

MINUTES
FAMILY LAW SECTION MEETING
September 22, 2011 at 4:00 p.m.
Boudart & Mensinger

Attendees: Lois Dawson, Shauna Hagan, Tim Hitchings, Jen Mensinger, Denise Nordheimer, Shana Pinter, Kara Swasey, Paulette Sullivan Moore (by phone), Megan Walstrom (by phone).

I. Good and Welfare. The Section congratulates Dana Reynolds on the birth of her daughter, Eleanor, and Drew Gonser on the birth of his daughter, Amelia. The Section also congratulates Paulette Sullivan Moore on her daughter's wedding.

II. Approval of Minutes. Minutes from the June 2011 meeting were approved as amended to add Dana Reynolds and Kara Swasey as attendees.

III. Liaison Issues.

i. *Entries of Appearance.* Attorneys may now file one Entry of Appearance for multiple representations. The Family Court staff will be informed to accept such entries.

ii. *Mediations.* A member complained that mediations have been scheduled before the answer has come due and, as a result, the attorney for the respondent does not get notified. This problem has been addressed in the past, but continues to exist.

iii. *Oversight of Judges.* A member queried where to complain when a judge acts outside of the scope of his or her authority in a way that cannot be effectively addressed on appeal. Members complained that there is very little oversight of Family Court judges.

iv. *Inconsistent Chambers Procedures.* A member complained about inconsistent chambers practices. Each judge seems to address the standard contact guidelines and the timing of decisions on school issues differently.

IV. Old Business. *Child Support Change.* House Bill 132 modifying 13 *Del. C.* §513(a) has been passed. "This Act authorizes the Court to order a party to designate a minor child or children covered under a support order as a beneficiary on any of the parties' existing life insurance policies for the duration of a support order. The designation may be exclusive or non-exclusive, as determined by the Court. The effect of this Act is that the designated child or children will receive support by way of proceeds from the life insurance policy if a party predeceases the child or children." (from the Synopsis of HB 132 posted on legis.delaware.gov)

V. New Business. *Family Law Update 2011.* The Annual Family Law Update has been scheduled for Friday, November 18, 2011, from 8:45 a.m. to 4:30 p.m. at the Christiana Hilton, 100 Continental Drive, Newark, DE. The program includes the following presentations: Civil Unions: A Primer, Financial Planning for Same Sex Couples, Risk Assessment for PFA Matters, Discovery and the Children's Department, and the Family Law Case Update. Protection from Abuse matters have been rescheduled for that week.

VI. Next Meeting. The next meeting will be at the offices of Boudart & Mensinger, LLP on October 27, 2011 at 4:00 p.m.

Minutes
Family Law Section Meeting
October 27, 2011
4:00 pm
Boudart & Mensinger, LLP

Attendees: Kara Swasey (by phone), Carl Heckert (by phone), Denise Norheimer, Mimi Boudart, Shauna Hagan, Bonnie Copeland, Megan Walstrom (by phone) Jill Di Scullo (by phone), Leslie Splotore (by phone), Ellie Torres (by phone), Shana Pinter (by phone), Rob Kliner (by phone), Julie Yeager

- I. **Approval of Minutes:** The minutes from the September 2011 meeting were approved.
- II. **Good and Welfare:** There is no good and welfare to report at this time.
- III. **Liaison Issues:**
 - a. **Untrained GAL's:** A member of the section had a case where a GAL who had not been trained by OCA was appointed to a case and there were significant issues presented from this. Shauna has agreed to speak with Tania and Jacki regarding this issue.
 - b. **Civil Union Forms:** The Court is currently working on new forms which should be ready in January.
- IV. **Next Meeting:** The next meeting will be on December 22, 2011 at 4:00 at the offices of Boudart & Mensinger, LLP.

MINUTES
FAMILY LAW SECTION MEETING
December 22, 2011 at 4:00 p.m.
Boudart & Mensinger

Attendees: Jen Mensinger, Shauna Hagan, Bonnie Copeland, Kara Swasey, Shana Pinter (by phone), Jill DiSciullo (by phone), Leslie Spoltore (by phone).

