Section calendar

Look for brochures in the mail and information on the Family Law Section’s website: www.familylawfla.org.

2011

September 9, 2011
Family Law Live Fall CLE: Foolish Games – Understanding Unique Children’s Issues in Your Family Law Practice
Hyatt Regency Tampa
(Brochure on Section Website)

September 21-24, 2011
The Florida Bar Midyear Meeting
Hilton Walt Disney World, Orlando
Family Law Section Committee Meetings – September 21, 2011
Family Law Section Executive Council Meeting – Sept.r 22, 2011

October 19-22, 2011
2011 Family Law Section Fall Retreat
Location: Taj Boston
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Room Block Cut-off date: September 18, 2011
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The Commentator is prepared and published by the Family Law Section of The Florida Bar.

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Statements of opinion or comments appearing herein are those of the authors and contributors and not of The Florida Bar or the Family Law Section.

Articles and cover photos to be considered for publication may be submitted to Laura Davis Smith, Editor, at lds@greenesmithlaw.com.

MS Word format is preferred for documents, and jpg images for photos...
The Family Law Section’s theme for the 2010 – 2011 bar cycle has been “Building Better Relationships.” In retrospect, I don’t think that I could have chosen a more appropriate theme. The *Merriam-Webster Dictionary* defines a relationship as “the state of being related or interrelated” and/or as “the relation connecting or binding participants in a relationship.” The 4,100 attorneys, judicial officers, and affiliates who comprise our membership dedicate our professional lives to resolving and improving the relationships of Florida’s families, while simultaneously promoting professionalism. In pursuit of these goals, Section leadership and members have expended thousands of volunteer hours and have, in fact, built better relationships with and among ourselves and those we serve. It has been my honor to serve as Chair of the Family Law Section for the past year.

It has been a busy and action-packed year for the Family Law Section. The Section conducts a Leadership Retreat in alternate years to encourage Section members to become involved in leadership positions on the Section’s many standing and ad hoc committees, as well as on our Executive Council and Executive Committee. This year’s extremely well-attended Leadership Retreat was held in July, 2010 at the beautiful Hammock Beach Resort in Palm Coast, Florida. A number of newly active Section members from all over the State were in attendance. The attendees and current leadership got to know each other better through the fun team-building exercises led by Mary Curtis of Authentic Communication Techniques and a Family Law Section “Family Feud” game. We continued to build our relationships during various social activities which included an evening cruise on the Resort’s *Sundancer* yacht and whacky mini-golf.

During our September, 2010 Committee Meetings, to our delight, we learned that the Florida Supreme Court had affirmed the 3rd District Court of Appeals opinion Fla. *DCF* v. *In Re: The Matter of Adoption of XXY and NRG.* During our luncheon, Former Chair Scott Rubin announced that the Section’s amicus brief was quoted at length in the Supreme Court opinion. The Section would not have been able to submit its brief without the consent of The Florida Bar’s Board of Governors who bravely and appropriately authorized the Section to do so.

The Section’s in-state Fall Retreat was held at the beautiful Casa Marina Resort in Key West, Florida together with the Florida Chapter, American Academy of Matrimonial Lawyers from September 27th - October 2nd, 2010. Ironically, for a while it looked as though the Retreat would live up to the name of its educational seminar: “A Perfect Storm: Legal Malpractice in Marital and Family Cases.” Fortunately, the threatened hurricane avoided Key West and attendees enjoyed the sunset catamaran cruise, a fiercely competitive scavenger hunt, and a “Pirates in Paradise” themed dinner-dance beautifully orchestrated by Kathryn M. Beamer as the Retreat social chair. The Section and Academy went toe-to-toe in the sand, by the sea, in a Battle of the Bartenders. When the roar of the crowd (and blenders) settled down, the Section won decisively. Susan E. Greenberg chaired the seminar where malpractice defense attorney Craig Hudson educated all of us on the potential pitfalls for malpractice facing family law attorneys, and liability insurance agent Blair Campbell gave us valuable information on malpractice insurance and risk management practices.

During this past bar cycle, the Section renegotiated and extended its partnership with the Florida Chapter, American Academy of Matrimonial Lawyers, for a three-year period beginning with bar cycle 2011 – 2012, to co-present the Marital and Family Law Review Course, the single largest marital and family law educational event in the State. This new partnership extension has brought with it an exciting change in the location of the event - to the Loew’s Royal Pacific Hotel at Universal Orlando. Save the dates (January 27th - 28th, 2012) now for this event! We look forward with enthusiasm toward this change as it will enable us to take over the virtually the entire occupancy of the Royal Pacific Hotel for our event, as well as provide a new and different venue, within easy access to the Universal Studios and the Islands of Adventure, including the immensely popular *Wizarding World of Harry Potter,* along with a number of restaurants
Moving on, in January, 2011 at the Disney Yacht and Beach Club, a record 1,190 attendees participated and “caught the wave” at the 2011 Marital and Family Law Review Course. Kudos go to Carin M. Porras, who once again served as Section event chair, and her hard working vice chairs, Ingrid A. Keller and Patricia Alexander, for selecting a talented line-up of speakers and topics and for producing fabulous written materials. This year the Section fulfilled its mission to provide our membership with the best marital and family law survey course around. The Course is also a major revenue source for the Section. The financial success of this Course has enabled us to expand our services and activities. During the seminar, it was my honor to present Deborah Day, Psy.D. (one of our most active affiliate members) with the Chair’s Visionary award in recognition of all of her contributions both past and present to the Section.

For me, one of the highlights of this year was the out-of-state Spring Retreat “Escape to Wine Country” held from April 6th - 10th, 2011 in Yountville, Napa Valley, California. The Retreat had a very large turnout, encouraged in part by seminar chair, Deborah Day, Psy.D.’s unique program “Addiction: Its Effects On Your Clients And Their Cases” and wonderful speakers (Dr. Marie Bell, Richard D. West, Dr. Kyle Goodwin, Dr. Trent Saxton, Dr. Jan Faust, Raul Viera, Gordon C. Brydger and Dale Saunders) as well as the availability of world-class vineyards, food and spas. The Retreat social chair, Douglass Greenbaum, was a fabulous host, making every attendee feel welcome and comfortable during the retreat. Kathryn M. Beamer provided tremendous assistance to Doug and me in arranging for some interesting and diverse organized excursions to Kuleto Vineyards, Quixote Winery, Chateau Montelena and Castello di Amorosa. I can honestly say that a “corking” good time was had by all.

