

FAMILY LAW COMMISSION MINUTES MARCH 9, 2006

The Family Law Commission met on Thursday, March 9, 2006 at 9:30 a.m. at Legislative Hall in the Senate Hearing Room. The following members were present: Chair of the Commission, Senator Liane Sorenson, Lynn Kokjohn, Harry Gordon, Curtis Bounds, Esq., Dana Harrington-Connor, Esq., Representative Pam Maier, Representative Theresa Schooley, Judge William Walls, Dr. Harriet Ainbinder, and Ellen Meyer, Esq. Also present were Jody Huber from Family Court, and Katherine Jester.

The guests for this meeting were Chief Justice Myron Steele of the Supreme Court, and Franny Haney from the Administrative Office of the Courts.

Senator Sorenson said that everyone should have received the minutes from the February meeting. She asked if there were any additions or corrections. There being none, Harry Gordon moved that the minutes be approved and Representative Maier seconded the motion.

At this time Senator Sorenson announced the passing of one of the Commission's members, Dr. Rhoslyn Bischoff, who served on this commission since the late 1980's. He also represented the commission on the Domestic Violence Coordinating Council.

Senator Sorenson introduced Chief Justice Myron Steele of the Supreme Court. The commission had asked him to come before the commission to speak on the topic of *Cases that Go Longer than 90 days in the Court*. Chief Justice Steele said he usually likes listening more than speaking, but said he would be glad to address this subject. He said that there are two issues that deal with justice in Family Court. The first is scheduling from the first time someone files the petition to how long it takes, given the nature of the petition, to be actually heard. This is driven by staff, attorneys' schedules, the partys' schedules, the emergency nature of the issue, courtroom space and availability, and the witnesses, especially when calling on expert witnesses. If it is in the criminal court, scheduling is then driven by the availability of police officers and vacations. He said there is no simple fix to anyone's scheduling delay or problem.

Family Court has specific guidelines to follow in a criminal case, generally 120 days from date of arrest, or 90 days from the time a petition of delinquency is filed in Family Court. These guidelines are not always met, due to the issues that have been noted—too many people are involved, but these are the guidelines that everyone works for. Everyone that is involved in Family Court tries to meet these guidelines in every instance. The Family Court reports on compliance come to the Chief Justice.

There is a Speedy Trial Committee that reviews the compliance of all of the courts and it reports annually to the General Assembly and the public on how well the courts have complied, or how they haven't complied. The speedy trial is important as a matter of efficiency and economics because delivery of prompt justice is better justice than delayed justice. Delay is expensive to the system itself, and dangerous to the parties involved. Chief Justice Steele said there will always be cases that don't meet the guidelines. The goal is to be as close to 100% as possible.

The scheduling issues are driven in part by courtroom availability and staff. In the Budget's request for this year, the court has a position that is needed according to the Chief Judge of Family Court. It is for an assistant or secretarial position for the new Family Court Judges who have recently been appointed. The judges are sharing a secretary now, but an additional secretary is needed since the workload is such there should be a secretary assigned to each Judge. Chief Justice Steele said that it would be most helpful if the Family Court Commission would support this request.

Chief Justice Steele said he would like to address the 90-day list. This list is pursuant to a directive initiated by Chief Justice Christie, followed by Chief Justice Veasey, and that he Chief Justice Steele has kept in place. This directive states that every Judge in every Court *once a case has been submitted to them must render a decision in 90 days*. If they do not, they have to report to the Chief Judge of their court that they did not meet the 90-day directive, why they did not, and a plan for solving the problem with a specific date certain when that opinion will come out

