

FAMILY LAW COMMISSION MINUTES

JUNE 19, 2008

The Family Law Commission met in the Senate Hearing Room in Legislative Hall on Thursday, June 19, 2008 at 9:30 a.m. The following members were present: Senator Liane Sorenson, Chair of FLC; Diane Metzger, Family Physician; Harriet Ainbinder; Psychologist; William Walls, Judge of Family Court; Harry Gordon, New Castle County; James Morning, Kent County; Curtis Bounds, Esq.; Peg Smith, New Castle County; and Lynn Kokjohn, Sussex County. Also in attendance was Jody Huber, our liaison from Family Court, and Drew Slater from the Senate.

Senator Sorenson then asked if there were any additions or corrections to the May 19th minutes. Harry Gordon asked to have a statement clarified in the minutes. He asked if the whole Self-Help Center had been closed. Senator Sorenson replied that it only referred to the Call Center. The minutes were then approved as reported.

Senator Sorenson then introduced our first speaker for this morning and she was Dana Sawyer who is the Administrator of the Delaware Children's Department Office of Prevention and Early Intervention, or OPEI. Accompanying her were Taneisha Jabbar-Bey who manages the data around the Separation and Divorce and Parenting Education Program and Miriam Cruz who actually manages the program. Dana said that she had been requested to come and give the Commission an overview of their program.

In July of 1996 Delaware passed S.B. 288 which said basically that any parent who had children up to the age of 17 and were going through a divorce must go through a Parent Education Class. The law states that there must be 4 hours of instruction, and their agency is the only one that can certify this.

Dana said she would share with everyone what they have done over the past 12 years. They began providing this service in December of 1996, and it is an unfunded mandate for them. Because of this they have experienced many challenges. Their curriculum is actually 6 hours long, and if there is domestic violence in the relationship it is 8 hours long. They have accommodations for the hearing and visually impaired.

Their goals are two-fold. They want to educate the parents about the effects of separating or divorce on their children. The goal is to help both parties minimize the harmful effects on their children. They do not have a specified curriculum, but they do have very clear core components that each provider must establish in their curriculum. Each provider is permitted to charge up to \$100 for the service, and the participants themselves must pay for this program; because it is court-ordered and it is an unfunded mandate for their Department. They do require that each provider have a sliding fee scale, so that the ones who are unable to pay the full amount are able to go at a reduced fee and even some are permitted to attend free of charge.

Dana said that all providers are reviewed and rated, and they are re-certified every three years. She stated that as of January of 2008 the children are no longer mandated to attend these classes as they had been for the last 11 or 12 years. They manage the adult component of Separating and Divorce Parent Education for the State. The next re-certification will take place in 2010, and this is a very rigorous certification process. The provider must establish their proposal and inform them what the curriculum will cover. They have to meet all the CORE education guidelines and the criteria that have been established. They have 22 providers statewide at this time, and Dana passed out a list of the providers for all 3 counties. They are most interested in obtaining more providers who could specialize in domestic violence, and more Hispanic provider's downstate. They continually recruit for these providers.

In looking at the enrollment and certification information, it shows that 89% of the participants that were in enrolled from January 1, 2005 until December 31, 2007 all received certification. Dana stated that a petitioner has to provide the certification that they have taken the class, before the court can schedule a hearing.

In regard to the age of participants, 40% of the participants are between the age of 30 and 39, and 27% are between the ages of 40 and 49, and 20% between 20 and 25. She reasoned that perhaps the older you are the less likely you are to separate or divorce, or your children are over the age of 17.

In regard to gender data, she said they noticed that more females are petitioners in custody and visitation matters, and more males are respondents. Another interesting thing is that more females are seeking custody and more males are seeking visitation. As to the number years married, it seems to peak at 7 to 10 years married. She stated that 64% of the participants said they had been court-ordered to attend. Jody Huber said that sometimes this is overlooked, because the petitioner or respondent are not clear that this is actually a court order. Another thing that Dana said they have learned is that 80% of their participants are not taking advantage of other supportive services and programs in their community during their transition.

Dana advised that they do pre-testing when they come to the program and then the person is given a pro-test when they are finished and all of the tests are given in Spanish. She said that they have found the issues that participants are most concerned about are the ones, they are happy to say, the classes address. The thing that the participants are most concerned about is their family well-being. They are very concerned about co-parenting – how are they going to maintain this relationship with their ex-partner when they are no longer living together – how can they communicate more effectively so our children remain healthy and stable? They are also concerned about their child/children's well-being

The participants are greatly concerned about the emotions and behaviors of their child, along with their living arrangements after the divorce. They also were worried about legal issues and how to deal with stress and how to manage it. According to the

pre-test data there was little concern about substance abuse. Dana said she feels that their curriculum does a good job in addressing all the participant's concerns.

