

# FAMILY LAW COMMISSION MINUTES

JUNE 8, 2006

The Family Law Commission met in the Senate Hearing Room on Thursday, June 8, 2006. Senator Liane Sorenson, Chair of the Commission, called the meeting to order at 9:30 a.m. The following members were present at this meeting and they were as follows: Senator Liane Sorenson, Harry Gordon, Lynn Kokjohn, Eileen Meyer, Esq., James Morning, Judge William Walls, Curtis Bounds, Esq., Representative Pam Maier, and Representative Terry Schooley.

Due to a copying problem last month, the minutes of the previous meeting of April 6<sup>th</sup> had not been approved and they were approved and seconded at this meeting. After the Commission had an opportunity to read over the minutes of the May 11<sup>th</sup> meeting, they were also approved.

Senator Sorenson then stated she wanted to inform the Commission about the *Delaware Girls' Initiative* which is a brand new program. This program was just formed last week, and Judge Kuhn was one of the prime sponsors. This is a program that has long been needed. Its purpose is to deal with the problems that girls experience in the Criminal Justice system. They have a history of sexual abuse, are runaways, and have been involved in many of the state systems. They have had problems in the courts, have drug and alcohol problems, and truancy from schools. Because several groups felt that the girls weren't having their needs met, they obtained a grant from the Jessie Ball DuPont Fund. The Delaware Center for Justice became involved and the National Council for Crime and Delinquency. This program is hoping to cut the risk for future delinquency, cut the risk of future arrests, and deal with their needs with gender appropriate counseling. They will be offered vocational school training, schooling, and it is hoped that they will be able to drop the truancy drop-out rates. There will be programs on health care and, pregnancy promotion information. Also, there will be mentoring programs. This is a huge undertaking when you look at all the groups involved. Many of the girls are a part of the minority population. Family Court will be heavily involved in this program.

Harry Gordon stated that the treatment and prevention aspects of a program like this that relates to victims of violence or other issues such as sexual abuse is particularly important in light of the statistics that the Chief Judge gave in May and that is that 80% of those involved in the Criminal Justice System were victims. Being a victim of violence and abuse is a great predictor of having problems in the future.

Senator Sorenson stated that the Justice System on the whole has been based on male models in terms of treatment, as there are more male offenders. In the past, there have always been fewer services for at the women's prisons and also for the girls, so this program is offering many of the com

Senator Sorenson then addressed the issue of allowing participants that have cases in Family Court to be able to have c.d. s of their court proceedings in Court. Right now, they have to make an appointment and come in and make copies with supervision. This can be is a very costly procedure for someone who needs to have a copy of the transcript to research and refresh their memory of what went on in court when they had their day in court. Many people have spent hundreds of dollars obtaining this information. Senator Sorenson asked Rich Dillard, the Senate attorney, to research how this is handled in other states. A legislative fellow is now researching this topic through the National Council of State Legislators (NCSL) to see how other states address this topic.

Rich Dillard also said that e-mails were sent to Family Courts in other states. Family Court said they had been contacted by a state that produces only audio recordings of hearings of Family Court hearings such as divorce, custody hearings, child support etc. in cases that are both open and closed to the public. Currently, parties can come into the Court and listen to the audio recording, but are not allowed to purchase a copy the recording. They can pay for a transcript to be made, but this can be very costly. They are looking into the pros and cons of allowing parties to purchase a copy of their audio transcript of their hearing. The following questions were asked:

Does your court allow parties to purchase of a copy of the audio recordings of Family Court hearings of both open and closed hearings?

If so, what has been your experience with this procedure?

Does it work well?

What are the problems you encountered, etc.?

Do you have any recommendations for exploring access to audio recordings of Family Court?

