

**FAMILY LAW COMMISSION
MINUTES
MARCH 8, 2007**

The Family Law Commission met in the Senate Hearing Room in Legislative Hall on Thursday, March 8, 2007. The meeting was called to order at 9:35 a.m. The following members of the Commission were present: Liane Sorenson, Chair of the Commission, Judge William Walls, Dana Harrington-Conner, Esq., Curtis Bounds, Esq., Harriet Ainbinder, Harry Gordon, and Lynn Kokjohn. Also present at the meeting were Katherine Jester and Jody Huber.

Several members of the Commission noticed that there were a few items that needed to be corrected in their copy of the February minutes. The secretary made a note of the changes. The minutes were then approved as amended. (They have now been posted on our website.)

Under announcements, Senator Sorenson said that the Sunset Committee was meeting tonight and they will be reviewing the *Child Support Enforcement* agency. She also announced that she had received a letter from the Senate Pro Tem, Senator Adams, advising that he has updated the members serving on the Commission and their term dates. Senator Sorenson also advised that she has talked to someone in the Medical Society of Delaware, and that she is hopeful that we will soon have a replacement for Dr. Bischoff.

Also, in future meetings Tanya Culley, the Child Advocate, is scheduled to be our speaker for April. Senator Sorenson has also contacted our new Attorney General, Beau Biden to be our speaker at a future meeting. One other issue that has not been finalized as yet is the Family Law Commission's tour of Family Court in Wilmington. It has been decided that the tour should take place on a Friday when they are having PFA hearings.

Drew Slater, our Legislative Asst. from the Senate, went over the Public Hearing Minutes of January 10, 2007, and extracted a *List of Concerns* that he was able to itemize and list. This handout was given to the members of the Commission. Many of the items are ones that we have been dealing with for several years and they are as follows:

- Open Meetings
- Availability of Family Court Tapes
- Lack of transparency of Family Court Child custody evaluators.
 - Would like to see policies or procedures that guide Child custody evaluators in the issuance of their psychological reports.
 - Question: How does Child custody evaluation work? (Mr. John Flaherty).
- Written Reports of the mental health profession.
 - Lawyer assigns you a mental health professional who is not paid by the court, but by the litigants.
 - No written reports received.
 - Verbal request to pay bill, no written request or receipt.

- Cost not stated up front.
 - Not adhering to the guidelines.
 - American Psychological Association’s Ethical Principles of Psychologists and Code of Conduct of the APA (the American Psychology Association). [Sunday Haffen].
- Checking for assets of individuals paying child support.
 - Two people have pointed out non-custodial parent saying they make less than they actually do. [Suzanne Ludwig, Jerry Ledwith].
- Meetings changing from Wednesday to another night.
 - Most non-custodial parent’s night with the kids.
- License Suspension on back child support
- Court evaluators need a fee schedule.
- Rulings should be made in a timely manner.
 - Taking more than 30, 60, or 90 day period.
 - One person, Deborah Fales, pointed out it taking 17 months from hearing to decision.
 - Also pointed out request for expedited relief has waited more than 30 days. (I do not know if or when this was resolved).
- Conflict of Interest between the Office of the Child Advocate and the Supreme Court.
 - The Supreme Court oversees the office of the Child Advocate. [Michael Dore].
- Electronic Court Reporters in Family Court.
- Length of time for wage attachments.
 - Wage attachments take 6 weeks.
 - Out of state, DCSE says wait 6 months [Jennifer August]
- Melson Formula, living expenses.
 - Raising living expenses [Charles Listy].
- Accounting for how custodial parents spend Child support money.
- Ease of getting a protection of abuse (PFA) order.
 - Abuse order when no abuse [Patricia Westphal].
 - Shows up on record as abuser.
- Adding Judges to Sussex County
 - Caseload of 167 cases. [Deborah Fales].

The first two items on the list have been addressed many times at our meetings. The next item is the Lack of transparency of Family Court Child Custody evaluators, and John Flaherty, of Common Cause, will speak to the Commission this morning on that topic. At this time, Harriet Ainbinder announced that she was having a meeting the next day with Ellen Gay, Child psychologist.

