

FAMILY LAW COMMISSION MINUTES
APRIL 14, 2005

The Family Law Commission met at Belmont Hall in Smyrna on Thursday, April 14, 2005. Before beginning the meeting, Senator Sorenson announced that this would be the last time that we would be meeting here in Belmont Hall. It was decided to change the location to Legislative Hall in the Senate Hearing Room for the May and June meetings. This decision was made since the attendance to these meetings has outgrown the Belmont Hall location.

Senator Sorenson, Chair of the Commission, began the meeting by asking the members of the Commission to introduce themselves. Those in attendance were as follows: Bill Walls, Judge of Family Court; Harry Gordon, a CASA and the at-large member from New Castle County; Lynn Kokjohn, concerned citizen from Sussex County; Dana Harrington-Conner, Esq., a new member representing NCC and who is a Professor of Law at Widener School of Law; Curtis Bounds, Esq., another new member who has been practicing law for over 15 years and also is the Chairman of the Family Law Section of the Delaware State Bar Association; Ellen Meyer, Esq., original member of the Commission and she is a NCC attorney that has been in practice for 23 years; Harriet Ainbinder, a child and adolescent psychologist in NCC; Terry Schooley State Representative from Newark who previously directed *KIDS COUNT IN DELAWARE*; Pam Maier, State Representative and Chair of the House Health and Human Development Committee which deals with children's issues and families and she also is a new member. Nicole Kennedy, Director of Pro Se' Services for Family Court, and Jean Ardis, Secretary for the Family Law Commission. Liane also introduced Katherine Jester previous State Representative who was the creator of the Family Law Commission. James Morning also jointed us just as Lynn Shreve from CASA began her presentation

Some of the guests here at this meeting were Heidi Pugh Phillipson, a native Delawarean who worked in social work prior to getting married, has done contract work for Child Mental Health, she is a certified parent educator. She got married in 1998 and had two children. Her divorce became final on March 5, 2002, and she has had many experiences through Family Court.

Shelly Eiseninger, who has been in the Family Court system since 1998, Raetta McCall, and Phyllis Wycher, who testified before this group back when Jane Maroney was Chair of this Commission . She said she is widely regarded as knowing divorce laws as well as anyone in the country. She has moved back to Delaware from Pennsylvania. Also, in attendance were Karen Hartley Nagle and John Flaherty.

Before the speaker began her presentation, Senator Sorenson asked if everyone had received their copies of the minutes for the February meeting. No one said they had not received theirs. She asked if there were any additions or corrections. It was moved and seconded to approve the minutes as presented.

Senator Sorenson then introduced our speaker for this meeting who was Lynn Shreve from CASA which stands for Court Appointed Special Advocate. After distributing to the members several informational handouts, Lynn began her presentation saying that she thought this program was one of Delaware's best kept secrets. She said she did not have the words to tell the Commission how wonderful the volunteers are who work in this program. CASA has just finished celebrating their 25th Anniversary. She mentioned that one of our members, Harry Gordon, has been a CASA volunteer for 14 years. The CASA program speaks for the best interests of abused and neglected children who are involved in Juvenile Court. There is a National CASA Association that works with State and local programs to promote and support quality volunteer advocacy. The Mission of Delaware's CASA program is to provide independent and quality representation advocacy to abused and neglected children who are the subject of court proceedings. She said they wanted to provide carefully selected, thoroughly trained, and responsibly supervised volunteers to serve as a Guardian ad Litem to represent the best interest of these children.

Before we had the CASA program, attorneys were assigned to represent the best interests of the children, but David Sokoff in Seattle Washington felt he wanted a better picture of the children's needs, he wanted a more rounded picture of those children and their life circumstances, so he decided he knew a number of individuals in his community who were interested in the welfare of children. He brought in these concerned citizens, trained them, and made them the Guardian ad Litem to these children. That concept worked in his court, so he shared it with his fellow judges around the country, and it really caught on. That was the first CASA program in 1977 in Seattle Washington, and today there are over 900 programs in the country, and over a million children have been represented by CASA volunteers.

