

Minutes of the
Family Law Section of the Delaware State Bar Association

September 25, 2014 at 4:00 p.m.

Bayard, P.A.

Members Present: Achille Scache, Shauna Hagan, Suzanne Seubert, Kara Swasey, Ashley Stitzer, Christine Demsey, Pete Clark

Members Present Telephonically: Patrick Boyer, Addie Asay (liaison), Megan Walstrom, Gretchen Knight, Julie Yeager, Carl Heckert

- Good and Welfare
 - David Gagne is moving to the firm of Giordano, DelCollo, Werb & Gagne effective Monday, September 29, 2014.
 - Rory Godowsky is moving to Gonser and Gonser.
 - Happy birthday to Ashley Gordetzer.
- Liaison Issues
 - Divorce decrees have been received smudged and in poor condition. The liaison addressed this issue with the Court staff and damaged decrees were reissued.
 - Members again expressed displeasure with mediations being scheduled prior to the expiration of the answer period because if an attorney gets involved after the scheduling notice goes out, motions for continuance or requests must be made.
 - All three notices- one for Petitioner, one for Petitioner's attorney and one for Respondent- were enclosed in the same envelope and mailed to Petitioner's attorney. The liaison will address this training issue.
 - Calls to mediation go unanswered. The liaison will address this issue.
 - Telephone contact with the Commissioner's offices has improved.
 - The recently installed murals on the second floor of the Courthouse look great.
 - The staff in Records, which includes a number of new people, is cheerful and doing a good job.
- DSBA Initiatives and Section Participation
 - DSBA Publications—Delaware Law Journal- please contact Ash Scache if you are willing to submit a law review-style article on behalf of the section.
 - The Family Law Section would like to increase membership and participation from downstate attorneys.
- Other Business and Announcements
 - Family Law Update- December 12, 2014
 - PFAs have been moved in New Castle County for 12/12/14 to increase attendance.
 - There will be panels on mediation (best practices), the child support review, valuation of unique assets, and QDROS. Chief Judge Kuhn will deliver a state of the Court address.

- Christopher White Awards Breakfast: October 23, 2014 at 8:00 a.m. at Hotel DuPont.
 - Our friends at Rahaim & Saints and the DVLS Staff Attorneys will be honored for their efforts.
 - Tickets are on sale.
- Food for Thought
 - The Delaware code still refers to children as illegitimate in some places and needs to be cleaned up.
 - The Delaware code still includes homosexuality in the definition of misconduct and correction should be made.
 - The Delaware code calls for divorce to be filed in the County in Delaware the parties last resided, but in some cases, the parties never resided in Delaware. This should be amended to reflect any county or county where the marriage/civil union was solemnized.
 - The Delaware Supreme Court heard oral argument on Rule 60(b) motions, alimony and the juvenile expungement law.

Respectfully submitted,



KARA SWASEY
Member, DBSA Family Law Section

Minutes
Family Law Section Meeting
October 23, 2014
4:00 pm
Bayard, P.A.

Attendees: Christine Demsey, Shauna Hagan, Kara Swasey, Patrick Boyer, Achille Scache, Shawn Dougherty, Ashley Stitzer by phone: Julie Yeager, Ashley Gorodetzer, Carl Heckert, Megan Walstrom, George Tsakataras, Darlene Blythe, Suzanne Seubert, Jim McGiffin

- I. **Approval of Minutes:** The minutes from the September 25, 2014 meeting were approved.
- II. **Good and Welfare:**
 - a. The attorneys of DVLS and the attorneys of Rahaim and Saints received recognition for their great efforts in the area of pro bono assistance at the annual Christopher W. White Distinguished Access to Justice Breakfast. The attorneys of Rahaim and Saints were honored with the Leadership Award and the attorneys of DVLS were honored with the Service to Children Award. Congratulations to all!
 - b. An opinion was issued in the matter of *Fuller v. State*. The Supreme Court reversed the Family Court and held that subsequent Title 21 infractions do not preclude expungement of a juvenile delinquency record. Much thanks to Kara Swasey and Ash Scache for writing and arguing the Amicus Brief on behalf of the Section.
- III. **Liaison Issues:**
 - a. Addie Assay was on vacation during our meeting and therefore not in attendance.
 - b. The Court is still considering how to address mediation that is scheduled during the answer period.
 - c. There was an issue regarding a matter where a litigant was considered absent for a hearing even though she was in the 3rd floor waiting room due to an expired PFA – the litigant had told Capitol police she was not comfortable waiting at the courtroom. No one had told the DCSE attorney where the litigant was either. There needs to be some check in procedure when this occurs. The attorney conducted a default proceeding only to learn at the end of the proceeding where the litigant was and the matter had to be conducted again once the litigant reached the courtroom. Further, 2 officers appeared with the litigant. This appears to be a non-judicious use of resources when there were no current PFA Orders in effect.
 - d. A discussion was held over what recourse is there when a premarital agreement is destroyed and whether the Family Court should have a "Register" for premarital agreements. Shawn Dougherty mentioned that you may be able to record a premarital agreement in the Recorder of Deeds office for safekeeping.
 - e. Please email Addie Assay (Addie.Asay@state.de.us) or Achille Scache with any liaison issues you have.
- IV. **New Business:**
 - a. **DSBA Initiatives:** The Section is still looking for a volunteer to write a law review-style article. If anyone would like to volunteer please let Achille Scache know. Further if anyone has suggestion on a novel area of the law for the article, please bring those ideas to the next meeting.

