

**Family Law Commission**  
Meeting Minutes  
May 12, 2011  
9:30-11:30 - Senate Hearing Room

**Members Present:**

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

**Members Absent:**

Harriet Ainbinder  
Dana Harrington-Conner  
Britt Davis  
Diana Metzger  
Dr. Pillsbury

**Liaisons Present:**

Harry Gordon  
Bonnie Copeland  
DAG John Hindman  
Drew Slater, Assistant

**Guest Speakers:**

Eileen King  
Tania Culley  
Shauna Hagan

The Family Law Commission met on Thursday May 12, 2011 to discuss Open versus Closed Family Court.

**Call to Order:**

The meeting was called to order at 9:34am.

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**

Senator Ennis moved that the minutes from the April 14<sup>th</sup> meeting be approved with Mr. Morning seconding the motion. All members present voted in favor of adopting the minutes, motion carried unanimously.

**2. Guest Speakers**

The chair recognized the speakers for the meeting.

Ms. King began by mentioning that she has observed many Family Courts through her work as a member of the Justice for Children. She said that all cases that she has observed relate to child abuse.

Ms. King would like to see all the courts presumed open and a question was asked if there were any courts that were closed. Ms. King said that Virginia is presumed closed. Ms. King continued by stating that public scrutiny allows the public to see regularity/irregularities that would allow for the review of change. She said that the Judges should be observed.

Ms. King also mentioned that the Family Court is publicly funded and the public has a right to know how their tax dollars are being used. She is very concerned about the closing of juvenile and protection proceedings.

Ms. King also mentioned that unless a Judge can show immeasurable harm then the proceedings should be open. Of course, there need to be guidelines so certain persons do not have favoritism, such as those with a monetary benefit (ex: a high level executive). It was mentioned that Delaware does have participation from children in Family Court hearings and that Delaware also has guidelines.

Ms. Hagan commented that others are allowed in, foster parents, advocates (if both parties agree), law clerks, and mental health professions. However, the general public is not allowed in.

Ms. Hagan asked if Ms. King knew of any pilot programs, to which she stated that she did not know if there were pilot programs.

Ms. Hagan also mentioned that, in preparation of this meeting, she asked 3 psychologists about opening family court and all three said no immediately and they are in the courtrooms very frequently. She also noted that California recently noted that there is harm done by allowing the public into all courtroom proceedings.

Ms. King mentioned that in courtrooms that are open there is not a huge influx of people that want to go into the courtrooms, citing Pennsylvania as an example. Ms. Hagan wanted to point out that the difference is that Pennsylvania Judges are elected officials whereas Delaware Judges are appointed by the Governor. Ms. King continued on by saying that there should still be public accountability stating that her favorite phrase is “what’s watched works”.

Ms. King said that litigants should still be allowed to show their evidence, to which Ms. Hagan responded that pro se litigants still need to follow the court procedures. Ms. King said that sometimes pro se litigants are tried differently and that there are discrepancies there. Many cases in Delaware are pro se on both sides. Judges in Delaware really do try and help the pro se litigants. At one point it was 80 percent of the cases that were heard in Family Court were pro se cases. Pro se litigants will sometimes file more than if they were represented, which is not a bad thing.

It was also noted that a support person, generally in dependence and neglect if there are no objections, are allowed into the courtroom.

Ms. Copeland said that she asked some of the Judges about how frequently they are asked to open the court and she said that most said that there are 1-2 cases in a career where they are asked to completely open the court. However, those that are going to testify must be sequestered outside the courtroom.

Under the current statutes, all criminal hearings, Protection From Abuse hearings and child support hearings are open to the public, while custody/visitation, guardianship, adoption/termination of parental rights, dependency/neglect, paternity, and

divorce/alimony/property division are held in private. In order to open the court, a party would need to make a motion or a third party would need to move to intervene. The Judges, or Commissioners, can look at the case and the applicable statute to make the determination as to whether to open the court for that case.

Another issue that was brought up is that advocates are not allowed in. It was mentioned that the Judges can make the ruling and once again there has to be a reasonable objection. Also, some litigants do not know that they can ask the Judge to have a support person in the room and they can grant that case.

Ms. Culley said that whatever is crafted needs to focus on the children. We need to make sure that the statutory change focuses on the child and what is in the child's best interest. It was mentioned that the eight best interest factors in a child custody case must be adhered to.

The hearings in Family Court do have time constraints so they would have to be a half-day or full-day hearing.

The court could either be Open with the Judge having discretion or Closed with the Judge having discretion. You cannot take away all the discretion. You could have the court to open with public access and discretion for the Judges. It was mentioned that there should be public access unless the judge deems it appropriate to close the court. A question was raised as to whether the Judges would accept that.

It was also mentioned that we need to have factors of when divorce would be closed due to the financial information that could be presented.

It was also mentioned that we need to make sure to make the distinction between access to courts and access to documents. They are two entirely different things.

There was a suggestion that a Blue Ribbon Task Force be created to review this issue. In talking about creating a task force it was mentioned that PFA hearings are open. The Family Court does not know of many of the public that come to the hearings. It was also mentioned that child support hearings are also open to the public as are all criminal proceedings. It was noted that the issue of child custody and visitation would have to be crafted to protect the children and there would have to be clear guidance on how to close the courts to protect the children.

It should be mentioned that the Supreme Court has ruled that open does not mean public access to all courts and cases.

A point that was brought up during the meeting was that at any time someone can request a court be open, depending on the case and the Delaware statute. The Judges would have the discretion but any litigant can ask based on the case and the situation.

In 1997, there were 16 requests and most were granted. Senator Ennis asked to see a copy of those statistics. There have been no requests in the last few years from the public. It was also mentioned that there is no tracking of this but Judges, for the most part, have not been asked.

Ultimately, the Judge has the discretion. We need to talk about a committee or find out if the legislators should work on legislation. How many people know they can appeal to have the court open? Maybe we need to have education of this issue.

What do you want the mission of the Family Law Commission to be?

It was then mentioned that we should have as members of the proposed task force a Judge, child psychologist, child advocate, family law attorney, Family Law Commission member, Domestic Violence Coordinating Council member, Legislators and one person from each county who has been through the Family Court system but who do not have pending cases in Family Court and have a final completed order. We should also include the possibility of having a grandparent as a public member.

### **Adjournment**

There was a motion to adjourn at 11:41am by Mr. Morning, seconded by Senator Ennis. It was then discovered that we had more business to attend to so there was a motion by Representative Ramone, seconded by Senator Ennis to go back into the meeting at 11:42am. It was then decided that we needed to have Ken Kelemen come and give us a final report on evening hours and what the Family Court has been working on to help litigants. Thereafter, the meeting adjourned at 11:44am with a motion by Representative Ramone, seconded by Sen. Ennis.

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