

Family Law Commission
Meeting Minutes
May 10, 2012
Senate Hearing Room

Members Present:

Lynn Kokjohn, Chair
Representative Ramone, Secretary
Senator Sorenson
WendyJean Matlack
Peg Smith
James Morning
Curtis Bounds
Eileen Williams
Diana Metzger
Harriet Ainbinder
Julia Pillsbury

Liaisons Present:

Drew Slater, Asst to the FLC
Ken Kelemen, c/o Family Court

Speakers:

Dr. Bartoshesky

The Family Law Commission met on Thursday, May 10, 2012 to discuss DNA testing, paternity testing and paternity fraud.

Call to Order:

The meeting was called to order at 9:34am.

1. Approval of Minutes

Dr. Metzger and Mr. Morning asked for amendments to the minutes. There was a motion by Dr. Metzger to approve the minutes reflecting the requested changes, seconded by Ms. Matlack. The minutes were approved unanimously with no abstentions.

2. Speakers

The Chair asked Dr. Louis Bartoshesky to speak on DNA testing, paternity testing and paternity fraud. Dr. Metzger introduced Dr. Bartoshesky to the commission.

There have been issues brought before the commission in previous years regarding DNA testing and paternity fraud. The commission asked Dr. Bartoshesky for an overview of paternity testing and then the commission would like to discuss the idea of having mandatory paternity testing.

Dr. Bartoshesky began by mentioning that shows like CSI are inaccurate when it is shown that a lab can determine someone's DNA in a matter of minutes. The fact is, that does not happen.

Dr. Bartoshesky continued by stating that no two people are alike and that there are several different companies that test anywhere from 5-25 fragments of DNA and look for matches. It was mentioned that Lab Corp does perform this service and they look at 21 markers.

Mr. Morning asked about someone who switched DNA and used DNA from someone else. Dr. Bartoshesky did not know that was done and Mr. Morning mentioned that it was a news item.

The cost for a test through the internet is \$80 per person while Lab Corp and Quest would be \$500 for a family. With 12,000 children born a year in Delaware it would be hard to find the

funding for a DNA test for every family with the cost being \$6 million annually. Additionally, Dr. Bartoshesky said that it costs \$60 to test for genetic diseases you may have, or are the carrier for.

Dr. Bartoshesky said that the most accurate test would be having the mother involved but the father and child would still be a very accurate test that could show a 1 in 10 million chance of a man not being the father of a child. It was mentioned that since a child already has genetic testing at birth perhaps this could be used for a paternity test before the samples are destroyed.

Representative Ramone then started discussion regarding the child's right to know who their parents are or are not. Dr. Bartoshesky said that they would need consent with confidentiality. It was also mentioned that geneticists would not be comfortable with mandatory testing. However, testing can be mandated in a criminal case.

The reason that confidentiality would be needed is because the testing would affect the brothers, sisters, uncles and other family members who did not consent to testing. Additionally, you must be ready for unexpected results. Representative Ramone said that you would be able to address this issue while the child is young instead of later when the statute of limitations to determine fatherhood has expired and you must then pay child support. It would be much more extreme when the child is 5, 10 or 15 years old.

Dr. Bartoshesky asked the question of how we would protect the privacy so only the mother and father have the results. In addition, Dr. Bartoshesky said that parents currently have to have counseling and be told what they are asking for ahead of time.

Mr. Morning mentioned that it currently costs \$35 to have a paternity test done through the Office of Child Support Enforcement. Dr. Bartoshesky said that it could be less expensive, than the \$500 test, if the State contracts with an outside agency.

Dr. Metzger mentioned that the medical community would not support this. Mr. Kelemen stated that a father can request paternity testing through Family Court if he does not believe he is the father of the child. He cannot deny testing if he does not believe he is the father of the child.

Dr. Bartoshesky mentioned that 5 percent of the cases may not be the father of the child but 95 percent of the fathers are.

There was then discussion on the statute of limitations and whether that was increased last year from 2 years to 2 years with 6 years if you can prove there was fraud on the mother's behalf.

Mr. Bounds said that he would not require genetic testing. Perhaps a child or parent would not want to know if they were the father of the child and this would be forcing them to have testing. Dr. Ainbinder said that we would not be looking at who the father is but who the father is not. Dr. Pillsbury asked if we were going to have a genetic database established to determine who the father would be.