- b. **Increase Section participation in Kent and Sussex:** In an effort to increase participation from our downstate members, the Section would like to hold a meeting downstate. CLASI offered their space for a meeting. Ash will contact them to arrange that meeting.

V. Other Business and Announcements:

a. Family Law Update:

- i. The Family Law Update will be held on December 12 at the Christiana Hilton. The topics are :

1. Valuing Unique Assets
2. Best Practices in Mediation
3. Drafting QDROs
4. The Changes to the Child Support Calculation
5. The Changes to the Substantiation Statute
6. State of the Family Court
7. And of Course, the Case Update

- b. **Announcements:** Since it is the holiday season when we have our update it would be nice if everyone could bring an unwrapped toy to the Update for Toys for Tots. Julie Yeager volunteered to get the word out to the section and to the other attendees of the Update.

- c. **Emmanuel Dining Room:** George Tsakataras revisited this topic that had been discussed during the 2012-2013 year. On the 9th of every month many firms and other groups donate food and volunteer to serve one meal at Emmanuel Dining Room. The cost is reasonable and George Tsakataras could write an article about the sections participation and sponsorship. A Motion was made and passed that the Family Law Section of the DSBA will support one meal one month a year at the Emmanuel Dining Hall. George will provide more information and help marshal attendance.

- d. **Child Inc. Happy Hour -** There will be a Happy Hour on October 30 for Child, Inc.

VI. Food for Thought: Open

- a. The Standard Visitation Guidelines need "tweaking".
 - i. The holiday schedule is not realistic based on the way people celebrate holidays
 - ii. The language is confusing regarding coordinating the children's activities and how it correlates to joint legal custody.
 - iii. There needs to be a way to formulate a way not to be in court over decision making.
 - iv. The section should try to devise a way to put language into orders regarding the parties need to plan for education.
 - v. The Section decided to call a committee regarding revising the guidelines: the members of the committee are: Shawn Dougherty, Kara Swasey, Chris Demsey, Megan Walstrom, and Darlene Blythe.

- b. Shawn Dougherty proposed drafting legislation to address the fact that there is no authority in child support matters to change which party will receive the tax exemption for the child.
- c. Further discussion was held on the perception that there are many new cases with elderly clients. It appears that the issue in these matters is that one parent dies and the children do not want the former spouse to receive any of the money. It appears that children with bad intent may be breaking up good marriage because the children are trying to get at their parents estate. A discussion ensued regarding whether there may be a desire to preserve assets by the parties' divorce. The Section discussed if this topic would be appropriate for an Inn of Court presentation.

Next Meeting: The next Section meeting will be held at 4 p.m. on Thursday November 20 at Bayard P.A.

Submitted By:


Minutes
Family Law Section Meeting
November 19, 2014
4:00 PM
Bayard, P.A.

Attending: Achille Scache, Pete Clark, Leslie Spoltore, Kasey DeSantis, Megan Walstrom, Pat Boyer, Carl Heckert, Shawn Dougherty, Suzanne Seubert, Bonnie Copeland, and Staci Pesin.

1. Approval of Minutes - The Minutes from the October 23, 2014 meeting were approved.

2. Good and Welfare - None to report during this meeting.

3. Liaison Issues -

a. Entry of Appearance - The Section inquired whether attorneys can file one Entry of Appearance for multiple petitions or whether separate Entries are required.

b. A member noted an issue with a delay of approximately 8-10 days from mediation to the issuance of the resulting order.

c. A member noted some difficulties in obtaining prompt responses from mediators in NCC about continuances.

d. A member raised a concern that if a document is filed in NCC for a Kent County action it can take 17 days for the document to be processed and docketed in the Kent County file.

e. A member raised a concern that the Divorce Unit has been sending all parties' copies in one envelope.

f. A member raised a concern about receiving the 10 day mediation notice in the same envelope as the final notice.

g. The Section raised a concern that mediations continue to be scheduled during the answer period.

h. A member raised a concern that the Mediation Unit has advised some litigants that mediation could not be scheduled without a parent education certificate.

4. DBSA Initiatives and Section Participation -

a. Increasing participation on Kent and Sussex Counties. In an effort to get greater participation from Kent and Sussex attorneys, Ed Curley has offered to host the February 26, 2014 meeting. The meeting will begin at 4:30 p.m.

b. DSBA Publications - Digest and Delaware Law Journal. The Section is still looking for someone to do a law review style article for the DSBA publications. The DSBA continues to press the point. If you have an idea, even if you do not want to write the article, please let the Section Chair know.

