



Delaware Family Law Commission Annual Report 2010

The Family Law Commission was established on June 14, 1984 to (1) conduct public hearings, (2) Invite written comments on family law from members of the public, (3) review and comment upon legislation affecting family law introduced in the General Assembly at the request of any member of the General Assembly, or on its own initiative and (4) public and disseminate information concerning family law to the public. The FLC meets in Legislative Hall once a month when the legislature is in session. This year's meetings were held on January 12th, February 18th, March 18th, April 22nd, May 13th and June 10th.

Members of the Delaware Family Law Commission

Lynn Kokjohn, Family Law Commission Chair

Senator Bruce Ennis

Senator Liane Sorenson

Representative Michael Barbieri

Representative Michael Ramone

Dr. Harriet Ainbinder

Curtis Bounds, Esquire

Professor Dana Harrington-Conner

Ms. Suzanne Landon – Britt Davis

Ms. WendyJean Matlack

Dr. M. Diana Metzger

Mr. James Morning

Dr. Julia Pillsbury, D.O.

Peg Smith

The Honorable William J. Walls, Jr.

Ms. Eileen Williams

Liaisons to the FLC:

Mr. Harry E. Gordon, Jr.,

Jody Huber, Esquire c/o Family Court

Jean C. Ardis, Secretary

Drew Slater, Assistant

Summary of the Minutes from the 2010 Meetings

Tuesday January 12, 2010: Annual Public Hearing

The main points raised in the public hearing were:

- Child Custody/Custody Evaluators
- Family Court Commissioners & Policies
- Child Support
- Paternity Fraud
- Protection from Abuse Orders/False Allegations

These topics became the focus of the 2010 year for the Family Law Commission. Speakers were invited to address these topics and were given the specific questions that had been raised at the public hearing. Some of the specific questions are noted in italic.

Thursday, February 18, 2010: Protection from Abuse/False Allegations & Family Court Commissioners Speaker: James McGiffin, Jr., Esquire-CLASI

The Family Law Commission met to discuss the January hearing and a list of concerns presented by Drew Slater, Assistant to the Commission. The commission first talked about the incident at the public hearing regarding audio and video and after some discussion moved on to the list of concerns.

Mr. McGiffin has been a member of the Community Legal Aid Society (CLASI) and was previously a Family Court Commissioner. At one time, he was responsible for hearing all of the PFA cases in Kent and Sussex County. The Family Law Commission was able to ask Mr. McGiffin several questions regarding PFA's and whether the laws need to be changed. One point made was that the most important thing the Commissioner bases his opinion on is the demeanor of the person who is being charged. On the issue of *changing commissioners who had previously heard a person's case*, Mr. McGiffin said that

it does happen. Commissioners rotate handling PFA's and when that happens the new commissioner might not be familiar with what was done previously.

The Chair stated that two subcommittees have been set up to work on '*How Neighboring States are Addressing Issues that Our Family Court are Now Facing and How Other States are Solving Similar Problems.*' These two subcommittees later became the DNA, PFA, and Evening Hours subcommittees based on the findings of the legislative fellows.

Thursday, March 18, 2010: Paternity Fraud & Child Support

Speaker: Commission Andrew Southmayd

The Family Law Commission's first order of business was to vote on whether to allow audio/video equipment. After dialogue between members, it was motioned to ban audio and video equipment from all meetings. The vote carried unanimously.

The speaker for this meeting was Commissioner Andrew Southmayd. Some of the key points that Commissioner Southmayd stated were: (1) visitation and child support do not work together, they are separate instances. (2) we need to hear cases quicker and have more prompt enforcement. He suggested that we may want to look at visitation monitoring, supervision centers and/or informal intervention. Commissioner Southmayd said that Michigan has judicial intervention and the Chair asked the subcommittee to review what Michigan is doing.

Another question brought up at the public hearing referred to *Social Security Income (SSI) versus Social Security Disability (SSD)*. Commissioner Southmayd said that SSI is for living expenses and no part of that can go to a child. If the individual has income besides SSI then they can include SSI. This is according to federal law.