I. Good and Welfare. The Section extends its sympathies to Judge Nicholas who lost his wife recently and John Sullivan who lost his wife recently. The Section congratulates Matt Carruci on his marriage.

II. Approval of Minutes. Minutes from the October 2011 meeting were approved without amendment.

III. Liaison Issues.

i. *Mediations.* A member complained that mediations have been scheduled before the answer has come due and, as a result, the attorney for the respondent does not get notified. This problem has been addressed repeatedly, but continues to exist.

ii. *Internal Delivery.* A member complained that because of the time it takes for pleadings and responsive pleadings to be delivered to the appropriate Judge or Commissioner, responses have not been considered.

IV. Old Business. *Civil Unions.* Revised forms reflecting the Civil Union Act will be available in early January. There will be a presentation at the Melson Arsht Inn of Court in January on Civil Unions and Bonnie Copeland will ask for copies of the forms to be used in the presentation.

V. New Business. *Turner Bill.* The Section would like to take an official position on the proposed Turner Bill which would add to the US Code provisions for custody in military families. This bill has been introduced to Congress for the last 3 years and the Section previously opposed the legislation. Jen Mensinger has asked members of the section to review the legislation and the ABA Family Law Section's White Paper (www.abanet.org/family/military) and provide comments in advance of the next meeting of the Section.

VI. Next Meeting. The next meeting will be at the offices of Boudart & Mensinger, LLP on January 26, 2012, at 4:00 p.m.

MINUTES
FAMILY LAW SECTION MEETING
January 26, 2012 at 4:00 p.m.
Boudart & Mensinger

Attendees: Jen Mensinger, Mimi Boudart, Jack Denny, Drew Gonser, Shauna Hagan, Bonnie Copeland, Kara Swasey, Ashley Gorodetzer, Gretchen Knight, Lois Dawson, Jill DiSciullo, Shana Pinter (by phone), Dana Reynolds (by phone), Megan Walstrom (by phone) Theresa Hayes (by phone), Ellie Torres (by phone)

I. Good and Welfare. The Section extends its sympathies to the family of Judge Horgan who recently passed away and to Dr. Samuel Romirowsky, who lost his father recently.

II. Approval of Minutes. Minutes from the December 2011 meeting were approved without amendment.

III. Liaison Issues.

i. *Entries of Appearance.* Although the Court permits attorneys to enter their appearance on multiple petitions on one entry of appearance form, members have complained that forms with multiple petitions listed have not been accepted consistently. Liaison Ellie Torres indicated that this is a training issue and she will follow up.

ii. *Non-est Packet/Deficiencies.* A member complained that non-est packets and notices of deficiencies have been sent directly to the client, instead of to counsel. Liaison Ellie Torres will follow up with case processing.

iii. *Service After an Answer Has Been Filed.* A member complained that Court personnel has insisted that service is necessary, even after an answer has been filed.

iv. *Mediators Role on PFA Day.* A member complained that at least one family court mediator is telling petitioners that if the other side doesn't appear, a PFA will automatically be granted. Petitioners must testify on the record to establish a *prima facie* case of abuse in order to receive a PFA, even if there is a default. The section recommended more training, including a requirement that the mediators sit in on PFA hearings.

IV. Old Business.

i. *Civil Unions.* Revised forms reflecting the Civil Union Act are available, including forms from the Office of Vital Statistics. If there are technical issues with the forms, please pass your complaints on to Ken Kelemen (Kenneth.kelemen@state.de.us).

ii. *Turner Bill.* The Section would like to take an official position on the proposed Turner Bill which would add to the US Code provisions for custody in military families. This bill has been introduced to Congress for the last 3 years and the Section previously opposed the legislation, after consulting with the Veteran's Committee of the DSBA. Jen Mensinger will again ask members of the section to review the legislation and the ABA Family Law Section's White Paper (www.abanet.org/family/military) and provide comments in advance of the next meeting of the Section.