Only about a half dozen states responded to their inquiry and only on a very general basis which is why they have given the task to their legislative fellow. It seems that a major problem with getting a copy has to do with the party receiving too much information, since the copy cannot be altered in any way. The major problem would be when the party has to share with the court all their financial information including account numbers etc. This could be a problem, since there have been many cases of identity theft today. Since the party would be getting a copy of what exactly happened in court including all the financial information that is given, the courts have reservations in this area. The courts' reservation is in the making of additional copies of the c.d. If hearings were allowed to be sold in the future, Mr. Dillard said that the Court would have to advise the attorneys beforehand, this information will be on a recording that could be copied thereafter so they should not use full account numbers etc. In other words, do not use anything that could be used in identity theft.

Ellen Meyer questioned if that wasn't always the potential when *transcripts* are available. She felt that the audio copy would not be any different from what always could have been a problem in the past with the copy of the transcript.

Rich Dillard responded that the copies of transcripts are not done lightly, and they are done because the party has to have a copy of the transcript to use in the appeal process. If it is only a matter of a minimal cost for a copy of a c.d., it is thought more people would buy them just to have a copy for their own. There is definitely a concern about making numerous copies of c.d.s.

Mr. Dillard felt that there are two basic policy decisions to be made. One would be in notifying the Judge at the hearing that this would be recorded. In order to secure the financial information that has to be given to the court, the officers in the court should be made aware of the taping and measures have to be taken to keep this information private - (such as only giving the last four digits of a bank account number etc.) The other

problem that he thought could be an issue was whether or not on the Federal level there would be limits on what information could be taped due to the widespread issue of identity theft.

Senator Sorenson reminded everyone that Chief Judge Kuhn said at a previous meeting that she would abide whatever the legislation dictates. If there is legislation passed, they will do whatever told to do. Family Court wanted everyone to be aware that they have some real concerns about establishing this policy.

Harry Gordon said he would not like to see identity theft be the fueling issue to allow copies to be made. He felt that the two aspects that should be investigated should be -- one that people that are represented and ones that are pro se', how will any program that we put into place of the expensive transcript, how will this move forward justice in the court and the process of moving cases through Family Court.

One thing that was made clear at this hearing was that the c.d. would not take the place of a transcript. You definitely would have to have a transcript of the hearing in order to file an appeal.

Raetta McCall shared information that she had received from the court in New Mexico and how they have handled the copying of c.d.s. They limit the use of financial information and the use of social security numbers. Also, they have initiated penalties for anyone sharing the hearing information inappropriately. Where the financial information is necessary, it can be submitted to the court in a sealed exhibit.

Senator Sorenson said that this was an issue that she and Judge Kuhn had discussed. There should be penalties initiated for anyone that abuses the information on these c.d.s. The Senator then inquired what the Commission felt was the next step that they should take. Do they want Rich Dillard to draft legislation; do we want to refer this to anyone else; or should they set up a sub-committee?

Ellen Meyer thought that Rich should draft some legislation and bring it back to the Family Law Commission. Bring it back and let them go over it

again. Then the Commission could decide if it should then be sent to the Family Law section, or any other entity for their comments.

If everything goes as planned at this time, it would be done early enough to be able to get the legislation submitted at the next session of the General Assembly.

Representative Pam Maier made a motion that there be legislation drafted supporting the sale of c.d.'s of a Family Court hearing to litigants in their case. Harry Gordon seconded the motion.

Under pending legislation Senator Sorenson brought everyone's attention to a Senate Bill which has been sent around for signatures, but has not been given a number as yet which reads - "following an adjudication in which Family Court declares a child is delinquent, this bill would allow Family Court to order the parent or guardian of the delinquent child to attend mandatory counseling." The sponsors of the bill are Senator Sokola, Representative Ulbrich, and Representative Spence. The Senator asked if anyone had any thoughts on this bill. Ellen Meyer stated that she thought it sounded like a good idea.

Another bill that was sent around addresses the enlargement of the 'statute of limitations for suites due to personal injury that were caused by sexual abuse of a child by an adult. This is H.B. 450. It extends the statute of limitations in Delaware from two years to six years and makes it clear that the totaling of the statute starts when the victim, as an adult, recovers memory of the abuse or learns that the abuse is the cause of emotional or physical difficulties he or she has been experiencing...