The 90-day list in Family Court is triggered by the submission date. The submission date should be when all the evidence is in, all the briefing if there is any should be complete, and in the Judge's hands. That is what triggers the running of the 90 days, it does not run from the first day of the hearing—it runs from the *completion*. No judge is expected to render an opinion until all the facts and all the arguments are in. Chief Justice Steele said all of the Judges are quite aware of the *90 day list*. They are all focused on not being on the *90 day list*—everyone knows when they are. Everyone in the system knows when someone is on the list. They have to have a very good explanation for not meeting the guideline, and a clear target date as to when you are going to be off that list. He said that list comes to him and he is looking to see if anyone has been on the list several times and then calls on the Chief Judge of that Court and calls their attention to the matter and questions if there is a problem, and if they are in need of help. They help by seeing what their problems are and help them solve their weaknesses and give them encouragement. This is monitored carefully by Chief Justice Steele. When a problem is identified, they have the means to solve it.

Senator Sorenson asked the Chief Justice if he thought currently if there is a Judge in Family Court that is a "*problem judge*". She asked this because the Commission received a letter from one of our members questioning this. Chief Justice Steele responded that he felt that Senator Sorenson was correct. There are two areas that address this: scheduling and apparent delay. When they do get into the court and the case is over, then the next possible delay *is why does it take the Judge so long to render an opinion?* The Chief Justice researched the reports for the past year, and he could not find any pattern of delay by a Family Court Judge. He said when a Judge had made the *90 day list*; he looks to see if they had met their target date. In none of the reports could he find anyone who had not met their target date for the completion of the case.

Representative Maier questioned the use of video phones in the Courts. She asked how often they are used and if they could be used more often. The Chief Justice replied that as he understood the use to help speed things along and to eliminate the need to transport people from the detention facilities to the courts. This is done in situations

such as arraignments when they are asked to plead guilty or not guilty. Representative Maier then asked about the use of e-mails and computers in the court. The Chief Justice replied if she had heard of the COTS system and she replied she had. COTS is an off-the-shelf case management system and they are in the process of developing it. This will allow a Judge on a laptop on the bench, or in the office, to know the status of everybody who comes before the court. It will show what their status is in that court, but will also show what their history is in all the other courts all at the same time. They will be integrated into all the other data information systems that plug into the Criminal Justice System.

Harry Gordon informed the Chief Justice that most of the comments we receive regarding Family Court performance are civil rather than criminal cases. Harry wondered if there was difference in the two. Is one easier to track and deal with in your 120 and 90-day list? The 90 and 120 day speedy trial list is really for criminal trial cases. He replied that all the scheduling problems that he had outlined previously are far more magnified in civil cases. Not all attorneys in the Bar practice Family Law. There are attorneys that represent indigents in Family Court. These attorneys are stretched beyond belief. This is another area in which the Commission can help. They would very much like to be able to hire an additional person and also to be able to use the money in a flexible manner to fit their needs. This is something that the Commission could show their support for.

Dr. Ainbinder said many of the Commission's complaints involve Kent and Sussex County. She said she knew that New Castle County has many more people that are involved, but she asked if he noticed a difference in Family Court procedures, or the 90-day list or anything between New Castle County and the lower two counties. He said he felt the quality in all the counties is the same, although there is a difference in how things are accomplished. He said he felt that in any scheduling problems that are there they could be solved by more people. The Chief Justice said he would defer to Judge Walls in answering if there was anything structurally different in how Kent and Sussex does business as opposed to New Castle County.

Judge Walls stated that he was somewhat surprised that the complaints were coming from Kent and Sussex, because it is his impression that things are running smoothly in Kent and Sussex and in New Castle. He said that just because people say it is happening doesn't make it so. If complaints are coming from Kent and Sussex residents and not New Castle, it may be a simple fact that the public hearing is more assessable to the lower two counties and is attended by those citizens. He said he would like to comment on the use of the telephone and teleconferencing. Telephonic testimony is used extensively in child support hearings, especially when a party resides out-of-state and must travel a great distance to attend. This is allowed by federal regulations. As for other type hearings the use of telephonic testimony is discretionary with the Judge. Telephonic testimony can be difficult in some instances, because the Judge is at a disadvantage to assess creditability of that witness.