While discussing other issues the question arose regarding the mental health evaluator – is he/she different than the Child custody evaluator, and yes they are. Curtis Bounds stated that in his experience most of the psychologists gave an oral report rather than a typewritten one. Since the litigants are required to pay for this evaluation it was suggested that this should be a requirement that could be inserted as part of the rules of Family Court. Jody Huber said that mental health evaluations, which are usually done for

adults, do have written reports, but the Child custody evaluators do not make written reports. Judge Walls wanted to be sure that no one thought that it was Family Court that required these evaluations, because they do not. Jody stated that Family Court does not ask for an evaluation to be performed. She said in the vast majority of cases there is not a custody evaluation.

The next item is checking for assets of individuals paying Child support. This occurs when the non-custodial parent says that they make less than they actually do. Curtis Bounds said it really is a problem, since there are many people that are self-employed. The self-employed have many ways to hide what they actually make. One thing he said was that sometimes a great deal of their wealth is built on credit, and that they are not as wealthy as they appear. Liane said this is an issue that falls under false allegations, and this will be something that we will address with the Attorney General when he is our speaker. Curtis said that other states are more pro-active than Delaware, but they may have more funds available for investigative purposes. Also under false allegations we will be addressing the PFA orders.

The next item addressed was changing the meeting night from Wednesday evening to another night, and Liane said they will certainly make this change, since this is the night that the non-custodial parent has as a designated time they have with their children.

Senator Sorenson then said we would take a break in going over this List of Concerns and allow our speakers to make their presentations. She introduced our first speaker, John Flaherty of Common Cause.

John Flaherty took this opportunity to thank all the members of the Family Law Commission for their many years of service. He noted that it is all volunteer time and they should all be commended for that. John said that he became involved because of Raetta McCall and others who began coming to Common Cause meetings with their concerns regarding Family Court. Because they seemed to have many issues with Family Court, Common Cause decided to hold their own public hearings. They held 8 public hearings in Wilmington, Dover, and Georgetown on various issues. All the data that they gathered from these meetings was submitted to this Commission along with the legislators.

John then said he would like to direct their attention to the Administrative Directive No. 162 that had recently been issued. This directive was issued because someone had requested information from Family Court under the Freedom of Information Act. The Attorney General ruled that Family Court is not covered by that Act. After this the Chief Justice issued this particular Administrative Directive which says that even though Family Court is not covered by the Freedom of Information Act, they will seek to enact policies and procedures to deal with administrative records. One of the issues that came before Common Cause was the issue of Family Court evaluators. This is a topic that he said he was not too familiar with. He tried finding information on the court's website on the evaluators, but could not anything substantial.

John Flaherty said that they learned at these meetings that an evaluator would come to a person's home to evaluate whether or not a person was suitable to have temporary custody or visitation of the Child in question. The person being evaluated did not realize that they would be required to pay for this evaluation which they did not request. The evaluator did not give a receipt for the payment, nor did they issue a written report. John said that when he thought about this procedure, he felt that the cost of the evaluation should not be borne by the person being evaluated. John had many questions that deal with the evaluators and wondered how many there are. It sounded as if there is only one and he wondered how that person is chosen. Are there any qualifications or standards that they must abide by? He said he thought there should be a set fee for the evaluator. He said there should be a receipt given to the person being evaluated. He questioned the payment in cash for this service. The aforementioned concerns are all items that Common Cause has questions about; policies and procedures for evaluators, they do not give a written report; and they write no receipts for the payments given. Jody Huber interjected her comment at this time by saying that these evaluators are *not Family Court Evaluators*, because they are *not employed by Family Court*. Family Court does not have any control over these evaluators whatsoever. They are like any other expert witness that might be called to testify

Harriet Ainbinder stated that she felt that the whole evaluation system needed to be tightened up. She mentioned that there should be a typical cost and it should be noted how it would be paid. Someone will be required to pay for this service – should it be the person asking for the evaluation or should it be divided between the two parties – do you split the fee – what is the fee – how do you get the fee etc.? She did say you want to get the fee up front or the evaluator might never be paid. Harriet said that there should be a report so the parties are able to look at it. Harriet plans to meet with the psychologists in the near future to get further information