Adoption of the Federal Child Welfare Act in 1980 was a revolutionary change in how we look at Welfare. The state has to make reasonable efforts before removing a child from their home and make reasonable effort before placing a child back into the home. There was no definition of what *reasonable effort* meant. It also called for states to have a registry of all the children who are in foster care. It also called for a review by an organization appointed by the court every six months and by the court every 12 months to see that the children moved toward permanency. It called for all children to have a case plan so that there was a game plan or path toward reuniting the children with their family. This all went back to *reasonable effort* and everyone's different interpretation of this. This did not always work, and Delaware began looking elsewhere, and this is when they found the CASA program in Seattle. Judge Robert Thompson was Chief Judge of Family Court at that time, and he gave his approval.

The CASA program was begun with the help, support, and assistance of the Junior League of Wilmington, Wilmington Chapter of the National Council of Jewish Women. The CASA program began in Wilmington in 1981. The following year this program expanded to Sussex County, and in 1983 it was started in Kent County. We have one of the oldest state-wide programs in the country.

In 1996, CASA was revised and the U.S. Congress made some changes and one of the things that they did was for children who were bounced in and out of foster care – was that any child that has been in foster care for 15 out of 22 months needed to be a part of a TPR and adoption proceedings, unless the agency can show the court some very good reasons why that shouldn't happen. They said all reasonable efforts should be made to return the child, but not at the expense of the safety of the child.

In 2000, when the office of Child Advocate was formed, they worked together to revise their legislation to strengthen the role of the Guardian ad Litem whether it be an attorney or a volunteer in the court and to clarify some of the things that may have been confusing in their original legislation.

In 2004, they became a part of the *National Casa Association* and you can visit their website by going to:

<http://www.nationalcasa.org>

This association provides training, technical assistance, set standards, information regarding grants, and helps provide public awareness.

A CASA volunteer gathers information regarding the case, reports back to the court with a written report, or may be called upon to give testimony. They become an advocate for the child and will monitor the child until permanency is resolved for the child.

Lynn brought several posters for anyone to take back with them to publicize the CASA volunteer and the need for new recruits. She expressly mentioned the need for more volunteers – expressly men and people of color, because they would like to more accurately reflect the community that they serve. Each volunteer goes through a very thorough selection process. After you have gone through their selection process, you are now ready to be trained to become a CASA volunteer. This is a 40 hour curriculum which takes place for 5 days over a two week period.

As part of their plans, they hope to be able to serve all children in foster care. They will support a plan for promoting faster permanency for the child, and to bring the program up to its full capacity. Another major goal is to increase public awareness of their volunteer program. They will continue to strengthen their goal of obtaining a more versified pool of volunteers and will continue to upgrade their staff and continue their volunteer training. It was noted that in the past year there were approximately 800 children in the foster care program.

Heidi Pugh Phillipson brought up the issue that she felt that there should be a memorandum of understanding, or a plan followed for each child. Also, she noted that no one is working enough in the area of prevention. She stated that the children have to already be in a terrible situation in order to obtain any help. Lynn replied she did agree with her. She said the CASA program only has the authority to get involved when there is an issue in Family Court, there is a case plan and then it is the responsibility of the Division of Family Services to pinpoint the facts.

Lynn noted that April is Child Abuse Prevention Month and also National Volunteer Month. This was the conclusion of her presentation.

Senator Sorenson then began addressing the Commission again by saying that she had checked and there wasn't any particular up-coming legislation that should be addressed by the Family Law Commission. She also said that she wanted to set up a committee to address the issue of Open Court. She asked that they meet separately and come back to the Family Law Commission to make recommendations. This would *not* be the Commission's issue, but it would be a legislative issue.

The following members volunteered to be on the committee researching the Open and Closed Court question: Dana Harrington-Conner, Curtis Bounds, Harriet Ainbinder, Harry Gordon, and Senator Sorenson.

At our next meeting in May, the Commission will address the Public Hearing that was held in March. The members will have had their copies of the hearing by then. Nicole Kennedy stated that she has been researching the ones that specifically pertained to Family Court. She noted that before the letters go out with responses, the Commission itself is going to have to respond to a number of issues that were raised at the Hearing. Senator Sorenson said that we would walk through them the next meeting in May.

At the June meeting she would like to have the report back from the Committee researching the policy of *Open Court* issue in Family Court. Senator Sorenson noted that when the Chief Judge spoke she was concerned with security, frustration with court incidents, confidential information, and the Judge wanted it understood that when a person is called upon to be a witness in a case, they cannot be in the courtroom.