In regard to scheduling; not only does the judge have to coordinate his own calendar, but the attorneys who are representing the litigants have to coordinate their schedules. The fact is if it takes four months for you to have your hearing—that means

there are four months of hearings that have been scheduled before you. He said he felt if you were to research this you would find that if you were unrepresented you would get into your hearing quicker than if you are represented by an attorney, because that is just one factor out of the equation.

Dana Harrington-Conner commented on the sheer volume of cases that are filed in Family Court state-wide which is unbelievable. She questioned whether there was a way to address this. She said that at one point there was the mention of having a “frivolity clerk” that could judge which cases should be heard sooner than others. It was decided that this could be an issue that could be mentioned to Chief Judge Kuhn when she appears before the Family Law Commission. Chief Justice did say that there are basics for filing an emergency petition and those are readily identified and they do get fast-tracking. He did say that 75% of those who file pro se’ no one knows which ones merit quicker attention to others and a good ‘triage’ system could be very helpful.

Senator Sorenson explained to Chief Justice Steele that the Commission has had their Public Hearing and that there were a couple of issues that came up. One was the training of Mediators. He replied that was something we could address with the Chief Judge, but if she felt that this was needed the Supreme Court would be glad to be of assistance. Franny Haney of AOC was in attendance along with the Chief Justice, and she is the Training Coordinator for the Courts, and she would be the person to contact

Liane said that the only other one they wanted to address with him was something that came up at the hearing and that was that it was felt that plea bargaining was too lenient. Is there anyone overseeing this—the decisions of Judges and Commissioners? He replied that plea bargaining is driven by the Attorney General’s Office. He replied that is not something that is done by the Courts—only by the AG’s office.

Harriet Ainbinder questioned what will be the real differences that will occur now that Family Court is a Constitutional Court.? There are two practical ones that he sees. The Judges will no longer hold over an office—there will be a 60 day window. You will not have a Family Court Judge sitting past reappointment for three, four, five, or six years before reappointment. There will be no limbo status. From his perspective is what he mentioned earlier; the Chief Justice will have the authority to move judges from court to court on a temporary basis when there is a need.

Senator Sorenson said that there might be questions regarding the Constitutional Court and “open court”, but that is something that cannot be discussed here, because this issue may go to the Supreme Court.

Representative Maier stated that she was wondering about the education of the public in regard to the Pro Se’ services, and if this service is offered to all the courts. She questioned who was in charge of your educational materials, and are they uniform? Jody Huber was able to answer this. She said that Julie Pezzner is the Director of Pro Se’ Services for the Administration of the Courts. Jody stated that she is the Director of Pro Se’ Services specifically and only for Family Court. She develops all the educational material for Family Court. Representative Maier asked to have that material brought to the next meeting of Family Court. This would be of help to Rep. Maier when any of her

constituents have a need for this. This information is available on the Internet, and can be downloaded for free. You may also obtain bound copies from the Resource Center for \$5.00. This includes all the instructions and all the forms you would need to file pro se' in the courts. The Chief Justice said he would ask Julie to come to the next meeting and bring all of her material. Liane informed the Chief Justice that our next meeting will be April 6th.

Harry Gordon had questions regarding Directives, specifically 98.4 in Family Court that relates to rather specific procedures. Harry inquired if all courts had Directives such as this independently that relate to the timing and the processes involved? The Chief Justice replied that every court has its own set of rules. These rules govern the process and practice before the court. They are subject to revision. Each court has its own Rules Advisory Committee which is made up of members of the Bar, members of the Bench, and in some instances members of the public. If someone is having difficulty with a particular rule or thinks it ought to be changed, it will be reviewed by the committee. A recommendation will be made to that particular court, and that court will send the recommended Rule Change to the Supreme Court who will look it over and look at it for conformity and uniformity to make sure it will not be in conflict with another court that it could present problems with the practicing attorneys or the public.

