or had explained to me orally the statements on the back of this form. I understand that the Acknowledgement is the equivalent of a judicial adjudication of paternity of the child and that a challenge to the Acknowledgement is permitted only under limited circumstances and is barred after 2 years from the date filed with the Office of Vital Statistics. Otherwise, I have 60 days after this document is filed to rescind.</p> <p>No other Acknowledgement of Paternity form naming another man as the biological father of this child has been filed. There is no court order naming another man as the biological father of this child.</p> <p>_____ Biological Father's Signature</p> <p>Date Signed _____</p> <p>Print Name _____</p> <p>State of _____, County of _____</p> <p>Sworn and subscribed before me on this ____ Day of _____ 20____</p> <p>_____ Signature of Notary Public</p> <p style="text-align: right;">My Commission expires on _____</p>
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Distribution: White - Vital Records, One Copy to Each Parent

Appendix B

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§ 63.2-1913. Administrative establishment of paternity.

The Department may establish the parent and child relationship between a child and a man upon request, verified by oath or affirmation, filed by a child, a parent, a person claiming parentage, a person standing in loco parentis to the child or having legal custody of the child, or a representative of the Department or the Department of Juvenile Justice. The request may be filed at any time before the child attains the age of eighteen years.

Pursuant to subsection F of § [63.2-1903](#), the Department may summons a parent or putative parent to appear in the office of the Division of Child Support Enforcement to provide such information as may be necessary to the proceeding.

Paternity may be established by a written statement of the father and mother made under oath acknowledging paternity or scientifically reliable genetic tests, including blood tests, which affirm at least a ninety-eight percent probability of paternity. The Department may order genetic testing and shall pay the costs of such tests, subject to recoupment from the father, if paternity is established. Where an original test is contested and additional testing is requested, the Department may require advance payment by the contestant.

Before a voluntary acknowledgment of paternity is accepted by the Department as the basis for establishing paternity, the Department shall provide to both the mother and the putative father a written and oral description of the rights and responsibilities of acknowledging paternity and the consequences that arise from a signed acknowledgment, including the right to rescind the acknowledgment within the earlier of (i) sixty days from the date of signing or (ii) the date of entry of an order in an administrative or judicial proceeding relating to the child in which the signatory is a party.

A genetic test result affirming at least a ninety-eight percent probability of paternity shall have the same legal effect as a judgment entered pursuant to § [20-49.8](#). When sixty days have elapsed from its signing, a voluntary statement acknowledging paternity shall have the same legal effect as a judgment entered pursuant to § [20-49.8](#) and shall be binding and conclusive unless, in a subsequent judicial proceeding, the person challenging the statement establishes that the statement resulted from fraud, duress or a material mistake of fact. In any subsequent proceeding in which a statement acknowledging paternity is subject to challenge, the legal responsibilities of any person signing it shall not be suspended during the pendency of the proceeding, except for good cause shown.

The order of the Department in proceedings pursuant to this section shall be served upon the putative father in accordance with the provisions of Chapter 8 (§ [8.01-285](#) et seq.) or Chapter 9 (§ [8.01-328](#) et seq.) of Title 8.01. The Department shall file a copy of its order determining paternity, including the information required by subsection C of § [20-49.8](#), with the State Registrar of Vital Records within thirty days after the acknowledgment becomes binding and conclusive or the order otherwise becomes final. No judicial or administrative proceeding shall be required to ratify an unchallenged acknowledgment of paternity nor shall the Department or the courts have any jurisdiction over proceedings to ratify an unchallenged acknowledgment.

(1997, cc. [792](#), [896](#), § 63.1-250.1:2; 2002, c. [747](#).)

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Family Law Commission Meeting Minutes – March 20, 2014

Senate Hearing Room, Legislative Hall

Members Present:

Lynn Kokjohn, Chair; Dr. Twain Gonzales; Rep. Stephanie Bolden; Rep. Michael Ramone; Curtis Bounds, Esq.; Sen. Dave Lawson; James Morning; Dr. Diana Metzger; Peggy Smith; Judge Bill Walls; Raetta McCall

Others Present:

Dick Carter, staff; Megan Sokola, staff

Summary of Meeting

The meeting began at 9:45am with the approval of the February 20, 2014 minutes.

The first item discussed was the rewrite of the brochure detailing voluntary acknowledgment of paternity issues. A handout was presented to the members by Dr. Metzger with the definitions listed for different legal terms. It was thought that the definitions be used as an addendum to the brochure rather than rewriting the actual language in the brochure, mainly for legal reasons. It was also recommended that the phone number for where a potential father may obtain information regarding paternity testing be included.

