

**FAMILY LAW COMMISSION
MINUTES
MAY 11, 2006**

The Family Law Commission met on Thursday, May 11, 2006, in the Senate Hearing Room of Legislative Hall. The following members of the FLC were in attendance: Liane Sorenson, Chair of the Commission, Dana Harrington Conner, Esq., Curtis Bounds, Esq., Harry Gordon, Judge William Walls, Representative Terry Schooley, Representative Pam Maier, and Harriet Ainbinder, Child Psychologist. Also in attendance at this meeting was Katherine Jester.

Since Senator Sorenson was caught in a traffic back-up on Rte. 1, Curtis Bounds called the meeting to order and asked for the approval of the minutes from the March meeting. It was noted that the copy that had been *e-mailed* to the members was the correct copy of the minutes, but the copy that had been distributed to the members at this meeting was missing page 3. Curtis advised that the correct Parliamentary procedure would be to table the approval of the minutes until the June meeting.

Senator Sorenson arrived at this time and apologized to everyone for being late, and then asked all the members of the Commission to introduce themselves. Our speaker for this meeting was Chandlee Johnson Kuhn, Chief Judge of Family Court. Judge Kuhn had been asked to tell us some of the things that are going on in Family Court and to talk about some of the issues that we have addressed in the past.

Judge Kuhn expressed her thanks for the Commission's invitation for her to speak. She said she wanted to share with them what the Court has been doing the past year or two and where they are going. She said that she had also been requested to address the opening of Family Court, the availability of court proceedings and the Judges' concern regarding that. Judge Kuhn said that she had also been asked to address P.F.A.'s. Senator Sorenson said that there had been some concern that there had been some abuse of the P.F.A.'s. This issue has been addressed with the Attorney General when he was a guest speaker.

Another issue was the length of time it takes to schedule a case. Judge Kuhn said there are three stages—the length of time to schedule a case, and the length of time one waits to have a hearing and the third is the length of time one has to wait to get a decision.

Judge Kuhn spoke on the Strategic Plan that they developed in August 2004. Under that Strategic Plan they are making a conscious effort to make sure that every initiative that the Court undertakes or policy that they enact is in furtherance of one or more goals of that plan. For the first time they held an administrative retreat and started prioritizing what issues they would be addressing. They are addressing matters that are important to the Court and matters that are important to the citizens.

The Strategic Plan includes some of the following goals and they are: Safety and security, timely and expeditious hearings in case processing, institutional competency, balance in the court workload.

They have been looking at mediation and arbitration and how the court can better serve the public. They will be looking at domestic violence training for all mediators and making sure the Court's training is up-to-date and that they actually do some certification. They will be looking at arbitration first, because they felt this issue needed to be addressed first.

She announced the addition of two new Family Court Judges and they are Judge Hitch who is a Commissioner in Family Court and is in the At-Risk unit in New Castle County, and Judge Cooper, who has been a Family Law practitioner for years and he is in the Civil Unit. Judge Kuhn expressed her thanks to the Family Law Commission for their significant support. The addition of these two new Judges has been a real help in allowing more cases to be heard in a timely manner. The Court knew that Civil cases had been pushed further and further out, and they can now see some of the timelines coming back in. Judge Kuhn also stated that Family Court has achieved Constitutional status along with the Court of Common Pleas.

Another significant area where there has seen great strides is the Pro Se' Service Centers. Judge Kuhn took this opportunity to publicly credit Jody Huber for the accomplishments that have occurred in the Service Centers. You are now able to obtain packets of information for the

following: divorce and annulment, custody and visitation, guardianship and permanent guardianship including answer packets, modification of custody and visitation packets, and corresponding answer packets. She announced that a TPR packet is in rough draft. They are also working on a short subpoena packet. In addition, Jody will be working in conjunction with the Division of Child Support Enforcement to develop a Child Support Enforcement packet after the Melson Formula Review is completed.

