

DRAFT

Family Law Commission Meeting Minutes for Meeting of June 6, 2013

*Senate Hearing Room
2nd FL – Legislative Hall*

Members Present

Lynn Kokjohn, Chair
Senator Dave Lawson
Dr. Twain Gonzales
M. Diana Metzger

James A. Morning
Representative Michael Ramone
Senator Bruce Ennis
Curtis Bounds, Esq.

Others Present

Invited Guests:

Charles Hayward, DHSS/DCSE
Gwendolyn Anderson, DHSS/DCSE
Ted Mermigos, DHSS/DCSE
Nichole Moxley, DHSS/DCSE
Brenda L. Sammons, DOJ

Dick Carter, Senate Staff

One member of the public

Summary of Meeting

The meeting began at 9:30am with the unanimous approval of the minutes for the meeting of 16 May 2013 as corrected.

Senator Ennis reported that Senate Concurrent Resolution No. 9 has passed the Senate and is now in the House Judiciary Committee, the chair of which has assured Sen. Ennis that they will work to make sure it gets out of committee. The Resolution would, if passed, establish a task force to look into the issue of whether Family Court proceedings can be made open to the public if the judge in the case concurs.

(Update: Senate Concurrent Resolution No. 9 has passed both House and Senate and is now ready to be implemented)

The subject of possible changes to the “Voluntary Acknowledgement of Paternity” form, which was continued from the May 16 meeting, was reopened. Chairperson Kokjohn stated that the two issues related to the form are: (1) that the language of the form needs to be simplified to a “Fifth Grade Reading Level,” and (2) whether or not certain requirements should be met before a minor under the age of 18 may sign the form. These might include having a properly informed counselor or attorney go over the form with the minor to explain its meaning; and possibly requiring that the minor undergo a DNA test at state expense—or making the test available on a voluntary basis.

Deputy Attorney General Brenda L. Sammons noted that federal law addresses the issue of voluntary acknowledgement of paternity in 42 U.S. Code, 666 c. She said that this statute mandates the “Voluntary Acknowledgement of Paternity” (VAP) program and that anything the state does must comply with the provisions of that statute.

She also noted that when a minor who has signed the form comes of age, he may challenge the acknowledgement of paternity if he can demonstrate to the court by clear evidence that giving up his acknowledgement of paternity is in the best interest of the child, or that his acknowledgement was based on fraud, duress or material misstatement of fact.

Ms. Gwen Anderson of DCSE presented Delaware Division of Public Health data concerning the number of births to minor parents in Delaware in Calendar Year 2011 and Calendar Year 2012 (See Attached PDF document entitled “Div Pub Health Data-Minor Parents 2011-2012”)

Mr. Charles Hayward of DCSE spoke about the effective work of school-based health and wellness clinics around the state, not just with teen pregnancy issues but in other areas of teen health and wellness also. He noted that it might be possible to work with school-based counselors to train them to provide information about the VAP. He noted that most high schools in Sussex County do have school-based wellness programs. He said that what is needed now is to extend such services into middle schools.

Ms. Sammons said that if a mother comes to DCSE requesting child support services and names the child’s father, the father may then request DNA testing. If the father is a minor, DCSE also generates a motion to Family Court to appoint a guardian ad Litem. Ms. Sammons said that genetic testing in and of itself does not constitute proof of paternity. It is necessary to follow up such testing with a legal step: either adjudication or completion of a VAP form. Whenever genetic testing is done, the court adjudicates the person as a child’s father and authorizes the state office of vital statistics to place that person’s name on the child’s birth record.

She said that DCSE has stopped requiring minor fathers to make child support payments while they are in school because it is desirable for them to complete their education.

There followed a general discussion of possible issues related to same-sex sperm donor situations.

With regard to Family Law Commission recommendations for future action:

1. Mr. Hayward requested that FLC members look at the VAP form and offer suggestions on how to make it more readable but still keep the required information on the form.
2. It would be helpful if Family Court adopted a more educational approach and made improvements to its web page to provide more information to the public. Ms. Sammons is available to provide more details about what such improvements might include.
3. The FLC should pursue a program of having school-based wellness centers take on more of a role in helping to inform students on issues relating to acknowledgement of paternity and its legal ramifications.
4. While the state cannot mandate DNA testing before a minor signs a VAP form because of potential conflicts with federal law, steps should be taken to make minors aware that testing is

available to them at no cost if they wish to have it done before deciding whether or not to sign the form.

(Note: at the present time minor fathers who work through DCSE to have DNA testing done have to pay for the test, so making it available at no cost would be a change in state policy with a cost attached)

The Commission set Thursday evening, January 16, 2014, as the date of the 2014 public hearing, to begin at 7:00 p.m. in the House Chamber at Legislative Hall in Dover. January 23 was set as a snow date, if necessary.

There was also discussion as to the need for the Commission to do a more effective job of publicizing the public hearing.

The meeting was adjourned at 11:45 a.m.