

Minutes of the
Family Law Section of the Delaware State Bar Association
September 26, 2013 at 4:00 p.m.
Bayard, P.A., 222 Delaware Avenue, Suite 900, Wilmington, DE

Meeting was called to order at 4:01 pm by Chairwoman Kara Swasey.

Members present: Kara Swasey; Jill DiSciullo; Leslie Spoltore; Jim McGiffin; Tabatha Castro; Shauna Hagan; Laura Brooks; Achille Scache; Pete Clark; Christine Dempsey; Bonnie Copeland.

Members present telephonically: Dana Reynolds; Julie Yeager; Megan Walstrom; Fred Tarrant; Ellie Torres; Rob Kleiner; Steve Kleiner; Dan Atkins; Karl Heckert.

Others present: Amy Quinlan, Esquire; Karen Antonelli.

1. Food for Thought: Limited Legal Assistance Program (Amy Quinlan, Esq.)--Amy Quinlan, Esquire presented information about a *pro bono* program sponsored by Administrative Office of the Courts (AOC). She explained this is a limited legal assistance program to provide a 15 minute consultation to clients without regard to whether they meet income guidelines for other services. The program evaluates the client's issues and narrows them to a single issue or small number of issues to keep the consultations short. The program helps *pro se* litigants process their issues and allows them to represent themselves in Court more easily. The program originally addressed a wider variety of legal issues but now deals only with family law issues. Clients seem to be very satisfied—95% satisfaction rate according to AOC surveys. Clients are coming to this program because the cost of having representation is prohibitive but they still need legal assistance. AOC keeps track of who attends the program so clients are prevented from coming back repeatedly. Program is expanding to focus on Spanish-speaking clients; now has a Spanish interpreter. The Spanish-speaking aspect is now open as a "pilot" model. Program is held on Mondays from 11:00 a.m.-1:00 p.m.; Spanish clients are seen one day per month. Program has a 3-4 month long waiting period for clients wishing to be seen. Looking for assistance from the Bar, even more so now that they are expanding into Spanish program.

Questions were raised by members, the issues addressed were:

- a. Longer blocks of time are provided for Spanish clients due to the impact of having a translator.
- b. Malpractice: AOC has partnered with DVLS; their insurance applies.
- c. Scope of the consultation is answering questions and reviewing some documentation, limited because of the time period allotted.
- d. Program does not have a form limited scope engagement agreement for clients; evaluation form (sign up sheet) does address the limited nature of the interview.

- e. Attorneys receive a list of the client's names in advance for conflict checks.

Pamphlets and brochures were distributed and are attached to minutes.

2. Good and Welfare

- a. Shauna Hagan is receiving the Commitment award at Christopher White Distinguished Access to Justice Awards Breakfast (Oct. 24, 2013 at the Hotel DuPont). Congratulations, Shauna. For more information, see this month's edition of *In re*, or call the DSBA at 658-4212.

3. Liaison Issues

- a. A member informed the liaison that she has not received Commissioner's orders—they are often sent directly to clients (and not to counsel) regardless of whether there was an entry of appearance on file in the case.
- b. A member informed the liaison that he requested that the Court certify a QDRO but received a court-certified letter rather than a certified QDRO.
- c. A member raised an issue about receiving both the scheduling letter (10-day letter) and the notice for mediation in the same envelope and the problems associated with rescheduling.
- d. A member raised the issue of mediation being scheduled during the answer period to a Petition.
- e. Prior to the meeting, a member asked that the liaison be informed that that matters have been scheduled without consultation with attorneys. Ellie Torres told the group that this issue was addressed privately with the attorney involved.
- f. A member raised the issue that although motions to reopen under Rule 60(b) are paid for like a petition and treated like a petition, they are served like a motion and they are being granted after 10 days.

- 1. The group discussed this issue and the general consensus was that the present rules require they be treated like a motion. Concern was raised that attorneys who previously entered appearances in the case would remain subject to service of a motion in perpetuity. One attorney shared that she had received a motion to reopen five years after handling the case. Another member shared the frustration of the Court requiring a substitution of counsel before the motion would be sent up to the Judge if a prior attorney had handled the case. The group believes this would need to be addressed via the rules committee.

- ii. A member also requested discussion of an expanded period for responses to motions and opportunities for reargument.

- 1. Discussion regarding such an expansion was generally negative because this is a uniform period throughout Delaware court procedure.

- b. Ellie Torres from Family Court requested that if the bar is able to provide specific case names related to their issues, the Court will be able to address the issue more easily.
- c. Upon a request for positive recognition of Family Court employees who did a good job, the group expressed that there are many Family Court members who do an excellent job.

4. DBSA Initiatives and Section Participation:

- a. Mentoring Program—Designed to match new attorneys with more experienced (> 5 years in the bar) attorneys where there is no formal mentoring in place. For more detail, see September 2013 *In Re* page 7.
- b. Increase participation in Kent and Sussex--Jim McGiffin was in attendance for this meeting. The group will continue to provide a phone call-in number and endeavor to hold one meeting per year downstate. Downstate participation in the section is not only welcome, but encouraged!
- c. Participation in the MLK Day of Service—DSBA plans to have attorneys gather that morning at the Chase Center. Attorneys will disburse to engage in different service projects including provision of free legal services and other volunteer activities. Interested members should make themselves known to Kara or the DSBA.
- d. Service Initiatives. Ballard Spahr is coordinating a service initiative on Tuesday November 5, 2013. The program will focus on drafting powers of attorney and healthcare directives. Volunteer attorneys will be paired with a Ballard Spahr attorney. Any interested members should contact Kara Swasey.
- e. DSBA Publications. Kara explained that the DSBA is soliciting contributions for two of its publications. The "Digest" is an electronic-only publication sent out when they achieve a critical mass of information. Examples could include photos from CLE's or service events. The Delaware Law Journal is more formal. Each section is supposed to be submitting articles to the Law Journal periodically. Any interested members should contact Kara Swasey.