This year I established an Ad Hoc Finance Committee to review the Section’s financial issues and to advise leadership on the establishment of certain financial policies to ensure the Section’s continued solvency in these hard economic times. Carin M. Porras and Melinda P. Gamot, along with their Committee, formulated various policies and recommendations and I thank them for their hard work. As Chair I am singularly most proud of one of this Committee’s proposals, which was adopted and approved by Executive Council and Executive Committee, to “give back” economically to hard-working and deserving Section members and those we serve by providing two scholarships to the Leadership Retreat, two scholarships to the Trial Advocacy Summer 2011
Family Law Section’s June 22nd, 2011 winners will be recognized during the section’s community. The monthly award furnished to media outlets in the winner being announced in conjunction therewith and honored at our luncheon and/or cocktail party. Robin J. Scher and Kimberly Rommel-Enright have spent hours co-chairing this Ad Hoc Committee. Susan W. Savard and Nicole Goetz have assisted them by writing profiles about each monthly award winner.

This year the Section revised its logo and we have proceeded to “brand” our website, our publications, our materials and meetings with that logo. Our website (www.familylawfla.org) has undergone a complete facelift. The changes have made it more colorful and easier to navigate. We have also expanded the website to incorporate historical information about the Section and its past and current leadership, Executive Council attendance, current membership (including affiliates), standing and ad hoc committees, CLE seminars, meetings and events and a sponsorship page. My thanks go out to our wonderful webmaster, Brent Holmes, and Program Administrator, Summer Hall, for implementing these significant and extensive changes.

Likewise, the Publications Committee has completely revamped our Section’s various publications. Laura Davis Smith and Patricia Kuendig, editor and vice editor, are responsible for the enhancement of the Section’s quarterly print magazine, the Commentator, which is now available on-line in color and is disseminated in hard copy as well. I would be remiss in not recognizing the continuing efforts of designer, Lynn Brady, and our program administrator, Summer Hall, in facilitating the changes described above. FAMSEG, the Section’s electronic newsletter, has a new masthead and has finally begun publication on a regular consistent basis for the first time in many years. FAMSEG has included regular features on the Section’s monthly “Making A Difference” award winners, case law updates via Stephen’s Squibs and insights of Section members on balancing the practice of marital and family law with the needs of their own families. Co-editors Luis E. Insignares and Eddie Stephens have consistently turned out a timely, quality product. Another benefit of the consistent issuance of the Section’s publications is our ability to provide a forum for sponsor and vendor advertising which, in turn, produces dollars for Section work and activities. During this past year, the Family Law Section has also made contributions to the Florida Bar Journal as a result of the efforts of Sarah Sullivan and Amy Hamlin, who are serving as the co-editors of the Section’s Florida Bar Journal submissions. They have revitalized the Section’s inclusion in the Journal and have left no stone unturned while they aggressively secure authors. They have edited articles and generally ensured that the Family Law Section once again has a regular presence in the Journal. The Publications Committee has exceeded all of my expectations as Chair and I thank the members and their various authors and contributors for their hard work.

Meanwhile, Thomas Duggar and Maria C. Gonzalez, co-chairs of the Section’s Legislation Committee have led us through one of the most difficult legislative sessions in many years. Thomas and Maria have toiled many untold hours tracking legislation and working on emergency issues throughout this session. Special thanks go to Thomas J. Sasser and Elisha D. Roy for their travels to Tallahassee to provide their expertise to various lawmakers and their staff on both proposed Section and non-Section legislation, as well as to our dedicated lobbyists, Nelson Diaz and Edgar Castro, who managed to usher Section legislation through a very difficult session. In fact as I write this Message, we just learned that Governor Rick Scott signed into law the U.I.F.S.A. and alimony legislation.

Matthew Capstraw continued to serve as senior chair of the Section’s busy Rules and Forms Committee this year. Much of what this committee does has no “bells and whistles” attached to it, but Matt and his Committee were of unparallel assistance to me this past year. Matt, who cannot say “no,” when called upon for help, authored a number of insightful comments on behalf of the Section under tremendous deadline pressures. As I write this Matt is slated to appear before the Supreme Court in oral argument in June, 2011 and I am certain he will be very persuasive on our behalf.

When Paul Hill, General Counsel for The Florida Bar, called upon the Sections and the Divisions in the Spring, 2011 to assist the Big Bar in analyzing proposed legislation which proposed to remove rule-making authority from the Florida Supreme Court, the Section answered the call. With the assistance of many of our past Section Chairs, as well as General Magistrate Robert Jones, continued, next page
Matthew Capstraw, and Maria C. Gonzalez, we were the first Section to respond and provide invaluable legal analysis in an expedited manner to the Big Bar. We also got the word out to our membership about legislation filed this session which threatened the funding and independence of Florida’s judicial branch. Hundreds of Section members helped to “fight the good fight” to support adequate funding for the court system and to maintain judicial independence.

Our CLE chair Douglas Greenbaum and his committee have produced a year of varied and successful telephonic and live seminars. In addition, the Section expanded its focus to include a seminar geared to educate family law paralegals – “Building An Effective Legal Team – A Seminar for Attorneys and Their Staff.” Sheena Benjamin-Wise and Odette Bendeck, co-chaired this inaugural paralegal seminar, which was held live and by webinar at the Tampa Marriott Airport. The seminar was well-attended and the reviews, which were very favorable, uniformly requested more paralegal seminars. It is our goal to accommodate those requests in the future.

Aside from membership dues, the Review Course, and CLE revenue, the Section’s operations are supported by sponsorship contributions. Section leadership explored the possibility of hiring a professional fundraiser, but the cost was prohibitive. Instead, co-chairs, Patricia Kuendig and Patricia Alexander, together with their Sponsorship Committee, formalized a sponsorship program with various sponsorship packages and levels which met with spectacular success in its first year of operation. This is a learning curve for the Section and we will continue to develop our sponsorship program in the forthcoming year.

As a public service, the Section has created and financed the production of the Guardian Ad Litem Training Manual for Family Law Proceedings and a professionally filmed DVD to be used around the State to train Family Law Guardian Ad Litems. My thanks go to Yueh-Mei Kim Nutter, chair of the Ad Hoc Guardian Ad Litem Committee, as well as the members of her Committee (Joy Bartmon, Steven Brenners, Sheila Cohen-Furr, Ph.D., Ronald Gilbert, Maria C. Gonzalez, Barbara Kelly, Ph.D., Kimberly Rommel-Enright and Sarah R. Sullivan) who were responsible for the massive undertaking of producing the DVD and accompanying PowerPoint, as well as the workbook previously produced by the Section. This has been a labor of love for all involved and the children of Florida will ultimately benefit from this effort.