There was a discussion of mandatory paternity testing for minors who agree to sign the VAP. It was suggested that there may be potential constitutional issues with this practice, particularly that the law cannot compel a minor to take the test without parental permission. Chair, Ms. Lynn Kokjohn brought up a bill that she believes was recently made into law, which allows for the release of parental medical records in the case of a minor's life-threatening emergency. She made clear that from her understanding, this would allow the information to be accessible if needed, rather than forced on a child who may otherwise not want the information.

A discussion of the Family Court Task Force and its work followed. Main points covered were the public vs. private arguments, the public comments, and the possibility of recommending guidelines for judicial discretion. On the same topic, Mr. Bounds asked one member of the public in attendance if she would have felt differently, given the same outcome, if the case had been public rather than private. The member of the public responded saying that she felt there may have been more appropriate conduct from the judges and commissioners, specifically referring to rude remarks that were made during her hearings. The question of how judges would respond if given guidelines for discretion was raised. Judge Walls made clear that the intent of judges is to follow the law, regardless of its mandates.

The role of the Family Law Commission as it relates to the courts and the task force's work was discussed. It was suggested that the commission could serve as a sort of "checks and balances" moderator between the legislature and the courts. Courtwatch was brought up as a possible pilot program for the FLC to take the lead on. A comment was made that regardless of whether courts are public or private, conduct of certain individual actors in the system will inevitably change to fit the scenario. To this regard, it was mentioned that some people thrive on an audience, while others feel more intimidated, and vice versa. The possibility of unauthorized practice of law is also a concern to some. This is where pro se litigants bring a "friend" who then gives the litigant legal advice. This is an illegal practice. Further discussion of the benefits and drawbacks to public or private courts ensued. Further workings of the task force were discussed at length.

It was discussed that future meetings are to be as follows:

- April 17: Child evaluations
- May 15: Court Improvement Program
- June 19: False allegations and PFAs

Following decisions about the future meetings, adjournment took place at 11:20am.

Family Law Commission Meeting Minutes – April 17th, 2014

Senate Hearing Room, Legislative Hall

Members Present:

Lynn Kokjohn, Chair; Dr. Twain Gonzales; Rep. Michael Ramone; Sen. Dave Lawson; James Morning; Dr. Diana Metzger; Peggy Smith; Raetta McCall

Others Present:

Invited Guests: Dr. Ted Wilson, Psychologist & Custody Evaluator; Dr. Joe Zingaro, Child Psychologist & Custody Evaluator; Shane O'Hare, Child Placement Review Board

Dick Carter, staff; Tanner Polce, staff

Five (5) members of the public

Summary of Meeting:

The meeting began at 9:41am with the approval of the March 20, 2014 minutes.

The first item discussed was an overview of the child custody evaluation processes and procedures. Dr. Joe Zingaro testified to some of the most pertinent information; specifically highlighting that there are currently no true regulations in the State, but there are general guidelines as it pertains to child custody evaluations. It was stated that both psychologists and certificated social worker (CSW) can conduct custody evaluations. There are two national organizations that offer paid certifications as a custody evaluator, both of which are not recognized by the American Psychological Association (APA). The certifications include a nationally certified custody evaluator, by the Professional Academy of Custody Evaluators (PACE). Currently, there is not a single psychologist registered on the PACE website who conducts custody evaluations in Delaware.

Dr. Zingaro then spoke to the specific measures and operations of a custody evaluation. Specifically, he stated that custody evaluations are one, if not the most difficult and trying thing not only for a family, but as well as the mental health professional involved. This is one of the many factors to why a very small group of psychologists within the State of Delaware perform such evaluations. Further, custody evaluations are the second leading reason mental health professionals are brought before an ethics committee; the major reason is the highly emotional and sensitive nature of the work. Specifically, in Delaware since 2012 only three complaints have been filed to a professional ethics board, to which zero have concluded with any findings. Dr. Zingaro stressed the numerous measures and instruments in place that allow for a fair and balanced custody evaluation. Some of these measures include: 1) an onsite visit; 2) testimony from family, friends, employers, etc.; 3) observations both at the home and in other, alternative environments.

