



## **Delaware Family Law Commission Meeting Minutes**

**Thursday, February 21<sup>st</sup>, 2019**

**Senate Hearing Room**

**Legislative Hall, Dover Delaware**

### **Present Commission Members**

Chair, Curtis Bounds

Senator Stephanie Hansen

Raetta McCall

Kelley Huff

James Morning

Aimee String

Dr. Diana Metzger

Judge Peter Jones

Bill Walls

### **Absent Commission Members**

Senator David Lawson

Representative Kevin Hensley

Representative Kendra Johnson

Lawrence Britt Davis

Lynn Adams Kokjohn

### **Commission Staff**

Dick Carter

Colinda Marker

Jennifer Parrish

### **Guests**

Laura Graham

Representative Lyndon Yearick

Lt. Sawchenko

**The meeting was called to order at 12:00 p.m.**

### **Opening**

Mr. Bounds opened the meeting with a reminder to commission members that he has elected to hold future meetings during legislative session, due to attendance issues. He then announced the retirement of staff member Dick Carter and introduced new staff member Jennifer Parrish as Mr. Carter's future replacement.

### **Meeting**

For the first order of business, the commission reviewed and approved the January 21, 2019 meeting minutes. All present members voted in favor of the minutes. The Chair then announced the opening of a position of "Secretary of the Commission" to be chosen from among the members. He explained that secretarial duties would include assisting commission staff with the preparation of meeting minutes, keeping records of the commission, and preparing the annual report. Ms. Raetta McCall volunteered for the position. The Chair appointed Ms. McCall as Secretary of the commission.

### **Presentation by Ms. Laura Graham of Delaware Community Legal Aid**

- Ms. Graham is the Managing Attorney and Deputy Director of Community Legal Aid.
- Community Legal Aid is a not-for-profit law firm with offices in each of Delaware's three counties.
- They provide free legal service, including services to survivors of domestic violence and sexual assault.
- The purpose of the presentation was to present the work that Legal Aid does and describe how cases are prioritized and accepted.
  - a. Type of services provided under domestic violence and sexual assault:

1. Provide representation and self-advocacy services for individuals seeking protective orders, custody and visitation, divorce and guardianship.
- b. The following are considered when prioritizing and accepting cases:
  1. Individual ability to self-advocate.
  2. Language and disability barriers.
  3. Finances, funds available to hire private counsel.

### Questions and Comments from Commission Members

Q: Sen. Hansen said that during the last Family Law Commission public hearing a concern arose regarding resources available to heterosexual, Caucasian males. She stated that she would like to see statistics on Legal Aid resources available to that demographic.

A: Ms. Graham stated that Legal Aid does provide services to the demographic. Legal Aid currently has heterosexual, Caucasian male clients and they do not discriminate based on gender, race, or sexual orientation. However, statistically most of the clients are female. This is because statistically women are more likely to be survivors of domestic violence.

Q: Mr. Morning stated that he would like a breakdown of domestic violence by gender. He voiced concerns about Legal Aid resources available to minority males.

A: Ms. Graham reiterated that Legal Aid does not discriminate and that they have many male clients. She stated that due to limited resources their priority for case selection is protection from abuse orders due to the urgency of such cases. January 1<sup>st</sup>, 2018 through December 31<sup>st</sup>, 2018 Legal Aid handled 240 domestic violence cases in Kent County. Of those cases 217 identified as female, 19 identified as male, and 4 identified as transgender. Delaware Volunteer Legal Services typically handles cases in New Castle County. In 2018 Legal Aid handled two cases in New Castle County. The clients for both cases were female. In Sussex County they handled 331 cases. Of those cases, 315 clients identified as female and 16 identified as male. In 2018, Legal Aid represented 30 male clients in domestic violence matters.

Q: Ms. McCall asked what type of cases Legal Aid handles in addition to domestic violence and divorce.

A: Ms. Graham stated that Community Legal Aid offers several programs in addition to the Domestic Violence Program:

1. Disabilities Law Program
  - Adults and children with physical, mental, and intellectual disabilities with civil legal matters regarding their disability are represented.
2. Elder Law Program
  - Individuals 60 years of age and over are represented in cases such as those involving elder abuse and nursing home matters.
3. Fair Housing Program

- Housing discrimination is investigated and litigated.
- 4. Poverty Program
  - Individuals who face eviction, termination of their subsidized housing, and those facing reduction or termination of their public benefits are represented.
- 5. Immigration Program
  - Survivors of crime on immigration relief are represented.
- 6. Medical Legal Partnership Program
  - Legal Aid partners with three health care providers to address the social determinacies of their patients' health.
    - a. Christiana Care- Serving low income patients
    - b. Division of Public Health- Serving low income, postpartum and pregnant women.
    - c. Connections- Serving Veterans who are at risk of homelessness.