There was legislation brought up about enforcing PFA's for two years instead of one year and that legislation was to be given consideration at the next meeting of the Family Law Commission. Another piece of legislation was SS 1 for

Senate Bill 171, relating to paternity fraud. This bill addressed the paternity fraud issue and was sponsored by Senator Ennis and Representative Schooley. The Family Law Commission decided to fully support this bill.

Thursday, April 22, 2010: Third-party Visitation & Child Custody

Speakers: Family Court Judge Peter Jones

Jill DiScullo, Esquire

The Family Law Commission focus of this meeting was to review child custody and third-party visitation.

The comments regarding third-party visitation started by making sure that everyone was aware that the current third-party visitation was in flux and that a new bill was pending. The initial bill was ruled unconstitutional by some of the Family Court Judges. Currently, grandparents do not have rights as long as the parents are capable of caring for the children. This goes back to a federal case of *Troxel v. Granville*.

Judge Jones spoke on child custody stating that custody is where the child will live while visitation is the right to visit the child, or visitation rights. A majority of the child custody cases are completely resolved at mediation, which is a mandatory process. If, in mediation, the issue of custody cannot be resolved and it goes before a judge, and the judge rules, then the custody cannot be modified for two years. Lawyers for either party may be present during mediation and mediation is completely confidential. Judge Jones also stated that you cannot use what a party says during mediation against them at a subsequent hearing.

There are eight factors that Judge Jones considers regarding the placement of children, which can be found in the Delaware Code Title 13 Chapter 7, § 722.

- (1) The wishes of the child's parent, or parents, as to his or her custody and residential arrangements.
- (2) The wishes of the child as to his or her custodian or custodians and residential arrangements.
- (3) The interaction and interrelationship of the child with his or her parents, grandparents, siblings, person cohabiting in the

relationship of husband and wife with a parent of the child, any other residents of the household or persons who may significantly affect the child's best interests.

- (4) The child's adjustment to his or her home, school, and community.
- (5) The mental and physical health of all individuals involved.
- (6) Past and present compliance by both parents with their rights and responsibilities to their child under § 702 of this title.
- (7) Evidence of domestic violence as provided for in Chapter 7A of this title and
- (8) The criminal history of any party or any other resident of the household including whether the criminal history contains pleas of guilty or no contest or a conviction of a criminal offense.

This led to the question of how often Judge Jones *speaks with the child*. He said that he speaks with the child in every custody case if the child, or children, are at least 5 years old. It depends on the child's case and age as to how much weight is given to the children's thoughts on custody. Another question brought up by the list of concerns was regarding the *education requirement for mediators*. Mediators must have at least a Bachelor's degree and have experience in social work and/or mental health fields. The next question, relating to the list of concerns, was about *parenting classes*. The Family Court would usually check on a file at 180 days to make sure that the Judge's rulings have been followed by both parties. The Family Court sends out a letter at 150 days and will dismiss the case on the 180th day. The last question relating to the list of concerns was regarding *parents that show up at school and extracurricular activities of their child*. Judge Jones said that he hopes that the schools would want to see the custody order from the parents. If there is domestic violence then they are limited in being able to place the child into their home. They also look at the state criminal records. They are starting to ask for a nationwide criminal background check.

Thursday, May 13, 2010: Family Court Policies
Speakers: Chief Judge Chandlee Johnson Kuhn
Guy Sapp, Family Court Administrator

The subcommittee reports were reviewed. The waiver form committee looked at the files of several of the speakers from the Public Hearing who had signed the form. When the sub-committee completed their task they found there was nothing apparent that they could address.

Chief Judge Kuhn spoke about the Family Court and updated the commission on the various projects that Family Court has completed in the last year. She said that in 2009 the Family Resource Center served over 60,000 unrepresented litigants. They now have detailed instruction packets on all major topic areas such as: Divorce, Custody, Visitation, Modification, Guardianship, Termination of Parental Rights, Motions, Adoption, Child Support and Emergency Expedited Relief.

