

**PRESENTATION TO JLOSC REPORT
THE FAMILY LAW COMMISSION (FLC or Commission)**

Introduction

My name is Raetta McCall and I am a commissioner on the FLC. I want to thank the JLOSC for doing the work of researching the Commission and bringing to the Commission's awareness issues that need attention. There was a genuine public need for the Commission in 1984 and there continues to be. As for meeting the need, I believe a few things need to change in order to do that. The main change has, in my mind, always been and continues to be the need to recreate the statute that formed the Commission; a redesign.

- Judge Jones stated that the Commission could accomplish more under a new design. He added the Report stated that the Commission was created at a time when things were much different in Family Court. He asked if the fact that things have changed in Family Court is a reason why it is thought that the Commission is no longer needed.**
- It was pointed out that the JLOSC staff would recommend a legislative caucus instead of continuing the Commission. One issue of the Commission is that the public is not aware of its existence; something that can be overcome. Where does the public hear of caucus meetings and is the public allowed to be a part? Does a legislative caucus have experts such as medical and mental health professionals, practicing Family Court attorneys and other experts? It is unlikely that a legislative caucus would invite lay people to caucus with them. What form of public notice would there be in order that the public know of the existence of the legislative caucus and when their meetings would be held? If it would be the same as public notice for Commission meetings, the public will not be aware that a legislative caucus exists.**
- Mr. Bounds, Chair, discussed the Commission with no oversight authority versus a legislative caucus which could become an echo chamber if it does not have sufficient input from the public and other professionals that are on the Family Law Commission. Oversight of the courts by the Commission or the Legislature cannot happen constitutionally.**

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Finding #1

The General Assembly created the Family Law Commission in 1984 after a statewide Family Court was established 13 years prior. The Family Law Commission is not meeting several of its statutory requirements, cannot provide legal advice, no longer takes positions on legislation, and does not have the resources to provide meaningful information to the public. Recent updates to the statute did not successfully address areas identified by the Commission.

- a. There are 4 legislators on the Commission. It was mistakenly believed that those legislators would take the Commission's discussion and resulting opinion on pending legislation back to their respective Senate and House.**
- b. The Commission does not have a budget therefore it has no ability to provide meaningful information to the public (i.e., compile and publish research).**
- c. The Commission needs a redesign and an updated statute to provide the redesign.**
- d. The Annual Public Hearing has always been to hear public concerns and provide a roadmap for the Commission's discussion of possible policy and/or procedural changes within the Family Court system.**
- e. Annual reports to the Legislature, as well as meeting minutes, have been difficult. The person in charge of creating the minutes and reports changed as different legislators came and went from the Commission. A Senator on the Commission would have their staff person create minutes. The computer from the last legislative aide was wiped after their departure. The Commission has no knowledge of how much Commission business was on the computer and therefore lost.**
- f. The Commission is not aware of who was tasked in the past with updating the website. Presently, James Berryhill has taken on updating the website with meeting agendas, minutes, and meeting notices.**

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Finding #2

Annual public hearings present issues of privacy, unrealistic expectations, and misunderstandings of the statutory duties and authority of the Family Law Commission, which does not have statutory or regulatory authority over Family Court operations. 2018 meeting minutes reflect the belief that “the Commission’s function as a sounding board seems to have passed.”

- a. The Commission created a speaker’s outline for public hearings (Addendum: example of 2010 outline).**
- b. The outline could be altered to state that the issues raised need to be more procedural or policy related.**
- c. Rep. Jester’s explanation that the intent and purpose of the public hearing was to give people a place to talk about their experiences and the Commission would discuss if any policy could be suggested to the General Assembly or Family Court to improve operations. A simple explanation of this could be given at the beginning of the public hearings. A brochure explaining the Family Law Commission could be created and handed out at the hearing. However, where would the funds for the brochure come from?**

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Finding #3

The Family Law Commission is inconsistent in its meeting format and historically allowed annual public comments to influence and dictate its annual agenda. For example, public comment topics such as Protection From Abuse (“PFA”) and false testimony received multiple meeting presentations, often with the same processes and historical information being provided to the Commission. This information is not adequately compiled or published, therefore, becomes a recurring agenda item with no new insight offered.

- a. It is my opinion that the public hearing is supposed to give the Commission issues to discuss and offer possible policy or procedural changes to the General Assembly or the courts. This was the reason for moving the public hearing to January so the topic issues would be the work of that year’s meetings.**
- b. I do not know of a “New Member Packet” that would show what the Commission worked on in the past to bring new members up to date with issues. I think this is a good suggestion for the future.**
- c. Again, compiling and publishing the information for public consumption would take a budget which the Commission does not have. I believe the Commission felt the Annual Report to the General Assembly was all that was needed; confusion on this matter can be resolved going forward.**

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Finding #4

Research pertaining to Family Court policy has historically been conducted by Family Court employees or a legislative task force, not the Family Law Commission. In 2006, the Family Law Commission used subcommittees; however, subcommittee meetings were not recorded on the Family Law Commission website or public meeting calendar and meeting minutes from these subcommittees are unavailable. Subcommittee reports stopped appearing in meeting minutes after 2011. Task forces were formed with or without Family Law Commission suggestion with one created based on public testimony at a Joint Finance Committee hearing.

