

MINUTES
FAMILY LAW COMMISSION
February 9, 2006 – 9:30 a.m.
Senate Hearing Room – Legislative Hall

Senator Liane Sorenson, Chairperson, Family Law Commission, called the meeting to order at 9:30 a.m. Members in attendance were: Judge William J. Walls, Jr.; Lynn M. Kokjohn; Dr. Harriet Ainbinder; James Morning; Jody Huber and Katherine Jester. Others in attendance were: Heidi Pugh Phillipson, Herman E. Row, Portia Busaitis, Raetta McCall, Jeff Samluk, Jennifer August and Karen Hartley-Nagle.

Chairperson Sorenson read into the record correspondence (copy attached) from Charles E. Hayward, Director, Child Support Enforcement, DHSS, where he replied to issues raised by the FLC, i.e. the amount of time it takes to make an adjustment in a child support order when there is a change in circumstances; and how often child support orders are modified-up or down. Dr. Ainbinder questioned whether the FLC could operate on this either at the court level or at the Melson Formula level where the initial child support is done better so that there aren't so many complaints as circumstances change, or so that the court can somehow operate more quickly. To hold a hearing 1-3 months out is a lot of time. By then, circumstances could have changed again. Mr. Morning felt if the information cannot be provided for modification, they have to report that information to the Federal government. That data has failed. Every time you go before the Commissioner, he knows that you are going there for an increase. Something is not adding up through the whole process. Chairperson Sorenson added that they would have to go to Family Court to obtain that information; they didn't have it through their office. Dr. Ainbinder inquired as to how much time the FLC wants to spend on getting the details of this piece of information. She did not feel the FLC needed that piece of information that much to know that people are waiting 6-8 months to get a change in their child support when their circumstances have changed. The only way they can operate is either the Melson Formula has to be changed to capture more information, i.e. bonuses, seasonal labor, etc. or you have to do something at the court level. She also doesn't understand if somebody doesn't show up. Mr. Morning stated that it usually is a default judgment. If the custodial parent doesn't show up, what do you do? Judge Walls stated that most of the time they'll enter a default judgment (depending on the circumstance), but just because they don't show up, the court does not keep re-scheduling the hearing. Even at times, when they aren't available to personally appear, they do a lot by telephone. Dr. Ainbinder requested that this correspondence be added to the list to ask Judge Kuhn about. Chairperson Sorenson also felt this letter should be posted on the website.

Chairperson Sorenson stated that Ellen Meyer was unable to attend the meeting, but provided the following Melson Formula update: The Child Support Formula Committee is tweaking the Formula. Two meetings have been held, which have focused on raising the self-support allowance. It is now at \$850/month and will be raised to \$950/month, based on the Dept. of Labor statistics on the cost of living.

Chairperson Sorenson read a letter of response from Chief Judge Kuhn, regarding issues that were raised relating to Family Court at last year's public hearing of the Family Law Commission (copy attached). The first issue addressed was the hardship and difficulty that many litigants face having to appear in court during the work day. Chairperson Sorenson stated that the next step might be to request an analysis of the cost entailed. Dr. Ainbinder suggested maybe their hours could be

scheduled similar to the Division of Motor Vehicles. The next issue addressed was if a litigant is delayed or unable to appear due to an emergency. Judge Kuhn also stated in her letter that the Supreme Court of Delaware oversees matters that have been pending more than 90 days from the date of final submission. Chairperson Sorenson announced that Chief Justice Steele is scheduled to appear at the next FLC meeting. The next issue addressed was providing an audio recording of a hearing for a reasonable cost to the litigant. Chairperson Sorenson stated if there was a way to provide CD's, it would be helpful and useful; but legislation, or regulations, would be required imposing penalties for misuse. Mr. Morning stated that the same should also apply for copies of transcripts. Dr. Ainbinder stated that she did not see that this is a problem for the FLC. There needs to be something to have them sign off stating "you are not responsible for what happens to this CD". Whoever gets upset, it is not the Family Court's business. Chairperson Sorenson feels this is a reasonable request. Ms. Kokjohn asked if only the litigant would get the CD. Chairperson Sorenson replied in the affirmative. Ms. Huber responded that that is one of the issues that would be considered. It is very diverse throughout the country. Dr. Ainbinder inquired as to who gets the transcript. Ms. Huber replied that only the parties involved would receive the transcript. Chairperson Sorenson announced that Judge Kuhn would be attending the April meeting.