One of the specific goals I established for the Section at the beginning of this year was to reinvigorate a Committee that Section leadership had previously considered eliminating - the Affiliate Membership Committee. I called upon Kathryn M. Beamer and David A. Riggs to undertake this challenge and their efforts as co-chairs have proven fruitful. Committee membership has both increased and become more active. As I write this report, the Section is redesigning a portion of our website. We intend to list the affiliate members by name, city and specialty area to facilitate our members’ use of these valuable litigation support sources. Affiliate members have made tremendous contributions to the GAL Manual and Training video; as well as to all our publications this year, and I sincerely hope that this participation will continue to grow as it benefits our membership tremendously.

At the close of this bar cycle, the Executive Council will be saying goodbye to two of its members. Lawrence C. Datz has been a stalwart council member but will be cycling off due to term limits. For years Lawrence singlehandedly spearheaded our parenting co-ordination efforts. Frank D. Zilaitis is leaving Executive Council to spend more time with his children and his political pursuits. Frank has been a valuable member of the Executive Council and has made major contributions with regard to the October 1st, 2008 parenting changes. More recently, Frank has chaired the Mediation and A.D.R. Committee where he has championed the collaborative law legislation authored by the Section. We will miss their presence on Executive Council but hope that they will come and “visit” with us often.

During this bar cycle we saw newer members of the Section become increasingly active, shouldering multiple responsibilities which have earmarked them as “rising stars” within the Section. I believe that we will see Joseph Robert “Rob” Boyd, Jr., John W. Foster, David L. Hirschberg, Asad Sam Jubran, Henry Stephen Pennypacker, Christopher W. Rumbold and Julia Wyda as leaders of the Section in the very near future.

As Program Administrator, Summer Hall has done an exemplary job in helping me administer the day-
to-day activities of the Section. Despite the demands made by each and every Committee chair, the various officers and members of the Section, the public, our sponsors, our vendors, and the Big Bar, Summer has always been responsive, responsible, helpful, and diplomatic in handling her many obligations to all of us. I thank her from the bottom of my heart for all of her help during my term as Chair.

In conclusion, it has been my honor to serve as the Family Law Section Chair for this past year. I could not have fulfilled my responsibilities as Chair without the dedicated, hard work and assistance of the Executive Committee. I consider each and every one of these folks to be a good friend. Chair-Elect David L. Manz, has admirably balanced his obligations to the Section with his Presidency of the Florida Chapter, of the American Academy of Matrimonial Lawyers. His common sense, calm demeanor and kindness will very well serve the Section and help him guide it during the forthcoming year when he is Chair. Treasurer Carin M. Porras answered every call I ever made to her this past year and helped in every way she could, including listening to me vent on those really tough days when everything went wrong. She also edited my various Chair’s Messages (with the futile goal of making me less verbose), as well as other documents, sometimes on a moment’s notice. Secretary Elisha D. Roy, whom I have known since her early years as a “young lawyer” (she is still “young!”) continues to lend her expertise and passion to the Section’s legislative agenda and I have welcomed her candor and perspective on all Section matters this past year. Immediate Past Chair Peter Gladstone has not rested on his laurels but has continued to provide his unique insight and experience to Executive Committee leadership. In closing, I want to express my gratitude to each and every one of them for their service to the Section and friendship to me during my term as Chair.

At the outset of this past year, it was the Section’s new goal to “build better relationships,” and as I believe the foregoing report on the Section’s accomplishments over the past year underscores, we have not only met, but we have exceeded that goal. I sincerely hope that the Section will continue to do so for many more years to come.

Diane M. Kirigin
2010-2011 Chair
Family Law Section

In Memoriam

It is with great sadness that the Family Law Section shares the news of the death of Helen Bracco Kirigin. Mrs. Kirigin, the beloved mother of Immediate Past Chair Diane M. Kirigin, passed away on August 5, 2011 at the age of 91. Devoted to her daughter, Mrs. Kirigin—a former Radio City Music Hall Rockette—was truly a “pistol” and any of you readers who were fortunate enough to have met her at a Section function in the 2010-2011 Bar Year would have been sure to see from where Chair Kirigin got her wonderful sense of humor. May Helen rest in peace.

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- New child support guidelines worksheet and income deduction order forms
- New forms for relocation with minor child

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Year: 2010

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10TH EDITION

This publication details the dissolution process from interview through temporary relief and discovery to final judgment. Key areas covered include parental responsibility, child support, alimony, equitable distribution, and attorneys’ fees. The publication includes forms and checklists, and a companion CD-ROM that links to the text of most cases cited within the manual.

THE NEW TENTH EDITION:
- Updates all case law, statutes, and rules through August 2010
- Incorporates a new chapter on Tax Consequences of Dissolutions
- Includes coverage of:
  - 2010 amendments regarding child support guidelines
  - 2010 amendments regarding income deduction orders
  - 2010 amendments to alimony statute, F.S. 61.14
  - electronic communication between parent and child
  - parenting coordination under F.S. 61.125 and Fla.Fam.L.R.P. 12.742

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Year: 2010

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Welcome to the final edition of the Commentator for Bar Cycle 2010/2011! This issue is devoted to Topics in Mental Health. We all know that in the current economy, and in light of the area of practice in which we engage, the topic of mental health is more relevant than ever. You will find this edition of the Commentator offers a plethora of tips for your clients, and for you as the service provider to people in distress, and as a human being working in a very stressful area of practice.

To begin, we are honored to have a piece from Supreme Court Justice of this Great State of Florida, The Honorable Barbara Pariente, entitled “So You Consider Yourself a Family Lawyer.” It is a wonderful thought-provoking article suggesting to the reader that we really must consider the actual work that we do as family lawyers. Are we doing the best we can to protect the most innocent and needy people in the families we represent? Can we do better by them and for them? Does tradition mean that we cannot make use of novel ideas in representing families so as to protect the children? Are we really servicing our families in ways that they need us to? Please – I urge you all to read this piece with an open mind and heart, and to carry it with you into your practices.”

Dr. Deborah O. Day, a diehard supporter of the Family Law Section, shares with us her thoughts on “Specialty Areas in Parenting Plan Assessments.” In her piece, Dr. Day highlights certain areas of concern that may arise in our cases and which require specific training and/or knowledge on the part of the evaluator to determine what would be the best parenting plan for the child or children involved in cases where such issues exist: sexual abuse, domestic violence, alcohol and drug abuse, Munchausen by Proxy Syndrome, and Religion.

Lori Wasserman, Ph.D., Sheila C. Furr, Ph.D., and Theodore Wasserman, Ph.D. discuss The Negative Impact of Divorce on Children, offering an analysis of what we, as practitioners, can look for in our clients’ relationships with their children so as to help those clients protect and provide for their children’s true best interests.