Of interest to the Commission was the Court's plans to expand their mediation services to the Child Welfare arena, and they intend to move forward with plans on having domestic violence training for all of their mediators.

One issue of great importance when addressing P.F.A.'s, she announced that a Writ of Sequestration procedure was implemented on November 1, 2005. This occurs when an individual comes in for an ex parte P.F.A. and they have been threatened with a deadly weapon, a firearm, and they can articulate where that firearm, or deadly weapon, is located they can now go to the police. What happens is that the Judge can hold a hearing after the P.F.A. hearing; they can now issue a writ. They issue a Writ to request that the police immediately go in and seize the weapon. This is now being done Statewide.

Judge Kuhn said that training has become a focal point for the court. They have been dealing with training in many areas, and one of the overriding issues for the Court now is that they are addressing Customer Service which is improving all of the time, but one of the focal points now is for them to look at the overriding theme of customer service and how they can better serve the citizens. This will be a top issue for all State agencies. They are looking at having a Customer Service Center—a Call-In Center, because when you have 100 files to process in a day, and you receive 20 calls in a day, which does happen, they are not always answered. It was decided that they would specially train some employees to be in a call-in center, and this would be their job. In this way, the person who is processing the files would be able to concentrate on the accuracy of the information they are docketing.

Judge Kuhn then addressed the Opening of Family Court. She said that they had taken a step-by-step look at what is opened and what is closed in Family Court. The Delaware Constitution's Statutes and Court Rules mandate whether Family Court proceedings are public or private. A chart was given to the members of the Commission showing the case type and the legal authority regarding privacy for each of these specific cases. She expressed her opinion that this is a very complicated issue.

Family Court believes that it is complying with the statutes and current court policy. Current court policy is found in the policy directive 98.02, and Judge Kuhn said that they will continue to abide by the Statutes of the State of Delaware as enacted by the legislature. They will follow whatever they are asked to do. She said she thinks there is a misperception that everything in Family Court is closed.

She stated that they are currently making sure they are consistent with 98.02. They have found that Family Court is *more open* than the laws and the rules that Family Court now has in effect. Judge Kuhn stated that by becoming a Constitutional Court, adult criminal matters are now mandated open. *The Constitution supersedes the Statute, the Statute supersedes the Rules, and Rules supersedes Policy. When Family Court became a Constitutional Court, adult criminal matters became public by virtue of the Constitution. In this area the Court has no need for a change. She said that Family Court Criminal Rule Procedure 62 indicates that records are private in all criminal matters, so they know they have conflicts which they are now investigating. They are determining what the Constitution says, what the Statutes say, and what the Rules say.*

The court is taking a careful review of all the different statutes and proceedings. Judge Kuhn expressed the opinion that it is Family Court's obligation to interpret the law and the rules, but they don't want to be perceived by the Public that what is Open and what is Closed is based upon court policy, because it is not policy driven. It is driven by what the Constitution, the Statutes and the Rules say.

Curtis Bounds was asked to clarify the definition of Open. For the citizens of this country, Open Court means that you have the right to go into the courtroom and have your case heard, and bring your representative and

litigate it as you see fit. What it doesn't mean is that the court is Open like the Dover Mall—meaning that you can wander in and out at will. The legislative problem, not the court's problem, is whether the court will operate better if there is a swinging door at the front of the courthouse.

