



Delaware Family Law Commission Annual Report 2012

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) 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 9th, March 15th, April 26th, May 10th and June 7th.

Members of the Delaware Family Law Commission

Lynn Kokjohn, Family Law Commission Chair

Senator Bruce Ennis, vice Chair

Dr. Julia Pillsbury, D.O.

Senator Liane Sorenson

Ms. Peg Smith

Representative Stephanie Bolden

The Honorable William J. Walls, Jr.

Representative Michael Ramone, Secretary

Ms. Eileen Williams

Dr. Harriet Ainbinder

Liaisons to the FLC:

Curtis Bounds, Esquire

Drew Slater, Assistant

Professor Dana Harrington-Conner

Mr. Britt Davis

Ms. WendyJean Matlack

Dr. M. Diana Metzger

Mr. James Morning

Summary of the Minutes from the 2012 Meetings

Tuesday January 12, 2012: Annual Public Hearing

The main points raised in the public hearing were:

- Child Support
- DNA testing, Paternity Testing, Paternity Fraud
- Family Court Policies/Procedures: Open v Closed Courts
- Domestic Violence

These topics, along with continuing 2012 topics (evening hours) became the focus of the 2012 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.

Thursday, February 9, 2012: Review of January Public Hearing Comments and Path Forward;

ISSUE: Evening Hours, FC open during business hours only now

Speaker: Ken Kelemen, Family Court, Director, Pro Se Center

Mr. Kelemen spoke about the new Family Court website and the live chat feature to help those looking for information during working hours.

The live chat feature should be up and running soon. Mr. Kelemen also mentioned that in the next several months he is looking to reinstitute the call centers again in conjunction with live chat. Mr. Kelemen said that he would like to make this statewide but needs to look at shifts in personnel and cost to determine if that is feasible. Mr. Kelemen said that Family Court is pushing for customer service.

OUTCOME: Monitor effectiveness and usage of the website, call center and live chat features. Hopefully these will compensate for concern of Family Court only being open during work hours.

Thursday, March 15, 2012

ISSUE: Blue Ribbon Task Force to review the issue of open family court

There was an amendment to the bill to add two members appointed by the Family Law Commission as well as one member of the public. There was a question as to whether the task force was stacked against open court. Rep. Ramone mentioned that the Judges he has spoken to believe the court is open.

Ms. Raetta McCall, a member of the public, was asked to speak about this issue and mentioned that she received all the proper paperwork to attend a PFA hearing only to be denied by the bailiff, who had no authority to deny her entry as PFA hearings are open to the public. She also mentioned that the police say that all Family Court proceedings are closed.

RECOMMENDATION: This discrepancy, and education, is something that we hope the task force will address.

Thursday, April 26, 2012

ISSUE: Incomes relating to Child Support payments; 2nd Incomes

Speakers: Commissioner Southmayd

Brenda Sammons, Deputy Attorney General

The commission heard testimony that secondary income was included in the Melson at the public hearing.

Commissioner Southmayd began by stating that there are several questions that had to be answered in determining if a second income would be attributable to child support payments. First, was the second income while the parties were married or is this new income? Second, is the second income for a dedicated purpose, such as paying off bills or a luxury idea, such as a boat? Lastly, is this a large amount of your total earnings in a year?

Commissioner Southmayd said that federal law states that at a minimum you must consider all of the income of the obligee parent. If the state does not

adhere to the federal statute, they put themselves at risk of losing \$25 million in funding for support enforcement with \$4-5 million of that money for the Family Court. He said that the formula has to consider someone who drives a school bus, owns a chicken house and works at the beach over the summer and it is very difficult to determine their primary income. It is not as easy as always looking at the W-2 forms.

In addition, there are some jobs where you can work 60 hours a week and be paid no overtime so how would that work into the formula? A statute excluding second income would be an exclusionary rule which would allow unscrupulous parents to shelter income, specifically those who are self-employed. They could pay themselves less but own a business or corporation.

RECOMMENDATION: Dr. Ainbinder asked that the second income issue be reviewed before the next Melson Formula review in 2014 since it has not been looked at thoroughly since 1998. Commissioner Southmayd said that this will be considered in 2014 if he is still on the review committee.

Thursday, May 10, 2012:

ISSUE: DNA Testing, Paternity Testing and Paternity Fraud

Speaker: Dr. Louis Bartoshesky

There have been issues brought before the commission in previous years regarding DNA testing and paternity fraud. The commission asked Dr. Bartoshesky for an overview of paternity testing.

Dr. Bartoshesky mentioned that the cost of a paternity test through the internet is \$80 per person while Lab Corp and Quest would be \$500 for the family. With 12,000 children born in Delaware every year, it would be difficult to find the funding for a DNA test for every family with the cost being \$6 million annually.