5. Law/Rules Update:

- a. Proposed changes to the Guardianship Statute. Shauna Hagan informed the group that these changes are not a section initiative but are proceeding through the Child Protection Accountability Commission (CPAC). Members should review the proposed changes to the guardianship statute and send comments to Shauna Hagan by the end of September—CPAC is proposed amendments to the statute to address issues created by *Thourison* as well as concerning the burden of proof to be applied (clear and convincing vs. preponderance of the evidence). CPAC is also discussing procedures for how to handle multiple contemporaneous petitions involving the same children (such as from competing grandparents).

6. Other Business and Announcements:

- a. Family Law Update will be held at the Christiana Hilton on December 13, 2013. The lineup is expected to include:
 - i. Dr. Ted Wilson & Dr. Sam Romirowsky will be presenting on Shared Residential Placement.
 - ii. Molly DiBianca, Esquire (of Young Conaway) presenting on legal ethics and social media with a focus on family law
 - iii. Tiffany Poole, Esquire (Rahaim & Saints) on the intersection of family law and bankruptcy.
 - iv. The visitation center presenting on their rules and available services.
 - v. The annual case law and rules update.

N.B. for New Castle County attorneys: PFA's have been moved to 12/12 to accommodate the update.

- b. Christopher White Awards Breakfast is 10/24/13 at 8 a.m.
Congratulations Shauna!
- c. Andrew Gonser will be the Family Law Section representative to the Management Team for the Family Court Enhancement Project. Kara Swasey explained that Delaware is a semi-finalist for a federal grant. The project involves bringing together stakeholders in Family Court. Drew will be representing the Section.

7. Jim McGiffin informed the group that the Combined Campaign for Justice's latest musical, *Madame Bovary: Ho Ho Ho* will be presented November 15 and 16 at 7:00 p.m. at the Tatnall Auditorium. The production will be presented on November 17 at 2:00 p.m. at the Schwartz Center. The ast features singing and dancing lawyers and judges; come out and support the Combined Campaign and the good work this production supports! Tickets at the door or through the DSBA ahead of time.

8. Adjournment—4:32 p.m. by Chairwoman Kara Swasey.

Respectfully submitted,



Achille C. Scache
Secretary

Minutes
of the
Family Law Section of the Delaware State Bar Association
October 24, 2013 at 4:00 p.m.
Bayard, P.A., 222 Delaware Avenue, Suite 900, Wilmington, DE

In attendance in person: Kara Swasey; Achille Scache; Janine Howard-O'Rangers; Shauna Hagan; Ashley Stitzer; Shawn Dougherty; Christine Dempsey; Ellie Torres; Pete Clark; Mike Eaton.

In attendance telephonically: Fred Tarrant; Megan Walstrom; Theresa Hayes; Gretchen Knight; Steven Kleiner; Rob Kleiner; Liz Fillingame; Lois Dawson; Bonnie Copeland; Shana Pinter.

Meeting was called to order by Chairwoman Kara Swasey at 4:03 p.m.

1. Good and Welfare

On October 24, 2013, Shauna Hagan was awarded the Commitment Award at the Christopher White breakfast. Shauna was nominated by DVLS. Congratulations Shauna!

2. DBSA Initiatives and Section Participation:

a. DSBA Publications- Delaware Law Journal

Kara Swasey gave a report at the DSBA executive committee meeting. DSBA is requiring each section to write one law review-style article per year for the Delaware Law Journal. Next submission date is January 6, 2014. Volunteers needed!

3. Law/Rules Update:

a. Changes to Rules 101 and 301 regarding social security numbers.

Ellie Torres previously circulated changes to Rules 101 and 301 via the Section's email list. The change is effective November 8, 2013. The Court is no longer requiring social security numbers to be put on the petition page for divorces and child support. It is still required on the case information sheets. (Please see notes of discussion continued under "Liaison Issues.")

A member raised the issue of what will happen when we do not have a social security number for a child. Will we have to file an affidavit of unknown address? Unsure.

If anyone did not receive the email from Ellie detailing the changes to the rules, please request a copy from Kara Swasey and she will forward it to you.

4. Other Business and Announcements:

a. Family Law Update- December 13, 2013

DSBA should be providing registration information soon. Kara Swasey explained that the planning committee had originally floated the idea of doing a happy hour after the update to promote camaraderie within the family law bar. The price quote from the Hilton was fairly expensive, however, and there was concern that this would needlessly increase the cost of the event, as well as extend the day unnecessarily. Several members suggested that members pick a bar apart from the Hilton and gather there afterwards.

b. Amicus Brief re: expungement

The Delaware Supreme Court has requested that the Section file an amicus brief on the issue of whether a title 21 adult conviction (motor vehicle) prohibits expungement of a juvenile record. Kara Swasey and Achille Scache will be working on this brief; others are welcome to join and assist.

c. PFA Committee Update

Kara Swasey reported that the committee is still in the research phase. The group is considering six specific issues.. The group is hoping to have recommendations in the near future. The group invites comment on these questions:.

1. Should there be an exception to allow possession of firearms by respondents in the military or police or other occupations where possessing a firearm is necessary?
2. How can we improve service on petitioners and respondents in PFA and related cases and how can we address service issues?
3. What types of violations of a PFA should be enforced through contempt proceedings versus criminal charges and do we want the statute to be more instructive?
4. How can we follow-up to ensure that respondents have completed their domestic violence counseling?
5. Should we revisit the length of time a PFA may be extended?
6. Should we permit modification of custody and visitation provided for in a PFA through the normal custody process? How can we effectively address custody and visitation in a PFA order?