Dr. David A. Martindale provides his thoughts on Litigation Support Services Offered by Forensic Psychological Consultants. His article offers guidelines on what services can and cannot be expected from a Forensic Psychological expert. Along those lines, Dr. Robert A. Evans, a frequent contributor to the Commentator, shares his article entitled Common Errors Made In Parenting Plan/Timesharing Evaluations, wherein he alerts us all to some serious issues we must be aware of when seeking out and reviewing Parenting Plan/Timesharing recommendations.

In The Evolving Practice of Parenting Coordination, Debra K. Carter, Ph.D., a very learned and experienced Parenting Coordinator in her own right, offers us a summary of where we began with the idea of parenting coordination, and where we are now. She also provides (thankfully!) a detailed picture of what parenting coordination actually is and when it is best utilized.

Using a Guardian ad Litem in a Dissolution of Marriage Action Involving Children by Attorneys Jessica M. Felix and Michael L. Lundy discusses §61.403, Florida Statutes and what powers and responsibilities it bestows upon Guardians ad Litem, (GALs). Attorneys Felix and Lundy also offer their thoughts on the differences between utilizing attorney-GALs versus mental health practitioner-Gals: a sure and welcomed conversation starter!

Dr. Sheila Furr, (co-author of The Negative Impact of Divorce on Children, referenced above), and colleague Dr. Barbara Kelly, have written a summary on Guardian ad Litem Training, as it has evolved out of the Section’s Ad Hoc Committee on GAL Training. The work of the Ad Hoc Committee has resulted in a set of training materials, including a DVD of power point presentations that coincide with a handwritten manual. The training materials are geared to both attorney-GALs and mental health-GALs.

Laura D. Smith, Esq., Miami, FL

Editor’s Corner

Thanks to the Commentator

Associate Editors:

Dr. Sheila Furr, Boca Raton
Douglas Greenbaum, Fort Lauderdale
Monica Pigna, Orlando
Sheena Benjamin-Wise, Boca Raton
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So You Consider Yourself a Family Lawyer?

Florida Supreme Court Justice, Barbara Pariente

The Heart of the Matter – There are faces behind the cases

The image of Nubia – golden hair and smile framed by pony tails, sitting up straight and facing the future – is with us forever. Hers is the very picture of life and childhood in bloom – green eyes and good heart eager for what life might bring.

Nubia never had the life she wanted, the life she deserved. Her life was short. Not even 11 years old. Full of horror, ending in horror. Her final screams and cries cannot leave us, should not leave us.

When terrible things happen, we are obliged as people to learn lessons – and apply those lessons. Shame on us – all of us in Florida – if we cannot learn from this so other children have a far less chance to have such horrors visited upon them.

So reads the Preface of “The Nubia Report: The Investigative Panel’s Findings and Recommendations” presented to the Secretary of the Department of Children and Families. I am a parent of three adult children and a grandparent of eight grandchildren ranging from two to sixteen years old. I carry photographs of my children and grandchildren with me at all times. Every time one of my grandchildren makes the honor roll or accomplishes something ground-breaking, I beam with pride. The picture of Nubia smiling out from the report written in her name should haunt each of us.

In 2009, 192 children in Florida died as a result of child abuse or neglect. As I carry the images of my family with me I can’t help but wonder who is carrying the image of these lost ones? And what is being done to assist families in crisis so that we can prevent the unthinkable deaths of more children?

After thirty seven years as a lawyer, with the last thirteen years as a justice on the Florida Supreme Court, I have come to believe that lawyers and judges have the ability to make a difference – for better or worse – in the lives of children who come in contact with the court system. Our individual and collective actions can help improve the real-life outcomes for children or consign them to potential failure or worse by our neglect and inattention. We must see the faces behind the cases.

Most of the lawyers who read this article will likely consider themselves family lawyers and primarily represent spouses in dissolution of marriage cases. Some have undertaken the representation of children in dependency cases on a volunteer basis. All know that proceedings under both Chapter 61 and Chapter 39 require that in deciding issues regarding children, the guiding statutory mantra is “best interests.”

Family court practitioners know that issues facing their clients do not neatly fit into a particular compartment. Families come to you for assistance in resolving particular matters, but you sense that there are deeper problems lurking. Ideally you are a family court practitioner because you understand that these terms best describe the justice system’s response to families in crisis. “Best interests” are often elusive. Family court practitioners know that issues facing their clients do not neatly fit into a particular compartment.

Families come to you for assistance in resolving particular matters, but you sense that there are deeper problems lurking. Ideally you are a family court practitioner because you understand that these are living and breathing people; that a more complete picture of a child’s existence or family’s history should be considered in order to improve the lives of those you serve. You understand that the lives of children and families do not exist in a vacuum, yet you practice in a system that continues to struggle in its own silos. Are there underlying school issues? Has the child been a witness to or been a victim of acts of domestic violence? Has the child been exposed to drug or alcohol abuse? Have the child’s grades suffered since the marital discord began? How long has the child been exposed to arguments between the parents? Is your client or the other parent prone to any type of mental illness or personality disorder? Does your client or the other parent treat the child like a pawn? Does your client urge you to file motions in court designed to portray the other parent in the worst possible light?

Certainly discrete legal issues must be resolved, but the system seems to operate in a fractured manner, resolving such issues iteratively without enough consideration for the complete picture of a child or a family.

We in the court system are trained to be traditionalists. We respect precedent and tradition. By our nature, courts are reactive rather than proactive. Ask most judges and they will tell you that their role in the criminal justice system is to protect the defendant’s constitutional rights and to preside over disputes based on our continued, next page
adversarial system of justice. Judith Kaye, former Chief Judge of New York, observed in a Newsweek article that:

Many of the cases in state courts today are not complicated legal matters. But they do involve people with complicated lives... Judges grapple with dockets driven by drug abuse, domestic violence and family dysfunction. These are new issues for the courts, and yet judicial responses tend to be firmly rooted in the past.2

The lack of data perpetuates this tendency to continue old practices. We know that seeing the complete picture requires access to good information. However, the primary reason for which families come in contact with the legal system often dictates where information is captured. Information is isolated into various case types or separate informational databases. One side of the system does not know what the other side is doing. One issue seemingly resolved can complicate outstanding matters.

