

Family Law Commission
Public Hearing Minutes
January 12, 2010
House Chamber

Members Present:

Lynn Kokjohn, Chair
Representative Barbieri
James Morning
Judge Bill Walls
Professor Dana Harrington-Conner
Senator Liane Sorenson
Representative Michael Ramone

Dr. Harriet Ainbinder
WendyJean Matlack
Curtis Bounds
Senator Bruce Ennis
Eileen Williams
Peg Smith

Other Legislators:

Representative Blakely

The Family Law Commission met on Tuesday, January 12, 2010 in the House Chamber for their annual public hearing. The public hearing began at 7:00pm and ended at 9:38pm.

The meeting began by all the members introducing themselves and then with the Chair going what the Family Law Commission can and cannot do.

The purpose of this meeting was to hear the concerns of the public regarding Family Court.

A list of concerns was created from the public comments that were heard to be discussed in the subsequent meetings of the Family Law Commission. A list of all the meetings can be found online at flc.delaware.gov.

The concerns most often mentioned were: child custody, child support, false allegations, protection from abuse orders (PFA), Family Court Commissioners and paternity fraud. Specific comments are noted for each concern in the following pages.

Family Law Commission
Summary of Concerns
Public Hearing January 2010

- **Child Custody (7)**

- Why does the other party get visitation of the child when they do not provide any support?
- In the case of sudden death of a parent
 - Rights as far as the care, schooling, etc.
 - HIPPA laws prevent the grandparents from information from a doctor or hospital
 - The custodial parent has the child and the grandparents of the deceased parent do not have any say in the child's life
 - They have no rights
- In Sussex County, the schools, daycares and camp providers have no assurance that the children's custody and visitation arrangements are current
 - They are dependent on the primary parent to update that
 - Would like to see a database that parents could elect to have schools have access to, or that schools and providers would be required to use
 - This would allow that no child is put in the middle of jurisdictional crises
- It is very difficult for fathers to get custody of their children
 - The mother is looked at as being the better caregiver
 - He did apply for custody and he was given sole custody of his children
 - Since then his ex-wife has been giving him problems and there is nothing that has been done about that
 - Mothers and Fathers should be put on an equal level and looked at as the same to determine which parent would be the better caregiver for the child
 - Or it should be at least joint custody if both parents are suited to provide for the child
- Children taken from mother who had sole custody in Delaware when she took the children to Nevada for work
 - They now have joint custody
- The primary caregiver was someone who had 5 DUI's and was jailed
 - The father was also in jail at a later time
- When the father was jailed she immediately drove up and picked up her kids
 - The next morning when she filed another ex-parte for emergency custody she was denied again, for the third time
- It took 5 months to get before a judge to get the children back from Florida, where their father had taken them
- Custody of children should be 50/50 shared custody starting out
 - There is nothing to prove that one gender is a better parent than the other
 - In most cases in Delaware the woman is given all the parental rights initially and the father has to prove that he is a fit father
 - This should be shared between the mother and the father