5. Liaison Issues

Social Security Numbers/ Rule Change: A member raised the issue previously discussed regarding whether attorneys will need to file affidavits of unknown social security numbers for children. Ellie believes the rule already required the social security numbers be listed on the petition as well as the information sheet. A member raised the issue that the form Family Court petitions did not always have space for the social security numbers. According to Ellie, the rule has always required them be submitted and it is possible that the Family Court form never caught up with the Rules.

Service issues: A member raised an issue regarding service where a 12 year old was served with a petition to modify custody concerning them. The child then read the petition and was upset with certain specific allegations in the petition regarding the child. Ellie is bringing this issue to the attention of the process server (DM). DM's instructions are that they are to serve people of a "suitable age", as set forth in the Family Court's rules. Several members discussed the confusion between the general service statute, which requires a person be over 18, and the Family Court statute that only requires a "suitable age". Several members stated they believe that "suitable age" and "over 18" should be interpreted as meaning the same thing. Ellie expressed that DM could be told that the Court believes that "suitable age" means over 18 without any need for a rule/statute change.

Joint Custody/ Tax Exemptions: Another member raised an issue about joint custody and tax filing status, and commissioners not dealing with these issues apart from ancillary proceedings. Because the Internal Revenue Service uses a "first to file" rule when both people are entitled the claim the children, this is resulting on one parent claiming all of the children and the other parent being left with an unexpected tax liability. The general consensus was that because the opinions dealing with these issues conclude that Family Court only has the jurisdiction to divide the exemptions during a property division proceeding, this would require an expansion of the Family Court's child support jurisdiction and should be handled in conjunction with the child support update which is about to begin. One member raised the issue that this could be considered an equal protection problem for families in which the parents had never been married, since they would never have had an opportunity for the Court to allocate the exemption.

Criminal Background Checks: A member raised issue of requiring criminal background checks when parents move in with new people. It was expressed that this could be included as part of the standard visitation guidelines. A member expressed that this could be done by requiring that the parent provide name and birthdate of people with whom they would be moving in, which would provide the other parent with sufficient information to search their background.

Scheduling Mediation: A member raised the issue of a circumstance in which mediation was scheduled by teleconference and when the member stated on the phone that she was not available that day, the mediator informed the attorney that he was "required" to

schedule the mediation that day and the attorney would have to file for a continuance. When the attorney filed for a continuance, a Commissioner refused to grant a motion to continue because it was entered by agreement, and thus presumably after the attorney had reviewed her calendar. Ellie expressed that the attorney should contact her with the specific case information so she could look into the matter.

Dismissal of Divorce Orders for Lack of Parenting Certificate: A member had written with concern that Family Court was holding a dismissal of divorce order, believing that they had to wait 12 months for a parent to file a parent education certificate, when the rules require it to be filed within 6 months. Ellie expressed that this was a training issue.

As always, when bringing issues to the attention of Family Court, the more case specific information you can provide to Ellie about a specific issue (privately), the better she will be able to address the issues.

6. Food for Thought: Janine Howard O'Rangers re: Task Force on Open Family Court Proceedings

Janine Howard O'Rangers was appointed by the General Assembly to a Blue Ribbon Task Force reviewing opening Family Court proceedings. The group met for the first time a few weeks ago. The Task Force is studying the effects that opening Family Court proceedings would have.

Task Force has already approved that adoption proceedings would remain closed, and paternity hearings would be opened. Termination of Parental Rights hearings should remain presumptively closed as well.

Task force is reviewing additional proceedings and whether they should be presumptively open. Janine solicited input from the section regarding what proceedings should be open. The Task Force has discussed giving Commissioners and Judges discretion to open or close a particular case for good cause. The Task Force is looking into the experience in other jurisdictions about how they handle this. Previously, the Family Law Commission had done research that showed that many contiguous states allow property division proceedings to be presumptively open.

A member raised the issue of whether the records/recordings of proceedings will be open if the proceeding itself is opened. Janine explained that the Task Force's mandate only deals with whether proceedings will be open, not whether records will be available. Group feels that they should be looked at hand in hand, so group is addressing raising this issue with the General Assembly. One of the legislators is going to be reaching out to other states to get information on what proceedings are closed/open in other states. Task Force has considered whether there should be some portions of certain hearings (such as property division) that are closed, while others are open.

Everything that is closed by statute, and everything that is open is open by court rule. Child support proceedings, specifically, are open.

Security is a big issue in allowing more people into courtrooms—Chief Judge Kuhn, who sits on the Task Force, has expressed that this is a big priority.

A member raised a question about dependency and neglect cases—general agreement that these should remain closed.

Guardianship, divorce, ancillary, property division, custody, visitation, and third party visitation are all tabled for further review.

A member expressed that the section should take the position that the proceedings remain closed and consider a fallback position about whether there should be restriction on access, such as not permitting those who have an affiliation with a party, or requiring spectators to come 15 minutes early.

Some members expressed that they feel PFAs should be closed and that this should be considered by the PFA Committee and the Blue Ribbon Commission.

October 29 and December 10 meetings—let Janine know if you have additional comments. JHoward@dvls.org

Committee will be submitting a report to the General Assembly and Family Law Commission by February 15, 2014.

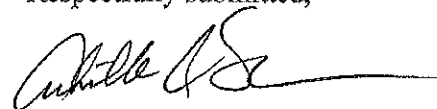
7. Open discussion

Shawn Dougherty brought proposed language for an amendment to 13 Del. C. § 1513(b) that would include “jointly titled real estate acquired by the parties prior to the marriage in which the parties subsequently entered into a marriage together”. The group apparently voted previously to make a recommendation that 1513 be amended to expand the jurisdiction of Family Court into property acquired by both parties prior to the marriage, rather than leaving them to fight in Chancery Court. The section discussed the proposed language. Revisions were discussed to change the final words to: “subsequently marry each other”.