V. New Business.

i. *Marriage Certificates.* The Court will now accept original marriage certificates with divorce petitions instead of requiring certified copies of the marriage certificate. Original documents that are not in English still need to be translated.

ii. *Effect of Divorce Decree on Creditor Protection.* When a divorce decree is issued, jointly titled property changes from tenants by the entireties to tenants in common and 100% creditor protection is lost. Gretchen Knight recommends specifying each parties' interest in the property, not just their interest in the proceeds from the sale of the property in order to preserve creditor protection for interests over fifty percent.

iii. *State v. SK, 2012 WL 117711 (NJ, 2012).* A recent New Jersey criminal case regarding restraining orders urges a focus on adverse contact and not no contact where parties share children in common and may end up in the same place at the same time for their children's events. The discussion of the New Jersey case lead to a discussion of the ways the PFA process could be improved, including encouraging petitioners who seek changes in custody to file emergency custody petitions instead of PFAs, revising the statute to require the commissioners to consider the best interests of the children when awarding custody pursuant to a PFA, and developing more unified standards for findings of abuse between and among the commissioners. The Section will approach DVLS to discuss leading a committee to look at improving the process.

VI. Next Meeting. The next meeting will be at the offices of Boudart & Mensinger, LLP on February 23, 2012, at 4:00 p.m.

MINUTES
FAMILY LAW SECTION MEETING
February 23, 2012 at 4:00 p.m.
Boudart & Mensinger

Attendees: Jen Mensinger, Mimi Boudart, Drew Gonser, Shauna Hagan, Bonnie Copeland, Kara Swasey, Lois Dawson, Dana Reynolds, Denise Nordheimer (by phone), Gretchen Knight (by phone), Leslie Spoltore (by phone), Rob Kleiner (by phone)

I. Good and Welfare. The Section extends its sympathies to the family of Lee Goldstein, Esquire who recently passed away. Funeral services were held on February 24, 2012, at 11:00 a.m. Also, the Section extends its congratulations to Dan Kelleher, Esquire on his retirement.

II. Approval of Minutes. Minutes from the January 2012 meeting were approved without amendment.

III. Liaison Issues.

i. *Non-est Packet/Deficiencies.* A member noted an improvement in the return of notices of deficiencies directly to counsel.

ii. *Subpoenas to New Castle County Police.* Subpoenas for civil matters directed to the New Castle County Police should be sent to Corporal Frank Cooke at the New Castle County Courthouse. Corp. Cooke's telephone number is (302) 255-0108. Subpoenas for criminal matters directed to the New Castle County Police should be submitted through the Court. A member complained that subpoenas served by the Court to police officers are routinely late.

iii. *Middletown Police Department.* A member complained that the Middletown Police Department would benefit from a liaison such as Corp. Cooke or additional training, especially for matters involving domestic violence.

iv. *Incorporation Language in Separation Agreements.* A member complained that although a separation agreement may include language that would otherwise appear in a Stipulation to Incorporate a Separation Agreement, case processing has rejected separation agreements without the additional (and redundant) Stipulation to Incorporate.

IV. Old Business.

i. *Marriage Certificates.* The Court will now accept original marriage certificates with divorce petitions instead of requiring certified copies of the marriage certificate.

V. New Business.

i. *Parenting Certificate Changes.* At a recent statewide Commissioners' meeting, an issue was raised regarding parenting certificates that are received by the Court in divorces versus custody cases. Currently, the custody rule allows a party to submit a certificate that was previously approved without any special permission from the court. The divorce statute is silent and there is nothing in the rule (Rule 16.2) regarding the use of older certificates. Some

Commissioners are requiring litigants to file a motion if they wish to use an older or previously approved certificate from a custody case in the case of a divorce. Some Commissioners accept the certificate without question and still others indicate that the course must be currently offered in order for the certificate to be accepted.