5. Other Business -

a. Family Law Update - The Family Court is arranging for the payment of the fee for judicial officers so we are hopeful that many will attend. The Update will be held on December 12, 2014 beginning at 8:30.

6. Food for Thought: Open Forum to Discuss Recent Case Law Developments -

a. (Pat Boyer) - Judge Cooper has transferred jurisdiction in a custody matter based on the theory of forum *non conveniens*. The decision sets forth the factors to be considered in this type of analysis.

7. Other -

a. A member inquired how litigants/Judges are handling Parent Plus Loans. These are loans parents are signing to pay for their children to go to college. Are they treated as a marital debt or are they treated as support for a dependent spouse?

b. It was noted that some changes are needed in the Delaware Code to eliminate homosexuality as a basis for divorce (misconduct). Similarly, changes are needed to remove references to illegitimate children. The Executive Committee of the Bar was very interested in making sure these changes are made. Suzanne Seubert offered to take the lead in drafting and the Chair will ask her to head a committee on the issue of drafting.

c. PFA - Weapons Prohibition. Federal law provides an exemption for members of the military but this exemption does not apply to law enforcement officers. This creates a bit of a concern for petitioners who want the respondent to keep his/her job because they need the financial support. Also, it is problematic that a hearing is required and the exemption will not apply to a consent order. The Chair advised that Kara Swasey would like to revive the PFA Committee to address this and other issues.

December Meeting – We will have a guest speaker on Special Education Law and how to identify and deal with those issues in custody cases.

Next Meeting - December 18, 2014.

The meeting adjourned at 4:26 p.m.

Minutes
Family Law Section Meeting
December 18, 2014
4:00 pm
Bayard, P.A.

Attendees: Achille Scache, Jill Spevack DiSciullo, Staci Pesin, Kara Swasey, Ashley Stitzer, Lauren O'Connell Mahler. [OTHER ATTENDEES NOT RECORDED] *Kileners, Addie, Megan, Julie*

- I. **Approval of the Minutes:** The minutes from the November meeting 2014 meeting were approved.
- II. **Good and Welfare:** Shauna Hagan will be opening the Law Offices of Shauna Hagan. Congratulations to Shauna. Laura Brooks is moving her office to Independence Mall. Shelly Cutrona is pregnant, Congratulations to Shelly and her family.
- III. **Liaison issues:** Addie Assay was going through the list on the November minutes:
 - A. As a general statement, a number of issues are coming in to her in general terms possibly due to concerns about *ex parte* communications. It would be better if any concerns could come to her with case specific or employee specific information so that she could determine whether this the issue is case or employee specific. Addie will keep the information confidential and this will help her investigation. She will be better able to determine if the issue is related to a systemic or case specific or staff issue. So if it's a staff issue, please share the staff member's name, if it's a case issue, give the case name/file number.
 - B. An issue was raised regarding the Entry of appearance forms and whether pursuant to Rule 5 and form 354 if we can place multiple entries on one form. Yes, multiple matters can be entered on one form. If problems persist reach out to Debbie Frye.
 - C. There was a concern regarding the delay in mediation orders: Addie looked into the process of how things are moved up to judges/commissioners and back down. There can be a delay in how they get up to the judge to get signed and get back down to mediation to be signed and back out to the litigants. There can be an 8-10 day delay before things get signed. It should not take that long, but it does happen.
 - D. There was a concern raised regarding getting prompt responses from mediators. Addie would like more information. This may have to do with the information that the mediators are putting on voicemail and whether they are properly indicating whether they are out of the office. If you are not getting a prompt response then put out a call to Rudy Eckard.
 - E. Filings in New Castle County took 17 days to be docketed in Kent County. It should not take that long. Addie would need case specifics to determine if this is a systemic issue.
 - F. Divorce unit is sending all photo copies. Addie working with divorce unit on that issue.

- G. The continued issue of mediation. This has been discussed this with the mediator. The Family Court is not in a position to change this procedure.
- H. Once mediator told a litigant that mediation could not be scheduled without parent education. Addie requires additional information on this issue as it appears mediator specific.
- I. The continued concern that there is a delay when you drop off of filings at central filing rather than at family court filing.
- J. New liaison issues: Shauna filed a petition for partition with a typo and told it was bounced back due to the typo on the certificate. Staff wouldn't accept the COS due to the typo.
- K. The wrong statute is listed on the petition for partition. This will be corrected.
- L. There is a different scheduling policy between parent counties. Kent county policy to schedule after the answer period. Addie doesn't know the policy in Kent and Sussex.
- M. In custody matters when representing the respondent and the petitioner doesn't take parent education course, the mediator is sending out the notice of dismissal to counsel even though counsel filed an EOA. Mediator is sending the notice to the Petitioner.
- N. How often does the court cull cases? The petitioner does not take the parent education course. Addie confirms that this is being done. Addie is under the impression that this is being done.