John Flaherty stated that Common Cause, because of this Administrative Directive, would be writing to the courts to receive some answers. At this time Judge Walls advised John that he should proceed in the following manner. The court has been saying for years that the custody evaluators are not court staff, the court does not pay them, nor does the court hire them. They come from the attorney, or they come from the litigant. The Court will be more than glad to assist, but the people need to understand that Family Court is not the problem. Family Court will be glad to assist in dealing with regulations and procedures and they will help. The problem lies with the psychologists and how they are handling it, or the attorneys who are requesting and handling it, or the parties themselves. He said it is not a Family Court issue, but it may be a Family Law issue. After several others made comments about this problem, Senator Sorenson thanked John Flaherty for coming to the meeting and being a speaker, and she stated that the Family Law Commission will continue to address this problem. She said that she appreciated everyone who had come forward to make the Commission aware of this problem.

Senator Sorenson stated that another issue that they had talked about at the last meeting and before that was the Parent Education Classes that are mandated for parents that are going through a divorce. She then welcomed our next speaker, Michele Ostafy from CHILD, Inc. After being introduced Ms. Ostafy advised everyone that she is a licensed clinical social worker and an administrator. She wears two hats on a regular basis. CHILD Inc. began giving Parent Education in 1994. They found that there was a very real need for these classes for parents going through divorce who were constantly litigating, dealing with issues of divorce, separation, custody, and visitation. They used a program that had been used in Georgia called *Families First*. It didn't take long for them to realize that their program was a real asset to the children of divorce. Not only did it help the children, but they noticed that it was also having an impact on Family Court by reducing the number of petitions filed. In 1995, there was legislation sponsored by Senator McDowell which was passed in 1996 and the purpose of the bill was that anyone petitioning Family Court for divorce, custody, visitation who had children would attend a Parent Education program. It took several years and lots of work to work out a program to benefit the children of all ages and circumstances. Anyone having children going through divorce must take these cases and that means both parents. At the beginning and completion of the classes those attending the classes are asked to fill out a survey – samples of the survey she provided to the members. Ms. Ostafy said that over 95% of those taking the classes felt that they had actually benefited from the program and that the comments given back to them were consistently positive.

In October last year, Ms. Ostafy received a call from Family Court asking that she serve on a committee entitled a Family Court Parent Education Committee. Judge Coppage had been charged with looking at the Parent Education classes and how they could make it better. It began by focusing on the adult portion and later the children's portion. This was being done due to problems that the Judges were seeing dealing with the kid's components and on the adult's components, but they were to a lesser degree. Parents did not like having their children all thrown in a group together consisting of all ages and problems. This group is still meeting. She has determined that the kid's component of these classes is not doing as well as she and others had thought they were. There are too many unanswered questions and no follow up. The classes are geared too much to the theory of one-size-fits-all. She stated that in her mind she feels there is a need to go back and rewrite the law. They need to rewrite the adult law and incorporate the law pertaining to the children. This law would have to be funded, and it would require a fiscal note attached to it. They would like to see a system where the children that need help would have it available to them. Not all children need help. Some are fortunate enough to have sensible parents who take the time and work with their children. From her perspective she feels that they are not hurting the children, but thinks that they could furnish a great deal more help to the ones that need it most.

At this time Senator Sorenson asked if there were any comments from the members of the Commission. Harriet Ainbinder said she thought it strange that
#1 The Family Law Commission had been left out of this when it was the Commission that had worked so hard to have this program passed by the Court.
2 Harriet said that she would like to see a list of the 12 groups involved in this.

#3 You don't know anything about the parent's families either, and they are mandated to come and you just start assuming that the information that you give will help most of them,

#4 The original question was that we know that the post tests were good – 99% of those who attend are satisfied. Harriet questioned what happens six months down-the-road? Do you have any information about that? Do they remain very positive about these courses? Are there some courses that they like and are there courses that consistently get low ratings – do complaints surface, etc.? Harriet said that she was more concerned with the post results.