At this time Senator Sorenson thanked Chief Justice Steele for coming this morning and expressed our appreciation for his taking time out of his busy schedule to be with us.

The next issue to be addressed at this meeting is the response that the Commission will be sending to everyone who spoke at the Public Hearing in January. Senator Sorenson distributed a draft of a letter that is to be sent to everyone who spoke that evening. She said they had tried to summarize the many issues that were addressed and the comments that were made

Bernard Brady, the Secretary of the Senate, brought in the Memoriam that he had prepared in honor of Dr. Rhoslyn Bischoff and it read as follows:

The Chair, Members and Staff of the Family Law Commission pay tribute to the life and honor to the memory of the life of Dr. Rhoslyn Jones Bischoff "Ros" a respected physician practicing in the Dover area for 45 years, Dr. Bischoff served his community, his profession, and through his Medical Military Service his Nation with distinction. Since the late 1980's he shared of his time and talent with this Commission. Countless hours were spent on behalf of families in the First State, most especially children. The Commission is deeply saddened by the passing of our colleague and extends sincere sympathy to his bereaved family as they mourn the loss of a beloved life well lived. Dated March 9, 2006.

Senator Sorenson continued with the discussion regarding the Commission's responses to all who spoke at the Public Meeting in January. She said that she wanted to

include the role of the Family Law Commission in the Public Hearing in each letter. Someone at the hearing questioned why mailings are being sent out of Baltimore. Judge Walls said he could answer that. This is a statewide policy, including all agencies of the state. Family Court does not like it any more than the public does. This affects everybody. The Senator said we will address this with the Chief Judge.

Also, the training of mediators was questioned, and this will be addressed with the Chief Judge. The next item is accuracy of claims. This is one issue that comes up many times and that is making *false accusations*. We will be inviting the Attorney General to address this issue. Next we addressed the speed of response and that was explained by the Chief Justice. Next issue to be addressed was child support and the Melson Formula. We had many people attend who had specifically attended the hearing due to questions they had regarding the Melson Formula, and these will be addressed by the Child Enforcement Evaluation Update Committee. Senator Sorenson announced that we will be hoping to have Judge Newell attend our last meeting in June.

Senator Sorenson announced that we now have two of our members on the Melson Formula Task Force. They are Lynn Kokjohn, who is new member of that Task Force, and Ellen Meyer. Ellen said they have been meeting and reviewing several different items. They are now in the process of tweaking the formula trying to determine things such as, should there be a limit to the amount of child care; is any amount of child care acceptable; or is there a point where the child care expenses will not go into the Melson Formula? Another thing is how Disability and SSI payments are going to be treated. In addition, the issue of private schools has risen again, is, or is that not, included in the Formula? She thought that these are the major ones they have been addressing in their meetings.

Harry Gordon mentioned that there were two people who spoke who had problems with verification of the input when determining the payment for child support and the honesty in the whole process. He asked if anyone is addressing that problem. Ellen Meyer replied that unless you have something else to prove by testimony, or documentation, people can get around the system if they are dishonest. The one that is hardest to treat is the self-supporting individual. People can lie about their income. They usually go by tax returns, because that is what they are reporting to the government, but if they are being dishonest and they are self-employed, unless you can get someone to testify that the person is actually pocketing cash—that is something that has always been an issue that has been hard to prove.

Another issue that was mentioned at the Hearing was the practice of plea bargaining. Dana Harrington-Connor said this was a topic that was being addressed by the Domestic Violence Coordinating Council. She stated that this topic is definitely not a Court issue, but rather an Attorney General issue.

Another item that was addressed was audio tape availability, and the FLC will address this with the Chief Judge when she comes. Rep. Maier asked Jody Huber the process in which testimony is recorded in Family Court. She said it is originally stored on the hard drive, it is then transferred to a c.d., and this is done by the bailiffs in Family Court. Judge Walls said this is a fairly new system, and the thing he likes is that the

judge can access it through their private computers in their office, so if they want to refer to a hearing that occurred two or three months ago they are able to do so.