- a. The Commission is made up of legal, medical and mental health professionals, legislators and lay volunteers; there is no staff for research of Family or Supreme Court cases.**
- b. Subcommittee meetings should have meeting minutes with findings; agreed. There needs to be someone on the subcommittee tasked with taking and creating minutes to be included on the Commission website and attached to the General Assembly annual report. One subcommittee received researched information supplied by a House legislative aide and legislative fellow. The Commission Secretary should be part of any subcommittee and create a record of each meeting.**
- c. Many years ago Family Court provided a liaison to the Commission that attended all meetings taking back information to the Chief Judge. Why that ended, I have yet to discover. I believe it should have continued.**
- d. A formal report of the Hartford, Ct. trip taken to study their Family Court procedures was not included with Annual Report. Again, with no particular support person dedicated to the Commission, this oversight occurred. Senator Ennis provided a copy of his report to me and it can now be handled appropriately.**
- e. Having taken part in the Blue Ribbon Task Force to study the “open court” issue, it was attorneys who did not want the court open not litigants. The task force did the study and a bill was introduced. The task force obligation was ended at that point.**

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**Finding #5 **

This review observed severe FOIA compliance issues with agendas and meeting minutes. JLOSC staff saw an extensive history of noncompliance with FOIA.

- a. 7-day notice of Commission meetings, meeting agendas, meeting minutes, etc. Over the years different legislators on the Commission utilized their aides to assist the Commission with notices, minutes, etc. The Commission relied on this person to know what needed to be done following FOIA rules. I do not believe a “formal” secretary was in place most of the time. With the presence of a Commission website, it has been difficult to have all the required documentation on the website due to the changes in legislative aides. Presently, I have taken over the role of Commission Secretary due to the last legislative aide leaving. Until recently, I had no idea who to go to for uploading the necessary documents to the website.**
- b. It was recently stated at a Commission meeting that “public notice” requirements is to have the meeting listed on bulletin boards in Legislative Hall, the Commission’s website and the state’s public calendar. I believe this is not sufficient for the public to be involved. The notices should be in Family Court locations in all three counties and a link on the Family Court websites. Discussions should be had on even more ways to inform the public of the meetings since most of the public does not go to Legislative Hall nor know to look at the state calendar. Since most of the public does not know the Commission exists, they would not know to look for a website.**
- c. Executive sessions of the Commission had been held as planning meetings for the upcoming year. These planning meetings ceased as the Commission became aware that they were not to hold any meetings without the public present. No planning meetings have been held for this reason.**
- d. Absence of meeting minutes is again addressed as the issue of no formal staff or secretary for the Commission.**

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Finding #6

Since 2016, the average attendance rate by Commission members is 64% with only 56% of meetings having a quorum of members present. This calculation is based on 27 meetings due to minutes missing for 8 meetings. Currently, there are 2 vacancies.

- a. Lack of quorum could be due to legislators, medical and legal commissioners having other meetings that happen suddenly that would take precedence.**
- b. Vacancies on the Commission are filled by the General Assembly. It has been difficult acquiring a medical professional; that role has been recently filled.**

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Finding #7

Public outreach survey received a low PRESENTATION rate and all respondents had limited experience and knowledge of the Family Law Commission.

- a. The public outreach survey shows what has been responded to in several of the JLOSC findings. The public is not aware of the existence of the Commission; this needs to be rectified. However, it is curious who the outreach survey went to that the people who answered “were not aware” or “not familiar” with the Commission. How were the survey participants selected?**
- b. If the JLOSC staff held 2 virtual public comment sessions in October 2021, how were the sessions advertised? And, was the Commission made aware of the sessions so they could observe and learn?**
- c. Of those respondents that answered the survey, 4 out of 5 stated the commission was very or somewhat valuable.**

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Finding #8

Lack of consistent staffing for the Family Law Commission is an issue raised in the self-report; however, it did not surface as discussion topic in Family Law Commission minutes until 2021. Delaware's General Assembly has limited permanent staff. The Family Law Commission statute does not define a source for staff support but supplies authority for the Chair to appoint a Vice Chair and Secretary. The Family Law Commission appointed a secretary in 2019 following a 7-year vacancy, but still requires staff support for meeting minutes and annual reports.

- a. Most years the Commission relied on various Senate legislative aides that changed as Senators rotated on and off the Commission. Thus, there has not been a consistent staff person. This has affected the Commission in several ways; meeting minutes, annual reports, public notification of meetings, etc.**
- b. Although out of the ordinary for the General Assembly, the Commission was established by statute in 1984. The Commission meets in Legislative Hall because their previous meeting location was too small to accommodate the public that was attending their monthly meetings. There was standing room only and, then

Rep. Pam Maier, made a motion to move the meetings to Legislative Hall.**
- c. The Commission requested a staff person for the Commission and believes the JLOSC review and recommendation for sunset is the result of the request.**

JLOSC Staff Recommendations

The JLOSC staff recommends to sunset The Family Law Commission.

