

**FAMILY LAW COMMISSION
MINUTES
JUNE 14, 2007**

The Family Law Commission met in the Senate Hearing Room of Legislative Hall in Dover on Thursday, June 14, 2007 at 9:30 a.m. The following members were present: Senator Liane Sorenson, Chair, Judge William Walls, Representative Pam Maier, Jud Bennett, Curtis Bounds, Esq., Lynn Kokjohn, James Morning, Harry Gordon, Peggy Smith, and Harriet Ainbinder. Also in attendance at this meeting was Jody Huber from Family Court, Gerald I. Street, Esq., Patricia Dailey Lewis, Deputy A. G., and past member Ellen S. Meyer.

Senator Sorenson asked if there were any corrections to the May 10th minutes. There being none, the minutes were approved as reported.

Next on the agenda was the recognition of service to the Family Law Commission by past member, Ellen S. Meyer, Esq. Ellen was a Charter Member of the Commission. On behalf of the members of the FLC, Senator Sorenson presented a plaque to Ellen with a Tribute commemorating her many years of dedicated service to the Commission.

Senator Sorenson then called upon Harry Gordon to give a report on the topic of Open/Closed Family Court. When Harry began this project Family Court had not issued its new directive which has taken the place of the original Directive 98.02. He said he felt that it is clear now by this new directive what the Family Court considers as Open/Closed cases. He and his committee will meet again on this project. They will be sure to let other interested parties of the date of this meeting.

Senator Sorenson then called upon Gerry Street, Esq. from the Delaware Bar Association. He stated that he has been an attorney for over 30 years and that this particular issue has been debated since 1972. He said that in his opinion that what matters most are the children in Family Court and that there could be psychological damage done to the children. Much of the information should not be available for anyone but the parties involved. Many times too much information is disclosed. He feels that allowing others to come would not be helpful. He also mentioned the possibility that it would take longer and the costs could be increased.

Still addressing the subject of Open/Closed Family Court, Senator Sorenson then called upon Debbie Gottschalk from the Community Legal Aid Society, Inc. She shared with the Commission how she felt closed hearings would be a real disadvantage to the

elderly victims in Family Court who have been abused. This particular type of PFA is issued when the elderly relative has to obtain protection against an adult child, or grandchild, who is displaying abusive behavior against the person by way of using threatening language, stealing, and harassment. During a PFA hearing, an elderly person who had been abused would most probably be very frightened and feel intimidated by the Judge during one of these proceedings, since they probably would have had little or no previous experience in the courtroom. Ms. Gottschalk felt in cases such as this that an advocate for the victim should be allowed to be present in the courtroom because the advocate could give the elderly victim support and reassurance.

Suzanne I. Seubert, Esq. from the Delaware State Bar Association also presented the State Bar's opinion regarding the Open/Closed hearings issue in Family Court. When this subject was addressed recently at the Family Law Section of the State Bar Association they adopted to follow Family Court Civil Rule 42.2 which calls for hearings or trials to be conducted privately. Ms. Seubert said that she also supported the opinion expressed by Debbie Gottshalk of allowing an elderly petitioner in a PFA hearing to have an advocate with them in the courtroom. In closing, Ms. Seubert stated that in general Family Court hearings should be closed to the public. But she clarified her statement by saying that she hopes that domestic violence victim advocates are treated not as members of the general public, but as someone who has a direct interest in the proceedings.

Senator Sorenson then called upon Paulette Sullivan Moore, Esq., a member of the Family Law Section of the Delaware State Bar Association. Paulette also expressed her opinion that the Family Court Civil Rule 42.2 should be followed in cases heard in Family Court. She went on to say that it is very important to allow an advocate to be in attendance in a hearing for a PFA in Family Court. In domestic violence cases she said it takes a victim as many as seven instances of abuse before they will file for a PFA. In these cases the victim needs the support of an advocate. This is someone who is a trained and who will support the victim.

The FLC then heard from Pat Dailey Lewes, Deputy Attorney General, from the Department of Justice. She said she has been involved in Family Law cases for 19 years and has experience has been with cases from Family Services and children in foster care. She said she did not feel that the court should be opened to allow everyone to come in. She thought the system should be kept as it is now. Family Court courtrooms are small and she thought that safety should be considered also, because these courtrooms are not safe. When there are children in these cases none of these proceedings should be made public.

The last speaker for this meeting was Irene H. Talley, PhD from Wilmington, DE., who stated that her area of interest is families and the children. She said that this was her first visit to the Family Law Commission. She stated that she has had several concerns regarding Family Court and their procedures. The first that she addressed was the fees charged by the Child Custody Evaluators in Family Court. These Evaluators perform dual roles by interviewing the parents and then by following up with home visitations.