After discussing the practice of issuing c.d.'s to the litigants, Judge Walls said there were actually two items that concerned the public—one was the cost of obtaining a copy of their hearing when they want to appeal their case to the Supreme Court. Family Court has no control over what is required by Supreme Court—they are the ones requiring a transcript. The other issue is the party involved wanted a copy of their testimony of their hearing. The question raised was why couldn't they have a c.d. rather than having to pay for the cost of a transcript? Judge Walls said this is a legitimate issue, and one that Family Court needs to address one way or the other.

Liane continued by saying the issue of Open Family Court was brought up again. She called on Harry Gordon who is the chair of the Committee that is looking into this. They will be looking at the current Administrative Directive that relates to the open and closed practice. Also they will be investigating the effect of Family Court being a Constitutional Court, and they will be investigating on that legal issue. They will also investigate what other states have experienced by having Family Court opened. They will also be assessing the sentiment of current Family Court Judges. The summary of their investigation will include assessing the benefits and harmfulness of the Open/Closed issues on the parties, the children, and the families, and the public at-large having the confidence that we do have the best Family Court with the best procedures. The third is the operability of the Open Court/Closed Court issue on the court itself.

Continuing with the issues that were mentioned at the Hearing, Senator Sorenson said a request was made asking for a copy of the Yearly Report. She said that since the Yearly Report was not very detailed, she said that this year it would encompass more information, and it would be placed on our web site.

Then a question was asked on what were the standards and regulations for mediators? The research was done on Custody Evaluators and that was addressed at the February meeting. Dr. Ainbinder will look into this more thoroughly, especially the organization called PACE (Professional Academy of Custody Evaluators). Research will also include other states to see what their requirements are.

In regard to mediators, the question will be asked of the Chief Judge—what are the standards for mediators? Are there standards and qualifications? Do you give training to these mediators? Are there classes given? They are actually court employees, but the custody evaluators are not court employees.

When addressing the problems associated with P.F.A.'s, it was decided that this was not an issue for the courts to address, but rather should be asked of the Police and the Attorney General's Office. Senator Sorenson said she felt that this could be actually asked of all three—the Chief Judge, the A.G., and the Police Department.

Next was equal treatment of fathers and mothers, and this item is another one for the Chief Enforcement Evaluation Update Committee Task Force issue. Another item

mentioned was a Contempt Commissioner and that is another item to be addressed with the Chief Judge.

Senator Sorenson said the next item on the agenda was pending legislation, and several bills were discussed, and a decision was made that there wasn't any particular bill that the FLC needed to add their support to. The next thing on the agenda was old business. Since there was none, the Chairman then asked for new business? The secretary questioned if it would be alright to post the January Public Hearing and February minutes on the FLC web site and this was approved.

It was moved and seconded that the meeting be adjourned.

At this time Senator Sorenson asked if there were any comments from the public who were attending this meeting. We heard comments from both Sunday Haffen, and Herman Row. Both of these individuals spoke at our Public Hearing in January. Ms. Haffen had many complaints regarding child psychologists, and she was given information on where she should take her complaints for this issue. And Mr. Row was asked to submit his suggestions to the Child Enforcement Evaluation Update Committee who is revisiting the Melson Formula. Also, in attendance was John Flaherty from Common Cause who took the opportunity to express his thanks to the Supreme Court for waiving the transcript fees for a pro se' litigant who filed a case in Supreme Court. He also submitted a copy of the statement that he made recently when he addressed the Joint Finance Committee on matters concerning Family Court.

Senator Sorenson thanked all the members for coming this morning and also the members of the public who took the time to come and address the Family Law Commission this morning..

Respectfully submitted,

Jean C. Ardis, Secretary
Family Law Commission