- The 2-3-2 system is complicated why not 1 week with the father and 1 week with the mother?
 - It would be easier for the child, especially riding the school bus
 - It took 2 years to get a child back that had been taken to New Jersey
 - Parents given sole custody of children even when they were abusive to their spouse
 - The court system allows non-custodial parents the opportunity to pick and choose what responsibilities they want to take as a parent
 - Father was absent from the children's life for 4 years
 - He petitioned for visitation with no other support in any other way and he won
 - The courts should meet with the family yearly to see how the current custody arrangement is working out
 - This way if it needs to be modified it can be modified by the court
 - Judges and Commissioners should work together regarding child support and custody issues
 - Visitation is not listened to (3)
 - Father was abusive to the mother and caused her to have her child early.
 - Father was given visitation after he was kicked out of the hospital and now sees the child twice a week for an hour.
 - He was granted supervised visitation
 - He stayed for no longer than 30 minutes most of the time
 - He did not change the child's diaper, play with the child or anything
 - He did not know the baby's name, never called; never saw the child until he filed for visitation.
 - Father received full visitation after the Commissioner did not listen to anything the other family had to say
 - Supervised Visitation is not supervised.
 - Children to go a Supervised Visitation Center
 - A parent can come to an extra-curricular activity at a school, even if the child is opposed to that
 - Family Court Judge in Sussex County allows unsupervised visitation because the father is allowed at the child's extra-curricular activities at the school
 - Visitation should be enforced (2)
 - Each parent should have the equal access to their children
 - Visitation has no guidelines when someone moves 1000 miles away
 - Spouse moved to Georgia
 - Two years ago he came and took the child over the summer
 - The lawyer did not have anything to draw on from any rules, or code
 - Transfer at 9:00am Christmas morning even though he lived in Georgia
 - She had to drive half way to meet him to drop off their child on Christmas day
 - There should be a presumption of joint custody and placement unless there are proven allegations of abuse against the child
 - Mandatory counseling for custody, rather than a parenting class
 - Would be more effective than a four hour class

- Orders are often ignored with no consequences to the custodial parent and to the overall detriment of the children
- Biased towards Fathers in Family Court (2)
 - There needs to be a major overhaul of the system
 - Direct biases against the fathers and towards the mothers
 - Men are considered inherently offensive
- There needs to be a major overhaul of the Family Court system
 - What was good 30 or 40 years ago may not be the best today
- Children are old enough to decide who they want to be with
 - The children are 12,10 and they are old enough to decide

- **Child Support (4)**
 - The other parent is said to be unlocateable, even with the information provided from the other party.
 - The concern about child support is that one person gets visitation without any child support payments.
 - This speaker also mentions that they have to do a lot of the work in locating the other party.
 - They are suggesting that they should not have to do all the work in locating the other party for child support payments.
 - Two years trying to get child support
 - Finally had a hearing and no one showed
 - Had a secured bond put on the other party and the Commissioner let them go without a secured bond
 - The next hearing date is now 2 ½ months away
 - Had a hearing that was scheduled for 1:30pm and they had the hearing at 12:00pm with no warning and the other party was let go without this party's testimony because they change the time without the party's knowledge
 - Judges must demand pay stubs and tax returns
 - Currently they do not do this
 - What is in child support? (2)
 - No one knows what is covered
 - Should clearly document what is covered in child support so there are no arguments on haircuts, shoes, cell phone, books, etc.
 - Would like a monthly breakdown of how his child support payments are spent
 - Has daughter 4 days of the week
 - Mother receives \$497 in child support
 - He has his daughter the majority of the time and he does not know what the child support is used for
 - He would encourage her mother to buy her the new shoes because he thought that is what the child support was used for
 - He was the one that would buy his daughter the new shoes
 - How is it that someone that receives SSI, and can still work, has support set at 0?

- He was told that his support was set at 0 until he gets a job, providing that the court knows that he is capable of working
 - Why is it that when income increases the other parent is given more child support but when you take a guaranteed income but make less and you go back to court to have child support lowered it is not granted?
 - Is it because this person left their job on their own to try and find a guaranteed job even if it paid less?
 - The court has no problem raising support but it is difficult to get your child support lowered when you move to a new job
 - The mother needs to support the child just as much as the father does
 - Child support should be totally separate from awarded custody time
 - The two should not be related
 - This will show the power struggles and reduce time spent in court
 - Confusion with documents in child support hearings
 - Numbers on the top of the page are by month and not by annual salary
 - Parties sign documents without looking to see if the other party changed their annual income
 - There should be an additional field on the child support form for the annual salary
 - This field should be the monthly salary times 12
 - A non-custodial parent should be able to get out of child support payments
 - If the child does not live with them there is no way to tell what lies the other parent may be telling the child about the non-custodial parent
 - Judges and Commissioners should work together regarding child support and custody issues
- Dependant Tax Issue (2)
 - Melson formula dictates how much support is given but there is no fair and reasonable claims for dependent care
 - He pays 74% of all family medical bills, summer camp, private schooling and he does not get to claim his children on his taxes
 - Court should mandate that he could claim some of the tax breaks
 - No tax credit for the fathers who are paying the child support
 - It needs to be fair to everyone
- Changed the time of a hearing without notifying the other party
 - Child support case
- **False Allegations (4)**
 - Perjury is obvious and rampant in Family Court.
 - Why isn't something done about it?
 - Judges and Commissioners have a responsibility not to sanction perjury and also violations of court orders.
 - False Allegations are used as a tactical tool
 - Used to gain the upper hand in divorce and custody
 - The Delaware Code needs to be changed to bring it in line with most other states and less able to be used incorrectly as a weapon

