



## **Delaware Family Law Commission Annual Report 2007**

The Family Law Commission, which was established on June 14, 1984, to study and evaluate the domestic relations laws of the State of Delaware as well as to study and evaluate the rules and procedures of the Family Court of the State of Delaware. The Chair of the Commission is Senator Liane Sorenson and the FLC meets once a month when the legislature is in session. This year's meetings were held on January 10<sup>th</sup>, February 8<sup>th</sup>, March 8<sup>th</sup>, April 5<sup>th</sup>, May 10<sup>th</sup>, and June 14<sup>th</sup>.

### **Members of the Delaware Family Law Commission**

The Honorable Liane Sorenson, Family Law Commission Chair.

A. Judson Bennett	Prof. Dana Harrington-Conner
The Honorable Harris B. McDowell, III	Mrs. Allene Poore
Mr. Harry E. Gordon, Jr.	Mrs. Lynn M.A. Kokjohn
Dr. Julia Pillsbury, D.O.	The Honorable Pam Maier
Dr. Harriett Ainbinder	Mrs. Katherine M. Jester
Diana Metzger	The Honorable Teresa L. Schooley
Mr. James Morning	Jody J. Huber, Esquire
Curtis Bounds, Esquire	Peg Smith
The Honorable William J. Walls, Jr.	Jean C. Ardis, Secretary

## **2007 Meetings of the Family Law Commission**

**January 10.** Senator Sorenson convened the annual Public Hearing from which to draw the year's discussion topics. Some of the main points raised in testimony from the meeting were:

- An open/transparent Family Court.
- Need for additional electronic court reporters.
- Availability of CD transcripts of Court proceedings.
- Qualifications and practices of child custody evaluators.
- Fees for Parent Coordinators.
- Changing the Hearing to a different night of the week.

These topics then became the focus of the 2007 year for the Family Law Commission.

**Thursday, February 8, 2007**, the Family Law Commission had their second meeting of the year at Legislative Hall in the 2<sup>nd</sup> Floor Senate Hearing Room. The purpose of this meeting was to have a discussion regarding the Family Court Training and Tour, a summary of the Melson Formula Task Force Report, and discussion of upcoming Legislation the Family Law Commission may want to endorse.

**Thursday, March 8, 2007**, the Family Law Commission met in Legislative Hall to discuss the January hearing and a list of concerns presented by Drew Slater, Assistant to the FLC.

**Thursday, April 5<sup>th</sup> 2007**, Tanya Culley, Child Advocate for the State of Delaware came to speak to the commission. The Office of the Child Advocate is charged with many statutory duties, which Ms. Culley broke down into three core categories. First, is staffing the Child Protection Accountability Commission. The second function is looking at the policies and procedures within the Child Protection System to make recommendations for change for Delaware's Abused and Neglected Children.

The last function is that they are statutorily mandated to provide legal representation to children who are abused, neglected, dependant, or are at risk in the State of Delaware. She stated that they currently represent 726 children and have about 250 volunteer

Mr. Gordon gave his report on the opened and closed court. Lastly, Senator Sorenson called on Dr. Harriet Ainbinder to give her report on Custody Evaluators. She said that they have developed a Task Force for Custody Evaluators to determine specific qualifications for custody evaluators.

**Thursday, May 10<sup>th</sup> 2007**, Chief Judge of Family Court Chandlee Johnson Kuhn came to speak to the commission. Senator Sorenson wrote to the Chief Judge in advance of the meeting and asked for her to address the following issues: making Family Court more user friendly, need for Family Court reporters, the need for CD transcripts of cases, her views on open/closed court proceedings, and the possibility of opening the Court one evening a week.

The first point that Chief Judge Kuhn made was the exciting new Pilot Calling Center initiated in New Castle County. The agents are able to field calls in every area except for divorce. She also stated that they have fielded over 10,000 calls since January and average 200 calls a day and 3,000 calls a month. The Chief Judge also stated that this has helped improve the timeliness of case processing. Chief Judge Kuhn expressed her hope that when they get new court houses in Kent and Sussex County it is her hope to establish a state-wide call-in-center in Kent County. Judge Kuhn also talked about the Pro Se Center, which served 50,000 litigants in 2006.

