

Open Family Court hearings will spur strong legislative debate

Expect a sharp debate when the General Assembly considers whether more or all Delaware Family Court hearings should be open to the public.

The Legislature next month will be asked to create a "Blue Ribbon Task Force" just to study that issue. But even the possibility that opening the last partly closed constitutional court in Delaware is bound to muster powerful arguments on both sides.

It's not the first time for such a study. The 1997 legislative session created a similar task force, which presumably issued a recommendation by March of 1998. Sen. Bruce Ennis of Smyrna believes it recommended against opening the court, but he can't be sure because so far no one has found a copy of that report. Too many task force and commission studies have been ignored over the years. I think the 2013 Legislature will make a decision when this task force reports.

Ennis introduced his Senate Concurrent Resolution 21 during last year's first session of the 146th General Assembly, with the understanding it would be considered this year. The resolution was voted out of the Senate Judiciary Committee

last month, and he expects the full Legislature to consider it when it returns from the Joint Finance Committee hearings. Ennis is also a member of that committee. He says the resolution will be amended to set a deadline for a report to the next General Assembly.

The resolution, which specifies a broad membership, has bipartisan sponsorship of the four legislative members of the Commission on Family Law, which asked for the study. In addition to Democrat Ennis, they are Republican Senate minority whip Liane Sorenson of Hockessin, Republican Rep. Mike Ramone of Middle Run Valley and Democrat Rep. Stephanie Bolden of Wilmington.

The Senate resolution says "the integrity of the Family Court process could be enhanced by opening court proceedings." It points to a 1974 Supreme Court exception in a divorce case when it ruled that the Delaware constitutional provision that "all courts shall be open" was "not directed to the question of public trial." Family Court

did not become a constitutional court until 1997.

The Commission on Family Law carefully avoided taking a position, asking only the task force review open versus closed court proceedings in Delaware and surrounding states.

Delaware's Family Court has many jurisdictions beyond divorces cited by the Supreme Court. The public is probably most familiar with its hearing charges against juvenile criminal/delinquency suspects, and those cases are generally open. But the Family Law Commission points out that "custody/visitation, guardianship, adoption/termination of parental rights, dependency/neglect, paternity, and divorce-alimony/property division" are all presumed closed.

The Family Law Commission, created in 1984, has been meeting in public four times a year and issues annual reports. It is tasked with studying and evaluating domestic relations laws and the procedures of the Family Court. Minutes of its May meeting illustrate the sharp division of opinion.

Speaking forcefully for open hearings was Eileen King of the national group Justice for Children. "What's watched works," she said, that judges should be observed and that "public scrutiny to see regularity/irregularities would allow for the review of change."

Attorney Shauna Hagan said interested

parties are already admitted into the courtroom if everyone agrees, but that three psychologists with whom she spoke before the meeting all said no immediately. "California recently noted that there is harm done by allowing the public into all courtroom proceedings," Hagan pointed out.

Tania Culley of the Office of Child Advocate told the meeting that any change should focus on what is in the child's best interest, and she listed eight factors to be considered.

In an interview with Delaware Law Weekly, Chief Family Court Judge Chandlee Johnson Kuhn said she welcomes a "well-researched and intelligent decision," based on a fresh look to see what other states and jurisdictions are doing, and that she would "support whatever the legislature asks us to do."

I wait to hear the debate because I am also undecided but feel judges should retain discretion on specific cases. Many Family

Court hearings do not involve children and I wonder whether intra-family squabbles need public scrutiny.