Chief Judge Kuhn would like the Family Law Section to consider amending the divorce statute to allow for a previously approved certificate, but perhaps limit it to within the last five years. The Section agrees that the rule for custody should be reflected in the divorce rule. Jen Mensinger will make a proposal to this end.

ii. *Collaborative Law.* A member of the Uniform Law Commission contacted Jen Mensinger regarding a uniform collaborative divorce law. A cursory review of collaborative divorce indicated that the concept is similar to how the family law bar approaches cases- work first towards settlement and, if necessary, litigate- but collaborative law requires parties to seek new counsel if they fail to settle. The members present do not support the adoption of the uniform law in Delaware.

iii. *2012 Annual Update.* The Annual Update is tentatively scheduled for November 2, 2012 at the Christiana Hilton. The Section would like to have retired Florida Judge Ralph Artiglaré present on the admissibility of electronic documents and e-discovery. Judge Artiglaré is presenting to the Delaware judges on November 1, 2012. Jen Mensinger opened the floor to discussion of other possible topics. Suggestions included a seminar on Artificial Reproductive Technology (including carrier contracts, surrogacy, etc.), what estate planning attorneys wish family law attorneys knew about drafting stipulations and prenuptial agreements, and the reality/practical effects of short sales and loan modifications. Members are encouraged to email Jen Mensinger at jmensinger@boudartmensingerlaw.com with any other ideas for seminar topics.

VI. Next Meeting. The next meeting will be at the offices of Boudart & Mensinger, LLP on March 22, 2012, at 4:00 p.m.

MINUTES
FAMILY LAW SECTION MEETING
March 22, 2012 at 4:00 p.m.
Boudart & Mensinger

Attendees: Jen Mensinger, Lois Dawson, Shauna Hagan, Mimi Boudart, Shawn Dougherty, Kara Swasey, Dana Reynolds (by phone), Ellie Torres (by phone), Megan Walstrom (by phone), Christine Demsey (by phone), Drew Gonser (by phone), Shana Pinter (by phone)

I. Good and Welfare. The Section extends its congratulations to Ashley Gorodetzer on the birth of her son, Auden.

II. Approval of Minutes. Minutes from the March 2012 meeting were approved without amendment.

III. Liaison Issues.

i. *Scheduling of Mediation/Hearing.* Members complained that mediations have been scheduled before the time to file an answer or response (and an entry of appearance) is due. If the mediation date conflicts with counsel's schedule, counsel either cannot enter his or her appearance or would have to file a motion for continuance, which is costly. Members request that mediation not be scheduled until the period of time in which the respondent must answer or respond has expired. The liaison has offered to take this issue to the judges meeting. Members also complained that mediations are being scheduled before the 10 day notice period has expired.

ii. *Time for Service.* A member complained that service of process is taking too long. The consensus, after discussion, is that the time for service has improved and that if service is not accomplished within 30 days, then counsel should call case processing.

iii. *Service from Court Personnel.* Members complained that personnel in civil case processing do not answer the phone or call back when messages are left. A member complained that the staff in the filing and payment center do not provide good service and avoid eye contact while people stand in line waiting to be called to the counter. The Liaison informed the section that the staff in the filing and payment center are not Family Court employees.

iv. *Family Court Phone List.* The Liaison will provide an updated Family Court phone list.

v. *Non-est Packet/Deficiencies.* Members complained than non-est packages are still being delivered to clients and not counsel of record.

vi. *Reviewing Files in Records.* A member complained that when she went to the Records Room to review a file, she was asked to present a signed retainer agreement. A second member indicated that he had a similar experience. The Liaison confirmed that attorneys may review files for prospective clients and are not required to produce a signed retainer agreement to review files. The issues described are training issues.

IV. Old Business.

i. *2012 Annual Update.* The Annual Update is scheduled for November 2, 2012 at the Christiana Hilton.

ii. *Collaborative Law.* After discussion, the Section voted against adopting the Uniform Law regarding Collaborative Divorce because the Section does not see a need for the statute because the Section does not believe it will be used. The Liaison abstained from voting. The Liaison informed the Section that the Judges asked for additions including adding guardianship, defining "tribunal" as Family Court, and making the filing of an agreement to pursue collaborative divorce an application for a stay.

iii. *Parenting Education Course.* The Section discussed a change to the Parenting Education Course rule. Currently, the custody rule allows a party to submit a certificate that was previously approved without any special permission from the court. The divorce statute is silent and there is nothing in the rule (Rule 16.2) regarding the use of older certificates. Some Commissioners are requiring litigants to file a motion if they wish to use an older or previously approved certificate from a custody case in the case of a divorce. Some Commissioners accept the certificate without question and still others indicate that the course must be currently offered in order for the certificate to be accepted. Kara Swasey has offered to revise the language for review.

