

Family Law Commission Minutes – Meeting of May 12, 2016
Revised Draft

Senate Majority Caucus Room, First Floor, Legislative Hall, Dover, Delaware

Members Present

Curtis Bounds, Esq., Chair
Ms. Lynn Kokjohn
Rep. Michael Ramone
Judge William Walls
Dr. Diana Metzger
Ms. Raetta McCall
Mr. James Morning
Dr. Twain Gonzales
L. Britt Davis

Staff Members

Dick Carter, Senate staff
Sarah Meyer, Senate staff

Others Present

Chief Judge Michael Newell
Ellie Torres
Aimee String
Leann Summa
Gordon Smith
Lisa Workman
Greer Stangl

Meeting Summary

Chairman Bounds called the meeting to order at 9:45 a.m. The minutes of the April 14, 2016 meeting were approved.

Presentation by Delaware Family Court Chief Judge Michael Newell about the current status of the Family Court:

Judge Newell gave a Power Point presentation about Family Court operations. He spoke about the Family Court Enhancement Project, which is studying ways to improve the handling of custody cases where domestic violence is an issue. He noted that Delaware is one of only four states across the U.S. to get federal grant funding to study areas for improvement in their Family Court operations. He said that Judge Jennifer Ranji is now the Domestic Violence Liaison

Judge. The Family Court Enhancement Project also has several sub-committees including an Access to Justice Subcommittee, which he characterized as “outside looking in” on court operations, and a Differentiation Subcommittee, characterized as “inside looking out.” The judge said he is interested in how the impact of domestic violence allegations affects both Protection from Abuse orders and custody orders.

He noted that he had established a Steering Committee for the ongoing Court Improvement Project. The court has also established a “Rules of Civil Procedure” Committee and that a “Rules of Criminal Procedure” will follow.

E-Filing: Judge Newell said that the Family Court is the only court that has no form of e-filing presently in use. The court has a target date of December, 2016 to implement e-filing for civil procedures, noting that the date may be optimistic, with e-filing for criminal procedures to follow within two years. He also called for the publication of case information on the court website, noting that this has not moved forward as much as he would like, but that it needs to be done. “We upload our cases to Westlaw and clerks redact information as needed, but only attorneys have access.” He said that the court is working to raise the level of respect for the court and for the Family Court Bar.

Among the Family Court’s major challenges, Judge Newell said, are inadequate facilities and unsafe facilities. He noted that a 2006 court study found that the Family Court facilities in both Kent and Sussex Counties are limited in size, unsafe, and undignified. Sussex court facilities are some 30,000 square feet in extent and 90,000 square feet is needed. Kent County court facilities are some 45,000 square feet in size and a total of 90,000 square feet of space is needed.

Budget Priorities: In the operating budget, the court is hoping to convert five casual/seasonal law clerks to full time employees. “Now we have one law clerk to one judge,” Judge Newell said, adding that the court still needs to resolve casual/seasonal issues with law clerks for Kent and Sussex. He said that there is \$5 million in capital funding proposed for Fiscal Year 2017 for enlargement of the Kent and Sussex County facilities, with \$500,000 in the F.Y. 2016 budget for planning. Family Court was given the authority in the F.Y. 2016 Capital Bond Bill to spend \$5 million for land acquisition.

Legislative Priorities: The Family Court is hoping to get passage of a bill to allow e-Filing by changing notarization requirements.

He said that the court is attempting to make what is not a good experience in their court into an acceptable experience. “Could we do a better job of triaging cases?” He asked, “yes, we could. He added that the court is also planning to make more use of retired judges in the “alternate dispute resolution process.”

Chairman Bounds asked the judge if there was any money in the court budget for more use of video conferencing. Judge Newell replied that there are new applications in the works to allow video and phone connections with court proceedings.

Representative Ramone expressed the hope that the construction of new, enlarged Family Court facilities in Kent and Sussex will solve much of the current problem about greater public access to proceedings.