Consider the educational needs of children involved in the judicial system. As a family practitioner you understand that school related issues are critical considerations in child custody cases. Imagine how difficult and complex these issues become when a child is engaged in the foster care system. Sheltering a child is certainly not an easy judicial decision to make. The immediacy of the decision and the complex array of hearings and services that must be in place subsequent to the shelter are daunting. However, states are required to ensure that foster children attend school and remain in the same school when appropriate. These educational requirements are often given a lower priority than finding adequate placement for a child, juggling visitation schedules, handling medication issues, and working to develop case plans. These matters eclipse a very important reality, that educational stability is crucial to academic success and a child’s future. We can each think back to the friends, favorite teachers, perhaps being part of a club or team, and yearbook pictures from our own school years. School is a focal point in a child’s life. It can often be a refuge from unfriendly streets and a difficult home life. How sad for a child when his or her school placement is addressed well after a physical placement decision has been made.

Fragmentation of information jeopardizes good judicial decision making. A friend of mine is a circuit judge in South Florida. He shared with me the personal experience that convinced him there must be a better way to handle cases involving children and families. At the time he was fairly new to hearing family cases. During a delinquency docket a case was called involving a child seeking to be released from the detention center. The child was accompanied by his seemingly supportive mother. The mother assured the court that she would provide a structured environment and that she could keep her child out of trouble. My friend released the child to his mother and set a date for the next hearing.

Save the date!

Family Law Section
Fall Retreat

October 19 - 22, 2011, Location: Taj Boston

Lectures with Professor Nena Odim, Clinical Instructor at the WilmerHale Legal Services Center, Harvard Law School and Attorney David Hoffman, mediator, arbitrator, founder of Boston law collaborative, and co-editor of Bringing Peace into the Room: How the Personal Qualities of the Mediator Impact the Process of Conflict Resolution.

CLE will be offered on Thursday, October 20 and Friday October 21, 2011.

Book your reservations: (877) 482-5267
Room Block Cut-Off Date: September 28, 2011

Brochure Coming Soon!
only to discover that the family was also involved in a dependency matter. The dependency judge had already ordered that the child be removed from his mother’s custody. Fortunately, the child was located unharmed. Unfortunately, such scenarios play out every day in family court.

So how do you get to the “heart of the matter”? How do you best help the faces behind the cases? How do we as a system avoid the significant gaps and failures in common sense, critical thinking, ownership, follow-through, and timely and accurate information sharing that are cited in the Nubia Report? As the report indicates: “In Florida we talk about a ‘system,’ but we are far from a real ‘system.’”

The Solution – More than 20 years in the making

There is a solution: Model Family Courts. Often referred to as Unified Family Court (UFC), Florida’s model family court is a fully integrated, comprehensive approach to handling all cases involving children and families, while at the same time resolving family disputes in a fair, timely, efficient, and cost-effective manner. The idea that Florida’s court system must do better when it comes to cases involving children and families began in Florida in 1991, when the legislature directed its Commission on Family Courts to develop specific guidelines for the implementation of a family law division within each judicial circuit; provide recommendations for statutory, rule and organizational change; and recommend necessary support services. The report of the Commission on Family Courts was followed by a series of Florida Supreme Court opinions. Between 1991 and 1994, three opinions were issued emphasizing the need for a family court system which would provide better protection for children in court and an improved method for the resolution of family problems. In May 2001, the Florida Supreme Court issued a fourth and unanimous opinion adopting the guiding principles of a family court which included the following:

- Children should live in safe and permanent homes;
- Needs and best interests of children are primary considerations;
- All persons should be treated with objectivity, sensitivity, dignity, and respect;
- Cases with inter-related family issues should be consolidated or coordinated;
- The court is responsible for managing its cases;
- A means of differentiating cases should be available; and,
- Parties should be empowered to select ways to address their individual case.

The May 2001 Supreme Court opinion further discussed critical components necessary to operate a model family court which included the following:

- Court case management is essential to monitoring case progress;
- Evaluation of each case at the onset to determine resource needs and the appropriate way to handle the case;
- Coordination of multiple cases involving one family;
- Collaboration between the judiciary, stakeholders, and the community to ensure access to an array of services for families;
- Adequate and sufficient security personnel and equipment to ensure safe court environments;
- Continuing education for judges and court staff;
- Adequate technology;
- Family Law Advisory Groups (FLAG); and,
- Use of alternative dispute resolution.

Family court practitioners may be surprised to learn the breadth of cases comprising a model family court. As specified in the May 2001 opinion, family cases include:

- Dissolution of marriage;
- Division and distribution of property arising out of a dissolution of marriage;
- Annullment;
- Support unconnected with dissolution of marriage;
- Paternity;
- Child support;
- URESA/UIFSA;
- Custodial care of and access to children;
- Adoption;
- Name change;
- Declaratory judgment actions related to premarital, marital, or post marital agreements;
- Civil domestic and repeat violence injunctions;
- Juvenile dependency;
- Termination of parental rights;
- Juvenile delinquency;
- Emancipation of a minor;
- CINS/FINS;
- Truancy; and,
- Modification and enforcement of orders entered in these cases.

Some engaged in the family court process consider dependency and delinquency cases as being separate from family court. As you can see, “juvenile” cases are specifically included as part of the model family court. Indeed, current projects involving dependency and delinquency cases are excellent examples of how components of the May 2001 opinion can be implemented to effectuate better outcomes for children and families.

Model Family Court Concepts at Work Today: Everybody’s a Teacher - Needs and best interests of children are primary considerations

The Florida Department of Children and Families (DCF) initiative “Everybody’s A Teacher” is an excellent example of how agency collaboration with the courts and other stakeholders can improve case processing and the lives of families. The “Everybody’s a Teacher” initiative is designed to encourage individuals and communities to become involved in the education of children and youth in foster care and to address issues that often hinder children’s progress in school. The message DCF and others hope to convey is that everybody is a teacher. We are all responsible continued, next page
for ensuring that the children we serve have what they need to excel in school. Keeping foster youth in their home school, monitoring attendance, advocating for Individual Education Plans (IEP), and ensuring that youth may participate in school activities are all part of “Everybody’s a Teacher.”

While this is a project of DCF with a focus on dependent children, the concept transcends case types. For example, we should be concerned that children who are the subject of custody disputes are kept in their home schools whenever possible. And all practitioners should ask questions about educational needs. How will parent-teacher conferences be handled? Can both parents be involved? What about IEP issues? Is each child receiving the services he or she needs?

“Everybody’s a Teacher” is also an excellent example of how collaboration breaks down silos. Children will have a better chance of success in school and in life due to the collaborative effort among the Florida Department of Children and Families, the Department of Education, the Department of Juvenile Justice, the Agency for Persons with Disabilities, and the Agency for Workforce Innovation.