8. Adjournment

The meeting was adjourned at 5:05 pm by Chairwoman Kara Swasey.

Respectfully submitted,



Achille C. Scache

**Minutes of the
Family Law Section of the Delaware State Bar Association
November 20, 2013 at 4:00 p.m.
Bayard, P.A.**

In attendance in person: Kara Swasey; Achille Scache; Shauna Hagan; Ellie Torres; Ashley Gorodetzer; Bonnie Copeland; Lois Dawson; Curtis Bounds.

In attendance telephonically: Megan Walstrom; Shawn Dougherty; Leslie Spoltore; Suzanne Seubert; Michael Arrington; David Gagne.

Meeting was called to order by Chairwoman Kara Swasey at 4:02 p.m.

1. Good and Welfare

Happy Thanksgiving to all of our members!

2. Liaison Issues

Members who have brought up liaison issues—the liaison is working on these issues and have reached out individually to offices and attorneys to resolve these issues.

A member raised an issue regarding getting matters in mediation rescheduled or scheduled in the first place. The liaison asked that more information be provided privately about the mediator.

A member raised an issue of when a petition will be bounced back (rule 301(b)) for failure to include a child's social security number—according to the liaison, only child support petitions will be bounced back—custody or PFA petitions will not.

3. DBSA Initiatives and Section Participation:

a. Participation in the MLK Day of Service

Notices have been coming out about this—DSBA sent an email about the breakfast and about DVLS looking for volunteers for the wills initiative. Please review these and participate if possible! Contact the DSBA for more information.

b. DSBA Publications- Delaware Law Journal

Chairwoman Kara Swasey received a second request about the section submitting a law review-style article for the Delaware Law Journal. Any members who are interested should make their interest known.

c. Amicus Brief

Kara Swasey and Achille Scache are working on the brief. Issue is whether title 21 motor vehicle offenses are "subsequent adult convictions" for the purposes of the juvenile expungement statute.

4. Other Business and Announcements:

a. Child Support Quadrennial Review Committee

Shawn Dougherty is the section's representative to the Child Support Review Committee. If you have thoughts on child support, please contact Shawn with those thoughts.

b. Family Law Update- December 13, 2013

Update is coming quick. Please make sure you are registered for the update. No meeting will be held in December due to the holiday and the Family Law Update.

c. Open Courts Taskforce

Michael Arrington requested that the section discuss further the open court's initiative in light of some recent recommendations on the part of the committee. Shauna Hagan raised the issue that we may have to wait until legislation is actually proposed and then lobby against it. Michael spoke that he has met with a variety of persons and that they are universally against opening the courts. The sentiment of the section at this last meeting as well as today's meeting was that the Section is against it.

Michael requested the Section's endorsement of his views that there are going to be issues involving interfamilial problems, a chilling effect on the willingness of witnesses to offer testimony, and that ultimately there is no legitimate public purpose that cannot be served by redaction of opinions or the appellate process.

Suzanne Seubert made a motion to support Michael's position (second by Achille Seache). All were in favor with two abstentions (Curtis Bounds and Ellie Torres).

Members suggested that the Section adopt as a fallback position that any new legislation should include authority for the Court to restrict the ability to come in and out of court rooms.

Issue about a fiscal note being attached to any potential bill—would need additional JA's and court staff since our current JA's are responsible for security, running court equipment, taking exhibits, etc.

The meeting will be held on December 10, 2013 in Dover. Public comment is at 1:00 p.m., committee will meet at 2:00 p.m.

5. Food for Thought: PFA Committee Topics

Six topics before the committee were in last month's minutes. The following topics were discussed and the comments below reflect the ensuing discussion.

- a. Topic 1: Should there be an exception for people to possess firearms where they have a need to use firearms?
 - i. Shawn expressed that there already was an exception, but that a finding of abuse is required to be able to do so.

- ii. Should depend on level of abuse?
 - iii. Should the issue depend on consent vs. finding?
 - iv. What about respondents who are actually a danger when permitted to keep their service weapons?
 - v. Consensus that we should be able to consent and have people maintain their firearms.
 - vi. Member raised a question whether we could get support of PFA lobby because this would make it easier to get a consent/ protection rather than just more guns.
- b. Topic 2: How can we improve service on petitioners and respondents and address service issues?
- i. Should the Court automatically publish everything?
 - ii. Should the Court set a cutoff for publication on Thursday at 4:30 p.m. so attorneys can check if there is service—would work if there was an administrative mechanism to extend *ex parte*'s etc.
 - iii. Should the statute/rules be amended to allow an *ex parte* order to be in place for 20 days in PFA cases?
 - iv. Apparently Kent county only makes 1 attempt and service and no more—a member raised an issue of whether this compounds motions to reopen etc after default orders are issued.
- c. Topic 3: Should we permit modification of PFA custody/ visitation issues in subsequent custody proceedings where the child is a protected victim?
- i. Members expressed that the consensus of Court is that a PFA where the child is a protected victim cannot be modified by a later custody petition.
 - ii. According to liaison, commissioners are being good about asking whether the children are properly part of the PFA.
 - iii. Member raised an issue about where the child is a petitioner/PV under a PFA longer than 1 year.
 - iv. Some members expressed that the judges should always be able to modify the custody aspects after the entry of a PFA.
 - v. Marginal preference of the members present that matters be reviewed in a subsequent custody petition.
- d. Topics 4-6 were not discussed, but are available from Chairwoman Kara Swasey or committee member Bonnie Copeland.