Questions from the commission focused around three primary pieces of information: 1) are interviews of the children conducted; 2) should there be true guidelines and/or standards codified; 3) how often are mental health professional's findings overruled in court. Both Dr.'s Zingaro and Wilson responded. Interviews of children are conducted if the child is of a reasonable age. However, the maturity level of the child comes into play; the usual age to which interviews take place is twelve years old. Dr. Twain Gonzales, of the Commission, was interested in gathering feedback pertaining to the potential codification of best practices and guidelines for custody evaluators. Dr. Zingaro discouraged such action because of several factors, which include: 1) the relatively small number of custody evaluators within the State; 2) said action would put government in charge of professional standards when professional boards are charged with the review of unethical behavior; 3) the unintended, unforeseen consequences of such action. The final question raised by the Commission spoke to the professional finding of a custody evaluation and how often does the court overturn those professional recommendations/findings. Dr. Zingaro informed the Commission that nationally, roughly ten percent of recommendations were completely countered or not taken into consideration. In closing both Dr.'s Zingaro and Wilson stated that they see fewer and fewer custodial evaluations annually, but an increase in psychological evaluations.

The second item discussed was an overview of the Child Placement Review Board (CPRB). Mr. Shane O'Hare, Executive Director of the Child Placement Review Board, outlined the board's purpose. In short, the CPRB

serves foster children in the State of Delaware and adjudicated children in out of home placements by involving trained citizen volunteers in regular reviews of where these children have been placed, how they are treated, and how their changing needs are being addressed. Mr. O'Hare spoke about some of the primary functions of the review process, specifically that there are roughly sixty volunteers who, in fiscal year 2013, engaged in more than 300 training hours and conducted a total of 3,325 hours for the review panel. CPRB currently has a two-tiered approach for conducting reviews. The first tier is a paper review of the children who are under twelve and are seeking placement; and the second tier is a comprehensive review, which are usually conducted for children older than twelve. Mr. O'Hare highlighted some of the challenges of both the placement and aging out process. Lastly, Mr. O'Hare spoke to the opportunity foster children have once they graduated from high school, which comes in the form of the Ivyane D.F. Davis Scholarship (Davis). During the fiscal year 2013, Davis funds totaled \$147,500 and were dispersed to 49 recipients who went on to pursue four-year, two-year and post-secondary programs.

The commission raised questions and suggestions regarding the following: 1) the number of children in the State of Delaware who are currently in the foster care system; 2) if the board meetings were either opened or closed to the public; 3) photographs of the children should be taken periodically to reduce the likelihood of false identification of said children. Mr. O'Hare stated that he estimates roughly 600 children are currently in the foster care system in Delaware. Second, the board meetings are open to the public, but they do have a closed section of the meeting. Lastly, Mr. O'Hare acknowledged the suggestion and thanked the Commission for it.

It was discussed that future meetings are to be as follows:

- May 15: Court Improvement Program
- June 19: False allegations and PFAs

Following decisions about the future meetings, adjournment took place at 11:29am.

Family Law Commission Meeting Minutes — May 15, 2014

Senate Hearing Room, 2nd FL – Legislative Hall

Members Present:

Lynn Kokjohn, chair; Dr. Twain Gonzales; Dr. Diana Metzger; James Morning; Raetta McCall; Senator Bruce Ennis; Judge Bill Walls; Representative Michael Ramone; Peggy Smith

Others Present:

Invited guests: Judge Kenneth Millman; Judge Peter Jones; Carrie Hyla; Shane O'Hare;

Dick Carter, staff; Megan Sokola, staff

Summary of Meeting

The meeting began at 9:40am with the approval of the minutes, as amended, from the April meeting.

Senator Ennis discussed a proposed bill that came about as a direct result of the work of the Family Court Task Force. He asked the FLC members to review the draft and return comments. The question of the feasibility of this draft passing both chambers was raised. Both Senator Ennis and Representative Ramone believe there would be active discussion surrounding the bill, and the possibility of misinformation. However, it was felt that it was the job of the sponsors of the bill (those who served on the Task Force) to correct any misinformation. It was also felt that the makeup and public nature of the Task Force would help to give the bill credibility. (The bill, Senate Bill No. 235, was released June 4, and awaits action in the Senate).

The conversation turned to the Court Improvement Project (CIP). Judge Millman began with the history of child welfare and other background information pertaining to the Family Court system. Judge Jones followed with

more specific information regarding the CIP. He explained the process through which a child moves in foster care and state custody. The ultimate goal of the system in regards to these children is permanency.

There are currently 15 court rooms participating in the CIP, and it was noted that every case is different – there is no one-size-fits-all remedy. Another important note within the CIP is that in each step of the process, the judge takes into consideration what the child wants, as the child is the most affected party.

A question was posed to the judges regarding best practices and what the legislature could do to help ensure these are fulfilled. There seemed to be agreement that services are lacking, especially in Kent and Sussex Counties. The services specifically mentioned include child psychologists, other mental health professionals, and CASA attorneys.