Dana said they were very pleased to learn that those that took the course felt they were able to talk more easily with their children about the divorce or separation, and they also felt that their level of understanding about the reactions of their children and what they could do to intervene early if they see signs of trouble. They focus on that also.

Dana stated that the majority of the people coming out of the program say – “This was wonderful – everybody should have to do that!” They find that they get very few who feel that this was totally useless.

Lynn Kokjohn suggested another thing that would be very informative in regard to the gender data would be to focus on the father's role also. Dana felt that this was something worth looking into. Harriet Ainbinder questioned whether they ever look at the people who fall into the *no change or decrease group* and kind of randomly call and say that we noticed that you did not think the course was very beneficial, and we were wondering what you thought was wrong with it. Harriet said it could be thought of as an *exit interview*. Dana replied that the pre and posts are anonymous, but they do have a section saying that if you would like to be contacted, please provide us with the information.

James Morning questioned whether there were many male minority instructors. Both Jody Huber and Dana Sawyer replied that not only do they not have male minority instructors, but they do not have many male instructors. Jody said this was a problem nationwide, because this field is mostly populated by females.

Harriet questioned whether over the course of 3 years have they ever considered sending in volunteers to observe what is going on in the classes: are they addressing all the criteria that you have set up? Dana replied that they do not monitor, but they do site visits. Anyone would be welcome to register, pay the fee, and take the class. Dana said she would really be glad to have any feedback regarding their experience. Roger Hall mentioned again that he felt that the expression *visitation* should be referred to as *parenting time*.

Dana continued by saying that it was felt that the program has many positive outcomes. The participants have said they are able to communicate more effectively both with their partner and their children. They find that they have increased parental sensitivity to their needs and feelings.

In regard to participant satisfaction they have found that 93% agreed that the content of the course was presented in an understandable and organized manner and relevant to their needs and offered enough time for discussion. Dana said that the one of the things that everyone agreed on was that the experience of sitting around with people who are going through the same thing helped them by gaining knowledge, experience, and the camaraderie surrounding that. The participants say that they feel that the overall

program is very worthwhile, and Dana said she felt that could be attributed to the fact that they really do have excellent providers.

In conclusion, they continue to actively recruit for additional sites for their domestic violence component. They are also continually recruiting for bilingual instructors – downstate especially. Dana also stated that they are very interested in doing more with the military, but have not been successful so far. As to quality assurance they do have site visits and monitor the classes as often as they are able.

Senator Sorenson stated that members of the Commission have had an ongoing concern as to the long term results of these courses. It has been asked in meetings several times if the programs were evaluated, and if you received feedback regarding the value of the courses. There has been a great deal of interest in obtaining long-term results. Dana responded that for the first time, she will be conducting a formal evaluation of their survey and will look at their results. Senator Sorenson questioned whether they will be going back to previous years to question participants. The contract has not been finalized as yet, and Dana said she thought that this could be a good idea to include this information too. This concluded Dana Sawyer's presentation. On behalf of the members of the FLC, Senator Sorenson expressed everyone's appreciation for Dana's and the members of her staff for their attendance that morning.

Senator Sorenson then introduced our next speaker for today's meeting, Chief Judge Chandlee Johnson Kuhn of Family Court. Chief Judge Kuhn began by thanking everyone for the opportunity to come again to bring the Commission up-to-date on what is happening in Family Court in light of the budget constraints at this time. She said she was so pleased on what they are doing in regard to child welfare. She feels that they are very blessed with the people they work with. They were able to bring in Trish Hearn two years ago when we were doing the Court Improvement Project Budget. As many of you know, because of the Adoption Safe Family Act there have been many, many Federal changes that require them to do business differently and to look at children, safety, and permanency more significantly. When they brought Trish in who is working with Andrea Schaeffer, Director of Special Services in Family Court, they started to get results. We have Judge Millman who is the head CIP Judge along with Judge Pyott in Kent County and Judges Hitch and Coonin in New Castle County; they are all working together. The Child Welfare Judges meet monthly, and they meet with the Director of Family Services. They are not just coordinating between their selves, but also the KIDS Department. Chief Judge Kuhn said they have recently hired a data collection person, Kathy Richards, and she said she was amazed with the statistics that Kathy is putting together. They are looking at their timeliness issue, and whether they are meeting the Federal guidelines and if not where aren't they meeting the guidelines!