IV. DSBA initiatives and section par

- a. Family Law Update very well received and very well received. February's meeting will be in Kent County at Edinboro University. The address is: 250 Beiser Boulevard, Suite 202, Dover DE 19904 302-671-1234. Please do your best to attend in person.
- b. We need a volunteer do a law review style article. Please contact Ash Scache if interested.
- c. At a previous meeting, Sheri mentioned that there are still lingering references to homosexuality in the code, so if you are interested in drafting the code please contact her and help.

V. Announcements

- a. May 21st Lecture sponsored by the Thomas More Society regarding the Evolution of Family Law, we would like to have good attendance. Please mark your calendars. Dr. John Professor of Law from Notre Dame will be speaking. Co-sponsored by the Thomas More Society.

VI. Food for Thought

- a. Lauren O'Connell –Mahler was our special guest on the topic of Special Education Issues and Issue Spotting:
 - i. McAndrew's Law Office. In DE since 2010. Represent Families of students with Disabilities against their school districts. A lot of families have ongoing custody issues so there is a lot of overlap. Firm has a history of 30 years. Potential issues to spot special education claims because there was an issue with a parent with a child a special need can become a need to determine which home best serves the child.
 - ii. DE adopted IDEA and 504. Laws cover gamut of special needs, not just educational, medical, and behavioral but anything that impedes educational process. Families could be entitled to relief is school impeding relief. Often compensatory education. Usually fund of services sometimes awarded as fund of money. Private school, specific education, etc.
 - iii. School has duty to identify any student in district with special needs ...CHILD FIND. If the parent hides the disability, still the duty to find student. If the child is found eligible, the child could be entitled to an IEP or 504 plan.
 - iv. In general IEP or eligibility under IDEA vs 504 could mean that the child is entitled to: OT PT or speech therapy. Also gives students more discipline protections under the law. Children also have different protections under the juvenile justice system. The school can discipline you differently if your child is covered under one of these accommodations
 - v. Who holds the education rights? The custodial parents. Hasn't been an issue that parents have battled in the courts to gain sole legal custody for the purpose of getting a child an IEP.
 - vi. 504 means equal access to education; IDEA defines the special education process.
 - vii. In the law there is fee shifting so there is very little that we as attorneys can be done to mess it up. In the majority of the cases that has been one parent that has sole legal custody.
 - viii. A 504 is to allow the child to equally access the school, such as a child needing a specific lunch. You can still get federal enforcement for violations of 504. There are a lot more procedural safeguards for children under IDEA.

VII. Next Meeting: The next Section meeting will be held at 4 p.m. on Thursday January 22, 2015 at Bayard P.A.

Minutes
Family Law Section Meeting
January 22, 2015
4:00 pm
Bayard, P.A.

Attendees (in person or by phone): Kara Swasey, Staci Pesin, Bonnie Copeland, Ashley Stitzer, Shawn Dougherty, Jill Di Sciullo, Kara Swasey, Achille Scache, Chris Demsey, Leslie Spoltore, Jen Mensinger, by phone: Shana Pinter, Steve Kliner, Rob Kliner, Megan Walstrom, Julie Yeager, Jim McGiffin, Addie Assay, Gretchen Gilchrist, Kathy Laffey.

I. Approval of the Minutes

- The minutes from December 2014 meeting were approved.

II. Good and Welfare

- Sean Lynn is now in the House for the 31st District. Congratulations, Sean!

III. Liaison issues:

- Old Issues: The dismissal which is issued after 180 days if a party has not taken the parent education course is not being sent to the attorney of record. This appears to be a staff issue. The staff is supposed to check off on the correspondence to whom the correspondence was sent, e.g. attorneys and parties.
- New liaison issues: The women's and men's prison do not offer the separating and divorcing parent courses on site. The prisoners cannot take the online course as they do not have access to the internet. A member requested the liaison look into whether it would be possible to establish a uniform system to enable prisoners to take the course. It was suggested that the parties could file to bypass the course, however when that has been done in the past, motions were denied. Addie will reach out to Yolanda Jenkins. At this point filing a motion to bypass is the appropriate even though they are being denied. DFS is responsible for coordinating these courses. DFS did not certify the online classes. The contractors at the prisons are not utilizing the correct course. In addition, a member raised the concern that there is no Spanish language course offered.
- A member raised a tangential issue where that attorney entered their appearance *pro bono* in a prisoner matter. Because the Commissioner did not notice the attorney on for the hearing, no one appeared. Moreover, the prisoner client was not transported from the prison for the hearing. The case was dismissed.

- Another member raised the issue of child support consent orders being filed but not timely going out to employers/parties and DCSE. This creates delays and can create issues between parents when one parent isn't sure when to pay DCSE directly and the other is complaining about not receiving support.