The meeting ended at 11:20, with the note that June's meeting would be in regards to PFA's and false allegations.

Family Law Commission Meeting Minutes – June 19, 2014

Senate Hearing Room, Legislative Hall

Members Present:

Lynn Kokjohn, Chair; Rep. Stephanie Bolden; Rep. Michael Ramone; Sen. Bruce Ennis; Curtis Bounds, Esq.; James Morning; Dr. Diana Metzger; Peggy Smith; Judge William Walls; Raetta McCall

Others Present:

Dick Carter, staff; Megan Sokola, staff

Invited guests:

Veronica Colombo, Victim Services Specialist, Del. State Police; Master Corporal Adrienne Owen, Del. State Police; Patricia Dailey Lewes, Deputy Attorney General; Mariann Kenville-Moore, Policy Coordinator of the Delaware Coalition Against Domestic Violence

Summary of Meeting

The meeting began at 9:40 a.m. with the approval of the May 15, 2014 minutes.

The commission discussed Protection From Abuse (PFA) orders and the problem of false allegations. Putting a PFA in place is a civil proceeding, conducted in open court, and is a way in which a person threatened or abused by a family member or partner can keep that person away and out of contact through a court order.

Adrienne Owen explained what steps are taken when a police officer is called to respond to a domestic violence situation: 1) the police officer identifies what has happened; 2) the criminal history of the alleged perpetrator is confirmed; 3) a “domestic incident report” is filed, and 4) if necessary, an emergency petition order may be granted by a judge ex parte (i.e., decided by a judge without requiring all of the parties to the controversy to be present). Once served, a PFA is entered into a national law enforcement database. Victims advocates help the victim after the fact. Ms. Owen explained that the “no contact” portion of PFAs is the most frequently violated part. A petitioner respondent may agree to some limited form of contact for a valid reason.

Those making false allegations of abuse misuse the PFA process for reasons other than abuse, such as, to achieve an advantage in divorce or property settlement proceedings. “False Reporting” is a crime. If confirmed, such charges are forwarded to the Office of the Attorney General. Relatively few such cases are filed, and the penalty depends upon the nature of the incident.

On average, some 3,000 to 3,500 PFA orders are issued per year. Fatalities are relatively rare when PFA orders are in effect. It was noted that a total of 2,500 persons were injured in domestic violence cases last year. Out of 1,596

PFAs granted, 143 to 157 of the cases were determined to be unfounded. Of the total number of PFA proceedings initiated, 48 percent resulted in the issuance of orders, while 52 percent were dismissed. In some instances, the domestic violence victim does not want a PFA issued.

Ms. Owen also described the process of carrying out a “lethality assessment protocol” in domestic violence cases, to determine whether or not there are factors present in the situation between domestic partners that often lead to domestic violence homicides. These include access to a weapon, whether such actions as strangulation have occurred, and whether or not any threats of suicide have been made, among other factors. Positive answers to any or all of these questions may indicate a need for intervention.

Victims are put in touch with resources to help them with safety planning, how to navigate a separation, etc. The Division of Family Services would come into play if there is any indication of endangered children in domestic altercations. The work of the Delaware Domestic Violence Coordinating Council was also discussed.

The commission discussed whether new legislation may be called for to clear up possible ambiguities in the existing statutory language governing the PFA process and possibly requiring further criminal charges in cases where serious violence or threats of violence have occurred.

Addendum: A Summary of the Findings of the 2013–2014 Family Court Task Force (SCR 9)

The Blue Ribbon Task Force established at the request of the Family Law Commission by Senate Concurrent Resolution No. 9 of the 147th General Assembly to consider the matter of whether or not certain family court proceedings should be open to the public, held a total of six meetings between October, 2013 and April, 2014, submitting its final report to the President Pro Tempore of the Senate and the Speaker of the House of Representatives on April 15, 2014.

The Task Force found that it may be feasible to open certain types of hearings. In addition to the passage of new legislation, the Task Force also identified key points that should be considered in the overall development of such a reform plan.

Much was learned within the Task Force about the meaning of open court from Delaware's Constitution. It was learned that a non-lawyer could easily misinterpret the meaning of "open" to mean "all proceedings should be open to the public." However, the Delaware Supreme Court has reviewed this matter and has rendered an opinion clarifying that the term "open court" means that all persons shall have access to the court without having to pay for justice. The Task Force also learned that having closed/private hearings is constitutional when established by statute and when factors can be clearly articulated as to why privacy is required.