Chief Judge Kuhn noted that they now have the ability to get data that they never had the opportunity to obtain before, but today they do not have the resources or the up-to-date equipment to do this. She said that this is something that Judge Cooch, along with other Judges, are doing to determine what data is needed to track the CIP cases and

how to track them.. With the cases that are out of timeframe, the Court needs to find out what is causing it. They had to obtain a Federal grant to hire a person to do this.

Chief Judge Kuhn and Judge Hitch both are on the Child Protection Accountability Commission and attend those meetings. There is an APPLA (Alternative Permanent Planned Living Arrangement) workshop and Judge Crowell sits on that. There is also a Multi-disciplinary workgroup on ICPC (Interstate Compact to the Placement of Children) This is actually new Federal legislation and we are working together in efforts to leverage for Federal resources for training and education. She mentioned how pleased she was in the way that the KIDS Department and Family Court have come together and gained a mutual understanding of each other.

Chief Judge Kuhn continued by addressing the Pro Se Resource Center and she stated that she thinks that they are doing some amazing things. In 2007 they were able to serve over 50,000 litigants. The following packets are now available: **Divorce and annulment, visitation, custody, custody modification, guardianship, permanent guardianship, termination of parental rights, and adoption.** These packets enable the litigants to better present their case to Family Court. The more efficient the case is when it goes into the courtroom; the more efficient the case will be handled. Pro Bono Desk References are available to attorneys appointed by the Court. She announced that there will be a training conference held in September 2008.

Another item that is available now on the Website and in the Resource Center is the FAQ's (frequently asked questions). These answers are proving to be invaluable, since they address questions that many of the litigants need information about. Here is a list –

- Adoption
 - Arbitration
 - Change of address
 - Consent to termination of parental rights
 - Child placement agencies
 - Custody
 - Custody modification
 - Electronic copies of court hearings
 - Foreign adoption
 - arraignments
 - guardianship
 - permanent guardianship
 - protection from abuse
 - registration of foreign custody orders
 - subpoenas
 - termination of parental rights
 - visitation
 - review of commissioners orders/
Rearguments
- Child Support Packet will be available August 1st
 - Pro Se seminars began on June 6th

Chief Judge Kuhn asked Jody Huber to talk about the Child Support packet. Jody said that Child Support makes up about 1/3 of the work that is done by Family Court. This is an area that a lot of people have many questions and one that they need a great deal of assistance with. She hopes that the design of this packet will be easy reference for someone to follow pertaining to their specific concerns. Jody stated that they continually go over the forms when they are submitted to the Court. If they find an error or an area

that might be confusing they make changes so it can be more easily understood. Their goal is to make everything easier for the person to file their papers in court.

Chief Judge Kuhn continued on addressing the subject of the Budget. She stated that they were fortunate to obtain 3 Audio Monitors in New Castle County. Along with the monitors they have been able to install different pieces of sound equipment in the court-rooms which have resulted in better recordings. She then addressed the Call Center which has been temporarily disbanded due to budgetary constraints. It is their hope that the Call Center will be up and running again which will be a huge benefit to the Court.

James Morning asked why the Court could not use senior volunteers at the Call Center. He said this has worked in other areas, and why not try it here. Chief Judge Kuhn was really excited about this idea and thought it was something worth pursuing. James asked again about having Family Court hours one evening a week, and Chief Judge Kuhn said they have not found a way for this to be done at this time. One of the most important problems is court security, and they do not have the resources to pay for this. She said that there have been Commissioners who have said they would have no problem doing this, but the main problem is providing security.

The Chief Judge then addressed the CASA (Court Appointed Special Advocate) Program. They recently launched a Statewide recruitment campaign. As a result of the program they now have double the new volunteers than they had in the previous 8 months. Currently CASA has over 250 volunteers serving over 560 children. They have been able to diversify their volunteers to now include males, full-time and younger individuals. This was accomplished by offering evening training and frequent training sessions. Our CASA volunteers give over 3,000 hours on a monthly basis by speaking up for the children they serve.

Chief Judge Kuhn then discussed several pieces of legislation.

S. B. 260 This Act would increase the time period for filing an appeal of a Commissioner's final order to a Judge from 10 days to 30 days. This bill was signed on June 30, 2008.

S. B. 232 – This Act would authorize the Family Court to conduct national criminal background checks in civil proceedings involving minor children. This bill has been assigned to the Judiciary Committee.

S.B. 289 – This Bill will honor and pay tribute to former Chief Judge Robert D. Thompson, Jr. of the Family Court by naming the Sussex County Family Courthouse after him. This bill has been passed and signed by the Governor July 17, 2008.