6. Adjournment (5:14 p.m.)

Respectfully submitted,



ACHILLE C. SCACHE
SECRETARY

**Minutes of the
Family Law Section
of the
Delaware State Bar Association
Bayard, P.A.
January 23, 2014 4:00 p.m.**

Attendance in Person: Kara Swasey; Achille Scache; Shawn Dougherty; Janine Howard-O'Rangers; Christine Dempsey.

Telephonically: Steve Kleiner; Robert Kleiner; Rebecca Trifillis; Renee Ciconte; Julie Yeager; George Tsakataras; Leslie Spoltore.

The meeting was called to order at 4:02 p.m.

- **Good and Welfare**

- Terry Taylor of Family Court in New Castle County is now Terry Hill—congratulations!
- Marci and Kevin McNair are expecting her first child—congratulations Marci and Kevin!
- Ellie Torres has left Family Court to spend more time with her family. Renee Ciconte is acting as the interim liaison.
- Janine Howard O'Rangers informed the group that the phone number for Cathy Kilian, who is the staff attorney for Delaware Civil Clinic at Widener University was incorrectly printed in the 2014 Bar Directory. The correct number is 477-2705.

- **Liaison Issues**

- Members raised the following issues:
 - The Affidavit of Appearance in Divorce does not say that a respondent has to file an answer with the Court, only that they have to send their Answer to the Petitioner. The Liaison addressed that it was not clear and the form is going to be modified to be clearer for *pro se* litigants.
 - Secure emails from the Court are no longer being sent to assistants. According to the Liaison, the Court Division of Technology wants all emails encrypted when they come from Family Court. No reason why assistants cannot receive encrypted emails. The Liaison is not sure why assistants fell off the email list. Attorneys should contact the individual Judge's chambers and request that assistants be added back.
 - A member raised an issue of incarcerated parents being willing to place children with a relative but needing a social report and being unable to afford it, whereas children are placed in foster care either do not need a social report, or it is funded through the state. The member questioned whether there is a way of waiving the social report requirement in these cases. A member expressed her understanding that while social reports are required by statute, they are discretionary for guardianships but mandatory of permanent guardianships. Another member indicated that DFS will do informal home

assessment to approve the placement if the parent makes the potential placement known to DFS. Any potential suggestions for change to the statute or requirements should be taken to the guardianship committee.

- A member had raised an issue in the past about whether attorneys can call ahead to records in NCC to have a file pulled? Yes, they can make a written request by 4:00 p.m. the day before to Jean Sumner. Jean's email address is: Jean.Sumner@state.de.us. Jaketta Livingston will be taking over this role in future.

- **DSBA Initiatives and Section Participation**

- Participation in MLK Day of Service
 - Christine Dempsey participated and reported that it was a lot of fun. She participated in putting on an ice cream social and bingo at the Ronald McDonald House. Janine Howard O'Rangers informed the group that DVLS participated in the Wills for Seniors program.
- DSBA Publications—Delaware Law Journal
 - Each section should be submitting an article to the Delaware Law Journal. Suzanne Seubert expressed some interest and may want a collaborator to begin research after March. If anyone is interested they should contact Kara or Suzanne in March.

- **Other Business and Announcements:**

- Child Support Formula Review Committee
 - Shawn Dougherty is the section's designee to the quadrennial review committee. Shawn spoke about the section's first meeting which was held 1/10/2014. Five meetings are scheduled. The group discussed the general purpose of the Melson formula. The group also discussed the issues they believe should be addressed by the review. The group wants to address the following issues: standards for modification of arrears; Rule 502(a)(5)—“assignment” vs. “transfer” to a region in terms of employee cost of living benefits; melson formula calculation should be attached to any agreement; whether an adoption subsidy should be treated as income; whether a new petition needs to be filed when the obligee becomes the obligor; visitation in an order/agreement versus in practice and how that affects parenting time adjustment; minimum orders; impact of Affordable Care Act; parenting time adjustment and inclusion of more time; incarcerated obligors and accumulating arrearage; underemployment/ impact of attribution of income; when litigants are receiving state benefits and neither party appears; attribution of income to the partially-employed; whether commissioners can have jurisdiction to allocate the tax dependency exemption; whether payment for extracurricular activities should be shared equally or according to the percentages in shared custody arrangements; adjustment of self-support allowance; how to handle “duty to support a poor person” cases and where that obligation should impact a child support calculation; whether guardianship child support calculations are being handled properly; whether the could should require that support comes to a certain amount in shared

custody before an order is issued; parenting time adjustment to allow for active parents to see a reduction in their obligation (ie, attendance at extracurricular activities getting credit as opposed to strictly overnights); simplifying calculation and forms and removing rule 509 to make the calculation more accessible to the public; removing the tax tables from the calculation completely; overtime and second job situations.

- These are the issues the committee has already identified. Anyone with other issues should bring them up to Shawn or another committee member.
 - A member raised the issue of a shared arrangement where mediators feel that they have to “round up” a small order to a minimum order even if the formula comes out to only a certain amount. A member expressed that this ties in with the committee considering whether orders below a certain amount should be issued at all.
 - A member expressed that if extracurricular costs are to be shared, they should be agreed-upon by the parents.

- Annual Family Law Update


- If anyone has topics for next year or feedback to be shared, they should let Kara know.
 - A member expressed that it was a very good seminar.

