

Family Law Commission
Meeting Minutes
February 17, 2011
Senate Hearing Room

Members Present:

Lynn Kokjohn, Chair
Sen. Bruce Ennis, Vice-Chair
Rep. Michael Ramone, Secretary
Judge William Walls
Peg Smith
Britt Davis
Eileen Williams
Dr. Diana Metzger
WendyJeanMatlack
James Morning

Liaisons Present:

Bonnie Copeland, FC
Ken Kellerman, FC
Judy Hodas, AG
Drew Slater, Asst FLC

The Family Law Commission met on Thursday February 17, 2011 to discuss the public comments from the Annual Public Hearing and set the schedule for 2011 meetings.

Call to Order:

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

Introductions were made and meeting procedures reviewed—it was noted that liaisons attend the meetings to share expertise but have no voting power.

Officers (Vice-Chair and Secretary) were appointed by Chair as Senator Ennis and Rep. Ramone respectively.

1. Approval of Minutes

Unanimous approval of June 2010 minutes—motion Ms. Matlack, second Sen. Ennis

Unanimous approval of January 2011 public hearing minutes—motion Sen. Ennis, second Rep. Ramone

2. Annual Public Hearing discussion

Though many issues were stated at the public hearing, there were 3 that were mentioned several times. The commission decided to pursue the following 3 topics in future meetings:

a. Child Support and Melson Formula

One point was that visitation and child support go hand in hand. If there is a substantial change in earnings, then the parties can file a motion to change child support. However, they cannot stop working and believe that their payment would decrease--the child's bills will not decrease. If one of the parties is not working, then they are expected to get full-time employment. Additionally, if you are qualified for a different job based on your qualifications/education then the court can use the Department of Labor (DOL) wage tables to determine what you should be making. The party must show they have tried to obtain full-time employment.

Several speakers at the public hearing had an issue with the **Melson formula** and it was noted that the Melson formula is updated every four years. The question was raised about the

possibility of how this formula could be adjusted by the taxes that each party files each year. This would allow the computation to be done automatically with the possibility of a three year averaging of wages. For example, there was a real estate agent making more money during the boom of the housing market than in the stagnant economy currently. Yet, their child support did not decrease. In addition, the litigants can use the Melson calculator found online at the Family Court website to review what their child support payments should be.

Another point was that since the court calculates the formula and that is becoming more and more administrative, why can't we just have the Division of Child Support Enforcement (DCSE) perform the calculations instead of the courts? A large amount of the complaints are with the formula and the issue of court discretion. This would take the discretion out of the court and put the function of administering child support, as well as calculating child support, in the hands of DCSE. There would have to be legislation to change the current statute regarding child support. An issue with the three year average on taxes is what happens with those that are self-employed or are paid under the table? They may underreport or have higher costs that are not being calculated in the average based on taxes.

It was then decided that we should explore this in one of our meetings and have an attorney who practices in the area of child support. Judge Walls will suggest names of the attorneys and judges that would be best for this meeting.

b. Open Family Court.

There was a one-page sheet that was given to the members and the public outlining each court and the status relating to being an open court. For instance, PFA hearings are open as are juvenile hearings, so long as they are not criminal hearings. Divorce matters can be open but child custody is closed. There are two different definitions of free and open court. The Legislature could open the court if they mandate that Family Court be open. The question of an open Family Court was also brought up at the Joint Finance Committee (JFC) hearing. Senator Ennis passed out copies of a ruling by Chief Judge Myron Steele that stated that there are "closed proceedings for certain cases (one of which I had outlined above) as well as closed proceedings by agreement of the parties in others."

c. Protection from Abuse orders (PFA).

Mr. Kellerman noted that there is a PFA flow chart of where to go for help. Also, the petition explains the PFA process so the applicant knows that they are filing. However, the other party may not know what the PFA means. It was suggested that maybe we can do a better job of informing the respondent of what the PFA means.

It was also noted that the petitioner and respondent have the same resources within the pro se center. However, they cannot give legal advice. The difference is that advocates are usually through federal grants and they tend to help the petitioner and not necessarily the respondent. It should be noted that the advocates do not work for Family Court.

The topic of expedited custody hearings when PFA's are involved was discussed by the committee. There was a memo stating that this would not be something the Family Court would be able to pursue.

3. 2011 Meeting Topics and Guests to invite:

It was mentioned that we should work to schedule attorneys and Commissioners to come and speak with us in **March** on Child Support and the Melson formula, if they are available. In **April** the discussion would be on Open and Closed court and the possibility of legislation to open the court unless the party's want proceedings closed. Another question is whether we need

legislation or are we satisfied with this presumption? The chart that was handed out at the meeting is based on the statute and not on Family Court.

As for speakers for this meeting it was discussed that we may want to look out of state. They asked Drew Slater, assistant to the Family Law Commission, to talk with the National Conference of State Legislatures (NCSL) and ask them which courts are open for all cases and to look at our surrounding states. The commission reviewed the handout on other states from 2001 and as of then New Jersey and Maryland are all closed while Delaware and Pennsylvania have the same open and closed statutes relating to Family Court. The commission would like an update on this handout to see if anything has changed with our surrounding states.

It was discussed that we should have our **May** meeting on PFA, False Allegations and Domestic Violence. Speakers for this meeting have not yet been determined.

4. Sub-Committee Reports:

The commission discussed the three subcommittees, Paternity, Evening Hours and PFA.

Paternity--it was discussed that with Senator Ennis' legislation that passed in June that this subcommittee is completed.

Evening Hours--moving along well with Family Court reviewing different ideas. One idea is to have an electronic online chat feature, which would not require the Family Court to run the building or have security work late. However, this feature would not provide an update on a particular case but would allow people to speak with a Family Court representative about filing the correct paperwork and other items. Mr. Kellerman mentioned that we could see this within a few months and it was suggested that we have a good overview in our June meeting of how the system is working for the Family Court.

PFA's and False Allegations--This subcommittee is still open with great research from the legislative fellows last year regarding what other states are doing regarding PFA's and False Allegations.

5. Proposed Statute Changes

The last order of business was to discuss proposed statute changes and a bill to change the Family Law Commission statute. Mrs. Kokjohn discussed these proposed changes and there was unanimous support for the changes. Three of the changes were to include '2 members from New Castle County' on the statute as they are not currently specified, to allow the 'Speaker of the House and the President Pro Tempore of the Senate to remove a member of the commission' as opposed to currently where it takes a vote of the full House and Senate to remove a member of the commission. The last change was to note that 'no member of the commission may have an open personal case pending in Family Court.' These proposed changes were to be given to legislative council for review. The FLC legislators will propose the bill when prepared.

The subjects of the meetings are to be posted online to encourage the public to attend. One of the main purposes of the FLC is communication.

Adjournment

With a motion from Dr. Metzger to adjourn the meeting, seconded by Mr. Morning the meeting adjourned at 11:58am.

Submitted by Drew Slater.