The Chief Judge mentioned that there is a new Mental Health Court pilot program that was funded by a grant. It began this year for juveniles in the delinquency track who had mental health concerns. The calendar for this program has been running at a steady pace for work with children's mental health. They are working with the Public

Defender's Office in the Attorney General's Office. This is about a year old and it is a great project.

Another project that Family Court has implemented in Sussex County is a walk-up support pilot program. This is a program where litigants attend mediation and, if unsuccessful, attend a Child Support hearing with a Commissioner that same day.

Chief Judge Kuhn stated that the Court has adopted Civil Rule 90.4, which allows a party to file a motion to the court asking for an electronic copy of the audio record of the hearing. She said that this can be credited in a large part to the work of the Family Law Commission who had repeatedly requested that this service be available to litigants. So far, they have processed 64 requests in New Castle County, 15 in Kent County and 38 in Sussex County for a total of 117. She said that the Commission is doing amazing work, because they are able to address the challenges that the community has, and Family Court has, and bring them together.

In regard to questions that have come from the FLC, the Chief Judge said that they appreciate the hardship and difficulty that many of the litigants have trying to appear in Court during their workday. They have considered both options – one in which the Court the Court could extend their hours into the evening, and the other one –if the Court could be open in the evening for Court proceedings. Both of these options have been discussed and even though the staff and hearing officers might be amendable, the Court does not have the necessary funds to enact either of these options.

Another question that came up was there any minority male commissioners, and Judges? At the present time, Family Court includes one male minority Judge, and he is Judge William Chapman. Bernard Pepukayi has recently been appointed to the position of Family Court Commissioner and awaits Senate confirmation at this time. Judge Arlene Coppadge is another minority Judge. For your information altogether Family Court is comprised of 17 judges, (6 are women) and 16 Commissioners (10 of whom are women). The selection of Judges and Commissioners is conducted by the Judicial Nominating Committee, and ultimately, appointed by the Governor.

At present, the Court currently employs only 1 male minority mediator. They also employ 10 minority mediators out of their total of 25. She stated that on a statewide basis, 40% of the Family Court mediators are persons of color. Actually, far fewer men apply for the position of mediator than women.

In response to the Chief Judge asking if there were any questions or comments, Peg Smith said that she has been a CASA for 15 years and there is no question that the pendulum has swung from reunification to permanency very quickly. She is concerned sometimes that when she is representing the child and feeling that the child should be with the parents there is not enough time given to the parents to do what is required of them.

Raetta McCall brought up the situation regarding a child who needs to go to a doctor and one parent agrees and the other parent disagrees. There should be someone who could come in and say that the child needs to go to solve this situation. Chief Judge Kuhn said that the CASA program is truly for children who are in the Division of Family Services care. It is nationally funded with a national grant. These are not just individuals who volunteer for the court to do whatever we need. Raetta said that the children of divorce are almost as bad off, so maybe we need to make up another organization to help them. One of the Judge's hardest decisions was when she had to make the decision to only appoint a CASA to a DFS case. Raetta also mentioned that there should be consequences for a parent who does not bring the child back from visitation when they should. Chief Judge Kuhn understood her concern, but she stated that the Court does not have enough personnel to hear Contempt of Court charges on a timely basis. The Commissioner's dockets are full now, and she did not know with present circumstances how they could address this problems as soon as it would be needed.

Raetta took the opportunity to commend Chief Judge Kuhn for her work since she was appointed Chief Judge of Family Court. She stated that she has seen the difference – she feels that Chief Judge Kuhn is more open and even when she is unable to do something she listens and does not forget the issue. Raetta said she truly appreciates what the Chief Judge has accomplished since she was appointed.

After responding to several questions poised by members of the public, Senator Sorenson thanked Chief Judge Chandlee Johnson Kuhn for coming to our meeting this morning. As always it is a pleasure to hear from the Chief Judge. Liane also took this opportunity to express the Commission's appreciation of having Jody Huber from Family Court as our liaison, and to say what a tremendous help it has been to have Jody give her input on many of the issues that arise.