- **Food for Thought: Open Courts/ Public Proceedings**

- Open courts taskforce met this morning; heard public comment at 9:00 a.m.
 - Chairwoman Swasey attended and voiced the opinion of the section that hearings should remain private.
 - Chairwoman Swasey also spoke on her own behalf about the issue and fielded questions from members of the public.
 - Two participants in the public comment portion spoke in favor of the hearings remaining closed; everyone else voiced the opinion that the hearings should be public even if the litigants want to keep the proceeding private.
- Janine Howard O’Rangers, who is on the Task Force, shared some details with the section:
 - Nomenclature change: public vs. private as opposed to open vs. closed.
 - While some people have submitted written comments in opposition to making hearings public, the vast majority of the public comment has been for hearings to be made public.
 - Majority of issues that the public has are perjury, judicial corruption; attorney misbehavior; being able to provide emotional support.
 - Committee has already agreed to recommend the following: adoption should be private, paternity should be public, divorce to be public with discretion to close; custody to be public; 3rd party visitation to be public; TPR to be private; permanent guardianship to be private; guardianship to be public.
 - Task force recommendation overall is that matters should be public but that the Court can consider factors to close, including:
 - Position of the parties
 - Likelihood of private medical/financial information being released;
 - Competency of individuals;

- Safety concerns
- Above-all, judicial discretion should control in the best interests of a child
- The Task Force has asked the section to submit articulate justifications for keeping hearings private as well as suggestions or proposals on how to alleviate the public concern. Janine spoke on a need to be able to reconcile how a PFA can be public (as they already are), but other just as sensitive hearings should be private.
- A lot of other states apparently have a presumption of openness but close proceedings based on judicial discretion.
- **Next meeting is 2/18 in Dover at 12:30 p.m. at Legislative Hall—Senate Hearing Room.**
- Members made the following comments:
 - Member suggested that dealing with public/private should be done well in advance and not the day or week of trial.
 - Member suggested that mental health information should be part of the factors in considering whether to make a hearing private.
 - Member suggested that mock trials be put on for the commission to see what cases actually look like—potentially using sensitive information about those members.
 - Member raised the question of whether records also going to be made public as a result. According to Janine, the Task Force has determined that this is outside the scope of their jurisdiction.
- Motion of Shawn Dougherty to form a subcommittee to present position of the section—seconded by Achille Scache.
 - Subcommittee will include Shawn Dougherty; Kara Swasey; Achille Scache; Chris Dempsey; Julie Yeager; George Tsakataras, Rebecca Trifillis. Committee is meeting 2/4 at 4:00 p.m. at Bayard, P.A. Come prepared.
 - Chairwoman Swasey will circulate a draft position of the section document to be voted on as the position of the section at a subsequent special meeting.
 - In addition to the Section's position, members with a position on this issue should make an effort to attend the February 18th meeting and let their positions be known.
 - Members should also consider whether they have particular clients who would be willing to speak about their position on keeping matters closed.
- Adjournment at 5:19 p.m.

Respectfully submitted,



Achille C. Scache
Secretary

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

February 27, 2014 at 4:00 p.m.

Bayard, P.A.

Members Present: Kara Swasey, Achille Scache, Shauna Hagan, Jill DiScuillo.

Members Present Telephonically: Shawn Dougherty, Jim McGiffin, Marie Crossley, Steve Kleiner, Robert Kleiner, Janine Howard-O'Rangers.

Other Guests: Mariann Kenville-Moore, Debbie Frye.

The meeting was called to Order by Chairwoman Kara Swasey at 4:01 p.m.

- Good and Welfare
 - Mimi Boudart's Mother passed away, our sympathies and condolences go to Mimi.
 - Addie Assay is the new Family Court Liaison and she will be participating next month
- Liaison Issues
 - None to report. Be sure to contact Addie Assay if you have liaison issues.
- DSBA Initiatives and Section Participation
 - DSBA Publications—Delaware Law Journal—Deadline is June. Anyone who is willing to submit an article on behalf of the section would be appreciated.
 - Supreme Court has called for oral argument on Amicus brief written by Kara Swasey and Achille Scache. Oral argument will be held on April 23, 2014 at 12:40 in Dover.
- Other Business and Announcements
 - Child Support Review Committee
 - Had first meeting on Valentine's day. 5 issues were on the agenda. Meeting is considering a few of the issues off the master list of issues at each meeting. Some issues were discussed, but no formal positions were adopted or proposed. Contact Shawn Dougherty with any child support issues or questions.
 - A member let the group know that DCSE is going to stop printing out account statements for court hearings. As a result, we may have even limited access to the statements.
 - Updates to *Legal Handbook for Grandparents and Others Raising Relatives Children*
 - Section was approached by DHSS about whether anyone who would be interested in updating the handbook for grandparents and other raising relatives children. DHSS is looking for someone to evaluate and make a bid to update the handbook. Interested members should contact Kara for

more information. Go to www.delawareadrc.com and click on Publications at the bottom of the page to view The Legal Handbook.

- Open Courts/ Public Proceedings
 - Janine Howard O'Rangers explained that it was helpful to have family law section meetings at the last meeting, but that the recommendations are leaning towards a presumption of open hearings.
 - Jim McGiffin voiced a concern that his research showed that the present Family Court closed proceeding system might make the court more susceptible to a court challenge than a presumptively open proceeding with a judicial option to close.
 - Patricia Dailey-Lewis drafted factors for the Court to consider in closing proceedings (safety, position of the parties, effect of release of private information; opinion of mental or physical health professionals; likelihood of harm due to disclosure of information; any other factor favoring closure).
 - Mariann Kenville-Moore voiced that the committee has not considered whether there is language that would more clearly assist judicial officers if they wanted to open a presumptively closed hearing (such as TPR, adoption, etc).
 - A member raised a question whether if parties wish to close whether a third party will be able to petition to open; Mariann Kenville-Moore voiced that the group discussed that idea and that while a party may be able to file a petition that would not be a separate independent factor.
 - A member raised a question of whether this would result in opening the Court's files—Janine voiced that this was not within the purview of the taskforce, and that they have discussed it, but have not addressed the issue.
 - A member raised a question regarding the definition of hearings—i.e., whether it included mediations, pretrial conferences, motion hearings.
 - A member raised the issue of how a motion to close a hearing could be made on an expedited hearing.
 - Mariann Kenville-Moore voiced that the taskforce was tasked with considering feasibility and that the taskforce recognizes that it is feasible but that infrastructure and other procedural changes need to be made before the court can be made public.
 - Chief Judge Kuhn apparently made a comment that any legislation should have at least a six-month window before implementation.
- Meeting was adjourned by Chairwoman Kara Swasey at 4:41 p.m.