In regard to legislation, Senator Sorenson said there wasn't much at this time, but there is one that would make Family Court a Constitutional Court. One thing that this would address is that if a Judge is not reappointed, he or she could stay on indefinitely until there is some action on that position and that is a Statutory Court, whereas in a Constitutional Court once the term was up they were out. That is one difference. The other one is that the Constitutional Court has a mandate that the Court is to be Open. It also would allow the Judges of the Courts to be transferred on a temporary basis to the other Courts.

In addressing H.B. 98, Curtis Bounds noted that section 737 of this bill has flaws contained in it. This piece of legislation is an amendment to a new section of 737, Chapter 7, Title 13 which puts in some kind of mechanism for a notice provision if one parent wants to move away from the other parent – he said it was a bit flawed in terms of construction. He said there might be some opposing forces to this piece of legislation. Like any piece of legislation, it has unintended consequences. The main sponsors of this bill are Representative Hudson and Representative Ulbrich.

In addressing H.B.109 which is entitled Truancy Emancipation of a Minor, it was decided that this is a bill that needs to be passed.

James Morning asked that they address the child support statements that are only issued every six months. Sometimes people continue paying child support when it is an automatic deduction such as a wage attachment. Some people are having deductions out of their paycheck long after it should have been finished. He said on the back of 2204, the form addresses what the people should be doing in seeing that the child support is paid and who is supposed to be notified. He said the employer keeps taking the money out because they are never notified. He said they have had people come in and say they had to go to Family Court to file a motion to stop it. Ellen Meyer said that could probably be solved if on the child support order form that it is issued from Family Court that a line be inserted to say that *when your child support responsibility is ended, it is your responsibility to notify the Division of Child Enforcement*. James said that when you have a wage attachment you can't notify anybody because the employer is under obligation by law to continue taking out that money. Ellen said that maybe it could say that *at least three months before your obligation is terminated, it is your responsibility to file something with Family Court to make sure termination goes through*. James said okay if you do that, what about the person in arrears and that happened before the wage attachment was in force and they find out that they are in arrears, because that occurred before and the employers made a mistake and didn't do something. This information should be on the statement. James feels that the agency should notify the employer that six months from now – that order should be ended. At the final date, when this individual sends the final payment in, this information should be on the notice advising that this is your final payment; the employer knows it is the final payment and that would allow you to go to Family Court showing that your obligation is completed.

Judge Walls questioned what happened to § B of 2204. Where is it? Nicole Kennedy responded that it is missing from the website itself. The website that James printed this from has this section missing. If you go to the hard copy of the section itself, you will find this missing section. It was agreed that §B was important. Judge Walls said that the Division of Child Support Enforcement needs to be more attentive to when words are no longer in existence and the order needs to be terminated. Nicole said that Commissioner Southmayd, who is the Child Support Guru in Family Court, is working very closely on this issue and is trying to get it worked through the computer system. She said there is a lot of exchange of information that needs to take place between the Court and the Division of Child Support. She said he is working on that project. She said it is just a matter of getting all of *his ducks in a row*. There seem to be two different problems – one is administrative changes, because the A.G.'s office, as representation of the office of Child Support Enforcement, has concerns about making some of those changes – some legal concerns, and the other is in how the computers talk to one another.

James asked that barring any other action a P.F.A. (or whatever you want to call it) when an application for child support is requested and there is no visitation order in effect why can't there be a minimal visitation order set in effect at that time? Ellen responded that often times, the person does not want visitation. But often times, the

Child Support petition will trigger a counter visitation, and there is a mechanism through the Special Master System of getting in and getting visitation within several weeks – that is possible. James felt that for the ones that wanted it, why couldn't it be done automatically. It was stated that this was something that really needed a full hearing before the Judge regarding visitation issues. Sometimes the child has not seen the other parent for a long time, and the visitation needs to be entered into slowly to form a relationship. Could this be set up in mediation? Is there anything to stop this from being done? If a person is served with a petition for child support, they have could file for visitation almost immediately. Visitation issues are heard by a Judge and support matters are heard by a Commissioner. You can file and be heard on visitation a lot more quickly than you can on mediation. Mediation takes about six weeks from final filing where as the Special Master visitation fast track takes about two weeks. James said that most people are not aware that you can get in for a visitation hearing so quickly. Ellen replied – “That’s why you need a lawyer.” It was mentioned, that this is where the self-help center comes in. It is a great source of information – they cannot give legal information, but can respond to general information.