Ms. Ostafy answered by stating that she did know that the Families First program out of Georgia has done evaluations, and she knows of another program that has done evaluations and what they learned was that the people felt it was a benefit and that there was less litigation in court. She said that they know that litigating these family issues is a big piece of the puzzle.

Senator Sorenson said getting that information about Delaware would be a good topic for a graduate student to research when pursuing their Master's Degree. She said that this was something that Representative Schooley was going to look into.

Dana Harrington-Conner mentioned there were other Parent Education Classes and one that dealt with Survivors of Domestic Violence and those that have been abused, and Curtis Bounds stated that there was one for Abusers also.

Ms. Ostafy went on to say that when the legislation was created, CHILD Inc. was opposed to creating something special for Domestic Violence pretending that they were going to be able to find everybody who comes to the seminars who have had domestic violence. They do offer seminars separately for Domestic Violence, but they do incorporate this in their seminar information about Domestic Violence and try to get the people needing this to the experts. They are fortunate at CHILD Inc. as they do have experts there.

At the conclusion Lynn Kokjohn said that she would like a clarification as to exacting what was this mandate as she wasn't familiar with it. Ms. Ostafy answered that any parent with children up to the age of 16 petitioning Family Court for divorce, separation, custody, or visitation has to go through this course. They need to provide a Parent Education Certificate from a certified provider. Then there is a Family Court Law that requires children 8 through 16 to attend a program. Senator Sorenson thanked Ms. Ostafy for coming and sharing all of the information about CHILD Inc. and their services.

Senator Sorenson then continued on with our meeting by addressing the pending legislation. The first bill she referred to was **H.B. 59** which deals with sex offenders. This bill comprises of a risk assessment of a tier 2 or tier 3 sex offender shall be guilty of a Class G felony if he/she violates § 763 -§767 of Title 11. The next bill was **HB 57**. This bill would establishment 211 as an Information Helpline. It was felt this would be a

good idea as many calls that come into 911 are not for emergency help, but rather from people that just need help. Several members felt this to be a good idea. The next bill is **HB 54** and it relates to Search and Seizure. This bill requires that a computer technical service provider who discovers child pornography on a computer being repaired notify the Delaware State Police or the local municipal police department which has jurisdiction. This next bill **HB53** does directly deal with Family Court. This the second leg of a Constitutional Amendment that would delete the surplus “Associate” in referring to Judges of Superior Court and Family Court. The Judges would no longer be called Associate Judge, but just Judge. The next bill **HB 48** relates to certain specific requested relief in divorce actions. This would require separate filings for child support, custody and visitation requests when filing for divorce. This will facilitate the streamlining and more efficient management of these matters. Senator Sorenson wondered why it would be more efficient to separate them. Judge Walls replied that right now he explained that when it is included as part of another action the Court is not given the detailed information that they would receive when it was a separate petition. By separating them it also gives the court a more efficient way of being able to track the request. Jody Huber said that she suggests to pro se litigants that if they are filing for divorce and they wish to file for custody that when they are filed together they cannot act on the custody issue until the divorce is granted. Jody said it will be acted upon sooner. It was mentioned that the filing fee is still the same. Senator Sorenson asked if the FLC felt this was a bill that they would want to support. If so, she will send an e-mail to Representative Hudson who is the lead sponsor of this bill and advise her that the Commission has reviewed this bill and they support it. Harriet Ainbinder then asked if the Commission wouldn’t want to support **HB 53** also. It was agreed that this was also a bill that the FLC would want to support. The next bill **HB 46** is an act to amend Delaware Code relating to guardianship of a child. This bill changes the publications requirement for guardianship of a child to bring the requirements in conformity with the publication requirement of other civil filings in Family Court. Jody Huber asked that the Commission to support this, since she is the person who drafted this bill. She said that this bill just changes the publication requirement for guardianship not permanent guardianship from three weeks to one week which cuts down on the costs of publication for litigants considerably. The last bill for their consideration was **SB 14**. This would be an act to amend the Delaware Code relating to compensation per innocent victims of crime. This Act will authorize the Violent Crimes Compensation Board to compensate property crime victims for their uninsured economic or pecuniary losses in an amount up to \$2,500 upon a showing of substantial economic hardship. Senator Sorenson asked the members if they had any thoughts on this bill. Harry Gordon questioned if we knew where it stood now regarding any compensation. It was decided that they would like to have more information about this bill before making any decisions about the Commission’s support