Judge Kuhn was asked to go over the list that she had handed to the members and advise the policy that is now being followed:

*ADOPTIONS - CLOSED PATERNITY - PRESUMED CLOSED
DIVORCE/ALIMONY/PROPERTY DIVISION - PRESUMED CLOSED
CUSTODY/VISITATION - CLOSED
TERMINATION OF PARENTAL RIGHTS - CLOSED
PERMANENT GUARDIANSHIP - PRESUMED CLOSED
GUARDIANSHIP - PRESUMED CLOSED
ADULT CRIMINAL - PRESUMED OPEN
JUVENILE FELONIES - OPEN BY STATUTE
JUVENILE MISDEMEANORS - PRESUMED OPEN
DEPENDENCY/NEGLECT - PRESUMED CLOSED
CHILD SUPPORT - PRESUMED OPEN (but this is under Administrative Directive 98.02 and if this should be rescinded, it would be Presumed Closed.)
PROTECTION FROM ABUSE - PRESUMED OPEN (but this also is under Administrative Directive 98.02, and if this should be rescinded, it would be Presumed Closed).*

When a hearing is presumed Closed or Open, you would have to make a Motion to make a change.

Judge Kuhn said the court is going over the statutes and rules and interpreting them and putting them in layman's terms for the public. One thing she wanted to get away from is the perception that the Family Court is setting the policy as to what is open and what is closed in Family Court. They are not, and they do not want to. She said this is the Legislature's mandate. She did express her concern that if they were to Open everything, they would be faced with a serious security issue, especially in Kent and Sussex Counties and they do not have the capacity for larger hearings in these two counties.

When addressing Divorce cases, Judge Kuhn stated that that they know that when people come into Family Court this is a tough time in their life. They are good people at a very difficult time in their life. This is a very unhappy time for them. You never win when the family is splitting up, and you never win when your children are not with you 100% of the time.

Judge Kuhn then addressed the issue of making available c.d. copies of Family Court proceedings. She then stated some of the concerns raised by the Family Court Judges regarding potential legislation that would allow parties or members of the public to obtain recorded copies of Family Court proceedings.

Since these hearings have been afforded privacy by the General Assembly, the Judges expressed serious concerns regarding the motives and purposes which one would obtain a copy of their hearing. You would not be able to use a copy of a recording to appeal a Family Court decision, or to represent the 'record in a case. Supreme Court rules require a transcript be prepared for purposes of an appeal. One way in which this could be abused would be in obtaining a recording of a child's interview with the Judge in a Custody matter. Also, there were concerns expressed concerning highly sensitive financial information being disclosed to third parties.

Judge Kuhn called upon Randy Williams to explain some of the technical issues. These recordings are formatted in FTR format (for the record). Today in Family Court they use the FTR Gold program which is a digital recording. It is leading the industry in the reporting of courtroom reporting and equipment. It is much more accurate and it is easier to use and provides a number of different safeguards. He said that he is certain there is no way to alter or delete, or in any way change the c.d.'s.

With the proper equipment, they *could* eventually be converted to a windows audio file, but staff is not trained at this time to do the conversion. Once that file has been converted to a Wave file or a Windows Media file, it could then be altered which is a major problem for the court. Another very important problem is that if copies were provided to the litigant, these copies cannot be "copy protected". This would allow many copies to be made from that one copy.

Judge Walls questioned that if there were equipment failure, was there any way that would be noted on the recording? Randy Williams replied that if the FTR Gold system was turned off at any time for any reason, a digital "marker" is recorded in the system which will show when the system was turned off and the time it was turned off; and it will show, or mark, when the system is turned on and the time it was turned on.

Judge Kuhn concluded by saying that at a meeting she attended yesterday, that there are plans to train all Judicial officers and mediators and creating a program, so that every time a new Judge or Commissioner comes on board they will be given one-on-one training addressing Domestic Violence.

On behalf of the Family Law Commission, Senator Sorenson expressed everyone's appreciation to Judge Kuhn for coming and addressing them.

At this time Senator Sorenson continued on with the meeting, and she said that the minutes will be deferred until the next meeting.

The Senator called everyone's attention to proposed legislation. There were two bills that the members had asked for clarification. One bill was H.B.98 which is now in committee. The Family Law Section stated that they did not think there was a need for this bill as there is a "best interest standard" that would make this bill unnecessary. The other one H.B. 124 is out of committee, but the Family Law section said that appropriate sanctions already exist regarding anyone who violates custody or visitation orders.