She thought that fees are exorbitant and they are then passed on to the parents, who cannot afford them, especially after the costs of maintaining two households and paying lawyers and other divorce-related expenses. These expenses can also multiply when the Evaluator can insist on an opened-ended number of sessions. The potential for abuse exists when fees have no ceiling, or the numbers of sessions have no end point. Since the Evaluators are not court employees, Family Court is not aware of the fees that are incurred during this process.

Dr. Talley thought this could be remedied by putting the Evaluator's salary under the auspices of the Court. If the Court had the responsibility of paying the evaluator, the parents would not be at the mercy of the evaluator's high fees. The next concern that she addressed was the evaluator's dual role of interviewing parents and then the follow-up home visitations. She thought it would help if the court were to hire a third party social worker to do some of the oversight of parent visitation when the children are with the non-custodial parent. The report of this interview by the Social Worker should be made to the Judge and not back to the Court Evaluator.

Her last opinion was that there is rubber stamping of joint custody agreements when disparate parenting skills exist. She stated that the national agenda is to put both parents in the lives of the children regardless of one of the parent's parenting skills. A parent may agree to Joint Custody only to avoid paying child support. While in this parent's care the child does not receive real quality time when living with them.

Dr. Talley's remedy to this situation was that you should permit Open Court so anyone can listen.

Next on the agenda Senator Sorenson addressed pending legislation pertaining to Family Court. The following list is some of the bills discussed:

H.B. 151 (this bill just updates the PFA law to agree with Federal Law changes)

H.B. 130 (creates a separate crime, with enhanced penalties, for sex offenders who commit sexual offenses against children and it has fiscal note attached to it),

S.B. 90, (adds a representative from the Domestic Violence Coordinating Council to the Child Protection Accountability Commission),

H.B. 75 (this bill was signed on 5/23/2007 and it clarifies that minors can only marry after receiving an order issued by a Judge of the Family Court)

H.B. 57 (this bill establishes #211 as the Information Helpline)

H.B. 53 – (this bill will remove the word “Associate” in referring to Judges in Superior Court and Family Court – this is the 2nd leg of a Constitutional Amendment)

H.B. 130 – (this bill expands the definition of sexual offenses in the De. Code to include advancing or profiting from child prostitution). **The Family Law Commission decided to support this bill.**

H.B. 48 (this bill would require separate filings for child support, custody and visitation requests when filing for divorce). This will help streamline cases in the Courts, and it was decided that the FLC would also voice its support for this bill.

H.B. 46 (this bill addresses the publication requirements for guardianship of a child to bring the requirements in conformity with the publication requirement of other filings in Family Court). This is being introduced for the purpose of saving money for those involved.

S. B. 75 (this bill would establish a separate fund to provide supplemental funding for court security personnel, equipment, and training based on a plan submitted by the Chief Justice. Monies for this Fund shall come from court security assessments imposed as a part of court costs for civil initial filings, criminal, and traffic filings) **It was decided that the FLC needed to support this bill to establish a fund for court security, since there is none at present.**

Under new business, Senator Sorenson appointed the following members to be on the Planning Meeting of the Family Law Commission to decide on an Agenda for the 2008 session of the FLC: Harry Gordon, Harriet Ainbinder, and James Morning.

Senator Sorenson then asked for public comments. Raetta McCall said that she only had one request and that was that she be informed when the next meeting of the Open/Closed Court meeting will be held. She was assured that she and others would be notified.

The Chair then recognized Herman Row. Mr. Row again addressed PFA orders which are mostly issued to women. He said that this means that the fathers and their children have become victims of a program that offers protection for only one sex. He said that everyone needs to be aware that women can and are as violent as men in domestic relationships. There are many studies that substantiate this when one searches the internet.

Senator Sorenson recognized Douglas E. Thompson who was a first time attendee to the Family Law Commission. He said he found everything in this meeting to be informative and of interest to him. He has a child from a previous relationship and is hoping to do everything that is right for this child, but finds the Court is not always responsive to his present situation, nor are they willing to make any compromises.

Senator Sorenson then announced that this was the last meeting of the year. Meetings of the Family Law Commission will not begin again until January 2008, and as soon as the schedule is decided upon it will be posted on the FLC website. The meeting was adjourned at noon, Thursday, June 14th, 2007.

Respectfully submitted,

Jean C. Ardis, Secretary
Family Law Commission