- People lie to a point about certain issues of domestic violence in order to get what they needed from the Commissioner
- Ex-wife committed perjury and was still awarded primary custody
 - He has her on tape that she was lying and he was not allowed to use it in court
- Accused of Abuse and he has been fighting it for two years
 - Meanwhile his wife was accused of abuse herself and there was no punishment for her
- Family Court protects people who make false accusations of domestic violence
 - There is no punishment for filing a false allegation of domestic violence

- **Protection from Abuse Orders (4)**
 - PFA used as a weapon
 - Ex-Parte order and had car taken away
 - PFA's are being misused as a device to manipulate the system
 - One suggestion is to have the children and property removed from the PFA.
 - It is supposed to be about Protection from Abuse not parental and property rights
 - The PFA gives the plaintiff a legal course to force the removal of one parent from the property
 - Ex-wife has been following him around and going around his home and nothing is done about her doing this
 - Joined his gym, moved into his neighborhood
 - Filed three ex-parte orders for emergency custody
 - When you file an emergency ex-parte order in Sussex County and that case is heard in New Castle County you have to wait for all the paperwork to be faxed up to New Cast County to go before that judge
 - It could take days until you hear back
 - Order was denied even though the father leaves the children at home and comes home drunk
 - There is no punishment for filing a false PFA
 - The Sussex County resource center makes people file a false allegations
 - Filed for a PFA and went to court for her time at 9:30 and at 10:00 someone told her that she was not there on time and that they would have to reschedule
 - She walked out of the courthouse with her ex-boyfriend, which was not her choice
- Ex-parte PFA should have a scheduled hearing
 - They should have to present some evidence
 - You do not have to present evident with an ex-parte PFA
- Domestic Violence advocates coach petitioners into exaggerating claims
 - This person had heard them coaching the petitioner
 - Advocates would not allow a party to reconcile with the other party
 - Told the first party that they need to hold on to their PFA

- **Commissioners**

- do not listen to what others have to say (2)
- Father given full visitation and the other family was never allowed to provide any other information
- They did not get the opportunity to discuss the supervised visitation, which he had before
 - The Commissioner did not care how the father interacted with the child
- Commissioner did not want to hear anything about any abuse the father had towards the mother and the baby.
 - She only wanted to hear what went on in supervised visitation
- Commissioner did want to hear about the abuse
- Commissioners do not listen to other orders
 - Different Commissioners every time you are in Family Court
- You have to have the same commissioner hear the case time after time, because if not, they just cannot get to the bottom of the issue.
 - Due to lies and tricks and using the kids as puppets
- The Commissioner let the party go without a secured bond when another Commissioner ordered a secured bond
 - They would like to know why Commissioners are not following other, prior orders
- Judges and Commissioners should work together regarding custody and support issues

- **Family Court Policies/Procedures**

- FC oversight committee is all lawyers.
- Family Court has no psychologist, family counselors or state agencies on the payroll who work actively to prevent harm and confusion in children.
(2)
- Regarding parents that are divorcing
- Child support case
 - Family Court Should be Open
- Secrecy of hearing and records are against the public interest
- Family Court is a Constitutional court and it should be open
 - Lack of due process in Family Court
- Administered by politically appointed Judges and Commissioners
- They have wide latitude in their decisions
 - Under the umbrella of judicial discretion
- There is no accountability and no oversight
 - The only appeals are to the State Supreme Court
 - Adult criminal matters should not be heard in Family Court
- You do not get a trial by jury in Family Court
 - Any Judge on the Family Law Commission should recuse themselves from any case involving litigants who speak in a public forum
- There needs to be a court open 24/7