Dr. Bartoshesky mentioned that Minnesota and Texas have lawsuits pending in court over having kept the blood spots from the children.

It was mentioned that if someone says 'No' to the testing then the testing would not occur. This would allow the presumed father to have a chance to have paternity testing.

There was then a question regarding child immunizations and Dr. Pillsbury mentioned that Delaware's rate is steadily improving. Dr. Pillsbury also mentioned that you cannot be enrolled in school or daycare without immunizations.

Dr. Pillsbury brought up another issue where the mother has the legal right to consent for the child as she is known to be the mother of the child. If the father agrees to send a child to a certain doctor but the mother denies then the mother would have consent for the child. Dr.

Pillsbury said that the Family Court needs to be able to provide medical decision as to which doctor a child would go to. Additionally, the Family Court, nor insurance, compensates for doctors who are subpoenaed to Family Court. Dr. Pillsbury said that she received 5 subpoenas in one week and sometimes she is allowed to testify by phone depending on the Judges but the doctors cannot afford to attend Family Court and practice at the same time. She also mentioned a case where a doctor had to decide where a child would go to school. This should not be in the doctor's hands but in the Family Court's.

Mr. Morning brought up an issue relating to paternity asking what would happen if the father is not at the birth, as may happen with a military father. If the father is not at the birth then who would mandate testing?

Dr. Bartoshesky said that there could be a great deal of coercion and lack of consent if we make paternity testing mandatory. They currently have to spend an hour with the parents going over the test, as well as counseling, before they are tested.

There was then a question on how many people know that they can have paternity testing. There was another point of what about if we do not assume the father, even married, is the father and instead the Voluntary Acknowledgement of Paternity form is used.

This led to great discussion on the voluntary paternity form. Mr. Morning said that a child could sign the form at 14 stating that they are the father of the child and they would then be liable for child support without maybe knowing all the implications of signing that form. He also mentioned that there is no education in the hospital on signing the voluntary acknowledgement form for the father.

Mr. Morning said that the child should look at the form but have a counselor present to let them know that they have a right to paternity testing. There should be a trained advisor present to explain all the rights to the child. Perhaps this would be a trained social worker as the form originates from the Office of Vital Statistics. Dr. Ainbinder said that all paperwork has to be on a 5th grade level and we would challenge that this form is not on a five grade level.

Another suggestion relating to the form was to have a counselor from the Department of Health and Social Services (DHSS) have to sign their name on the voluntary form as well stating that they have discussed the consent form with the father. Dr. Pillsbury mentioned that she thought that DHSS workers would not be able to see every child's parents as their caseloads are already too large.

The commission then determined that they would like someone from DHSS to come and speak to us about this form, and some of the questions raised, at our June 7th meeting.

The topic for the June 7th meeting is domestic violence and the voluntary paternity form.

The commission then spoke about the public comments heard in January and mentioned that the 3 pay stubs for overtime is not enough. Dr. Ainbinder would like to know who decided that as the pay stubs should be looked at for an entire year's pay.

This question was answered after the meeting noting that the "3 paystub" provision is part of the formula in Rule 500(i). In addition, a single pay stub will show you everything you need to know but the less that is brought to the Family Court the better so as to avoid anomalies. As an example, a person who brings just one paystub showing an hourly rate but just 32 hours for the particular week will likely be attributed with 40 hours because they did not bring sufficient evidence to prove a lesser number of regularly available hours. This is also where those wage tables can be helpful to corroborate the limited information provided. Rule 500(i) was modified at the last review to detail other types of documentation that can be required especially where a person is self-employed or employed by a closely held corporation.

The commission then reviewed pending legislation.

The chair asked for new business and Mr. Kelemen said that he would be happy to provide a quick update on his progress. He said that the New Castle County call center will be up and running soon and their phone number is 302-255-0300. There is not a call center set up for Kent and Sussex yet as this is the starting point. Additionally, he said that there are 5 full-time staff that are working the call center. Mr. Kelemen also mentioned that live chat is just around the corner and the staff will be working the live chat as well as the call center with oversight from Mr. Kelemen.

Adjournment

With a motion from Mr. Morning to adjourn the meeting, seconded by Ms. Matlack the meeting adjourned at 11:15am.

Submitted by Drew Slater
Assistant to the Family Law Commission