The Georgetown Project - Coordination of multiple cases involving one family

One of the guiding principles of Florida’s Family Court is that there should be a comprehensive coordination of all judicial efforts in cases involving the same child or family. Such coordination should emphasize linkages with community resources. A perfect example is how the judicial system deals with a dependent child with a concurrent or subsequent delinquency case. In UFC, that case should be assigned to the same judge. Equally important is that DJJ and DCF coordinate their efforts to ensure that all information about the child is known to permit the best decision to be made.

As was recently stated by a judge hearing a unified family court docket, we have evolved from one family/one judge to one family/one judge/one system. The Georgetown Project has taken collaboration to this next level by creating a system that better addresses the youth engaged in both the juvenile justice and dependency systems (crossover youth). Crossover youth are disproportionately children of color and girls. Experience and studies have shown that these youth require more intensive services than youth known only to the juvenile justice system or the dependency system. Studies also have shown that children who are maltreated are more likely to exhibit delinquent behavior.

Recently brought to Florida by Casey Family Programs and the Center for Juvenile Justice Reform at
the Georgetown University Public Policy Institute (CJJR), the Georgetown Project leverages a “crossover youth practice model” that has been in existence nationally since 2007. According to CJJR, the model is based on a “growing body of knowledge” that shows what systems and resources must be in place to reduce the number of crossover youth. The project works with local communities to address the behavior of crossover youth in a different framework. For example, if a child is acting out at a group home, and that child has school-related issues, it does not serve the child or the system to arrest that child. Other services can be provided to assist the family.

The Georgetown Project is under way in the Tenth (Bartow), Eleventh (Miami) and the Seventeenth (Ft. Lauderdale) Circuits. Key stakeholders regularly meet to determine how best to address the needs of crossover youth. In addition, the Department of Children and Families (DCF) and the Department of Juvenile Justice (DJJ) are working to share data concerning these youth and to assist judges as they strive to ensure that youth and families are receiving the services they need. Data show that this sort of a program can prevent deeper involvement in the system. We expect this to be the result in Florida. Case coordination can indeed make all of the difference in a child’s life.

Raise your FLAG – Family Law Advisory Groups

FLAGS are the ultimate silo buster. As stated in Family Courts IV:

“...the Georgetown Project under way in the Tenth (Bartow), Eleventh (Miami) and the Seventeenth (Ft. Lauderdale) Circuits. Key stakeholders regularly meet to determine how best to address the needs of crossover youth. In addition, the Department of Children and Families (DCF) and the Department of Juvenile Justice (DJJ) are working to share data concerning these youth and to assist judges as they strive to ensure that youth and families are receiving the services they need. Data show that this sort of a program can prevent deeper involvement in the system. We expect this to be the result in Florida. Case coordination can indeed make all of the difference in a child’s life.

The success of any family court is dependent upon effective communication among all stakeholders both in the judicial system and in the community. Because the model court concept must be tailored to the needs of each community and because each family court should fully explore and take advantage of resources within the community, the creation of a Family Law Advisory Group within each circuit will enhance the family court in each circuit. Only by open communication among court staff, judges, attorneys, social service providers, and other community leaders will the role and the goal of the family court truly be realized.”

While some are more active than others, Family Law Advisory Groups (FLAG) exist in each circuit to encourage and provide a forum for collaboration. Ideally legal stakeholders meet in local FLAGS to discuss issues and impediments to handling family cases in the comprehensive manner contemplated by the Court in our May 2001 opinion. I encourage you to contact your local judges to find out about and participate in your local FLAGS. Once a year is not enough. The dialogue must be meaningful and ongoing. We must take time to problem solve. We truly must join together in an effort to break down the stovepipes, step out of our compartments and rally around each child and each family. FLAGS are one way we can engage in problem solving at the local level to make our court system work better and improve outcomes for children.

Behind each case is a face - a face of a child. A child whose interaction with the judicial system may be life-changing. The child is there because of turmoil in her life or her family’s life. The family cannot be separated from the child. Each of us as, acting together, with our justice system partners, must collaborate, coordinate, and communicate to ensure the very best outcomes for our most vulnerable children. Together we can accomplish what none of us can achieve alone.

Endnotes:
1. The Nubia Report: The Investigative Panel’s Findings and Recommendations. Page 2. The report was presented on March 10, 2011 to Secretary David E. Wilkins by panelists David Lawrence Jr., Roberto Martinez, Esq., and Dr. James Sewell. The full report may be found online at: http://www.dcf.state.fl.us/initiatives/barahona/docs/meetings/Nubias%20Report.pdf.
4. September 12, 1991 -- Family Courts I (588 So.2d 580); March 10, 1994 -- Family Courts II (633 So.2d 14); October 26, 1994 -- Family Courts II (646 So.2d 178)
5. May 3, 2001 -- Family Courts IV (794 So.2d 518)
6. More information may be found at: http://www.dcf.state.fl.us/initiatives/everybodys-teacher/index.shtml
7. More information may be found at: http://cjir.georgetown.edu/nn/practicemodel.html
8. 794 So. 2d 518, 534 (Fla. 2001):

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**Editor’s Corner ——— from page 9**

We are also delighted to share with you Robert J. Merlin’s wonderful summary of what happened at the Florida Chapter of the Association of Family and Conciliation Courts (FLAFCC) seminar “A Primer on Mental Health Issues.” In his article FLAFCC Presents Seminar on Mental Health Issues, Mr. Merlin discusses the need for all of us to learn more about mental health, especially as it relates to the developmental needs of children and timesharing.

For all you paralegal affiliate members of the Section, as well as all of you attorneys who could not live without your paralegal, please do not miss the enlightening piece by Erica Foerch!

Finally, Dr. Michelle Channing has given us a gift in her article Stress Management. Therein, she offers us some very practical suggestions for how to keep our OWN mental health in tip-top shape!

This year has been a phenomenal one for the Commentator. I am delighted to have been able to provide four beautiful issues for you, our readers. This was possible because of the assistance of Summer Hall, our Section Administrator, and Lynn Brady, our Florida Bar layout prodigy. To them I offer infinite gratitude. I also want to thank all of the Associate Editors: Douglas Greenbaum, Sheena Benjamin-Wise, Eddie Stephens, and, for this issue, Dr. Sheila and Monica Pigna. I hope you have enjoyed this year of the Commentator!
Speciality Areas in Parenting Plan Assessments

By Deborah O. Day, Psy.D., LMHC/Licensed Psychologist, Certified Family Mediator
Winter Park, FL