V. New Business.

i. *Public Access.* The Section discussed permitting public access to the Family Court. A Blue Ribbon Commission has been appointed to explore the issue. The Section voted and its official position is that the Section does not support permitting public access to the Family Court. The Liaison abstained from voting.

ii. *PFA Process.* The Section discussed the recently expressed policy of some, but not all Judges, that the Court will not address a custody matter while a PFA listing the child as a petitioner is in effect. Members expressed their opinion that this policy provides a perverse incentive for abuse of the PFA process. Members expressed a desire to reform the PFA process and expressed an interest in forming a subcommittee including domestic violence advocacy groups to make the process better.

VI. Next Meeting. The next meeting will be at the offices of Boudart & Mensinger, LLP on April 26, 2012, at 4:00 p.m.

Rule 16.2. Parenting Education Course.

(a) *Parenting education course.* -- There shall be a Court approved parenting education course required for parents of children under the age of 17 in custody and visitation proceedings and in divorce proceedings where there are living children of the marriage up to the age of 17. The parenting education course for parents of children under the age of 17 in custody and visitation proceedings and in divorce proceedings where there are living children of the marriage up to the age of 17 shall meet the requirements set forth in 13 *Del. C.* §1507(h).

(1) *Parents.* -- Both parties to a custody or visitation proceeding and parties to a divorce proceeding where there are living children of the marriage up to the age of 17 shall participate in a Court approved parenting education course. Each party shall pay the provider of the parent education course, according to a Court approved schedule of fees, for their individual participation. The Court approved fees shall have a "sliding scale" provision.

(2) *Scheduling and attendance.* -- Each party shall be provided with a list of Court approved parenting education course providers, and shall be responsible for arranging enrollment in a particular course.

(3) *Completion of course.* -- All participants completing a Court approved parenting education course shall be given a certificate of completion verified by the provider. The petitioner, by the filing of a custody petition or a divorce petition, , voluntarily submits to the jurisdiction of the Court, and shall complete the parenting education course. The petitioner shall submit an original copy of the certificate of completion for the petitioner prior to the scheduling of a final custody or visitation proceeding before a judge or commissioner or prior to the issuance of a decree of divorce. Failure to submit such certificate within 180 days of the filing of the petition will result in the petition being dismissed.

(4) *Waiver.* -- The requirement under this Rule may be waived by Court order upon a showing of good cause. Parties seeking a waiver shall file a motion consistent with Family Court Civil Rule 7(b).

(5) *Previous completion of program.* -- A litigant who has previously completed a Court approved parenting education course may submit a copy of the original certificate, certified by the provider, and shall be considered in satisfaction of the requirement under this Rule if the parenting education course remains Court approved or if the certificate of completion was previously filed with the Court.

(6) *Priority scheduling request and interim orders.* -- Requests for priority scheduling and interim orders may be granted by the Court prior to completion of the Court approved parenting education course . The requirements under this Rule must be met, however, prior to the scheduling of a final hearing before a judge, commissioner, or master.

(b) *Failure to comply.* -- Failure of both parties to comply with the Rule may result in dismissal, with prejudice, of the application before the Court.

Rule 16.2. ~~Divorcing and separating~~ **Parentings Education program Course.**

(a) ~~Parenting education program course.~~ -- There shall be a Court approved parenting education ~~program course~~ required for parents of children under the age of 17 in custody and visitation proceedings and in divorce proceedings where there are living children of the marriage up to the age of 17. The parenting education course for parents of children under the age of 17 in custody and visitation proceedings and in divorce proceedings where there are living children of the marriage up to the age of 17 shall meet the requirements set forth in 13 Del. C. §1507(h).

(1) Parents. -- Both parties to a custody or visitation proceeding and parties to a divorce proceeding where there are living children of the marriage up to the age of 17- shall participate in a Court approved ~~parenting education program course~~. Each party shall pay the provider of the parent education ~~program course~~, according to a Court approved schedule of fees, for their individual participation. The Court approved fees shall have a "sliding scale" provision.