Judge Newell responded that “it is not the size of the courtroom. It is the type of cases we hear” that governs public access. He said that the General Assembly’s 2013-2014 task force on greater public access in Family Court proceedings on which he (Judge Newell) served took public comments and that 60 percent of the people said “leave it the way it is” and 40 percent wanted more public access. “Half of the 40 percent wanted a support person” to accompany them to Family Court proceedings.

Representative Ramone spoke of the “balance between PFAs [Protection from Abuse orders] and people who have abused the PFA process.” He said that he wanted to “express the frustration of people who believe PFAs are being misused.”

Discussion of Pending Family Law Legislation:

The Commission discussed a number of other bills now before the General Assembly which touch on various aspects of family law.

Senate Bill 55: The Commission discussed SB 55, which would amend the Protection From Abuse (PFA) statute of the Delaware Code.

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO THE FAMILY COURT OF THE STATE OF DELAWARE.

Synopsis:

This Bill extends the number of days for an emergency ex parte order from 10 days to 15 days. Currently, an ex parte order is issued and a full hearing is scheduled within 10 days. This can be insufficient time to effectuate service of the order and petition on the respondent. If respondent has not been served, the hearing is rescheduled and the petitioner must return to court the following week. Scheduling the hearings within 15 days will allow more time for service on the respondent, and afford more time for the parties to prepare for the hearing. The amendment also extends the time to 15 days for an expedited emergency hearing when there has not been an ex parte order issued.

Ms. Ellie Torres of the Domestic Violence Coordinating Council said that in more than half the country, full hearings must be scheduled 15 days or more after emergency *ex parte* orders are issued. Delaware's ten-day rule is substantially shorter than the norm and this legislation would lengthen that time period.

House Bill 373, AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO FAMILY COURT

Synopsis:

This bill amends the definition of family to make spouses and couples gender neutral. This bill also permits the transfer of misdemeanor criminal jurisdiction in cases involving former spouses, persons cohabitating, with or without a child in common, and persons living apart with a child in common from the Court of Common Pleas to Family Court...

Ms. Torres explained that moving cases from Common Pleas to Family Court is in keeping with the court's civil jurisdiction. She said that companion charges not against a family member will still go to the Court of Common Pleas.

Comments concerning false allegations by Gordon Smith, a member of the public:

Mr. Smith recounted his experience with five Protection From Abuse orders (PFAs) obtained by his ex-wife against him. He said that he has heard "domestic violence advocates" tell people that they need to make false allegations as a way of obtaining custody. He spoke in favor of reforming the PFA process, contending that much of the reason why this has not been done is that there is "too much at stake for federal funding and no one wants to fix it [the PFA statute]."

Comments by Frances Stangl, member of the public and a child advocate:

Ms. Stangl express the view that persons who come to the annual Family Law Commission public hearings year after year with stories of false allegations and alleged mistreatment by the court system “are not representative of cases in Family Court.” She said that proving that domestic violence has occurred is extremely difficult for victims, who are often without legal resources, and that many find the difficulties to be insurmountable. She said that if such persons are struggling to pay for an attorney they often are not able to take off work to appear at Family Law Commission meetings to tell their stories. She said that she would like “Family Court work groups” to be more available to people “who are in the trenches.” Ms. Stangl also called on the Family Law Commission to survey people who make public comments at FLC meetings as to whether they have open cases in Family Court. She questioned the prevalence of false allegations and said that statistically there is a very low percentage of false allegations in PFA proceedings. She added that many victims of domestic violence do not report their abuse.

The meeting was adjourned at 11:40 a.m.

Upcoming Meetings:

Thursday, Sept. 15, 2016: The Commission will hold an evening meeting from 6:30 p.m. to 8:30 p.m., in the second-floor Senate Hearing Room at Legislative Hall. The main subject of discussion will be Protection from Abuse orders and the alleged abuse of the process

Thursday, Nov. 17, 2016, 9:30-11:30 a.m., Senate Hearing Room, Second Floor, Legislative Hall