Introduction
Most parties who divorce work cooperatively to craft parenting plans for their children. While adjustment difficulties emerge, the majority of families do not require a parenting plan assessment. When these assessments are needed, general knowledge about divorce dynamics is often not enough when specific specialty questions arise. When a specialty area is encountered in the process, it is essential that family lawyers not only know the credentials of the professionals doing the parenting plan assessment but also know their areas of expertise and experience. Not all psychologists are created equal. Gourley and Stolberg (2000) surveyed a large sample of psychologists in Virginia. Only 35% of the psychologists they surveyed had experience doing custody evaluations. Of the psychologists that performed these evaluations, few were prolific with child custody evaluations (most averaging fewer than three per year). Less than 14% of psychologists receive formal training in graduate school or on internship in performing custody evaluations. Most training is received by attending workshops or conferences. The American Psychological Association (APA) Specialty Guidelines for Forensic Psychologists’ specifically states in III. Competence, A.: *Forensic psychologists provide services only in areas of psychology in which they have specialized knowledge, skill, experience, and education, and B.: Forensic psychologists have an obligation to present to the court, regarding the specific matters to which they will testify, the boundaries of their competence, the factual bases (knowledge, skill, experience, training, and education) for their qualification as an expert, and the relevance of those factual bases to their qualification as an expert on the specific matters at issue.*

Specialty areas frequently encountered in these cases include but are not limited to, sexual abuse allegations, parental alienating behavior, domestic violence, substance abuse, mental health/personality disorders, relocation, and children with special needs. Other more obscure but not unheard of specialty areas include Munchausen by Proxy Syndrome (MBPS) allegations and religious/cult involvement by one parent. The role of the psychologists is designed to assist families and their lawyers to clarify concerns, investigate allegations, and educate them through a comprehensive report about their children’s needs. Researchers indicate that answering the concerns using empirically based research in the area specific to the referral question increases the likelihood the family can settle their disputes. This article will review a few of the specialty areas.

Specialty Areas
Sexual abuse is estimated to affect hundreds of thousands of children in the United States each year. Female juveniles between 12-17 make up the majority of sex abuse victims. Some children never disclose their abuse. Kuehnle and Connelly (2009) recognize that forensic child sexual abuse evaluations are a specialized area of practice that requires specialized knowledge across a number of important areas. Knowledge of normative sexual and nonsexual behavior is necessary, including knowledge of memory development, children’s resistance to suggestion, and knowledge of the literature on repressed and recovered memories during childhood and adolescence. Child forensic interviews, children’s suggestibility, and the impact of repeated interviewing are only a few areas that require specialized skill.

In addition to understanding how best to approach a child evaluation when abuse is suspected, the examiner needs specialized training and knowledge regarding a psychosexual evaluation of the alleged perpetrator. Specific guidelines have been generated by the Association for the Treatment of Sexual Abusers (ATSA). These guidelines state that an objective measure of sexual interest must be included in any psychosexual evaluation. The most widely utilized psychological measures are the penile plethysmograph (PPG) (maybe explain this in a footnote?) and visual reaction time measures such as found in the Abel Assessment for Sexual Interest-3 Second Edition (AASI-3)™. In the last twenty years, domestic violence has entered the knowledge base of professionals and the public. The focus of the literature has been on identifying families and, more recently, children and domestic violence situations have become a central focus. Bancroft and associates authored a comprehensive book regarding the batterer as a parent and specifically discussed assessing risks to children from batterers and provided a comprehensive set of recommendations structuring contact. Bancroft discussed the risk to children when batterers continue or intensify their undermining of the mother’s authority and of the mother-child relationship. There is the risk for rigid, authoritarian parenting, neglect or irresponsible parenting, new threats of violence, and risk for psychological abuse and other forms of maltreatment. Acts of violence are only one area of risk to children. Some batterers are considerably more dangerous to children than others, and the level of dangerousness cannot be discerned by examining the batterer’s history of physical violence alone. Bancroft states the structuring
of visitation plans that are safe and that best facilitate children’s emotional progress and recovery requires the use of various levels of supervision, lengths of visitation, and the engagement of the batterer and the children in other relevant services. Clearly, domestic violence assessments are multifaceted.

Unique challenges exist when parents abuse alcohol and drugs. Family life is often chaotic, unpredictable, and unstable. Children can perceive their parents’ behavior as confusing, unloving, and they can blame themselves. Other children protect the substance abusing parent and become the caretaker not only to the substance abusing parent but their siblings. Not every family is affected identically. For example, a parent may lose his or her job because of substance abuse. The loss of income affects the family’s living conditions and may cause the child to change schools on multiple occasions. A comprehensive approach to the impact of substance abuse on a family requires knowledge of substance abuse interviewing techniques, collateral source interviews, and specific methods of detection, including psychological testing and biological testing. Knowledge of the literature and the impact of substance abuse on families, particularly children, is relevant, as example, some data states children raised in substance abusing environments face increased risk for substance abuse and for physical and mental illness (www.casacolumbia.org).

Munchausen by Proxy Syndrome (MBPS) is referred to in the DSM-IV-TR as Factitious Disorder Not Otherwise Specified (NOS). This disorder is a psychological condition that motivates an individual to falsely report, exaggerate, or induce symptoms that imitate a medical condition in order to obtain unnecessary treatment for the proxy (child). The goal is to obtain the special attention society reserves for the parent of ill and suffering children. This form of child abuse can lead to physical and/or psychological damage to the victim, owing either to the direct actions of the perpetrator, or to the intrusive medical procedures performed by doctors to diagnose the child’s suspected illness. This form of child abuse comes with highly specialized recommendations regarding contact with the perpetrator. Failing to understand these specialized cases and the guidelines available to assess a suspected case can lead to significant physical and psychological harm to a child, and more rarely, death.

Religion is just one of the many different social institutions which promote the mutual involvement of all family members. Occasionally, something goes wrong. A combination of risk factors place some divorced parents and children at risk for joining religious sects beyond what the other parent agrees is best for their children. Expert psychologists have been helpful to the courts by providing invaluable information in patterns of child-rearing within identified religious groups. The focus is on well recognized scientific principles known about these groups. The use of parenting plan experts in this area is more extensive than in typical parenting plan assessments. Questions go beyond the parent-child relationship and require knowledge about the specific religious cult, about the leadership, who controls the family, makes decisions, and directs the parent. Questions about decision-making, about the children’s upbringing, and education and how those decisions are reached often become the focus.

Conclusion

Parenting plan assessments are alternative dispute resolution tools targeted to the audience of litigants and their attorneys. The benefits to family include the opportunity to have an objective opinion about a fear or belief addressed. Real concerns are identified and clarification provided. Preconceived ideas about timesharing are addressed and serve to open the doors to negotiations. If cases proceed to trials, judges are more able to make informed decisions about the best interest of individual families. If, however, the parenting plan assessment is ill-conceived or outside one’s specialty, the benefits to families are lost and harm can be created.