Next, Judge Kuhn addressed Family Court's budget request. She stated that one of the issues has been the transcripts are not of the quality that they should be. They have requested 30 audio monitors (electronic court reporters). The Family Law Commission wrote a letter to the Joint Finance Committee endorsing the budget request.

Another concern that Judge Kuhn addressed was the timeliness of cases. She said that there are numerous reasons for perceived delays and sometimes relay delays including scheduling, motions, briefings, continuances, and expert witnesses, and also service of process cause the delays because the time does not start until the last absolute item is filed and even then the judge might ask for a Post Trial Briefing.

The next important issue addressed was the open versus closed court issue. Judge Kuhn said that the Family Court has issued a Public Access Policy which replaces the Administrative Directive 98.02. The Public Access Policy addresses public access to court proceedings, court record, and administrative records. The Family Court continues to treat cases as open or closed pursuant to statute and court rules. The court has made a conscious decision to keep PFA's open, based upon the fact that they have been open for so long, the same applies to child support. Whether or not they should be closed is really a legislative decision, and should the legislators tell them to do something different Family Court would abide by that.

Lastly, Judge Kuhn mentioned the possibility of considering extending the court's hours in the evening. While it is not currently feasible, Judge Kuhn acknowledged that this is an issue that they will have to grapple with for a long time.

**Thursday, June 14<sup>th</sup>, 2007**, the Family Law Commission met for the last time this session. Senator Sorenson called upon Harry Gordon to give a report on open versus closed Family Court. Mr. Gordon said he thought that it was clear by the new directive what the Family Court considers as open and closed cases. He also stated that they will meet again on this project in the near future.

The following guests gave their views on the issue of opening Family Court:

1) Gerry Street, Esq. from the Delaware Bar Association what his stance was. He said that in his opinion what mattered most was the children and making sure they do not cause psychological damage to the children. He said that he feels that much of the information should not be available for anyone but the parties involved and that by

opening up the courts there may be the possibility that it would take longer for a case to be decided and that the costs could be increased.

2) Debbie Gottschalk from the Community Legal Aid Society, Inc. said that in regards to PFA cases an advocate for the victim, especially elderly victims, should be allowed to be present in the courtroom for support and reassurance.

3) Suzanne I. Seubert, Esq. from the Delaware State Bar Association. Ms. Seubert said she supported the opinion expressed by Ms. Gottshalk of allowing an elderly petitioner in a PFA hearing to have an advocate with them in the courtroom. Ms. Seubert said that in general Family Court hearings should be closed to the public.

4) Paulette Sullivan Moore, Esq., a member of the Family Law Section of the Delaware State Bar Association who stated that it was very important to have an advocate in attendance in a hearing for a PFA in Family Court.

5) Pat Dailey Lewis, Deputy Attorney General, from the Department of Justice who said that she thought the system should be kept as it is now. Family Court courtrooms are small and she thought that safety should be also be considered. When there are children in these cases none of these proceedings should be made public.

### **Legislation Pertaining to Family Court.**

At each regular meeting of the FCL members discussed pending legislation related to Family Court. A complete list is attached. The following bills were endorsed by the Family Law Commission:

**HB 48** (relates to certain specific requested relief in divorce actions.

**HB 53** (directly deals with Family Court. This the second leg of a Constitutional Amendment that would delete the surplus "Associate" in referring to Judges of Superior Court and Family Court. The Judges would no longer be called Associate Judge, but just Judge.)

**SB 75 (Signed SS1 for SB 75)** Established a fund for Court Security

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

## Attachment A

### Legislation Pertaining to Family Court.

#### Signed/Enacted

**HB 7** (An act to amend title 14 of the Delaware Code to establish the school bullying prevention act. Rep. Maier said regarding HB —7, Domestic Violence would be addressed in this Bill.)

**SB 29** (An act to amend title 10 of the Delaware Code by removing the statute of limitations for civil suits relating to child sexual abuse and adding related provisions regarding such suits.)

