



## **Delaware Family Law Commission Annual Report 2009**

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 March 26<sup>th</sup>, April 9<sup>th</sup>, May 14<sup>th</sup>, and June 11<sup>th</sup>.

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

The Honorable Liane Sorenson, Family Law Commission Chair.

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| Senator Bruce Ennis              | Mr. James Morning                            |
| Representative Michael Barbieri  | Dr. Julia Pillsbury, D.O.                    |
| Representative Michael Ramone    | Peg Smith                                    |
| Dr. Harriet Ainbinder            | The Honorable William J. Walls, Jr.          |
| Curtis Bounds, Esquire           | Ms. Eileen Williams                          |
| Professor Dana Harrington-Conner | Mr. Harry E. Gordon, Jr.,<br>Honorary Member |
| Mrs. Lynn M.A. Kokjohn           | Jody Huber, Esquire c/o Family Court         |
| Ms. Suzanne Landon               | Jean C. Ardis, Secretary                     |
| Ms. WendyJean Matlack            | Katherine Jester                             |
| Dr. M. Diana Metzger             | Drew Slater, Assistant                       |

## **Summary of the Minutes from the 2009 Meetings**

**Thursday, March 26, 2009.** 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:

- Protection from abuse orders.
- False Allegations in child abuse.
- Law Enforcement, Harassment.
- Child Support Modifications.
- Family Court Transcripts.

These topics then became the focus of the 2009 year for the Family Law Commission.

**Thursday, April 9, 2009,** the Family Law Commission met in Legislative Hall to discuss the March hearing and a list of concerns presented by Drew Slater, Assistant to the Commission. Senator Sorenson asked Jody Huber to report on the new task force established by the Administrative Office of the Courts, entitled the Fairness for All Task Force. The task force has been given the task of studying perceptions on fairness to pro se litigants in all the courts, not just Family Court.

Senator Sorenson then introduced the speaker for our meeting, Vivian Rapposelli, the new Secretary for the Department of Services for Children, Youth, and their Families (DSCYF). Secretary Rapposelli was asked to talk about the Kids Department. Senator Sorenson stated that one of the issues that came up when we had the Public Hearing was that in divorce cases there are allegations made of abuse on both sides regarding abuse or neglect and how it is handled by the department. Secretary Rapposelli said that she was not sure if a judge makes his decision by the findings of the Child Advocate, or by the

department. She also said that if anyone believes that a child is being abused or neglected they have an obligation to call the department and have them investigate the matter. She did acknowledge that many times the abuse, or neglect, is unsubstantiated. Senator Sorenson responded and said that though the claims may be unsubstantiated that does not mean that they were not true, but that they have no evidence to prove it. Jody Huber mentioned that saying a child was abused is used as a sort of leveraging, which we have heard in the Public Hearings. Secretary Rapposelli also commented that a Protection from Abuse (PFA) is used many times as a pawn in a divorce case. She said that she thought that was something that was filtered out by the courts.

In the case of the Division of Family Services (DFS) if they investigate and can find nothing to substantiate the allegations then they do not have to become involved. If they do become involved they make sure they are doing it for all the right reasons to protect the child. Judge Walls said that in his experience with the Division of Services for Children, Youth & their Families (DSCYF) they have a lack of coordination of services within the three divisions. Senator Sorenson asked if caseworkers, or family service workers, have had training when dealing with children in a divorce as this was brought to light in the Public Hearing. Secretary Rapposelli responded that she knew that they did have training but did not know how specific it was. It was also determined that there should be training on how to interview a child.

**Thursday, May 14, 2009**, the Family Law Commission meeting was held in Legislative Hall and the speakers for this meeting were Secretary Schiliro, from the Department of Homeland Security, and Bridge Poulle, from the Domestic Violence Coordinating Council in Family Court. Senator Sorenson explained that since we have received several comments on how the police handle family law issues she thought that it would be appropriate to hear from Secretary Schiliro.

Secretary Schiliro brought with him Deputy Secretary for Public Safety, Elizabeth Olsen, who has had experience with PFA's when she was a private attorney, and Sergeant Randy Fisher, who is the Domestic Violence Coordinator

for the Delaware State Police. Secretary Schiliro began by stating that in 2007, the State Bureau of Identification reported that there were approximately 28,500 non-criminal and criminal domestic violence incidents. This reflected a 5.7% increase of domestic violence incidents in the State over the last 10 years. Approximately 16,000 of the 28,500 were criminal in nature and approximately 16%, or roughly 2,600, involved some type of injury. Secretary Schiliro stated that with the ability to obtain a Protection from Abuse Order (PFA) through a civil proceeding in Family Court it has become a valuable and necessary tool in keeping the abuser away from his or her victim. Because a PFA is a civil process it allows law enforcement to respond quickly in domestic violence situations and assist them in preventing a possible escalation of domestic violence abuse. He continued to say that of greater significance in the PFA order it requires the respondent to relinquish any weapons that they may have and where there is a threat of deadly force it allows the police officer to confiscate any weapons through a writ in Family Court. This was an issue that was brought up in the Public Hearing regarding someone being able to keep their weapons even though there was a PFA against them.

