

## Family Law Commission Meeting Minutes

April 22, 2010

9:30am – Senate Hearing Room

### Members Present:

Lynn Kokjohn  
Britt Davis  
Eileen Williams  
Judge Walls  
Senator Sorenson  
Representative Ramone  
Harry Gordon (Hon. Member)

Dr. Harriet Ainbinder  
Peg Smith  
Senator Ennis  
WendyJean Matlack  
Dr. Diana Metzger  
Curtis Bounds, Esq.  
James Morning

### Others Present:

Jody Huber, Esq.  
Drew Slater, FLC Asst.

The meeting was called to order at 9:30am.

The speakers for this meeting were Family Court Judge Jones and Jill DiScuillo, Esq. and the focus was on Child Custody and third-party visitation.

The first order of business was to approve the minutes from the March meeting. The minutes were approved unanimously without revisions.

### THIRD-PARTY VISITATION:

The comments were started by stating that the current bill regarding third-party visitation is in flux. The bill was ruled unconstitutional by some of the Family Court Judges. This has caused some problems for those dealing with third-party visitation and grandparents rights.

Currently, grandparents do not have rights. It goes back to a federal statute, Troxel v. Granville.

### CHILD CUSTODY:

Judge Jones spoke on child custody stating that custody is where the child will live while visitation is the right to visit the child, or visitation rights. Mediation is a mandatory process and it is moving through the system quicker now. The mediators for the mediation proceedings are Family Court employees. They start off with the hope of shared placement of the children but they also look at the best interests and what is going on with divorce and other proceedings regarding the parties. If the parties agree during mediation the Judge would have to sign off on the order.

A majority of the cases are completely resolved at **mediation**, Judge Jones thought that it might be somewhere between 60-70 percent of the cases. If an agreement is reached with the parties on custody then the custody can be modified. However, if the proceedings

must go before a Judge, and the Judge rules, then the custody cannot be modified for two years.

Lawyers for either party may be present during mediation and mediation is completely confidential. You cannot use what a party says during mediation against them at a subsequent hearing.

Judge Jones said that the current recommendation is a shared placement arrangement. That would be 50/50 or close to it.

If there is no agreement during mediation and they schedule a hearing before a judge then they can use a psychologist or other persons to help determine the placement schedule of the child. Another factor considered in the placement of a child is the child's involvement in home, school, and community.

A question was asked about how often Judge Jones **speaks with the child**. Judge Jones said that he speaks with the child in every custody case if the child, or children, are at least 5 years old. It depends on the child's case and age as to how much weight is given to the children's thoughts on custody.

Another question was asked regarding the **education requirement for mediators**. They said that the mediators have at least a Bachelor's degree and have experience in social work and/or mental health fields.

Another question was asked regarding **parenting classes**. It was determined that both parties have to attend parenting class. They would usually check on a file at 180 days to make sure that the Judge's rulings have been followed by both parties. The Family Court sends out a letter at 150 days and will dismiss the case on the 180<sup>th</sup> day.

After two years, if there is no mediation agreement, then the parties have to go through the entire process again.

Judge Jones looked at the list of concerns and addressed the concern regarding if there was no child support payments why the other party was still allowed visitation. Judge Jones answered that they look at the best interest of the child. He said that he looks at **eight factors regarding the placement of children, which can be found in the Delaware Code Title 13, Chapter 7, § 722**.

1. The wishes of the child's parent or parents as to his or her custody and residential arrangements.
2. The wishes of the child as to his or her custodian or custodians and residential arrangements.
3. The interaction and interrelationship of the child with his or her parents, grandparents, siblings, person cohabiting in the relationship of husband and wife with a parent of the child, any other residents of the household or persons who may significantly affect the child's best interests.
4. The child's adjustment to his or her home, school, and community.

5. The mental and physical health of all individuals involved.
6. Past and present compliance by both parents with their rights and responsibilities to their child under § 702 of this title.
7. Evidence of domestic violence as provided for in Chapter 7A of this title and
8. The criminal history of any party or any other resident of the household including whether the criminal history contains pleas of guilty or no contest or a conviction of a criminal offense.

Another question from the list of concerns was regarding parents showing up at school and extracurricular activities of their child. Judge Jones said that he hopes that the schools would want to see the custody order from the parents. If there is domestic violence then they are limited in being able to place the child into their home. They also look at the state criminal records. They are starting to ask for a nationwide criminal background check.

The National Criminal Information Center (NCIC) tests require fingerprints. In civil proceedings it makes it difficult but they can get fingerprints in criminal proceedings. There would have to be a federal law to change the requirements or allow for fingerprinting in civil proceedings.

Regarding the credibility of some parents Judge Jones said that maybe you have to determine who you think is best. Some do lie and they are asked why the Judges do not charge them with perjury. The Attorney General's office would be inundated with cases. Representative Ramone said that is true at least initially.

Another comment made was that there needs to be a law change on custody/visitation. It is on appeal to the Supreme Court but the statute only says both parents, what if there was only one parent? It was discussed that this is a problem with the equal protection clause. This was the problem with the third-party visitation bill that was passed and deemed unconstitutional by some of the Family Court Judges.

#### **Sub-Committee Reports:**

The sub-committee to review other states has not yet met. However, the committee to review cases did meet in March and it was determined that there was nothing substantial to report.

Jody mentioned that we may want to modify the waiver form for more specifics. We should add what they thought was wrong with their case. This would help to review the cases in a more efficient matter because looking at the overall case may not show inconsistencies that those signing the waiver believe may have occurred.

It was also noted that we can send letter on behalf of the Family Law Commission to those whose cases were reviewed by the sub-committee.

This suggestion was noted and will be put into place.

**Pending Legislation:**

Senator Sorenson asked that we add SB 213 to the list, which was added after the meeting. There was no other action taken on legislation.

**New Business:**

The new business for the commission was to determine what they would like to concentration on for their upcoming meetings. It was determined that we should talk about Family Court policies and procedures as this was a large section of the list of concerns presented in January that we had not received input on. Another suggestion was to have a meeting to talk about the upcoming legislation more in depth.

It was also suggested that we send out the legislation to the committee members early to help to commission review the legislation more in depth before the meetings. This is to be implemented at our upcoming meeting in May.

Another suggestion was to have the meeting in June center around custody evaluators. However, it was determined that the Delaware Psychological Association already has what custody evaluators do and all about them online. If there were complaints then they would take them to the Board of Examiners of Psychologists.

The meeting was then adjourned at 11:31am for public comment.

Sincerely,

Drew Slater  
Assistant  
Family Law Commission