Next on the agenda was pending legislation. The first one under new legislation was H. B. 369. This bill deals with domestic violence and pets. The Court may order that the petitioner be granted the exclusive care, custody, or control of any animal owned, possessed, leased, kept, or held by either petitioner, or the respondent or a minor child residing in the residence or household of either the petitioner or the respondent. The Court may further order the respondent to stay away from the animal and forbidding the respondent from taking molesting, attacking, harming, etc. or disposing of the animal. Someone wondered if this was necessary, but Senator Sorenson stated that there is a belief that a person who is harmful or abusive to a pet, especially when it is a child's pet, may go on to be violent towards people. Curtis Bounds stated that he thought this might not be necessary, since the statute permits the court to award personal property to the petitioner and a pet is personal property. After a thorough discussion the Commission was of the opinion that this was an unnecessary piece of legislation

The next piece of legislation was HR 64 – Creating a Sex Offender Interfacing Task Force. Senator Sorenson said it sounds like it will interface with national organizations. The Task Force is authorized to consult with and obtain the advice of various experts and national organizations having expertise in this area. Senator

Sorenson said she thought this was part of the Adam's Walsh law. This addresses being able to interface with the Division of Motor Vehicles, Dept. of Corrections, Delaware State Police, and Family Court. It sets up a Task Force to look at a Sex Offender being able to get a valid driver's license. This would pertain to adults. One of the concerns regards sex offenders who change their address, but do not change their driver's license.

The next one is H.B. 442 – This is an Act to Amend Titles 11 and 16 of the Delaware Code Relating to Parents and Children. This amendment ensures a Custody Order entered or modified as a result of a deployment will be interim in nature until the return of an armed forces military member or the termination of their service.

Next on the agenda was SB 313. This Act Amends Title 11 and 16 of the Delaware Code Relating to the Criminally Mentally Ill. What this bill says is that you cannot put someone that is guilty, but mentally ill, under the age of 18 into the Delaware Psychiatric Center. You have to find another place for them.

The last new piece of legislation is S.B. 296 – This Act is To Amend Title 11 of the Delaware Code Relating to Crimes Against Children. This bill says that currently abandonment of a child less than 16 years of age is a misdemeanor and abandonment of a child 6 years of age and older is not a crime. This would make all cases of child abandonment a felony, with children under 14 a Class E felony and those over 14 a Class F felony. Senator Sorenson wondered if this bill takes into account the Safe Arms for Babies bill that was enacted several years ago. That bill allows someone to drop off a baby at a hospital with no questions asked.

Anthony B. Wright asked to be recognized at this time. He had written a letter to Senator Sorenson on June 2, 2008. His letter pertained to H.B. 100 which was signed into law July 12, 2007 by Governor Minner. This bill provides for GPS tracking for Tier III Sex Offenders while they are on probation being supervised by the Department of Corrections. He said that part of his concern was first of all if the child is wearing an anklet, or GPS device, and the child is still active this can stigmatizes the child. He questioned the use of this device when the goal is to rehabilitate the children – so how can they participate in sports when this is very visible, and is almost impossible to conceal. He also mentioned that there is an \$8.00 a day fee for the cost of the child being under this supervision. This is another financial burden on the parents. He said he has a problem with one person (a Family Court Judge) having the final decision that will affect the youth into their adult life. For instance a 14 year old convicted of attempted rape will be posted on the Sex Offender Website for 15 years to the rest of his life. Mr. Wright said he thinks that Family Court's authority should cease at age 18. In that way the records could be sealed and the child will be able to pursue a better adulthood and leave their mistakes behind.

Senator Sorenson said that it has been found that there are many questions about our sex offender registries. If you review all the restrictions on where they may live – such as not being able to live near a shopping center, a church, a school, etc. it has been

found that there are some jurisdictions where a person will not be able to live – such as Manhattan. Then there are questions where someone is on the list for statutory rape (for instance, a 19 year old has sex with a 17 year old) and they end up getting married and the person is stigmatized as a sex offender. Senator Sorenson stated there is a great deal of talk around the country about redoing the Sex Offender Registry to truly reflect the people who are threats to society.

James Morning followed up on Judge Wall's suggestion that maybe the FLC could meet in Executive Session to be able to investigate more fully into some of the concerns addressed by members of the public at the Public Meeting. Also Harriet Ainbinder said she thought they should also talk about the Sex Offender issue, because there is a difference between the juvenile sex offender and the adult sex offender, and there is a difference in what kind of sex offense that is committed. Judge Walls thought that this could give the members of the FLC better insight into some of the problems that have been brought up at our meetings, while at the same protecting the privacy rights of the people concerned.

Senator Sorenson thanked everyone for coming and reminding them that this is our last Commission meeting of the year. She said there will be a planning meeting sometime in November or December to discuss the Annual Public Meeting in January 2009 and to address the speakers/topics that will be on the agenda for 2009. The meeting was adjourned at 12:20 p.m.

Respectfully submitted,

Jean C. Ardis, Secretary
Family Law Commission