Ellen Meyer said she felt that both of these bills sounded like good ideas. She thought it was a very good idea to expand the time during which that you can come forward in cases such as sexual abuse. It was moved and seconded that the Family Law Commission supports the bills that were discussed.

The FLC then referred to the list of bills that Garrett Wozniak prepared. This report gave them an update on some of the bills that they have been following and gives their status with a synopsis of each one

mentioned. Copies of this report were distributed to the members. This was a very concise report which told the status of each bill. A copy of this report will be on file with the minutes. This report broke the bills into the following categories: *Custody Issues, Family Court, Juvenile, Domestic Violence, Marriage, Child Support, Health, Investigations, Foster Children, Child Care, Sexually Violent Predators, and Other*. These bills were thoroughly discussed by the Family Law Commission. It was decided that the Commission would notify Rep. Valihura that they have some concerns with H.B. 124; tell Senator DeLuca that they support his draft bill, and tell Representative Lavelle that they support H.B. 450.

Next on the agenda was the End of the Year Report for 2006 from the Family Law Commission. This was the first year that we have entered the Minutes, and other information regarding the Family Law Commission on the Web, and we have our own website... We changed the Public Hearing date to January rather than the previous hearings which were held in March. It was felt that this change worked much better and gave the Commission additional time to address the problems that were mentioned by the speakers at the hearing. Senator Sorenson agreed that she felt it worked better also. She said now that the meetings were concluded she would work on getting that letter written to the speakers at the January Public Hearing. She will let them know how we followed up on the problems that they encountered in their dealings with Family Court. Senator Sorenson expressed the opinion that she felt it really was unnecessary to do this. She has chaired many Task Forces, and on no other Task Force did anyone respond to the people who spoke at the meetings.

Representative Maier responded that she also didn't think it was necessary, especially considering the fact that the minutes of the meetings are published on our website. Also, Senator Sorenson mentioned that the complete statements of all the speakers at the Public Hearing in January 2006. are entered as part of January's minutes. It was decided that they would respond this time, but at the next hearing in January 2007, the speakers will be encouraged to use our website. For those without a computer, they are always able to use the computer at the Public Library. The information contained in the letter this year will be information that will also be included in the FLC Yearly Report which is sent to the Senate Pro

Tempore, Senator Thurman Adams, and to the Speaker of the House, Representative Terry Spence.

Katherine Jester mentioned that she did not think it was necessary to go into a great deal of detail when making the report. They are only interested in the fact that we have met, the number of times we met, and the current list of the Commission members, and that the FLC is abiding by the legislation, and refer them to our website. It was agreed that this would be what the Commission would do this year.

The next issue on the agenda was appointing a new member to the Commission to replace Dr. Bischoff who passed away this year. We also have one member who hasn't been able to attend the meetings this year. Senator Sorenson felt that this could be addressed at the beginning of the next session. Katherine Jester mentioned that Dr. Bischoff had just been reappointed. In the past, the members have been asked for suggestions. This can be a doctor that still is still practicing or one that is retired. This doctor appointed should be a doctor in family practice.

Katherine Jester mentioned the fact that there is a problem with the listing of the Family Law Commission members and their terms of office. When the new list was made up, a problem arose with the term of service for the new member. When a new member is added, they should be listed as filling out the term of the person they are replacing. Also, since the list hadn't been updated when people's terms had expired, we ended up with several of our members having their terms expiring on the same date. Katherine said she hoped to have this error corrected by the fall, and, before we begin replacing any openings on the Commission. At the same time, the decision was made that this would be a good opportunity to look over the by-laws of the FLC, and see if they should be amended in any way. Maybe this will be a good opportunity to establish rules of attendance for the members of the Commission. Everyone agreed that this is something that should be addressed.

Senator Sorenson then asked if there was any new business. Harry Gordon mentioned that he had met with the judges of Family Court who are examining how their existing procedures are communicated and expanding

the one page table about Open and Closed cases in Family Court. That is being made more understandable for everyone.

The Chair, Senator Sorenson, then asked if there were any public comments at this time.