- Should be another Judge at Court 7 or 16
- Need more security in Family Court
- Lawyers drag out settlement for years
 - You should be able to get a divorce within 6 months
 - If children are involved than within one year
- Lawyers and Judges refuse to address evidence provided
 - They are talking about evidence and not hearsay
 - If evidence is not in hand during court hearing the judge should not hear the case
- Cases that have criminal content should be moved to a criminal court
 - This is because they are investigated at a different level
- Monitor the Judges
 - Judges make remarks that are unprofessional
 - They should have someone that monitors their statements
- Family Court should be open (2)
 - The State Constitution says that Family Court should be open but it is still not open
 - Family Court is not transparent
 - Taking the case out of Family Court to the Superior Court for everyone to see
 - Hearings should be open unless all parties agree to close the hearings
- Family Court Cases Take Too Long
 - Almost a year before a hearing
- Two Person Audio Consent
 - Delaware is one of eleven states that requires two-person consent for audio taping
 - Has evidence of perjury on tape but cannot use it in court
- Given the incorrect audio copy
 - Ordered the court audio copy for \$25 and was given the wrong one
 - There are no audits to track when and where a audio copy was sent
- We need to have precision and accuracy in court
 - Audio tapes
 - Transcripts
 - Stamped the date as the 34th of January
- Observers and support people should be allowed in the courtroom (2)
 - Should add the ability to have up to three people, declared in advance to the court, to attend the custody hearing for both the mother and up to three for the father
 - The Judge in the case should be able to question the party on the potential observes or question the observers themselves to determine if the people requested are the press
 - The goal is not to have press report on the case as court hearings are to be for the best interest of the child
 - If Both parties agree to no outside people, then no outside people should be allowed
 - If at least one party wants their three support people than the Judge should grant it regardless of if the other party has none and regardless if the other party object
- Review attorney behavior in the courtroom
 - Many attorneys intimidate the Pro Se Litigants
- Let the children's voices be heard in court

- Currently they are not heard and the best interest of the child are being overlooked
- Limit surprise teleconferences that often happen a few days before a hearing
 - Pro Se litigants are not prepared and often the issues surrounding the upcoming hearing are downplayed
- There should be a time limit on the division of assets
 - Often one side delays the process sometimes for years
 - Require a status report from both sides to tie up loose ends and eliminate dragging issues on for years
- Court case keeps changing counties
 - Court case went from Sussex to New Castle County and then back to Sussex County
- Why do the courts allow each case to re-open every 2 years?
 - When will the courts say No to re-opening a case?
 - This person believes that this may be a case of the courts and lawyers trying to get more money out of the cases
- The process of filing a rule or motion to have an issue heard in court takes too long even when a judge has told a Pro Se litigant to file
 - The court could assign a Magistrate Judge (like the Court of Chancery has for guardianship cases) to hear cases regarding rule to show cause or contempt charges immediately
- A rule to show cause hearing does not stop someone from filing again
 - Impose more strict penalties if someone does not stop the behavior
 - Enforcement is critical and other states judicial systems does not permit individuals to continue to break orders
- The current system is flawed and unfair for women who are not the income providers of the households
 - Started a non-profit organization to help fund legal council for these women called 4 Women 4 Children
- In the court system, matters of a child should be seen together
 - Visitation, Custody, Support should all be heard at once because supporting a child is all of these issues together
- **Paternity Fraud (2)**
 - Cannot get the medical records of the father and this is hurting the child
 - In this case it is not about child support it is about the medical welfare of the child
 - The State of Massachusetts has a bill right now that would make DNA testing at birth mandatory
 - A child has an absolute right to have knowledge of its birthright
 - It took 12 years in Delaware to establish his paternity even though it was never disputed
 - Delaware and New Jersey could not get their act together to determine the paternity
 - Move from one in one hundred to one in ten thousand
 - We do not need to do blood tests anymore
 - We can do a cheek swab for \$15-\$20