Respectfully submitted,



ACHILLE C. SCACHE
Secretary, DBSA Family Law Section

**Minutes of the
Family Law Section of the
Delaware State Bar Association
March 27, 2014 at 4:00 p.m.
Bayard, P.A.**

In person: Kara Swasey, Achille Scache, Shauna Hagan, Shawn Dougherty, Bonnie Copeland, Jill di Sciullo.

Telephonically: Kathy Laffey, Megan Walstrom, Janine Howard- O'Rangers, Leann Summa, Julie Yeager, Steve Kleiner.

Guests: Mike O'Rourke.

The meeting was called to order by Chairwoman Kara Swasey at 4:02 p.m.

1. Good and Welfare

- a. Ashley & Aaron Gorodetzer welcomed their third child, Aurora Faith Gorodetzer to the world on Friday, March 21, 2014. Congratulations Ashley & Aaron.
- b. Angela Fowler was confirmed on March 26, 2014 as Commissioner in Kent County. Congratulations Commissioner Fowler!

2. Liaison Issues/Practice Issues

- a. One member raised an issue about records being available to attorneys prior to entering an appearance. Attorneys can still see the record with a certified release from the client. Some attorneys were being turned away, this is a training issue.
- b. A member raised the issue of trial readiness notices being only sent to the petitioner and not the respondent or the respondent's attorney. This creates difficulties. The member expressed that copies should be sent to both parties and their attorneys as a matter of due process. Leann Summa was unsure regarding the rule governing the notice, and expressed that she would raise the issue with the Commissioners and the administrative team.
- c. A member expressed concerns about at least two cases where motions for interim alimony has been filed, an answer has been filed, and then a reply has been filed without permission under the rules. Motions to strike have been ignored by Judges Chapman and Waserstein.
- d. Members expressed concern that attorneys are not being sent copies of Commissioner's orders and clients are not being sent orders promptly. Anyone having this problem should contact the Court.
- e. A member raised an issue with the 16(c) stating that the court uses the NADA retail values of cars. The member expressed that this is unfair and creates an

artificially high value for cars. The group discussed the matter but the general consensus was that while the Court may want to take it off the form, the question of the value to use for a vehicle was one of judicial discretion.

3. DBSA Initiatives:

- a. DSBA Publications- Delaware Law Journal— The DSBA is still looking for someone to do a scholarly article for the Law Journal. If anyone is interested or has an idea, please bring it to the attention of Kara Swasey. Shawn Dougherty brought up the possibility about doing something with the Inn of Court Cuba trip.
- b. Nomination of new officers—The Section is in search of nomination of new officers for 2014-2015. Over the course of the next month, a slate will be formed for the section. If you are interested, make your interest known!

4. Food For Thought- Using a Private Investigator in Family Court Cases- Michael O'Rourke

- a. Several things a PI can help with in a family law case:
 - i. Service of process (locating respondents and witnesses). O'Rourke serves all of New Castle County for \$35.
 - ii. Executive protection for people, video documentation of property, inventories, keeping the peace, and documenting the contents of a home.
 - iii. Background investigations (criminal histories, driving history, civil litigation, social media inquiries)—O'Rourke starts with a proprietary overview search and then narrows down from there).
 - iv. Cohabitation—can assist with all elements of the case: holding out as couple (surveillance, interviews, social media), as well as surveillance (Generally likes to go out at midnight and 5 am, but can accommodate surveillance regardless of when surveillance needs to happen). Mr. O'Rourke told the group that he has worked with high profile individuals and takes a unique case by case approach. Mr. O'Rourke explained that he also assists attorneys in dealing with the excuses (I couldn't go home, he's renting, etc)
 - v. Cohabitation (approx. \$2000/week)
- b. Mr. O'Rourke also discussed that his company has connections in digital forensics and information gathering. He expressed that it is important to treat electronic information carefully—assume you are going to find information that you want to use in litigation—don't trust the Geek Squad to detect and preserve data and be able to use in litigation
- c. Several members brought up other surveillance-type issues. According to Mr. O'Rourke:
 - i. If you suspect GPS on you or a client's car, should take to a mechanic and file a police report because that is against the law.

- ii. Keystroke loggers and phone software (flexispy) are also out there to be able to intercept emails and phones.

- 1. EBlaster by spectrosoft—keystroke logger for computers

5. Other Business and Announcements:

- a. Child Support Formula Review Committee (Shawn Dougherty)

- i. Have had 3 meetings so far; next is April 11. Have agreed on some issues:

- 1. Changed some wording with regard to fluctuating income and the 40 hour work week. Getting rid of presumption of underemployment just because an individual works less than 40 hours.
 - 2. Second job income issues: Adding language if you leave a second job without just cause or decline overtime without just cause, will not be considered a substantial change for a modification within 2.5 years.
 - 3. Cleared up the fact that an obligation may be adjusted upwards or downwards regardless of who files to modify.
 - 4. Changed percentage adjustment for other children—Commissioner Southmayd came up with a straight 70% credit for other children outside the calculation. Same regardless of how many kids outside the calculation.
 - 5. Parenting adjustment still under consideration.
 - 6. Minimum orders still under consideration.
 - 7. Other topics to be considered: shared placement when there's an order that says otherwise, extracurricular and school activities (percentage of medical coverage, or 50/50?), giving commissioners/judges ability to allocate tax exemptions in shared custody arrangements; incarcerated obligors; attribution of income with underemployed/unemployed individuals; self-support allowance, autistic children who will need care down the line (do we have to consider how duty to support a poor person needs to get factored into child support), overall simplification of the formula, and whether a change in the formula constitutes a substantial change in circumstances.