The Task Force reviewed and discussed the Family Court proceedings that are currently private. These hearings are Adoption, Custody/Visitation, Third Party Visitation, Termination of Parental Rights, Permanent Guardianship, Guardianship, Child Protection Registry, Paternity, Divorce, Property Division and Alimony (Ancillary Matters). Adult Misdemeanor, Juvenile Felony & some Misdemeanor, Child Support, and Protection from Abuse hearings are already presumed public.

The Task Force actively sought public comment for the Task Force's consideration. Three (3) press releases were issued to the media. The public was also invited to have a discussion with the 3 public members of the Task Force prior to each meeting. Over 30 people provided input. Of all comments received, approximately 60% indicated a preference to keep the courts as they currently are with approximately 40% indicating a preference to have proceedings public. Several people indicated a preference of keeping the current private system, but would like to allow the option of having a support person present if desired. Further detail about the public comment can be found in Appendix H.

The members of the Task Force approached the process with similar intent: that of wanting to provide litigants with the best court environment as possible. The Task Force worked to protect the privacy and personal interests of parties, including children, while promoting public trust and confidence in the court. Although the Task Force worked hard to reach consensus, not all members were in agreement. The following recommendations represent the majority view:

1. Paternity, Divorce, Property Division & Alimony hearings should be presumed public. Due to the needs of litigants, the court and those involved, it may be appropriate and necessary for a hearing to be private in part or full. The Task Force agreed that Judicial Officers maintain the discretion to determine such a request but based on the following factors:
 - a. Safety concerns of the Court or the parties
 - b. The position of the parties, including children
 - c. The effect of the release of private information
 - d. The opinion of medical and behavioral professionals involved with any of the parties or the children
 - e. The likelihood of harm from release of any medical or financial information, or
 - f. Any other factor the Court finds where privacy serves an overriding interest and no less restrictive means is available.

NOTE: Recommendation One will require legislative action to implement; subsequent changes to the Court Rules and procedures will also be required.

2. Weighing the potential negative impact on the child, the Task Force voted that Adoption, Custody/ Visitation, Third Party Visitation, Termination of Parental Rights, Permanent Guardianship, Guardianship, and the Child Protection Registry hearings should be presumed private except to those with a legitimate or direct interest in the proceeding. Due to the needs of litigants, the court and those involved, it may be appropriate and necessary for a matter to be made public with the ability for other individuals to be present. The Task Force agreed that Judicial Officers maintain the discretion to determine such a request but based on the following factors:

- a. Safety concerns of the Court or the parties
- b. The position of the parties regarding public access
- c. The position of the child or a representative of the child to have a support person present
- d. The position of the parties to have a support person
- e. The effect public access may have on the proceeding
- f. The opinion of medical and behavioral professionals involved with any of the parties or the children
- g. Legitimate academic or research interest in the work of the Court, or
- h. Any other factor the Court finds where public access serves an important interest and no other means is available.

NOTE: Recommendation Two will require legislative action to implement; subsequent changes to the Court Rules and procedures will be required.

The Task Force weighed what is in the best interest of children utilizing existing legal precedents. We recognize that these issues are also being considered nationally and that the legal review of this type of policy remains open to interpretation.

There were additional findings/factors that the Task Force identified which potentially impact the feasibility of a court system change.

a) To ensure consistent application of the law, the Task Force recommends ongoing training on Court Rules and procedures for Family Court personnel, attorneys, professionals and agencies that appear before the court.

b) Given the high percentage of Delawareans who are self-represented (pro se) in Family Court, access to information relevant to the legal process and procedures is imperative. The following areas were identified as requiring further attention:

- i. Providing guidance and access to the public on how to file a grievance
- ii. Increasing the public's awareness of the Family Court Resource Centers, online resource materials, and websites
- iii. Improving access to the law through law libraries, public libraries, and relevant public resources
- iv. Providing public education sessions on how civil & criminal cases are handled in Family Court.

The Delaware Family Law Commission may be an appropriate body to track subsequent changes made in reference to this work and assess whether recommendations are implemented, changes to the Court have improved outcomes for litigants and children, changes to public information has occurred and improved access to information has assisted litigants, especially those who are self-represented.

The recommendations of the task force were included in legislation, Senate Bill No. 235, entitled “AN ACT TO AMEND TITLES 13 AND 16 OF THE DELAWARE CODE RELATING TO PUBLIC ACCESS TO FAMILY COURT PROCEEDINGS.” The legislation may be viewed on line by following this link:

<http://www.legis.delaware.gov/LIS/LIS147.NSF/vwLegislation/SB+235?Opendocument>

It was introduced on June 4. The bill passed the Senate with Senate Amendment No. 1 by a 19-2 vote, but was not acted on by the House of Representatives before the end of the 147th General Assembly.