**HB 57.** (This bill would establishment 211 as an Information Helpline. It was felt this would be a good idea as many calls that come into 911 are not for emergency help, but rather from people that just need help. Several members felt this to be a good idea.)

**HB 53** (directly deals with Family Court. This the second leg of a Constitutional Amendment that would delete the surplus “Associate” in referring to Judges of Superior Court and Family Court. The Judges would no longer be called Associate Judge, but just Judge.)

**HB 48** (relates to certain specific requested relief in divorce actions. This would require separate filings for child support, custody and visitation requests when filing for divorce. This will facilitate the streamlining and more efficient management of these matters. Senator Sorenson wondered why it would be more efficient to separate them. Judge Walls replied that right now he explained that when it is included as part of another action the Court is not given the detailed information that they would receive when it was a separate petition. By separating them it also gives the court a more efficient way of being able to track the request. Jody Huber said that she suggests to pro se litigants that if they are filing for divorce and they wish to file for custody that when they are filed together they cannot act on the custody issue until the divorce is granted. Jody said it will be acted upon sooner. It was mentioned that the filing fee is still the same. Senator Sorenson asked if the FLC felt this was a bill that they would want to support. If so, she will send an e-mail to Representative Hudson who is the lead sponsor of this bill and advise her that the Commission has reviewed this bill and they support it. Harriet Ainbinder then asked if the Commission wouldn't want to support **HB 53** also. It was agreed that this was also a bill that the FLC would want to support.)

**HB 46** (an act to amend Delaware Code relating to guardianship of a child. This bill changes the publications requirement for guardianship of a child to bring the requirements in conformity with the publication requirement of other civil filings in Family Court. Jody Huber asked that the Commission to support this, since she is the person who drafted this bill. She said that this bill just changes the publication requirement for guardianship not permanent guardianship from three weeks to one week which cuts down on the costs of publication for litigants considerably.)

**HB 75** (This bill addresses the age of anyone wishing to marry and clarifies that anyone under the age of 18 years of age must get their parent's consent.)

**HB 90** (This bill adds a representative of the Domestic Violence Coordinating Council to the Child Protection Accountability Commission. This has already passed the House.)

**SB 26** (This act will provide for an enhanced Truancy Court under the Justice of the Peace Court. This act will enable the J.P. Court to have full authority to adjudicate contempt charges, including any rehabilitative measures or penalties that could be employed had they occurred in Family Court. It also will provide an opportunity for appeal to the Family Court should the juvenile be found guilty of a truancy-related contempt charge. According to Judge Walls this is supported by the Judiciary.)

**SB 50** (This act will amend Title 10 of the Delaware Code relating to Family Court's exclusive jurisdiction over Motor Vehicle Violations. This will give Family Court exclusive jurisdiction over minors who are charged with aggressive driving, driving after consumption of alcohol, and operating a bicycle on a roadway under the influence of alcohol or drugs.)

**SB 57** (This act amends the definition of parties considered protected under the domestic violence statute. Senator Sorenson said that what this does is reflect relationships that aren't currently covered such as dating relationships and same sex relationships. She said there are a significant number of people involved with partner violence that aren't covered now, so this will change the definition of the parties involved. This bill is part of the legislative agenda and is being proposed by the Domestic Violence Coordinating Council. Jody Huber stated that the Court is behind this legislation and that they are committed to providing protection to those individuals that would be in need of this protection. Jody said there is no civil relief for these individuals in any court. After a thorough discussion of this bill and how this would relate to an order for a PFA, Lynn Kokjohn said she thought the Commission would like to look into the bill further before giving their support to the bill. A copy of SB 57 was e-mailed to the members.)