Mr. James Morning said that there have been abuses of a PFA and he asked what happens to a person who has made that false allegation. Lynn Kokjohn said that a member of the judiciary recently commented that “false allegations of sexual abuse have become the weapon of choice for mothers seeking to alienate their children’s father in custody cases.” We have heard a lot of testimony that PFA’s are being used as a weapon as opposed to being used for their intended purpose.

Secretary Schiliro responded by saying that he thought that this was a very valid concern. He said that one issue is that you have to separate the law enforcement function of this from the actual obtaining of the order. The order is obtained through the court where a person would state the facts and circumstances to the court. Once that order has been given there is a finding of abuse and once the police officer does show up it is one of fact. He said he did not feel it was up to the police to determine whether it had been appropriately

obtained or not. Judge Walls stated that once it becomes a PFA it basically is an issue for the court, and once the court determines when it should be issued the police officer is basically just serving or executing the writ or PFA. Judge Walls continued and said that anything that may transpire after that which may lead to false allegations is an issue that would lie squarely with the court or the Attorney General. He continued to state that it is not the police officer's function to determine if the PFA is warranted. When the petitioner who is asking for the PFA fails to show up in court there could be many reasons such as assuming they did not show up because they were using it as a pawn, or that they were lying to the court.

Jody Huber mentioned that if a person makes an allegation of abuse and then they come to Family Court for a PFA and the Court finds that there is not enough evidence to issue that protective order, it does not necessarily mean absolutely that it is a false allegation it just means that there was not enough evidence for the court to issue the order. Jody also mentioned that she thought it was very difficult to determine if an allegation is false or not. Senator Sorenson reminded everyone that in years past we have had the Attorney General come and speak to the commission about this issue and that they advised that the person should file a police report. Secretary Schiliro said that he was sure that there has been abuse of filing a false report. Many times he said abuse, or protection orders, are filed against police officers. When that happens it is determined where or not the police officer is permitted to carry a weapons. In that instance the job becomes an issue and many times this is a powerful tool for the complainant to use against someone and perhaps there may be other issues.

Lynn Kokjohn asked about the issue that a speaker at the Public Hearing had and who questioned why her abuser was able to obtain a permit to carry a gun. Secretary Schiliro said that when a permit is issued to Carry a Concealed Deadly Weapon the person must be free from any order of protection. When someone who has a license to carry a gun becomes the subject of a PFA order, then technically the permit to carry a gun is no longer valid. The PFA order will allow the police to seize that weapon, and often times the PFA order will state

that any and all weapons can be confiscated. In the case of the speaker Jody Huber said that she would have to look up the transcript to see if there was a PFA against the abuser. In the transcript from the Public Hearing the only mention of a PFA is that the speaker had tried to obtain a PFA but she did not state that she had a PFA. In this case, if she did not have a PFA then the perpetrator would be allowed to continue to carry a concealed weapon.

Bridget Poulle of Family Court was our next speaker and she said she would go through the process of obtaining a PFA. There are three ways to obtain a PFA: you can have a consent order, default hearing, or you have a hearing. If you have a consent PFA order the parties are consenting there is no finding of abuse. When you have a default hearing it means that the other person did not show up. Then you can go to the court for a hearing. There are two ways to confiscate weapons: you have to bring an injunction, which goes before a judge who determines whether they need to do a warrant and they need to go out and confiscate the weapon, or the guns can be ordered to be turned in to the Police Department. The petitioner has to acknowledge that the other person does have guns.

Ms. Poulle said that in her opinion there is not as much abuse of a PFA as people seem to believe. In their report of 2007, she said that of the 3,130 petitions processed, 1,695 PFA's were never even issued. The reasoning in those particular cases is that 52% of the petitioners failed to appear. She also noted that it is fairly common in a domestic violence issue that a victim may change their mind. In 37% of the cases that were dismissed, the petitioner voluntarily withdrew it before the hearing. She continued that 11% were dismissed following the hearing from a judicial officer. In the cases of homicides victims of the 78 cases in their report 68, or 78%, did not have a PFA. She stated that we should have confidence in the judicial officers who hear the case, in their having the ability to grant or deny a PFA order.

Jody Huber mentioned that the Administrative Office of the Courts offers a program on Mondays where you are able to consult with an attorney for 15 minutes on a Family Law matter. Senator Sorenson said that she talked to

someone in Community Legal Aid after an issue that was raised at the Public Hearing regarding the Community Legal Aid Society only helping the victims and not the accused. The response that she received was that they are woefully understaffed and part of their mission is to serve victims. Senator Sorenson continued that if they were financially able they would represent both victims. She said that the Legal Aid Society is not purposely trying to leave them without representation they are just very limited in the number of people that they are able to serve.