At this time Senator Sorenson then returned to the *List of Concerns* that were taken from the Public Hearing in January. She continued on the list by addressing the issue regarding *License Suspension on back child support*. When someone loses their license they have problems getting to their doctors or lawyers for appointments. Senator Sorenson said we might revisit this later. Senator Sorenson said this has been a very effective way in getting someone to pay their child support because when they have their

driver's license taken away and are unable to get fishing and hunting licenses through the State the back support payments are sometimes brought up-to-date. Jody Huber said there is a procedure whereby they can ask the court to have their license renewed to be used only for going to and from work. Jody said that the forms are on the website, and she would mail Drew the information so he could help the gentleman who had that complaint. The next issue was *Timely Rulings*. The Chief Justice spoke to the Commission on this topic. He said that according to his records there weren't any cases that were beyond the time ordered. The main issue is when the court starts the clock and that does not happen until the very last paper is filed. Dana Harrington-Connor questioned if we had determined if the issue was the time when the hearing is heard from the time the ruling is made or is it just getting into court? Senator Sorenson said that in this case it was how long it took to get a ruling. This is an issue that the Chief Judge keeps a keen watch on. Should a Judge go beyond the 90 day period, he is given notice that he is not in compliance with the 90-day rule, and that he/she should address that situation and immediately address it. The next item on the list is *The Conflict of interest between the Office of the Child Advocate and the Supreme Court*. Someone mentioned at the Public Hearing about moving the Child Advocate to the Office of Management and Budget, or State, or something like that. She said her understanding of this was that the Chief Justice raised this issue at the Budget hearings with the Joint Finance Committee. The Chief Justice and the Child Advocate had a conversation, and he is no longer concerned about this issue.

We are planning to have the Child Advocate as our speaker in April. Senator Sorenson requested the members to e-mail her with questions or concerns that they have with this office, and ask that this be the topic. The next item was *Electronic Court Reporters in Family Court*. The main issue with this project would be cost. Another item is the *Length of Time for Wage Attachments is 6 weeks*, but if it is out-of-state it could take as long as 6 months. The agency that actually processes the wage attachments once they leave the court is the Child Support Enforcement Agency. Maybe we could ask the Joint Sunset Committee to look into this issue. The next item was the *Melson Formula* and we have already talked about that. We had the periodic report last month. Another item was *accounting for how custodial parents spend Child Support money*. Senator Sorenson said that she didn't think that the court has ever required that. Harriet Ainbinder said that a person can file for an accounting of how the money is spent. The last item on the list is the *Ease of getting a protection from abuse (PFA) order*. Senator Sorenson said that she thinks that is something that the Domestic Violence Council feels very strongly about. It needs to be easy enough in order that you can move quickly to ensure the victim's safety. Dana Harrington-Connor said that there are arguments on both sides on this issue. She said that people who are survivors- people who are seeking protective orders would argue that it isn't easy to get a PFA order and that it is getting harder and harder. You have to prove that an act of violence took place and then it turns into a he said and she said situation and that makes it very difficult to prove without witnesses or physical evidence. Jody Huber said she can bring to the next meeting the statistics on PFA's that are published every year by the Domestic Violence Coordinating Council. This report shows how many petitions are filed – how many actually consent – she said the majority of their PFA's consent – they don't go to trial. It also shows how

many go to trial do find abuse, and how many go to trial that they don't find abuse. This report can be found on their website. Senator Sorenson requested Jody to bring a copy of this report to the next meeting. The last item on the list is *Adding Judges to Sussex County*. Senator Sorenson said that she knew that we had added Judges to New Castle County, but she doesn't know the long range plan, or if there is a plan to add more Judges to Sussex County. Judge Walls said he felt that it was not a big priority with the court. He said that he thought that financial considerations are more into court staff, mediators, and the trial court reporters, and security.