**SB 60** (This bill addresses the Registration of Sex Offenders and community notification of Sex Offenders on probation, parole, conditional release, or release from confinement. Senator Sorenson said that what this bill is doing is amending Megan's law. She said she felt that what we are doing with this bill is modifying our state laws so it conforms to the 'Adam Walsh Act' a national act. A question arose regarding people who have been considered sex offenders in the past and who have served their sentence somewhere else, the public is questioning why they do not have to register. Senator Sorenson said that she is involved with a Criminal Justice group nationally and that is a huge problem. Some of the problems related to sex offenders are where they live and how you can notify the public of their location etc. She said we have laws in the State of Delaware, and other states have made laws regarding where the offenders cannot live such as near a church, a playground, a community center, or a school. This is creating a real problem, because it becomes a real issue – *where can they live?*)

**HB 130** (relating to Sexual Offenders and Sexual Offenses. This act expands the definition of child offenses in the Delaware Code includes advancing or profiting from child prostitution. It creates a separate fine for with enhanced penalties for sex offenders of sexual offenses with children.)

**SB 75 (Signed SS1 for SB 75)** (it addresses court security assessments and this is another bill that is now in Senate Finance. This bill states that no person shall be in fear of or at risk of physical harm in a Delaware court to assure that all State courts should

have access to the financial resources necessary to provide adequate court security at all times while the court's business is being conducted. This bill is in the Finance Committee due to the fiscal note attached to it. 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.**

**SB 90** (deals with sex offenders and the establishment of a Sex Offender Management Board. Senator Sorenson explained that this Board is an extremely important issue. There are numerous stipulations about where they can and cannot live, and how we monitor them. The Adam Walsh Act has just been passed which increases supervision and requires enhanced reporting – change of addresses, e-mail addresses, all of which helps in the tracking of these offenders. This Board would be set up as a part of Homeland Safety and Security with various agencies that deal with sex offenders. This was the conclusion of the new legislation.)

**HB 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.)

**SB 90** (adds a representative from the Domestic Violence Coordinating Council to the Child Protection Accountability Commission.)

**HB 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)

**HB 57** (this bill establishes #211 as the Information Helpline)

**HB 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.

### **Bills awaiting House Action**

**HB 106 (Now HS 1 for HB 106)** (This act is to encourage and enable the practice of Certified Professional midwives. Representative Maier is the sponsor of this bill, and she reported it was out of committee, and is now on the Ready List. This bill allows women of the State of Delaware to have the freedom to choose the manner, cost, type of birth attendant and setting for giving birth. Harry Gordon questioned how often this service is used, and Representative Maier said at least one birth a day, and the one midwife associated with Kent General said she might have 3 or 4 a day. They are used a great deal in the Amish and Mennonite Community.)

**H.B. 128** (deals with health care for families and children.)



**H.B. 151** (updates the PFA law to reflect recent Federal changes to remove outdated references to Sheriffs and Constables neither of which provide support to PFA respondents in the State of Delaware.)

**H.B. 152** (this act creates the Delaware Online Predator Act of 2007 with requirements for internet providers. She explained that this is the act that provides that if you should be the one repairing someone's computer and if you were to find pornography you need to report it.)

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

### **Bills awaiting Senate Action**

**HB 54** (it relates to Search and Seizure. This bill requires that a computer technical service provider who discovers child pornography on a computer being repaired notify the Delaware State Police or the local municipal police department which has jurisdiction.)

**SB 14** (This would be an act to amend the Delaware Code relating to compensation per innocent victims of crime. This Act will authorize the Violent Crimes Compensation Board to compensate property crime victims for their uninsured economic or pecuniary losses in an amount up to \$2,500 upon a showing of substantial economic hardship. Senator Sorenson asked the members if they had any thoughts on this bill. Harry Gordon questioned if we knew where it stood now regarding any compensation. It was decided that they would like to have more information about this bill before making any decisions about the Commission's support.)

**SB 55** (This bill gives one free birth certificate to the mothers of children born in Delaware.)

**SB 65** (This act sets up a tiered system for Child Care Quality and it rewards child care centers that have extra training etc.)

**H.B. 129** (deals with health care for families and children.)

**S.B. 71** (relates to the interstate contract regarding the placement of children. This bill allows Delaware to keep up-to-date with the other states that our laws agree with the other laws so that things run smoothly from one state to another.)

### **Stricken**

**HB 59** (This bill deals with sex offenders. This bill comprises of a risk assessment of a tier 2 or tier 3 sex offender shall be guilty of a Class G felony if he/she violates § 763 - §767 of Title 11.)