I. DSBA initiatives and section participation:

- February's meeting will be in Kent County at Ed Curley's office: the address is: Curley, Dodge & Funk, 250 Beiser Boulevard, Suite 202, Dover DE 19904 302-674-3333. Please do your best to attend in person.
- The Section still is looking for someone willing to write a law review-style article for publication in the Delaware Law Review. Please contact Ash Scache if you wish to volunteer for this scholarship opportunity.
- Plans are underway to present a free Child Support Formula Update CLE given in each County. Judge Newell, Commissioner Southmayd, and Commissioner Vari will be on the panel. Anyone wishing to help set this up please contact Ash Scache.
- There are still lingering references to homosexuality as grounds for divorce on the basis of misconduct in the Delaware Code. Jim McGiffin volunteered to assist Suzanne Seubert in drafting the necessary legislation required to clean this up.

V. Food for Thought

- A discussion ensued regarding parents who utilize "self-help" in relocation cases and how the Court views such actions. Will the court reward parents who do not follow the rules and simply move first, and then ask for forgiveness? In one matter the court allowed relocation to Serbia.
- Another question came up as to whether a Respondent could consent to a lifetime PFA order. The Respondent was told there could be no consent without the Commissioner making a finding regarding aggravation factors. The Section discussed whether you were at risk of the Commissioner dropping the lifetime portion of the PFA in such situations if you attempt to put such consent on the record. The consensus appears that the aggravating factors have to be put on the record as well.
- The Section discussed continuing the tradition of circulating decisions so that we can stay abreast of the Court's most recent decisions. If you have a recent decision you think is noteworthy redact it first and send to Ash Scache for circulation.

Next Meeting: The next Section meeting will be held at 4 p.m. on Thursday February 26, 2015 at Curley, Dodge & Funk in Dover. Please make every effort to attend in person!

Minutes
Family Law Section Meeting
February 26, 2015
4:00 pm
Curley Dodge & Funk, LLC

Attendees: Jill Di Sciullo, Achille Scache, Patrick Boyer, Darlene Blythe, Ann Fitzgerald, Clay Jester, Ed Curley, Jim McGiffin, Jae Eberly, Anthony Panicola, Laura Yiengst, by phone: Steve Klinier, Rob Klinier, Shawn Dougherty, Tabatha Castro, Julie Yeager, , Addie Assay, Carl Heckert, Kathy Laffey, Janine Howard

- I. **Approval of the Minutes:** The minutes from the January meeting 2015 meeting were approved.
- II. **Good and Welfare:**
 - a. Erin Fitzgerald will be joining Curley Dodge and Funk effective Monday, March 2, 2015, Congratulations!
 - b. Achille Scache became associated with Giordano, Delcollo, Werb & Gagne, LLC. On February 16, 2015. Congratulations!
 - c. Judy Jones will be joining Parkowski, Guerke and Swayze in the Spring. Good Luck and congratulations!
- III. **Liaison issues:**
 - Entries of appearance are being separated from the petitions
 - Scheduling mediation: Whoever is scheduling mediation is being told to scheduled mediation 15 days after the petition is filed, however they are not sending out notices until immediately before the mediation, and the attorneys are not receiving "10 day notices" even if their appearance is entered. This is causing an inordinate amount of continuance requests in mediation matters. Addie informs us that that it is a staffing issue - they are instructed to wait for 20 days after service (3 weeks during answer period) and no mediation is to be scheduled during this time. There is even a "fail safe" provision that no notice can be issued if it's within 3 weeks, however if the mediator overrides this "fail safe" then no notice will be issued at all. There will be scheduling 15 days after the petition is filed. The Court will not agree to wait until an attorney enters their appearance because attorneys enter their appearance in only 20% of the cases.
 - Follow up regarding parenting class for litigants in DOC custody. Addie reports that Yolanda Jenkins on behalf of DOC states that they are hopeful that someone at DOC will work on a way for those in incarcerated will be able to take the course. There will not be a blanket exception for those at DOC, a motion will have to be filed in every case.

IV. DSBA initiatives and section participation:

- We need a volunteer do prepare a law review style article. Shawn suggested that there may be a test case for determining what marital property is in a same sex marriage where the parties were together for 23 years but only married a year. The parties are briefing now.
- There will be a free Child Support Formula Update CLE given in each County. Judge Newell, Commissioner Southmayd, and Commissioner Vari will be on the panel. Anyone wishing to help set this up please contact Ash Scache.
- Allison Orsinger, who handled all substantiations in Kent County is retiring to Jim Liguori's office. She is happy to retire, everyone will miss her.
- Nominations for 2015/2016 will be discussed at the next meeting. We also need to increase participation in Kent and Sussex County.