(2) Scheduling and attendance. -- Each party shall be provided with a list of Court approved ~~Approved parenting education program course~~ providers, and shall be responsible for arranging enrollment in a particular course.

(3) Completion of ~~program course~~. -- All participants completing a Court approved ~~program parenting education course~~ shall be given a certificate of completion verified by the provider. The petitioner, by the filing of a custody petition or a divorce petition, or by retaining jurisdiction over custody in a divorce filing, voluntarily submits to the jurisdiction of the Court, and shall complete the ~~parenting education course program~~. The petitioner shall submit an original copy of the certificate of completion for the petitioner prior to the scheduling of a final custody or visitation proceeding before a judge or commissioner or prior to the issuance of a decree of divorce. Failure to submit such certificate within 180 days of the filing of the petition will result in the petition being dismissed.

(4) Waiver. -- The requirement under this Rule may be waived by Court order upon a showing of good cause. Parties seeking a waiver shall file a motion consistent with Family Court Civil Rule 7(b).

(5) Previous completion of program. -- A litigant ~~having who has~~ previously completed a Court approved ~~parenting education program course~~ may submit a copy of the original certificate, certified by the provider, and shall be considered in satisfaction of the requirement under this Rule if the parenting education course remains Court approved or if the certificate of completion was previously filed with the Court.

(6) Priority scheduling request and interim orders. -- Requests for priority scheduling and interim orders may be granted by the Court prior to completion of the Court approved ~~parenting education course program~~. The requirements under this Rule must be met, however, prior to the scheduling of a final hearing before a judge, commissioner, or master.

(b) *Failure to comply.* -- Failure of both parties to comply with the Rule may result in dismissal, with prejudice, of the application before the Court.

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MINUTES
FAMILY LAW SECTION MEETING
May 24, 2012 at 4:00 p.m.
Boudart & Mensinger

Attendees: Jen Mensinger, Shauna Hagan, Kara Swasey, Ellie Torres (by phone), Drew Gonser (by phone), Shana Pinter (by phone)

I. Good and Welfare. The Section extends its congratulations to Chandra Williams on the birth of her child and Melissa Dill on her recent marriage.

II. Approval of Minutes. Minutes from the April 2012 meeting have not been circulated.

III. Liaison Issues.

i. *Memorial Day Court Schedule.* The Court will close at 3 p.m. on May 25, 2012, in honor of Memorial Day.

ii. *Process Server Issues.* A member complained that the process servers have filed false affidavits or have failed to properly serve litigants. In one instance, an affidavit of service was filed even though service was not accomplished (affidavit described an individual at the party's home when party lives alone and had no guests). The Court has addressed this particular incident. If there are other instances where this has happened, please bring it to the liaison's attention or the Court's attention immediately. The liaison reports that the Court is working with the process servers on properly filing affidavits, including having the individual who served the party actually signing the affidavit of service.

iii. *Service by publication:* A member complained that petitioners in PFA matters are encouraged to sign affidavits of unknown address, even when they have contact information (and perhaps contact) with the respondents, in order to have service by publication in the newspaper. These are false affidavits if the petitioner knows where the respondent resides or has contact information.

IV. Old Business.

i. *2012 Annual Update.* The Annual Update is scheduled for November 2, 2012 at the Christiana Hilton.

V. New Business.

i. *Rule 104.2.* Rule 104.2 requires a Stipulation to Incorporate a Separation Agreement to be executed after a divorce proceeding has been commenced. On at least two occasions, Commissioners have returned the Stipulation because it was submitted contemporaneously with the petition for divorce and thus was not executed after the proceeding commenced. The Section discussed the usefulness of this rule and discussed suggesting a change in the rule removing the time period ("executed after"). Jen Mensinger will suggest to Judge Conner, as chair of the Rules Committee, that this Rule be revised.

VI. Next Meeting. The next meeting will be on June 28, 2012, at 4:00 p.m. hopefully at a local watering hole.