Chief Judge Kuhn spoke on the issue of *having to take off from work in order to go to Family Court*. One idea was *Family Court holding evening hours* once a week. She said that she is not opposed to having evening hours and would be able to have appropriate Family Court staff and hearing officers available, but other agencies would need to agree in order for the Court to have evening hours. For example, the Court would need security. She would be supportive of this change, but there are several issues that would have to be addressed. It was decided to form a task force to examine the issue of having evening hours in Family Court. This subcommittee has not filed their final report as of yet but have met several times.

Another question that Chief Judge Kuhn addressed, pertaining to the list of concerns, was *why litigants are not given five minutes to speak to the court* at the end, or beginning, of the hearing when they are represented by counsel. Chief Judge Kuhn said that litigants must be sure they hire an attorney who they have confidence in and will be their voice in the courtroom. The next issue was regarding *allowing a support person in the courtroom* with the litigant. If there is

no opposition to a support person one is allowed to be in the courtroom, but if that person is to be called as a witness many times the court will not allow them to be there. The Chief Judge said that in a domestic violence situation she would usually allow a support person in the courtroom.

Chief Judge Kuhn then accepted questions from commission members. Some of the questions were the issue of PFAs and False Allegations. The Chief Judge said that she feels that the PFA process is less abused now than it has been in the early years of the statute. She said that you must remember that a PFA is based on a preponderance of evidence, so if it is found that a person has more likely than not committed one or more acts of domestic violence, the Court will enter a Protection Order against that person. The Respondent may be ordered to be evaluated by a DVCC certified treatment provider and to follow any recommendations of the provider, including DV intervention counseling/treatment. If the Respondent is recommended for treatment by the DVCC certified agency, the court is now tracking that individual to make sure they attend the program otherwise they will be called back into the court. The Chief Judge reiterated that she believes the process is working much better than in the past. The last question was regarding the no contact order in PFAs. It was suggested that the no contact portion of the PFA be applied to both parties. Chief Judge Kuhn stated that the PFA was not made against the victim, unless the other party has filed for protection against the petitioner as well. She went on to say that she knows that this does happen. One piece of advice would be for the Respondent to get caller I.D. and to never pick up the phone when the victim calls. It is important that if the Respondent feels they are being stalked or harassed by the victim showing up at places they never were before Judge Kuhn's advice would be to gather proof of said actions and file a report with the police.

Thursday, June 10, 2010: Legislation & Sub-Committee Reports

The Family Law Commission met and there were no speakers for this meeting. The purpose of this meeting was to go over the sub-committee reports and pending legislation before the end of session on June 30th.

The commission began by thanking Jody and Jean for all their work and years of service to the Family Law Commission. The FC liaison will be Bonnie Copeland, replacing Jody Huber. No replacement will be made for the secretary position. Those duties will be assumed the FLC assistant until officers are named.

Three subcommittees were formed to continue working on the top issues:

1. Paternity Fraud, DNA, what other states are doing regarding paternity fraud:

Chair Sen. Ennis

2. PFA, false allegations, what other states are doing regarding protection from abuse legislation. Goal: Evaluate and reduce issues around misuse of PFA process.

Chair: Rep. Ramone/Rep. Barbieri

3. Feasibility of evening hours in Family Court. Goal: TO increase access to general public of Family Court. Chair: Rep. Ramone/Rep. Barbieri

Guest speakers would be invited to the subcommittee meetings in order to help come to a conclusion regarding these three issues. The subcommittees are meeting Sept-Dec and will report their findings at the 2011 FLC meeting.

The Family Law Commission reviewed the legislation to see if there was any bill of interest to the commission. It was determined that many members were concerned over the lack of movement of SS1 for SB 171 relating to paternity fraud. This bill was endorsed by the Family Law Commission and the prime sponsor was Senator Ennis. This bill did pass the House and Senate and was signed by the Governor. With no enactment date this bill became law once the Governor signed the bill.

Legislation Pertaining to Family Court.

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

For a full list of Legislation from this past year please visit the Family Law Commission website at flc.delaware.gov.