James Morning said he would also like to address the false allegations issue. He mentioned this again because someone brought this up at the Public Hearing. He referred to the case of the man from South Carolina and Judge Walls said that this was an issue that will be discussed in May when the Commission discusses the issues mentioned during the Public Hearing.

Senator Sorenson reminded the members to submit their travel vouchers. Lynn Kokjohn asked what the procedure will be when we discuss the answers. Will we allow the public to be in attendance when these answers are being discussed? Nicole Kennedy said there will be sensitive information given in some of the answers. The Commission has to decide how they want this handled. Last year, the members of the public in attendance at that meeting were asked to leave when the discussion began regarding some of the answers. Some of the answers are general in nature, but others are more confidential.

Katherine Jester said she thought that the problem here is originally the purpose of the Public Hearing was to hear the people present their problems and then the Commissioners were to consider that and then see if there was anything that they could suggest to the General Assembly or to the Courts to make this better. She stated that she didn't know how the Law Commission had gotten away from that purpose to where they are at present. Katherine said she thinks that the Commission has gotten off the track from what they had originally tried to accomplish. She said the purpose of the *hearing* was first of all to give the people someplace to vent their anger, secondly consider what the people had said and then consider what might the Commission do to make this a better situation, because now when each individual gets a notice about the hearing they are under the impression that their problem will be solved right now and that's not the case at all.

Nicole Kennedy mentioned an article in *Sound Off* that called it a Family Court Public Hearing, and she said the perception out there is that the hearing is a Family Court thing. The public is coming thinking they are coming talking to representatives of the Family Court when they are really coming talking to a Legislative Committee. She stated that Family Court is more than willing to assist in the process. She said that whatever answers that come from this Committee needs to be from the Commission and not from Family Court. She said that as she has gone through the information, the more she goes through it she sees that the answer should come from the Commission and not an answer from Family Court to respond to. She said she should not be the one writing the response.

Judge Walls said it seems to have evolved to specific cases, not necessarily the overall procedure, and you are not seeing a lot of common situations except when they are finding fault with Family Court, or the Judge, or the psychologist, or the police officer. These situations are not the Commission's charge to deal with. He said if someone says they have been waiting three years to get their case scheduled, this is something that they can address. He said, "Has Family Court become lazy; do they have enough staff; or has it really been three years, or has there been other matters going on?" He said it is those kinds of issues that they can take a look at. Judge Walls said he thought they have gotten away from the original intent of the Commission.

Nicole Kennedy made a suggestion that she thought that the Commission should go over the minutes, and they should read through the minutes and the members should decide what they think are the important issues in those testimonies. Then she will have gone through the files to give answers on anything that she is able to give a response on. She stated that a lot of the replies should not be coming from her – she cannot respond to the Division of Child Support Enforcement as an employee of Family Court. She can't respond to allegations made that the A.G.'s office is not enforcing P.F.A.'s: she can't respond to what this Commission is going to do in response to whether or not we should have regulations for custody evaluations within the State of Delaware. This is outside the realm of Family Court. Her thought is that she can come prepared to benefit the discussion, but the discussion and the questions and the responses should be generated in this group instead of coming specifically just from Family Court.

Judge Walls said that what the Commission needs to do number one is to review the minutes of the Public Hearing and then individually when we read them, we should bring out what we believe what may be of concern or a problem and then bring back to the Committee as a whole and then openly discuss it. Then decide if it is something that the Commission needs to deal with, or is it something that they need to recommend as a procedure to the Legislature, or to request Family Court to respond to that particular concern of the Commission. If the Commission should decide an answer should come from Family Court, Nicole said she will be more than willing to draft that answer and get it back to the Commission.

Senator Sorenson said the answers will be more generic this year and more procedural than last years which were more case specific.

At this time John Flaherty announced that the General Assembly Sunset Committee is meeting in Joint Session on April 29th and they will be reviewing the Division of Child Support Enforcement and they will be meeting at 1:00 p.m. at Buena Vista.

It was moved and seconded that the meeting be adjourned at 12 Noon.

Respectfully submitted,

Jean C. Ardis, Secretary
Family Law Commission