- **Instead of this recommendation, it is suggested by the Commission to “redesign” the Commission.**
 - **Page 5 of the JLOSC Draft Report states it is authorized to make recommendations on how to proceed. Out of the recommendations listed, I believe the best recommendation would be to modify the Family Law Commission statute which is Chapter 20 under Title 13. Modifications to the Commission can be made based on the JLOSC findings.**
 - **The modifications and conditions to be given time to be achieved.**
 - **I also recommend an additional Commissioner with expertise in domestic violence as this issue has grown much over the years.**
- **In review of the findings, there is work that can be done to ensure the Commission overcomes the criticism of the Report.**
- **The Commission also needs to create and implement a plan for public awareness.**
- **The Commission will hold subcommittee meetings, with public notice, in an effort to correct issues brought forth in the JLOSC staff report.**

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Additional Comments

- **As when the constituent came to Rep. Katherine Jester back in 1984 for help, Family Court still needs positive change. Families are in turmoil when they enter and continue going round and round in the revolving door of the Family Court system with a 20 year to life sentence.**
 - **Many individuals are bleeding during their time with Family Court (motions, hearings, Calls of the Calendar, hearings postponed, etc.); they are consumed with the process. They are trying to keep their heads above water; some never recover.**
 - **When FLC was created, I believe the 16 members were appointed to represent and provide a voice for DE citizens, state-wide. Many litigants were afraid to speak up for fear of retaliation, especially if they were currently active in family court matters. Since then, some of the family court rules have been modified and times have changed (2 income families, blended families, grandparents raising grandchildren, domestic violence awareness, opioid epidemic, COVID-19 pandemic, etc). As a result, I believe the composition of members on FLC needs to change & include a representative who is experienced and knowledgeable with domestic violence issues, a person with a disability, an individual that is a child guardian or a grandparent raising grandchildren.**
 - **I am not discounting the need for experts in law, judicial representation, mental and physical health professionals, but there are too many attorneys on the Commission.**
 - **One cannot put a price tag on advocacy efforts to assist those in need. Has JLOSC members, or other members of the General Assembly, thought about how to encourage and strengthen advocacy efforts in Delaware to aid constituents? It is needed in Delaware.**

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Additional Comments # 2

- **I began advocating for change in 2001. I handed out surveys at the Family Law Commission annual public hearings, advocated before the Commission for litigants to be able to purchase recordings of their hearings instead of paying thousands of dollars for transcripts or having to sit in a room in the court building to listen to a recording. I advocated for a support person at hearings and was able to be a support person. From 2009 until 2017 I was caregiver for my mother who, before she became bedbound, attended some Commission meetings and actually attended a court hearing. She talked to me about what Family Court was like when she had to use it all those years ago. It has improved but can still be better. Too many litigants cannot take the time to advocate for change because they are bleeding and trying to survive.**
- **Has any legislators on the JLOSC had constituents who have reached out to them about Family Court issues in Delaware? People still reach out to me and I see Facebook posts on social media where people are at wits end (i.e., shared custody with an addict, shared custody where parents cannot agree on school or health issues, no follow-up after initial evaluation which I believe needs to happen when a court order sends children into the home of a “using” addict, etc) It takes too long to get back into court when one litigant is not following the court orders; I am still advocating for a Contempt Court to specifically hear cases where court orders are ignored.**
- **Commission members should attend a custody hearing, child support hearing, POA hearing, etc and then share feedback to the full Commission. There should be a Memorandum of Understanding developed with Family Court to permit Commission members to attend such hearings.**

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Additional Comments #3

- **There are definite ways the Commission can benefit the Family Court system which, in the end, benefits the public that must use it; subcommittees to study and publish findings on alimony and divorce laws, best interest of children, juvenile justice, etc. Researching and comparing Delaware Family Court systems with other states to see if there are more up-to-date systems, procedures and policies that assist litigants during this most horrific time in their life.**

- **Create an adequate system for the Commission to compile and publish research or policy efforts on common topics from the annual hearing.**

- **Finding #7 discusses that the public is not aware the Commission exists.**
 - **Public notice given for meetings is in the form of information on The Family Law Commission website, the public calendar and bulletin boards in Legislative Hall is not enough. How many of the public go to Legislative Hall to see public notices?**

 - **If the public does not know the Commission exists, what would steer them to the public calendar or the Commission website?**

 - **The Commission needs to create a brochure to be handed out at Mediation and Family Court hearings, have brochures in all Family Court locations, and have a link on the Family Court websites. Then maybe the public would know the Commission exists and connect with it.**

 - **It is my understanding JLOSC reviews State agencies to see if they are needed and provide tools to strengthen them. This Commission does not receive State funds....so how do boards/commissions without funds get staff assistance? A budget for the Commission and a staff person would allow the Commission to overcome many of the limitations the JLOSC report noted. Those on the Commission are volunteers, unlike those on the JLOSC or Legislature in general who are paid to serve. The Commission would have the ability to do so much more with assistance from legislative staff and a budget to publish research findings.**

- **I leave you with this thought. One prunes a tree not cut it down. There is still the need for the Family Law Commission; prune it, not sunset it.**