Chairperson Sorenson read a letter from Lisa Brennan (copy attached) concerning "Child Custody Evaluators". Dr. Ainbinder wondered how people obtain experience if they're not allowed to do anything before they have all that experience. Do we actually know if the child evaluators in the State of Delaware meet the PACE criteria and have taken the continuing education from PACE? The Ethical Principles have been updated in 1994. She asked if the guidelines, have been, or are being, updated by APA? The Ethical Guidelines are very broad and tend to be very general. Calling the APA is like falling into a black hole. She offered to contact them for more information. Mr. Morning suggested having someone from that organization attend a future FLC meeting to explain the experience level. Judge Walls does not think the source would come from Family Court; it would come from a psychologist who evaluates. He does not fully understand the particular issue or complaint. People are believing that the custody evaluators are people who are routinely ordered by the courts from the parties of their attorneys. It is initially coming from their attorneys. They either are in agreement or go out on their own and get their own evaluator and have the person testify as an expert. The particular qualifications are all going to be the way to reality. What is the credibility? Chairperson Sorenson asked Judge Walls who serves as the custody evaluator for those who do not have attorneys. Judge Walls replied that there is none, unless they request one. There isn't a rule in Family Court, or in the statute, that says that the Court has to appoint one or not appoint one. It is basically left up to the parties. A judge may suggest that one be appointed; but it's left up to the parties. People have the misunderstanding that the Court has this group of custody evaluators that they get all their information from and based upon that evaluation, that's how a case is decided. That's just one of many things that considered. From a personal point of view, he looks at it as a psychologist giving him information; not necessarily telling him what's in the best interest of the child; but by statute, he must decide that. What he looks at in the opinion of a psychologist testifying is what emotional impact or what underlying psychological conditions or effects there are on the child. Chairperson Sorenson suggested having someone attend a future meeting to talk about this subject, i.e. someone from a psychological association or someone from PACE. Dr. Ainbinder stated that PACE is an overall national organization that credentials people. There is a need to know what their credentials involve, what a person has to do to be credentialed. She also felt FLC should know what these people do and who/what they credentialed by. She only knows of 3-4 herself who have credentials in the State of Delaware. She felt FLC should pursue this and offered to look into this.

Heidi Pugh Phillipson presented a letter from Leann Summa, Esq. (copy attached), who was replying to a letter she sent to Judge Kuhn. Judge Walls informed her that these are two different issues.

Correspondence from the Public Hearing on January 11, 2006 was distributed to members (copies attached). They are as follows:

- Letter from Arthur Jenkins regarding the Melson Formula.
- E-mail from Luisa H. Johnson regarding her specific situation with Family Court.
- Letter from Thelma Davis regarding Child Support (Melson Formula) and the Child Care System.
- Letter from Shirley Thomas regarding court actions against men, having a mandatory blood test at time of birth of child, etc.
- E-mail from Scott Berry relating his experience with Family Court and custody.
- Written testimony from Jerry Ledwith expressing his views of Family Law Commission, the Melson Formula, the Dover Post, and CD's and comments made by Jean Ardis, who has been quoted in the newspaper on behalf of the Commission.
- Letter from Herman E. Row regarding problems with child support guidelines.

Mr. Morning brought up the issue of the child support for the low income wage earner, i.e. if they are a minimum wage earner, working a temporary job for 90 days, then are laid off, try to get another 90 days, using the Melson Formula, they are left with zero. Nothing changes in the original amount and they wind up in arrears. Chairperson Sorenson asked him to submit this issue in writing. Mr. Morning also asked about child support and visitation. At the time of filing, why can't a visitation order be issued at the same time? They have to wait for a visitation hearing, which leaves a bitter taste. The first thing you see is a child support order. Judge Walls does not think this is necessarily true. A lot of the filings are coming at about the same time. They are not acted on at the same. They go to mediation for the visitation custody. If they can't work out visitation schedule at that point in time, there's a recommendation from the mediator that goes to the judge as to what a temporary visitation order should be. Unless there's a good cause to stop it, it is signed by the judge and that becomes a temporary order. People are trying to tie-in support with visitation. They are trying to merge the two issues when they are really two separate things. Mr. Morning added that if a person cannot see his child, he is not going to pay. Judge Walls stated that that would have to be a legislative initiative. Our Supreme Court has ruled that child support and visitation are two separate issues.

Chairperson Sorenson excused herself from the meeting as she had another commitment out of state. She asked Lynn Kokjohn to chair the meeting in her absence.

Dr. Ainbinder suggested that written comments which have been received after the public hearing be prioritized and discussed at the March meeting. Discussion ensued on the sub-committee. Mr. Morning would like false allegations to be discussed. There is a need to look at it and do something about it. Judge Walls thought someone from the Attorney General's office was to appear before the Commission. Ms. Kokjohn felt that people have got to be held accountable for what they said.

At the end of the meeting there was an opportunity for Public Comment. Seven people spoke about their concerns with child support, PFA'S, and Family Court procedures.

There being no further business, the meeting adjourned at 11:30 a.m. to meet again on March 9, 2006.

Respectfully submitted,

Janice S. Yerkes
Recording Secretary