- The processing costs about \$100
 - We must establish that there never be a time limit so the State should never support fraud

- **Law Enforcement (3)**
 - Sussex County files false police reports
 - Lewes
 - Breaks up families with children
 - When you do confront the law enforcement you can get retaliated against
 - Spouses, or ex-spouses, have influence with the police that can lead to not getting the information that is needed
- Party was asked to leave the house by police officer because they had a warrant

- **Custody Evaluators**
 - Custody evaluations are unregulated in the State of Delaware
 - They exist outside of any accountability
 - Paying up to \$10,000 for an evaluation and the evaluators have no accountability and are completely unregulated
 - Should form an oversight board with representation from Family Law, Child Advocates, Victims' Rights, and mental health groups
 - Their first mission should be to draft policy allowing for the regulation and necessary accountability for custodial evaluations and parenting coordination in Delaware
 - Establish a credential process, Establish a timeframe for an evaluation, establishing guiding principals for clinicians that ensure equity and a reliable clinical evaluation
 - In certain cases testing should not be allowed
 - Establish limits for fees
 - Establish similar guidelines for parenting coordinators, beginning with prohibiting the custodial evaluator from being allowed to serve in that capacity
 - All this information should be put in resource centers, on the internet, and in the custodial hearing packet
 - This could help solve this issue so that it would not come up again
 - Get rid of custody evaluators and leave the decision up to the parents to show the courts where the best interest of the child is
- Psychological Evaluator was unfair
 - Allowed her ex-husband to pick the evaluator and she believes that the evaluator was unfair
 - The evaluator did not go by the regulations and guidelines

Domestic Violence:

- Delaware's Definition of Domestic Violence is too broad and overly defined
 - It includes engaging in a course of alarming or distressing conduct in a manner, which is likely to cause fear or emotional distress

- The broad definition would allow someone to be accused without a trial and carry a false stigma
- Attorney General's Office
 - If you do not say No and if you do not get a rape kit the next day then there is nothing that the AG's office can do for you.
- In Maryland during a domestic situation when someone files for a divorce they have counseling first
 - The divorce situations are held up and you do counseling, this would free up a lot of Family Court staff and time.

Misc./General Issues:

- Lawyers always refer to the same psychologists
 - This person agreed to family counseling and she still has not had a single counseling session with her children
- Retaliation against an individual because of their testimony and participation in the process
- Refused access to the Law Library
- Family Law Commission should interface with the Delaware Board of Professional Regulations
 - Need assurance that our health care practitioners have no criminal background
 - It was only in July 2007 that doctors applying for a medical license were subject to a criminal background check
 - They would like to see a background check not just for doctors but also for health care practitioners
 - Health care practitioners in Delaware would have to undergo criminal background checks, and if possible have their license reviewed.
 - Other states require finger printing for someone applying for a medical license
- Community Legal Aid is only for the plaintiff
 - **This was discussed and resolved last year**
 - **The Community Legal Aid Society (CLASI) does not have the funding to support both parties**
 - **They would like to support both parties but the funding is not available at this time**
- No funds are allocated to provide for Pro Bono legal aid to single mothers who are in need of legal council for Family law
 - How is the mother supposed to acquire legal council if the father is the primary provider for the family and he files for custody of the children?
- Parent Coordinator Program does not address medical or educational issues therefore the best interest of the children are overlooked
 - Re-Write the parenting program and review what other states do with their parenting coordinator program to address the medical and educational needs of a child
 - A decision should be made as to who can make medical educational decisions for children of divorce
- The self-help area should offer more assistance to Pro Se litigants

- Offer more free seminars to the public
 - Market the seminars in places that can reach out to the average person (schools, etc.)