The Senator recognized Phyllis Witcher. Ms. Witcher said that there are things happening on the issue of *divorce and Family Law*. She said that just two weeks ago the State of Louisiana have made the first turn back in many years. The bill cleared their Senate two days ago. They expect this bill to be signed into law. Their bill will lengthen the waiting period of divorce in Louisiana, if there are minor children. Ms. Witcher said that she expects to see a decline in the divorce rate in the next six to ten months. She wondered if anyone at this meeting was aware of where Delaware falls in the divorce rate. She said that we all know that United States has the highest rate of divorce of any nation in the world according to the U.N Delaware's rate is above the national rate of divorce for the United States. The last time she checked Delaware was #11 in the 50 states. Curiously there are two other states and one of them is New York. In New York, you have to wait longer - then you are able to get it yourself. Thirdly, two weeks ago in England they announced they ruled for the first time the recognition that marriage is marriage. They said that a woman, or a man - it could go either way, a woman (or homemaker) at home earns an interest in her husband's continuing income increases after the divorce. Her son-in-law said isn't that the way it is anyway? She was surprised that was what he thought having been around her so much. She said she plans on getting more information on this subject.

Interestingly, there were two cases joined together. In the United States divorce has never gone to the United States Supreme Court. The other case actually involved an American woman who had married a British man, and the marriage ended in less than three years. She wondered if there was anything specific to that divorce.

Ellen Meyer said that in Delaware the earning potential of the parties is looked at as one of the statutory issues when you determine how property is to be divided, but to the best of her knowledge, and Judge Walls can certainly correct her, she said she knew of any interest in the future



earnings of a spouse. The earnings are locked into the period of marriage by the formula that is used.

Senator Sorenson then inquired if there was anyone else who would like to speak. She then recognized Herman Row. He said ladies and gentlemen he said that he was a little older than most of everyone attending, but he wanted to talk about a few comments that had been made previously. When he was a youth women hung their wash outdoors and went about the practice they observed. They always hung their unmentionables on the clothesline first and then bed sheets were placed over the top of them. He asked what were they trying to hide. There wasn't anything seen that you couldn't view in a Sears and Roebuck catalog. He inquired what is Family Court trying to hide. Why all the opposition to the idea of a free and open court? Is the entire clamor about the protection of individual rights and the copying of records, or is this a smoke screen, or is the smoke screen devised to hide the court's inadequacies? (Unintelligible at this point). He continued and said that he thought that others had a lot more trust in the Judicial system that he did.

The Chief Judge said in a previous meeting that he attended that Family Court transfers cases that are in violation of visitation rights to the Attorney General's office. Mr. Row wrote to Judge Steele and asked how are the number of cases that were sent, transferred, or recommended to the Attorney General for prosecution. You will not be surprised that the answer is zero. Judge Kuhn did say that she sent these cases to the Attorney General's Office. So he thought that there would be no doubt that he did not misunderstand, he wrote to the Attorney General and asked him how many cases of violation of visitation had been sent to his office. Would you be surprised that his answer was zero?

The next speaker was Raetta McCall and she said she had a couple things that she wanted to address. She mentioned that she loved the website, but wanted to call our attention to the fact that the date on the list of Commissioners says 2005 in the heading. That needs to be changed. She said she appreciated the discussion today regarding the members who do not come for one reason or another. She said she hates to see that the only way that new blood gets on the Commission is by the death of someone. She said that she herself has observed that Senator McDowell does not

come, and she is sorry for Mr. Bennett's situation, and she said we do not see Dr. Pillsbury. Raetta said there is only 15 hours other than the planning session that this Commission meets. This is only 15 hours out of 8,760 hours in a year, so to me if you cannot do it, or you are too busy, let someone else who has an interest do it and they will attend