Dr. Ainbinder wanted to discuss an issue regarding the police. She said that we heard in the Public Hearing that a group of law enforcement officers have acted in ways that have caused the speaker to be afraid, or they have received threats made to them by an officer, none of which is made in a way that could be proven in court. She said that this is something wrong in the police department itself, and it is frightening to the person. Secretary Schiliro said that years ago the police protected one another. Another concern were the numerous speakers who made charges against specifically the Lewes Police Department, Rehoboth Beach Police Department, and Delaware State Police Troop 7. Secretary Schiliro said that he would not say that those things do not exist. He said that they do get those kinds of allegations on occasion, not a lot, probably not as much as it was years ago. He said that if anyone had a problem with the police, they could call his office. His telephone number is in the blue pages of the telephone book under Homeland Security, and that number is 302-744-2680.

Sergeant Fisher stated that if someone is having problems with any of these police agencies, they could call him directly. He said he would need a date, time, and the person's name. He could start pulling reports to see just what has been going on down there. If it is inappropriate, he will be able to forward it to refer it to the Troop's administration department, or to Internal Affairs and have them look at it. What the commission really wanted to do was to get back to the people and tell them what they should do in their situation. Sergeant Fisher said that the person could call him if it is domestic related. Sergeant Fisher is now a Lieutenant for Troop 4 and his phone number is 302-856-5850.

Senator Sorenson continued with the meeting and asked if there was any public comment for Secretary Schiliro. Ms. Kim Butcher addressed the commission with a concern regarding W-2's and her pay information being given to the non-custodial parent and then hearing that her information was mailed out all over the community. Jody Huber responded that they no longer collect social security numbers on petitions, except for child support. They have to for child support to process the information. Mr. Bounds stated that this would not be a law enforcement issue but rather a Division of Child Support Enforcement (DCSE) issue regarding how they should better protect the financial information. Dr. Harrington-Conner said that she felt this could be a training issue for the Bar Association because she could see this happening in a PFA situation as well.

**Thursday, June 11, 2009**, the Family Law Commission met in Legislation Hall and the speakers for the meeting were Brendan O'Neil, Public Defender for the State of Delaware, as well as Kerry Ferriter, the Head of the Psycho Forensic Department.

The Public Defender's office covers all of Delaware and they presently have 68 lawyers and 62 support staff. If you have a criminal case pending against you and the crime has the potential for jail; you will be entitled to a lawyer from the Public Defender's office, but only if you make less than \$400 per week. Senator Sorenson asked Mr. O'Neil why they only deal with misdemeanors in Family Court, and not with the felonies. Mr. O'Neill replied that the felonies go to the Court of Common Pleas and then on to Superior Court. Senator Sorenson also asked the question as to whether or not they handle domestic violence cases that are in the Court of Common Pleas and Superior Court. Mr. O'Neill said that they did and said that this is a big part of the practice both in Family Court and the Court of Common Pleas. Mr. O'Neill said that they do not handle civil cases as they are authorized by statute and the statute is the result of what the Constitutional requirement is.

Mr. O'Neill said that his lawyers resolve about 468 cases a year. He said that Family Court moves things along very quickly and that in Ne Castle County it

is about three weeks. He said that the cycle is much shorter than the Court of Common Pleas or Superior Court.

Ms. Ferriter, the head of the psycho forensic department, said that when someone gets arrested they come into their office and go through an intake process where they meet with an investigator. Their intake staff asks them questions such as have you ever been hospitalized for a mental health issue, are you on any medications, do you have a diagnoses, are you in treatment, do you have a substance abuse issues, and have you ever had a head injury. She said that they could not handle all of the amount of cases so they take the ones that are most severe. Ms. Ferriter also stated that the person that is assigned to Family Court handled about 165 clients, most of which are juveniles.

Mr. O'Neill said that if anyone had any questions for the Public Defender's office, his office number in Wilmington is 302-577-5160 and he said that they would be sure to return the call. Senator Sorenson thanked the speakers for sharing their responsibilities and how they relate to the Family Court.

Senator Sorenson continued the meeting and said that there was a sub-committee of the FLC that looked at a few cases of the people who had signed waivers to allow someone to look at their case file. She said that they did not find any broad systemic issue that was thought could be addressed by the Commission. As far as they could see, the Court had done due diligence with the cases, and the conclusion was that there was no need for them to review them any further.

The sub-committee did talk about having pro-se counselors available to help those with mental health issues. In the cases that were reviewed, the respondents were not happy with how the order turned out, but in looking for fraud and systemic issues they were unable to find anything. Ms. Kokjohn stated that it might be good to send a letter to those who had signed a waiver to inform them of their findings. However, it was determined that this was not needed as there may be an issue with privacy.

Senator Sorenson asked Jody Huber about making information available about where they could go and receive counseling, such as in a domestic

violence case, or maybe someone might need to be in anger management counseling. Jody responded that they do have some flyers and brochures available but that she would be glad to make the information available.

This was the conclusion of the meetings for the Family Law Commission for this year. It should be noted that there was no meeting in January or February due to the commission having some expiring appointments for the member of the Family Law Commission. Once this was settled the meetings began and were held per the annual report.

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

At each regular meeting of the FLC members discussed pending legislation related to Family Court.

For a full list of Legislation from this past year please contact Drew Slater, 302-744-4039.