Senator Sorenson stated that she has introduced two bills during this session. The first one, the Senator decided not to go forward with as Superior Court assured her that all requests by jurors are given every consideration possible. They try to accommodate everyone to the best of their ability.

The next bill she introduced came out of the Coalition Against Domestic Violence and the Domestic Violence Coordinating Council. This bill passed the Senate easily and is now in the House. The bill, S.B. 274, deals with the Landlord Tenant Code. Currently, if you are a tenant and you have to break the lease because of domestic violence issues, you have to give 60 days notice. This would add to the other six sections where you only have to give 30 days. This would certainly be a benefit to a victim of domestic violence, and it also is a benefit to the landlord. It would certainly help protect the landlord's property.

Next Senator Sorenson called upon Harry Gordon to give a report on the Open and Closed Family Court issue. At a retreat that Harry attended, the Judges expressed their appreciation of the support of the Family Law Commission. While he was there he was told by the Chief Judge that they were in the process of a total review of the various procedures. These items were covered by the Chief Judge today in her address.

Harry said that the Judges agreed that there were very few requests to have a Court open or closed. Since there have been hardly any requests for Open court. The process is continuing to clarify what is Open and Closed and also to clarify the communication of what is Open and Closed to the public.

Senator Sorenson inquired if it was still Harry Gordon's opinion that the Family Law Commission not to take a stand on it, until it is no longer a court case and he replied Yes.

Under new business she acknowledged that we had several members of the public in attendance who would like an opportunity to speak.

The first speaker was Paula Tawes King who had addressed the Commission on March 16, 2005. Due to the length of her comments, copies were made of her comments and distributed to the Commission members.

Senator Sorenson then called upon Scott Berry to give his comments. He said he was addressing custody visitation issues especially discrepancies in the Code. In one section it says each parent is supposed to be treated equally, and then in another it says

the child has to be placed in one home or the other. He said the law is putting constraints on the Judiciary. He then referenced another section that says there should be frequent and meaningful visitation. He said that Family Court has adopted this standard visitation procedure to comply with, and he said he does not feel their plan is frequent and meaningful visitation. He stated that Custody issues turn bitter when partnerships dissolve. This needs to be further investigated.

Raetta McCall then asked to speak. She said that in regard to shared custody, it is not always in the best interest of the child to have shared custody and for the child to be constantly moved from one home to another. She then referred to the audio tapes or c.d.s. When the court checked with the other states did they ask what problems had they encountered? In Arizona she said they use transcripts, but audio copies are also used by the attorneys. She expressed the opinion that the public should be able to work on this issue also.

The next speaker was Jennifer August. She said that she thought in regarding to the public availability of the transcripts, it would be important to specify in the bill that this recording shall not be used for any sales or promotional purposes. She said she was not in favor of an open Family Court. She said she felt that certain family matters should remain private and not be broadcast, because she felt this could be damaging to the children. If they were to have transcripts, the bill should state that they would only be available to the parties and to their appointees. In another issue, she questioned whether there was any pending legislation in Delaware during this session that would say that no child or children go longer than one or two months without a child support order – post separation.

Karen Hartley Nagle said that her case was not a custody case. It was on reverse and remand from the Supreme Court. She knows of several instances that were not recorded during her case. There was a pre-trial hearing that was not recorded. There was a telephone conversation that she did not hear, so she said the transcripts are not always accurate. Transcripts cost a great deal of money and you would want them to be accurate, and if you can't use them, they are useless. Senator Sorenson responded by saying that this is why they have gone to the Gold system because they don't have as many missed or dropped inaudibles as in the old system.

The meeting was adjourned at 12 Noon, with the last meeting scheduled for Thursday, June 8th at 9:30 a.m.

Respectfully submitted,

Jean C Ardis, Secretary
Family Law Commission