

**Family Law Commission Minutes – Meeting of Sept. 15, 2016**  
*Senate Hearing Room, Second Floor, Legislative Hall, Dover, Delaware*

Members Present

Curtis Bounds, Esq., Chair  
Sen. David Lawson  
Rep. Michael Ramone  
Ms. Lynn Kokjohn  
Judge William Walls  
Dr. Diana Metzger  
Ms. Raetta McCall  
Mr. James Morning

Staff Members

Dick Carter, Senate staff  
Sarah Meyer, Senate staff

Invited Guests

Chief Judge Michael Newell, Family Court  
Commissioner Andrew Southmayd, Family Court  
Ellie Torres, Family Court  
Lakresha Roberts, Esq., Dept. of Justice

Others Present

Greer Stangl  
Patrick Withrow  
Tim Collins  
Trina Martelli  
Mariann Kenville-Moore  
Matt Watson  
Lana Kacprzyk Watson  
Joseph DiMaio  
(Mr. DiMaio was accompanied by two  
persons who did not sign in)

Meeting Summary

Chairman Bounds called the meeting to order at 6:37 p.m. Action on the minutes of the May 12, 2016 meeting was deferred until the November 2016 meeting.

The Chair addressed the purpose of having the Meeting in the evening to allow persons to attend without taking off from work, and address the Commission about their experiences with

Petitions and Orders for Protection from Abuse (“PFA’s”) and about representations, previously made to the Commission, about false allegations being made to the Court by petitioners for the purpose of obtaining PFA’s.

Ms. McCall asked about the evidence required to obtain a protection from abuse order (“PFA”). Ms. McCall expressed her understanding that many litigants in Family Court, including most PFA petitioners, are *pro se* litigants [acting without an attorney] and that more training and education of the public as to Family Court procedures was needed.

Chief Judge Michael K. Newell addressed the Commission about the purpose of the meeting, and enlightened the Commission on the process of obtaining PFA’s and gave information about the Court granting PFA’s and denying PFA’s. The Chief Judge also spoke about the difficulty of identifying PFA’s as coming from false allegations, and that the Court is an instrument to determine the truth and falsity of evidence, but no such system is foolproof.. Chief Judge Newell noted that about one fourth of petitions for PFA’s need to be resolved with a final hearing and that hearings that go to trial split about equally between granting and denying PFA’s.

Commissioner Southmayd also addressed the Commission about the PFA process from his perspective as a Commissioner who regularly hears PFA’s and explained to the Commission that he sometimes struggled with petitions for PFA’s that gave him, based upon the allegations and demeanor of the litigants, cause for concern, but did not meet the evidentiary standard for granting a PFA.

Rep. Ramone asked if there is any kind of objective standard by which to measure Commissioner’s decisions on PFA’s. Chief Judge Newell stated that a party in a PFA proceeding can appeal a Commissioner’s decision to a Judge of the Family Court and that Judge’s have the ability to reverse a Commissioner’s PFA Order after reviewing the record, including the transcript of the hearing.

Chief Judge Newell replied to Rep. Ramone that there are 3,000 petitions for PFA’s filed annually, that the judicial process exists to determine whether PFA’s are granted properly or improperly, that statistical evidence is not appropriate to determine the correctness or incorrectness of a Commissioner’s decision, and that the judicial officers of the Family Court do their best to provide fair and accurate decisions on the merits.

Deputy Attorney General LaKresha Roberts, Director of the Department of Justice's Family Division, spoke on the allegations of false testimony in civil proceedings as it relates to the crime of perjury. She said that during her years with the Department there has never been a perjury case arising from a PFA proceeding prosecuted, of which she is aware. She noted that perjury is a criminal charge and that a PFA proceeding is a civil matter. She noted that inconsistent statements in a civil matter may not and often do not rise to the level of criminal behavior that can be prosecuted beyond a reasonable doubt.

Ms. McCall noted that the late Attorney General Joseph R. "Beau" Biden, III, had expressed to the Commission that the Department of Justice did not have the resources to carry out perjury prosecutions.

Senator Lawson commented about his concern that someone using false allegations to obtain a PFA is a serious problem within the judicial system, and recognizing that such prosecutions could have a chilling effect on obtaining PFA's.

Ms. Roberts noted that before a prosecution for perjury can take place, the offense has to be provable. There has to be evidence to support the charge, she said, that is independent of one person's uncorroborated evidence and it is necessary to be able to prove the charge beyond a reasonable doubt. She said the prosecutor must be able to prove beyond a reasonable doubt that the person charged with perjury intentionally made a false statement.

Ms. Greer Stangl, a member of the public, commented about her belief that persons who were asserting that false allegations in PFA's presents a problem in the judicial system, are pursuing the agenda of national fathers' rights groups.

Mr. Joseph DiMaio, recounted his experiences after having been served with a PFA sought by the mother of his daughter. He expressed his recollection that he felt pressured to consent to a PFA, and that as a result he felt that his visitation with his daughter was limited for a lengthy period of time. He also commented that, while the PFA statute is a civil law, he felt that it was surrounded by criminal repercussions.

Ms. Lana Kacprzyk Watson, a member of the public, spoke about her experience of being served with an Emergency Ex Parte PFA obtained by her ex-husband. She said that she had to leave her home with no money, no clothes, no bank account, and no access to her children. She

recounted that subsequent to the PFA, she has not seen her children for six years, and ascribed her situation to the fact that her ex-husband obtained this PFA, in this way, and when she did not have ready access to funds, or to obtain an attorney.

Mr. Matt Watson, present husband of Ms. Watson, also spoke about his Wife's situation, stating that he felt that there was evidence available in the criminal process, concerning his wife's ex-husband, that had it been made available to the Commissioner, may have changed the outcome of the PFA.

Ms. Trina Martelli, a member of the public, recounted her boyfriend's experience with his ex-wife who had filed for a PFA prior to a custody hearing.

Mr. Patrick Withrow, a member of the public, spoke of his experience in dealing with a PFA proceeding, also advising the Commissioner that he felt that he had no help as a Respondent, no attorney, and that he felt intimidated by the PFA process.

Mr. Tim Collins, a member of the public, told the story of his experience with the PFA process. He alleged that his girlfriend made false allegations against him in a PFA proceeding, and that his version of what was really happening in his girlfriend's life was not heard, to which he ascribed her eventual death, because she did not get the help she needed with her own problems..

Mr. Bounds noted that Delaware was the last state to adopt a PFA statute and that PFA's have saved lives in the State of Delaware since the statute became law.

Mr. Bounds noted that the Family Law Commission's next meeting will be held on Thursday morning, November 17, from 9:30 to 11:30 a.m. in the Senate Hearing Room on the second floor of Legislative Hall.

He said that, among other business, the Commission will discuss major topics to be considered during 2017 meetings.

The meeting was adjourned at 9:35 p.m.