

Family Law Commission
Meeting Minutes
March 17, 2011
9:30-11:30 - Senate Hearing Room

Members Present:

Lynn Kokjohn, Chair
Judge William Walls
WendyJean Matlack
Representative Bolden
James Morning
Eileen Williams
Senator Ennis, Vice Chair
Representative Ramone, Secretary
Senator Sorenson
Curtis Bounds

Liaisons Present:

Bonnie Copeland
Judy Hodas
Kay Wilson
Drew Slater

Guest Speakers:

Commissioner David Jones
DAG Brenda Sammons
Commissioner Andrew Southmayd

The Family Law Commission met on Thursday March 17, 2011 to discuss Child Support and the Melson Formula.

Call to Order:

The meeting was called to order at 9:31am.

The chair introduced the commission to Representative Stephanie Bolden who is taking the place of Representative Barbieri on the commission.

The chair also mentioned that the commission cannot give any legal advice and only the members of the commission have voting power.

1. Approval of Minutes

Unanimous approval of February 17, 2011 minutes with Mr. Morning making a motion to approve the minutes and Senator Ennis seconding the approval.

2. Guest Speakers

The chair recognized the speakers for the meeting and Mr. Morning began by stating that Judges should not be part of the child support or Melson formulas. Commissioner Jones said that someone is always unhappy; they cannot satisfy both sides as there is always someone that is unsuccessful.

There was discussion in the last meeting regarding moving child support from the Family Court and making it more an administrative function of the Division of Child Support Enforcement (DCSE) as this would take away judicial discretion. To this issue, it was mentioned that there is discretion everywhere and that the child support formula itself provides for some discretion. It was also mentioned that some states do in fact make their child support an administrative function; however, not all states use the Melson formula.

In addition, you need flexibility as not every case is exactly the same. The Melson formula allows for flexibility and discretion to look at Delaware wage surveys and past work history. If

child support were more of an administrative function there would be no accountability as judges are subject to discipline/removal by the Governor and Senate.

Family Court reviews the child support formula every 4 years and is trying to find more efficient ways to look at child support.

Recent changes to the Melson formula was the next item discussed during the meeting. The chair asked if the formula is working, what the weaknesses are and how can those be fixed.

It was mentioned that it is tough to rebut the Melson formula but many do not understand the formula so they are trying to make it simpler so everyone can understand where the formula comes from and how their child support is calculated by providing a child support calculator on the Court's website.

They are working on this by studying what other states are doing and boiling it all down to one page. If there is anything that the Judges wanted to discuss about the Melson formula at the review every four years they write down what was not accomplished so the next person can review that in the coming years.

There are many issues that come into play when discussing the Melson formula. Some of which are: gross income, portion of health insurance, \$1,120, self-support allowance, primary support allowance (\$510 per child), day care, private school tuition, standard of living adjustment and parity between households, which looks at if there are other children then there are reductions based on the other children that have to be supported as well.

The biggest weakness is that the formula does not look at 100 percent placement. There is no distinction between a non-custodial parent and one that has/does not want to see the child(ren). There is no negative parenting time adjustment and this would favor the obligor.

It was also mentioned that daycare is what really increases child support. What if the other parent could watch the children? That would be a custody and visitation issue and would have to be ordered if it is in the best interest of the child.

There is no way to expedite the process. However, at mediation, which is 5-6 weeks, for child support modification if there is no agreement they can see a Commissioner that day. Also, if there is a motion to stay child support this can be modified retroactive, to a certain extent, to when certified mail is received by the other party.

There was a guess by one of the Commissioners that 80 percent go through just mediation while the other 20 percent find it to be a problem.

The minimum child support payment is \$130 a month for one child and a good example of judicial discretion relating to child support was in the Valero refinery shutting down. These were special circumstances that the Judges and Commissioners were able to look at and review instead of just assessing the Melson formula child support.

There was then discussion relating to driver's licenses, education, military, social security and prisons.

Driver's license revocation/Passport denials/Bank Intercept Program and other enforcement provisions are mandated by federal law. There are many people that are given back their driver's licenses as some live in areas where public transportation is not available. It was also mentioned that buses are not designed to take people to work.

Looking at education relating to the Melson formula depends on how your income has translated in the past. If you quit and go do something else it may be used, or looked at, depending on the type of position.

The military housing allowance cannot be more than Delaware and is included in the Melson formula.

Social Security can sometimes be taken into account depending on what type of social security the person is receiving.

Lastly, there were recent changes to the Melson formula relating to those in prison. The rule is that if someone is incarcerated for more than a year it may be considered as evidence of diminished income and can be taken into account by the Judges and Commissioners.

The Melson formula was last updated January 1, 2011 and will be reviewed every four years. The major changes are to prisoners, SSI (as they cannot assess that), Military and that disability insurance premiums are now accepted into the equation.

There is a summary of the changes that are to be added to the minutes.

Lastly, regarding the issue of whether or not taxes could be reviewed it was mentioned that there is no access to the Division of Revenue and the records would have to be subpoenaed.

Commissioner Jones also stated that any commission member can sit in on his court room any time.

Adjournment

Thereafter, the meeting adjourned at 11:31am with a motion by Ms. Matlack, seconded by Ms. Williams.

Submitted by Drew Slater on behalf of the Family Law Commission Secretary, Representative Ramone.