Senator Sorenson then continued by asking for any New Business to be considered. She said that everyone should make a note that the next meeting has been changed to Thursday, April 5 due to the Easter holiday. The next meetings are:

April 5, 2007
May 10, 2007
June 14, 2007

The next item they wanted to address was that the Commission wanted to recognize Ellen Meyer, a charter member of the Commission, for her years of dedicated service. We have tentatively said that we would like to have her recognized at our May meeting.

Senator Sorenson then asked for any comments from the public. She recognized Raetta McCall. Raetta began by saying that Lynn Kokjohn was nice enough to make this Speaker's Outline for the public to use at our meetings. She said that she had a couple issues to address. The first one is the Parenting Coordinator. This is when a parent needs help in obtaining help in getting agreement on the upbringing of the social and medical issues of the children. As it stands a pilot program headed by Felice Kerr, an attorney, has been put into effect based on a Colorado program of Parent Coordinator charged their regular fees which can be anywhere from \$100 to \$500 an hour, and it has added another burden – another layer – from what she sees into what parents who are trying very hard to get what their children need would be another difficulty. Raetta said that she would like to see the Commission talk to Felice Kerr to see what they are doing. She said that her suggestion would be to have CASA volunteers work with these kinds of issues. They are trained to work with parents and children. This would not incur any additional costs. .

Raetta went on to say that one of the problems that she saw was an issue that she has addressed before. This issue is the Child's Rights. She said she would like to see the Commission work on the Children's Statute.

Another item she addressed was the members on the Commission who never attend. Katherine Jester replied and told Raetta that the Commission is working on that, but the Commission has to work through Representative Spence and Senator Adams to accomplish this.

Raetta also said that another issue was that the Chief Judge did not see that there was an abuse of timely decisions. She said she has been attending court hearings as they become available. She stated that the court is confused about whether the *Administrative Directive 98.02* should be used or shouldn't be used, but if they don't use it they say – *oh, you can't come in then* – but if they do use it - *they say you don't need it*. There is some confusion there, and it would be nice if it is cleared up. Senator Sorenson said that if Raetta would furnish the names to Jody Huber she would investigate this. Judge Walls said that anytime that there are decisions that take 18 months or a year the court needs to know this. The court needs to know if they have a problem with a particular judge, or is it a problem with a particular case. They also need to know just when the 18 month or one year time clock started.

Senator Sorenson then called upon our next speaker, Sunday Haffen. She mentioned several articles about child welfare. She said that she thought that a 50/50 child custody split was detrimental and confusing to children.

Senator Sorenson then recognized John Flaherty. He said that sometime ago he was under the impression that this Commission formed a committee to look into the issue of Open Court. He said that maybe at the next meeting there could be report on what their findings were. Senator Sorenson explained that the Chair of that committee had been away. Jody Huber asked to be recognized, and she said that at the last meeting of the Family Law Section of the Bar Association this topic was discussed. She said that Clay Jester, who is the President of the Bar Association, indicated that they would be very happy, and in fact several of the attorneys said that they would be happy to speak to the Commission about the Bar's views about the Opening or Closing of the Court. Jody said that they would appreciate being invited to come and address the Commission. Senator Sorenson asked if Jody could advise the Bar Association of our next meeting dates and set up a date for them to come.

Senator Sorenson then called upon Herman E. Row. Mr. Row talked about his son's experience in the N. Carolina and Delaware Family Courts. He believes that there is not an equal opportunity for a father to be a custodial parent. Mr. Row presented to the members his comments regarding the problems that he found and his suggestions for a solution to the problems. Senator Sorenson thanked Mr. Row for his comments.

Senator Sorenson then adjourned the meeting at approximately 11:55 p.m.

Respectfully submitted,

Jean C. Ardis, Secretary
Family Law Commission