The second thing she wanted to mention was that she appreciates the continuation of the c.d. discussion. This is something important to pro se' litigants. She said she didn't agree with everything that was said, because it is important for pro se' litigants to be able to prepare for ongoing cases, because the court is clogged with ongoing cases, and they need to have that ability to know how they are going to plan it. Raetta said she also wanted to talk about penalties. She said there are penalties for different things. There should be penalties for interference with custody and visitation, for child support, all kinds of different things, for Contempt of Court. She said when a Judicial decision comes out, and it is a formal Judicial decision, and it says that a person shall do this, or they shall do that, and one person does it, and the other person doesn't, it affects the person that does, and there is no remedy for the person who does comply, because Contempt of Court charges do not get heard. No Commissioner, or Judge, is specifically charged with hearing these charges. When you go to the police station and say to them - "I can't get my son back - I was supposed to have him back yesterday." They tell you to go to Family Court. Well it takes six months or more to go to Family Court. By then no one wants to hear it anyway. The behavior continues, because there are no real sanctions done on these people who go against what the decision is all about. She said you would think that the Judges would be insulted that their decisions are not carried out, but nothing ever gets really done.

Raetta said that she has said before that there should be a Commissioner in each county that hears Contempt of Court charges - sanction them. She said that you could put them in jail for the weekend; it wouldn't affect their earning capacity. You could put them in jail for a weekend - it is done for D.U.I. That is done in Maryland, but she wasn't sure about Delaware. She said that she hoped that in the minutes it would not say that seven people from the public spoke, but actually what the public said. Liane responded by saying the May minutes summarized what the people said.

Raetta continued that she met with a Senator on Thursday and said that she did not understand the problem with Open Court, and the Senator looked in the Constitution and said that it is very clear it is Open. Judge Walls inquired who the Senator was. Raetta said it was Senator Peterson. Senator Peterson read the whole thing and stated that it is clear that all courts are open, and if the Court doesn't like that they should come down and ask for an amendment to the Constitution. Senator Sorenson said that the recent court case did not support that. Raetta said that the case was kind of thrown back out. Senator Peterson did give some suggestions on how to handle it. Raetta said she would hate to see someone have to do a lawsuit, because Judge Kuhn said as you stated today that when the legislation is passed, the court would go by that legislation. She stated that they are clearly not doing that, and this is a concern. She feels there is no reason to pass a law to get them to open the court, because the Constitution says it is open. She questioned why would a court system that is supposed to uphold the laws, go against the Constitution? It just boggles the mind.

Ellen Meyer said she feels that in defense of Family Court it is in a difficult situation, because, it has to balance what is in the best interest of the child against the Constitutional mandate. and other courts do not have to consider what is in the best interest of the child.

Raetta McCall responded that if it is in the best interest of the child there are Children's Rights that are not enforced. She stated that she has had children come up to her that are teenagers, who have said to her that their parents had to sign these. They question why they are not enforced. There is no protection clause for children in that Children's Rights. Basically, it is like something for the parents - it is all for the parents. It is really a smoke screen to say it is in the best interest of the child. It is like the open court issue with the hearing on the c.d. Where is the child when the parents are in the courtroom when the parents are in there for custody or support? Where are they? How often are they even allowed to be on the record, or in the Judge's chambers to discuss where they want to be, or how things are going? She said that statement doesn't fly - no offense.

Harry Gordon said that he felt that what Raetta said that what she has said must have come from a very confined set of personal experiences,

and Raetta replied they were not hers, as she said she would not have hers involved. Harry said she had made some comments that were very strong regarding these people whose experiences she was filtering and conveying to the FLC. He said that he would suggest that there are many, many instances in which Family Court is looking at the best interest of the family and the child. Raetta said that he should really listen at these public hearings. Senator Sorenson said that generally when there is public comment at our meetings, the members do not comment or respond for which Harry Gordon apologized.

The secretary at this time asked to distribute to the members of the Commission the written comments of Paula Tawes King which were quite lengthily. Ms. Tawes attended our previous meeting, but had not been able to finish her comments.

Senator Sorenson said that since there were no other public comments, she moved that the Commission adjourn until next year. The meeting was adjourned at 11:25 a.m.

Respectfully submitted,

Jean C. Ardis, Secretary  
Family Law Commission