V. Food for Thought

- There was a discussion regarding making statutory changes in the child support statute to allow parties the ability to claim tax exemptions through child support or custody (only in a shared residence situation). Judge Newell suggests that the statute should be opened up for other arrangement in the event the exemption would be useless to the other parent. One of the issues is that if the tax exemption issue is dealt with in property division it is not modifiable. Should we only deal with this issue win custody in Child support.
- There was also a discussion regarding the use of Petitions for Protection from Abuse. The issue currently before the Supreme Court is whether a biological child, whose parents rights were terminated, could file petitions for protection from abuse against their former parent, since under the statute they are no longer a member of the protected class. The section suggests the statutes be modified to include former legal children/parents as members of the protected class.

Next Meeting: The next Section meeting will be held at 4 p.m. on Thursday March 26, 2015 at Bayard.

Minutes
Family Law Section Meeting
March 26, 2015
4:00 pm
Bayard, P.A.

Attendees: Jill Di Sciullo, Achille Scache, Shawn Dougherty, Kara Swasey, Shauna Hagan, Staci Pesin, Leslie Spoltore, Ashley Stitzer by phone: Patrick Boyer, Jae Eberly, Steve Kliner, Rob Kliner, Megan Walstrom, Addie Assay, Gretchen Knight

I. Approval of the Minutes: The minutes from the February 26, 2015 meeting were approved.

II. Liaison issues:

- 3rd party Petitions are being bounced because parent education classes are not being completed. A case sat for 2 ½ years was bounced then reinstated when the Court figured out that parent education was not needed.
- There has been an issue with Child Support petitions not being processed more than a month after being filed. Addie reports that operations was inundated with petitions from DCSE and that caused a large backlog because many petitions were filed at one time. This should be worked out by now.
- Guardianships have not been processed for 3 ½ weeks to a month because there was no information sheet. Since the process took so long a child ended up being deported. Ash reported that it took 4 months to get a *non est* packet on a Petition to Rescind guardianship. Addie has requested that when these issues arise that you please report to her case specific information. Addie is also trying to keep information on statistics on how the length of time between the filing of an action and the processing of the action.

III. New business :

- We need a repository for past minutes. Kara Swasey volunteered to be archivist. Please look through your computers and old notebooks and see if you have any past minutes. This became relevant in discussing the proposed legislation to extend the jurisdiction of the Family Court over premarital real estate. There are no minutes that reflect what action the section took regarding this proposed legislation. There are minutes from 1/24/13 which reflect a discussion took place to propose such legislation, but there are no minutes reflecting what if anything occurred after this meeting regarding this legislation.

A draft House bill was circulated and was attached to the agenda. The Section discussed several revisions to the language of the draft bill which are excerpted below. A discussion ensued regarding the change to the statutory language of 1513(b) of Title 13. The section discussed whether we were trying to make additional provisions for marital property that is subject to equitable property division under 1513 or whether we were simply trying to divest Chancery court of their jurisdiction over real property that was acquired premaritally, and if so would we simply change the jurisdictional language found in 10 Del. C. 921(14) and give Family Court the authority to partition the property.

The section discussed that there are some “philosophical differences” with creating changes to what is marital property versus simply expanding the jurisdiction of the Family Court to include jurisdiction over property that was previously the purview of Chancery Court.

The Section further discussed that if we only addressed the jurisdiction issue in Title 10 then it would be a partition action versus property that would be considered marital property and subject to equitable division.

Upon concluding the discussion, two alternate proposals for draft legislation were created and they are as follows:

1) PROPOSED PARTITION LANGUAGE

10 Del. C. § 921 Exclusive original civil jurisdiction.

The Court shall have exclusive original civil jurisdiction in all proceedings in this State concerning:

(14) Petitions by persons formerly married to each other seeking an interest in or disposition of jointly titled real property, where such property was not disposed of (i) by agreement of the parties, or (ii) by virtue of ancillary proceedings pursuant to § 1513 of Title 13. In dividing said property the Family Court shall apply equitable principles unless there is a written agreement signed by the parties regarding the disposition of said property. Unless there is a written agreement signed by the parties the Family Court shall not consider the factors enumerated in § 1513 of Title 13.

2) PROPOSED EQUITABLE DIVISION LANGUAGE

13 Del. C. § 1513

(b) For purposes of this chapter only, "marital property" means

(1) all property acquired by either party subsequent to the marriage except:

(i) Property acquired by an individual spouse by bequest, devise or descent or by gift, except gifts between spouses, provided the gifted property is titled and maintained in the sole name of the donee spouse, or a gift tax return is filed reporting the transfer of the gifted property in the sole name of the donee spouse or a notarized document, executed before or contemporaneously with the transfer, is offered demonstrating the nature of the transfer.

(ii) Property acquired in exchange for property acquired prior to the marriage;

(iii) Property excluded by valid agreement of the parties; and

(iv) The increase in value of property acquired prior to the marriage; and

(2) all jointly titled real property acquired by the parties prior to their marriage, unless excluded by valid agreement of the parties.