Dr. Bartoshesky said that the most accurate test would be having the mother involved but the father and child would still be a very accurate test that could show a 1 in 10 million chance of a man not being the father of a child. It

was mentioned that since a child already has genetic testing at birth that perhaps this could be used for a paternity test before the samples are destroyed.

There was “lively” discussion about a child’s right to know their biological parent and the genetics of their family. Dr. Bartoshesky said that geneticists would not be comfortable with mandatory testing and that confidentiality would be required from consenting parties. Rep. Ramone said that it would be best to address this issue while the child is young as opposed to 5, 10, or 15 years old and then be told that their father is not their biological father.

Mr. Morning said that paternity testing is \$35 through the Office of Child Support Enforcement. Dr. Bartoshesky said that the cost could be lower than \$500 if the State contracts with an outside agency. Dr. Metzger mentioned that the medical community would not support mandatory paternity testing. Mr. Kelemen stated that a father can request paternity testing through Family court if he does not believe he is the father of the child. He also cannot deny testing if he does not believe he is the father of the child.

RECOMMENDED CONSIDERATION: Should the statute of limitations be increased from 2 to 6 years.

Dr. Pillsbury said that the Family Court needs to be able to provide medical decisions as to which doctor a child would go to. Additionally, the Family Court, nor insurance, compensates doctors who are subpoenaed to Family Court. Dr. Pillsbury said that she received 5 subpoenas in one week and sometimes she is allowed to testify by phone depending on the Judges but the doctors cannot afford to attend Family Court and practice at the same time. She also mentioned a case where a doctor had to decide where a child would go to school. She states that this should not be in the doctor’s hands but in the Family Court’s.

Do people know that they can have paternity testing? This led to discussion about the Voluntary Acknowledgement of Paternity form. It was noted that a minor could sign the form at 14 stating that they are the father of the child and they would then be liable for child support without maybe knowing all the

implications of signing that form. He also mentioned that there is no education in the hospital on signing the form for the father.

RECOMMENDATION: Minor should look at the form but have a counselor present to let them know that they have a right to paternity testing. There should be a trained advisor present to explain all the rights to the child. Perhaps this would be a trained social worker as the form originates from the Office of Vital Statistics. Dr. Ainbinder said that all paperwork has to be on a 5th grade level and the current form is not on a 5th grade level.

Thursday, June 7, 2012:

ISSUE: Domestic Violence and the Voluntary Acknowledgement of Paternity Form

Speakers: Charles Hayward, DCSE

Gwen Anderson, DCSE

Bridget Poulle, DVCC

Mr. Hayward said that there were changes and improvements coming to the VAC form. He noted that all hospitals have this form and a video that explains the purpose of the form and about signing the form. In addition, he said that they had a grant that was used to provide training to the hospitals. It was noted that even without signing the form DCSE must establish paternity for services to the mother and child. Mr. Hayward said that there is publicity for the VAP program and they offer both English and Spanish versions.

RECOMMENDATION: There is no age requirement to sign the VAP form. The Family Law Commission was interested in reviewing this and finding out if they could pass a law to create a minimum age to sign this form.

Mr. Hayward said that there are three ways to establish paternity: 1) by marriage, 2) by the VAP form or 3) through a court order where the court would have to agree to have the individuals take a genetic test. If there is a court order that determines someone is the father, then that person should go to the Office of Vital Statistics and ask to be put on the birth certificate. However, if there is

already a father on the birth certificate, that person would have to ask the court to remove his name from the birth certification, at which time the determined father can be added to the birth certificate.

RECOMMENDATION: The last note was that there are two major weaknesses of the VAP form that the Family Law Commission would like to address. First, we need to make paternity testing available. Secondly, there needs to be a clause for minors in the form stating that you have 60 days when you are 18 years old to contest paternity or something similar.

RECOMMENDATION: Mr. Hayward asked if a CASA/Guardian Ad Litem could be present for a minor to sign the VAP form. He said that the Division of Public Health provides data that says that there are 4-12 minors who have children each month with half naming a father.

Ms. Poulle was asked to speak about domestic violence and false allegations. She mentioned that someone can sue another party civilly if they believe there is perjury by an individual. She also stated that she would not oppose having a law about false allegations in court, but that there are several departments that would want a say in any potential legislation. There were 3,254 PFAs filed with 1,480 as emergency orders. Of the total amount, only 1,673 PFAs were granted, with 61% of petitioners failing to appear. She stated that men can be victims too but underreport due to feeling ashamed and other factors. Judges and Commissioners have domestic violence training.

RECOMMENDATION: Explore departments to understand implication of proposing law. Understand what is behind petitioners failing to appear.

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.