\*Note- All programs are available at the three Community Legal Aid offices.

Q: Mr. Morning asked if cases are screened to identify those who may seek to abuse the system in custody cases.

A: Ms. Graham stated that cases are screened for merit. Cases are screened for a conflict of interest regarding the cross filing of PFA's.

### Closing

At the close of the presentation Ms. Graham stated that she would provide a breakdown of income level and racial demographics to Mr. Carter along with the number of cases that Community Legal Aid turned away in 2018. To prevent cases from being turned away there have been discussions to eventually establish "Civil Gideon." The term "Civil Gideon" refers to a growing national movement that has developed to explore strategies to provide legal counsel, as a matter of right and at public expense, to low-income persons in **civil** legal proceedings where basic human needs are at stake, such as those involving shelter, sustenance, safety, health.

This would allow funding to be set aside so that every civil litigant would have guaranteed representation if they are below a certain income level. Currently Legal Aid seeks funding from the State and holds fundraisers. The agency also receives funding through the Interest earned on Lawyer Trust Accounts (IOLTA). The money earned from IOLTA is divided based on a formula set every year by the Supreme Court to the three civil legal service agencies. When interest rates were higher in 2006, IOLTA funding was over a million dollars. In 2009, when the economy crashed and interest rates went down, Community Legal Aid received under two hundred thousand dollars. The agency hopes to receive more funding through this source as the economy grows.

### Discussion of Grandparent Representation

After the presentation, the commission discussed the representation of grandparents in custody cases. They discussed the possible change in the Delaware Code of “parental representation” to that of “guardian representation.” Sen. Hansen stated that the policy should be in best interest of a child. Currently there are cases where grandparents serve as guardians to children and the parents are absent in the children’s lives. In these cases, grandparents do not receive representation. She went on to say that in the best interest of the child perhaps resources should go to the grandparental guardian rather than the parents. Judge Jones stated that he believes that based on a constitutional right the Supreme Court decided to provide counsel to parents in guardianship cases.

## **Old Business**

### Discussion of Topics at Annual Public Hearings and Topics for Upcoming Meetings

1. Identified topics for upcoming meetings:
  - Public funding to provide attorney to indigent clients.
  - Access to Legal Aid based on race, gender, and ethnicity.
2. Sex Offender Representation
  - The commission discussed the repeated issue of perpetrators of domestic violence and sex offenders. They discussed the possibility of revisiting the statute regarding sex offender child custody and representing registered sex offenders.
  - The Chair asked for a motion to add the topic to an agenda for an upcoming meeting. Seeing no motions, the commission moved onto the next topic.
3. Parental Alienation
  - Constituency that speaks at annual public hearings would like to see a statute on parental alienation related to what is considered parental alienation.
4. Access to Justice Commission
  - Commission members unanimously voted in favor of having a member currently serving on the commission to speak at an upcoming meeting.

## **New Business**

Representative Yearick and his guest, Lt. Sawchenko, Delaware State Police (Ret.), presented the commission with a piece of legislation that explores pensions in relation to divorce.

### Long Title

AN ACT TO AMEND TITLE 13 OF THE DELAWARE CODE RELATING TO DISPOSITION OF MARITAL PROPERTY.

### Synopsis

This bill addresses the inequity that may occur when Family Court is asked to divide a non-covered pension by requiring the court to consider the ability or inability of the parties to earn Social Security and other factors which the parties may present relevant to the equitable distribution.

Points made by Lt. Sawchenko:

- Lt. Sawchenko went through a divorce. During the divorce proceedings, his spouse attempted to gain his pension.
- The legislation would affect individuals not paying into social security but receiving a pension, as, for example, Lt. Sawchenko's pension from the Delaware State Police.
- By Federal law, Social Security is not divisible during a divorce. However, a state pension is currently divisible.

Questions and Comments from Committee Members

Q: Mr. Bounds asked what would happen in a divorce situation where one spouse had dedicated their time in the marriage to allowing the other to work, meaning that they did not pay into Social Security and did not earn pension benefits in their own right. He then asked if Lt. Sawchenko would be o.k. with dividing a pension in the case that neither spouse paid into Social Security but where one has a pension.

A: Lt. Sawchenko stated that he is agreeable to the division of a pension in this case.

Closing

The commission decided to give the proposed legislation thought and consideration. Mr. Bounds invited Lt. Sawchenko to attend the next Family Law Commission meeting and asked the Lieutenant to bring the finalized version of the legislation to the next meeting.

**The meeting adjourned at 1:49 p.m.**