- Kara Swasey, Chris Demsey, Megan Walstrom and Shawn Dougherty met to review the custody guidelines. They also discussed utilizing and devising a Rule 16(b) form for custody mediation.
- There was a discussion regarding when it is necessary to attach cases to brief and memoranda. All other courts require that if you can find it on Westlaw or Lexis that you don't have to attach it unless it is different or unusual. Spoke to G. Knight regarding changing this rule. S. Seubert mentioned that in *pro se* matters in Chancery Court she typically provides the cases and rules to memoranda and briefs.

Next Meeting: The next Section meeting will be held at 4 p.m. on Thursday April 23, 2015 at Bayard.

**Minutes
Family Law Section Meeting
April 23, 2015
4:00 pm
Bayard, P.A.**

Attendees: Jill Di Sciullo, Achille Scache, Shawn Dougherty, Kara Swasey, Shauna Hagan, Staci Pesin, Bonnie Copeland, Molly Shaw, Patrick Boyer, By phone: Steve Kliner, Rob Kliner, Suzanne Seubert, Addie Asay, Gretchen Knight, Ellie Torres, Jen Mensinger, Kathy Laffey

I. Approval of the Minutes: The minutes from the March 26, 2015 meeting were approved.

II. Good and Welfare:

Rachelle Cutrona had her baby "Olivia" - Congratulations to the Cutrona Family.

III. Liaison Issues:

- Issue with petitions regarding petitions for guardianships and children turning 18 before hearings being scheduled. The children will not be eligible for special immigration status if this occurs.
- The Chief Judge reached out to Kathy Laffey and was told that the Court will be sending out courtesy copies of the Notices of Trial Readiness to Respondents. There is a new form in production
- In Sussex County they seem to hold final decrees for 13-14 days to see if anyone has an objection
- Still having the issue of mediation being scheduled during the 20 day answer period

IV. Old business :

- To increase participation in Kent and Sussex County nominations for Board positions can be from the Section's downstate participants. We would like to encourage participation from down state.
- Still looking for a law review style article. One suggestion was to have an article regarding alternative types of service of process e. g. service of process via Facebook .
- The section then began discussing the proposed revisions to Title 13 and Title 10 or the Premarital Real Property Bill .

- The section discussed an alternative to changing Title 13 that was introduced at the last meeting instead of 13 Del C 1513; that the jurisdictional mandate of the court found in the language in 10 Del. C. 921(14) could be revised.

The two proposed changes are as follows:

10 Del. C. § 921 Exclusive original civil jurisdiction.

The Court shall have exclusive original civil jurisdiction in all proceedings in this State concerning:

(14) Petitions by persons formerly married to each other seeking an interest in or disposition of jointly titled real property, where such property was not disposed of (i) by agreement of the parties, or (ii) by virtue of ancillary proceedings pursuant to § 1513 of Title 13. In dividing said property the Family Court shall apply equitable principles unless there is a written agreement signed by the parties regarding the disposition of said property. Unless there is a written agreement signed by the parties the Family Court shall not consider the factors enumerated in § 1513 of Title 13.

13 Del. C. § 1513 – proposed amendment

(b) For purposes of this chapter only, "marital property" means

(1) all property acquired by either party subsequent to the marriage except:

(i) Property acquired by an individual spouse by bequest, devise or descent or by gift, except gifts between spouses, provided the gifted property is titled and maintained in the sole name of the donee spouse, or a gift tax return is filed reporting the transfer of the gifted property in the sole name of the donee spouse or a notarized document, executed before or contemporaneously with the transfer, is offered demonstrating the nature of the transfer.

(ii) Property acquired in exchange for property acquired prior to the marriage;

(iii) Property excluded by valid agreement of the parties; and

(iv) The increase in value of property acquired prior to the marriage; and

(2) all jointly titled real property acquired by the parties prior to their marriage, unless excluded by valid agreement of the parties.

A discussion ensued regarding the validity of each of the proposals.

The section discussed that if only the language of §921 was changed then there may not be financial certainty for the parties. Further, there was a concern that it would cost the

parties more as could potentially have to litigate both a partition matter for that parcel of real estate and an equitable division matter for the rest of the marital estate, if there were no other changes made to 13 Del. C. 1513. However the section further discussed that if we do not change the jurisdictional language found in 10 Del. C. §921 then the jurisdiction of the court would not be properly extended over jointly purchased premarital property.

After a discussion of both proposals the section voted (with only one opposed) to adopt a change to both Title 13 § 1513 and Title 10 § 921.