- b. Updates to the Legal Handbook for Grandparents and Others Raising Relatives' Children

- i. The state is still looking for someone or a group to do an update on the handbook. The state is looking for bids to update/improve the handbook. If you're interested contact Kara Swasey.

- c. Update on Open Courts/Public Proceedings Task Force

- i. Janine provided an update: she was not at the last meeting (which was rescheduled from snow). The Task Force voted on recommendations and agreed to finalize draft report on April 8, 2014 at the last scheduled meeting. Although the task force tried to reach consensus, not all members were in agreement.
 - ii. The Task Force is recommending:
 - 1. Paternity, divorce, property, and ancillary should be presumed open/ public with the caveat that they can be closed based on the needs of the case in consideration of several factors at the discretion of the hearing officer.
 - 2. Adoption, custody, visitation, grandparents, TPR, permanent guardianship, guardianship, and substantiation be closed/ private except to those with a legitimate or direct interest, with discretion of the hearing officers to close based on factors.
 - 3. Recommendations will be made about training, self-represented resources, complaints regarding judicial officers, improved public access, law library, public education sessions, and recommendation that the Family Law Commission become more involved with reappointment.
 - d. Combined Campaign for Justice Fundraiser- Julie Yeager, Esquire
 - i. Julie Yeager presented that the 2nd annual event is set for July 15, 2014. 12:00 noon-5:00 p.m. is golf, then cocktails and a silent auction.
 - ii. Julie is heading the committee organizing the silent auction. If anyone has any items for donation or knows of anyone who would like to make a donation, please let Julie know. Items that went well included sporting tickets, restaurant gift cards, foursomes for golf, weekends at vacation homes went well. Last year raised \$16,000. Any donations are appreciated.
 - iii. Can sign up as a solo golfer, a foursome, or sponsorship. Prices are from \$500 and up for sponsorships. Contact Julie Yeager for more details.
6. Adjournment at 4:57 p.m. by Chairwoman Kara Swasey

Respectfully submitted,



ACHILLE C. SCACHE

Secretary

DSBA Family Law Section

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

April 24, 2014 at 4:00 p.m.

Bayard, P.A.

Present: Kara Swasey, Achille Scache, Shauna Hagan, Jill di Scullo, Ashley Stitzer, Bonnie Copeland, Rob Kleiner, Drew Gonser.

Present Telephonically: Shawn Dougherty, Julie Yeager, Megan Walstrom, Jay Eberly, Carl Heckert, Lois Dawson.

The meeting was called to order by Chairwoman Kara Swasey at 4:01 p.m.

1. Good and Welfare
 - a. Kara Swasey and Achille Scache went to Dover for oral arguments in *Fuller v. State* on Wednesday April 23. Matter was rescheduled before Court en Banc.
2. Liaison Issues/Practice Issues
 - a. The Family Court liaison was not in attendance.
 - b. A member raised an issue where neither party arrived and the people at the front desk immediately inside the courthouse had directed both parties to mediation rather than to the appropriate courtroom. Attorneys may wish to alert clients to this and make sure they know precisely where to go.
 - c. A member had an issue where the Court would not accept one entry of appearance for multiple matters, despite all matters being clearly set forth on the entry of appearance.
 - d. Several members expressed concerns with not getting orders promptly out of mediation and commissioner's offices. This appears to be an ongoing problem.
3. DBSA Initiatives and Section Participation:
 - a. DSBA Publications- Delaware Law Journal—The section is still looking for a member or members to submit a law review-style article for the Delaware Law Journal. A member suggested asking Jim McGiffin to write about the different between open and closed courts and public and private proceedings.
 - b. Another member suggested the topic of Delaware's recent adoption of a statute providing for reinstatement of parental rights.
4. Elections- we will be extending the elections to allow additional time for nominations
 - a. Achille Scache is nominated to be Chairman
 - b. Patrick Boyer nominated for Secretary
 - c. Julie Yeager has expressed a willingness to serve on the executive committee.

- d. The deadline for next nominations is next month's meeting—please make your nominations to Kara Swasey prior to next month's meeting.
- 5. Other Business and Announcements:
 - a. Child Support Formula Review Committee--
 - i. Shawn Dougherty reported that the Committee has one more meeting scheduled and that she will present a more fulsome account of what has been decided next month.
 - ii. Shawn informed the Section that the Committee has voted that fewer overnights will be required for there to be a shared custody scenario.
 - iii. Shawn informed the Section that the Committee determined that it did not have the authority to give the Commissioners jurisdiction to allocate the dependent tax exemption. Shawn intends to draft legislation granting this right to the Court.
 - iv. The Committee's next meeting will address adjustments to the self-support allowance.
 - b. Update on Open Courts/Public Proceedings Task Force
 - i. No report.
 - c. Combined Campaign for Justice Fundraiser- Julie Yeager, Esquire
 - i. Julie Yeager spoke to the group about the 2nd annual Combined Campaign golf outing. It will be held at Deerfield on July 15, with a shotgun start at 12:00 noon.
 - ii. Golfing spots are filling up fast—if you have any questions about registration, contact Julie.
 - iii. Julie is in charge of the silent auction and is actively seeking donations of sporting tickets, dinner gift cards, salon gift cards, weeks at beach houses, and other items for the auction. Last year, the event raised \$16,000 for the Combined Campaign. Let's help them beat that amount!

Adjournment—meeting was adjourned at 4:20 by Chairwoman Kara Swasey.

Respectfully submitted,

Achille C. Scache
Secretary