V. New Business

- The Section next discussed Senate Bill 55 which relates to extending the number of days for an emergency ex parte order from 10 days to 15 days. Ellie Torres introduced the bill. A discussion ensued that this bill is designed to help cases move along more expediently. This bill is designed to limit the need for continuances as if the matter is filed on Monday, it is frequently the case that service cannot be made in time for a hearing that Friday and the parties have to come back. However this will also affect DFS and PPH hearings.
- Addie Asay added that this is about judicial resources, judicial economy. They are hoping to decrease continuances, and allow time for service. This bill is not designed to allow the process server additional time to serve the petitions.
- This bill was based on a lot of data collection, including, how many cases had to be continued, how many ex parte orders were issued and how many cases were resolved based on a consent order or how many cases resolved after a full hearing. 60% of the cases were resolved on the first hearing, the court would like to improve that number by 20%
- A motion was made to support the bill, and the vote revealed a fairly even split against supporting the bill
- Another motion was made to reserve decision on supporting the bill until more data was shared with the section .
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- **Next Meeting:** The next Section meeting will be held at 4 p.m. on Thursday April 23, 2015 at Bayard

Minutes
Family Law Section Meeting
May 28, 2015
4:00 pm
Bayard, P.A.

Attendees: Carl Heckert, Addie Assay, Rebecca Trifellis, Jennifer Mensinger Achille Scache, Jill Di Sciullo, Shawn Dougherty, Kara Swasey, Staci Pesin, Pete Clark, Rob Kleiner, Steve Kleiner, Janine Howard O'Rangers, Ellie Torres, George Tsakataras, Julie Yeager

I. Approval of the Minutes: The minutes from the April 23, 2015 meeting were approved.

II. Good and Welfare:

Judge Newell will become the Chief Judge of the Family Court for the State of Delaware. Ashley Gorodetzer's father is ill (*he is doing much better now). David Gagne's mother passed away

III. Liaison Issues:

- Still issues with requiring Motions for Continuance on mediations. 10 day notices being sent in the same envelope as the actual scheduling notice for the mediation. The mediators are not being responsive to request to continue. The mediators are not updating their voicemail messages. The section does not know whether there is a procedure for calling. If a matter gets continued, not everyone gets notified. Usually whoever get he signed order would make the call. This practice should be memorialized.
- Why are divorce decrees coming out 8-10 days out after the divorce is granted. This is causing an issue regarding completing the 16(c). Will the divorce decree look different with the new e-filing.
- The records people are fantastic.
- Still having the issue of mediation being scheduled during the 20 day answer period

IV. Old business :

- DSBA Initiatives - Thank you Rebecca for joining us.
- Still looking for a law review style article.
- Draft of Real Property Bill, went out to other sections, however legislation is on hold until Fall (January)

- SB 55 was tabled. If you were at Melson Arsht you heard that the Bill would do what it was intended, which is to decrease continuances. As a reminder Senate Bill 55 relates to extending the number of days for an emergency ex parte order from 10 days to 15 days.
- Pete Clark brought up an issue in which there was a matter in which Mother had primary custody. Father was granted an ex parte PFA. The question ensued whether Commissioner's scrutinize PFA's when granting ex parte relief and whether SB 55 will bear on this - will having a 15 day ex parte period versus a 10 day period bear on judicial discretion. Ellie ran the numbers and the data bears out that the longer period will actually lessen continuances and resolve more cases at the first hearing. Therefore overall it will decrease the length of time the ex parte relief is in place. The hearing will still be scheduled within 15 days instead of being continued.

47% of the country has ex parte orders for 14 days or longer

26% of the country has a 14 day order

In 8 states the Respondent has to request a hearing

DVCC would like the sections support now for SB55, however because the gun bill is pending DVCC is holding SB55. There was a motion to support the bill and the motion passed unanimously.

- SB 56 - *(This bill passed after our meeting) DFS would like authority to seek ex parte mental evaluations to compels parents to submit to mental health evaluation prior to taking kids into care DFS will give parents the option to submit in writing If parent refuses if mental health or alcohol is at issues in a case
- At a Probable cause hearing, where hearsay is allowed and the standard is a preponderance of the evidence. Julie Yeager believes that the Court will send the parties to Mid-Atlantic for a 2 hour evaluation and an 'evaluation' will be produced after a 2 hour meeting and the evaluations will be substantially similar for every parent. Further, Mid-Atlantic receives all their information from DFS, then Mid-Atlantic will use this information against them. If mental health is impacting the ability of a parent to parent, then parent should be able to have other information and facts that they can use to get to the PPH. What if this mental health evaluation is used - can it be used at subsequent criminal hearings? Can it be used between parents?

DFS wanted to use it pursuant to a safety plan. The section also discussed why it was need ex parte. There was a concern that there was room for abuse. There was concern was concern about how this would play out and concern about the validity of a compelled mental health exam.

A motion to oppose SB 56 was made. The motion carried. Shawn Addie and Rob and Steve Kleiner abstained.

V. Nominations for 2015/2016

Chair: Patrick Boyer

Vice Chair: George Tsakataras

Secretary: Julie Yeager

This panel was nominated and voted in as the Officers for the Family Law Section for 2015/2016.

- **Next Meeting:** The next Section meeting will be held at 4 p.m. on Thursday September 24, 2015 at Bayard