References

Association for the Treatment of Sexual Abusers (ATSA). 2005. Practice Standards and Guidelines for Members of the Association for the Treatment of Sexual Abusers. Beaverton, Oregon. www.atsa@atsa.com


Endnotes:
1. Currently in revision through the Board of Professional Affairs, American Psychological Association (APA).
3. Phallometric testing using penile plethysmography involves measuring changes in penile circumference or volume in response to sexual and nonsexual stimuli. Circumferential measures (measuring changes in penile circumference) are much more common than volumetric measures (measuring changes in penial volume), which are used in only a few laboratories worldwide. However, there is good agreement between circumferential and volumetric measures once a minimal response threshold is reached. www.atsa@atsa.com
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Florida Statute 61.402 sets forth guidelines for qualifications of Guardians Ad Litem (GAL) appointed in family law cases. Pursuant to this statute, GALs appointed in family law cases must either be certified by the GAL Program pursuant to § 39.821, certified by a not-for-profit legal aid organization as defined in § 68.096, or an attorney who is a member in good standing of The Florida Bar. There is no requirement for not-for-profit legal aid organizations to certify GALs. However, if certification is offered through a not-for-profit legal aid organization, it is required to conduct a security background check of the applicant and provide training using a “uniform objective statewide training program.” It is this last provision that resulted in the formation of the Guardian Ad Litem Ad Hoc Committee by the Family Law Section of The Florida Bar.

To meet the above training requirement, an Ad Hoc committee was formed, chaired by Kim Nutter, Esq., currently at Brinkley Morgan in Fort Lauderdale. Attorneys from around the state, along with two psychologists, met for live meetings and phone conferences over a three year period to produce what was originally construed to be a two day training module with both live presenters and a training manual. Budgetary constraints ultimately necessitated replacing the live training with a DVD that can be replicated and used statewide. The implementation, supervision and regulation of the training are yet to be finalized.

The training manual takes the GAL trainee through the process of being assigned a case, conducting the interviews with parents and children, interviewing professional and lay collaterals, writing a report, interacting with the Court and testifying. The manual also includes a primer on mental health issues, the impact of divorce on children, parents and families, child development as relates to recommendations for time sharing and parenting plan development, use of psychological evaluations, and age appropriate interviewing techniques. Thus, the intent was to provide interdisciplinary training in both the legal and mental health components of the GAL process. The manual is also expected to serve as an ongoing reference, and includes legal forms and a glossary. As statutes and case law develop, the manual can be updated and revised.

The DVD is a power point presentation of each chapter in the manual with voiceovers teaching the subject material. Interspersed are video presentations of proper techniques for interviewing young and older children and testifying in Court. The “actors” for these demonstrations included attorneys from the Ad Hoc Committee and General Magistrate Diane Kirigin, the Chair of the Family Law Section.

This training module of the DVD and accompanying manual is intended to provide a basic understanding of the role and responsibilities of the GAL. It is meant to be supplemented by continuing education by the GAL and an ongoing mentorship relationship with an experienced GAL. However, even the experienced attorney GAL will benefit from a review the DVD and manual.

This project not only resulted in a procedure for training GALs under Chapter 61, but is also a living example of but one of the great works that can come from collaborative, interdisciplinary efforts between attorneys and mental health professionals. Such endeavors ultimately benefit the children and families undergoing the stress, conflict and confusion associated with divorce, especially those families experiencing higher conflict. The committee encourages attorneys interested in become GALs, even Family Law attorneys, to complete the training before embarking on this challenging but gratifying area of practice. (In the spirit of full disclosure and without bias, the authors of this article would like to indicate that they are also the psychologist members of the Ad Hoc committee.)
Using A Guardian Ad Litem in a Dissolution of Marriage Action Involving Children

By Jessica M. Felix, Esq. and Michael L. Lundy, Esq., Tampa, FL

§61.403, Florida Statutes, generally governs guardians ad litem in family law cases. It states, in relevant part:

A guardian ad litem when appointed shall act as next friend of the child, investigator or evaluator, not as attorney or advocate but shall act in the child's best interest. A guardian ad litem shall have the powers, privileges, and responsibilities to the extent necessary to advance the best interest of the child...

The statute then goes on to enumerate the various powers that guardians ad litem can have, which include (1) investigating the allegations set forth in the pleadings; (2) inspecting records, including medical records, of the child and their family members; (3) requesting expert examinations of the child, the child's parents, or other interested parties; (4) making written or oral recommendations to the court; (5) filing pleadings, motions, or petitions for relief; and (6) being present for any proceedings. Perhaps most importantly, the guardian ad litem may "submit his or her recommendations to the court regarding any stipulation or agreement, whether incidental, temporary, or permanent, which affects the interest or welfare of the minor child." In essence, a guardian ad litem can be the judge's "eyes and ears" outside the courtroom; that it is critical to be able to effectively communicate the basis of the information he or she has learned to the court regarding any stipulation or agreement.

§61.403, Florida Statutes, does not prescribe whether the guardian ad litem should be an attorney. The only requirement for non-attorneys to serve as guardians in family law matters is that they have received some basic training. Generally speaking, in our experience, the most effective guardians ad litem are either family law attorneys or mental health professionals that are very familiar with family law litigation. Of the two, family law attorneys tend to be slightly more effective in most cases as they have far more experience in the litigation process.

Guardians ad litem are not advocates in a case. Interestingly, because the guardian is not in fact an advocate, there is literally no role for a guardian at the appellate level because the appellate court is not a fact-finding court. Guardians, in this sense, are more like parties and other witnesses in the sense that they are subject to cross-examination regarding their reports and recommendations. Lawyers are often more skilled in handling the rigors of cross-examination, as they were trained to conduct cross-examination in law school and in practice, and this is yet another reason why a lawyer-guardian often is more effective than a mental health professional. We have found that most mental health professionals are simply not as comfortable in the litigation process and can often get so immersed in their investigation that they lose sight of how the ultimate recommendation will present in court and how they will have to withstand an attack during an aggressive cross-examination. Mental health professional often fail to appreciate that being "right" is not necessarily enough inside the courtroom; it is critical to be able to effectively communicate the basis of any findings while they are under attack.

Although a guardian can play a valid and necessary role in a contested timesharing case (including an initial determination, modification action or contempt proceeding), many attorneys operate under the mistaken belief that using guardians ad litem in a timesharing dispute will be a means of circumventing the hearsay rules. Although guardians speak with the minor children and their investigation is centered around the children, a guardian's testimony is still subject to the rules of evidence, including the hearsay rules. Therefore, the children's voices may still be stifled by the rules. So although a guardian's recommendations may be based on what they learn directly from the minor children, they may not be allowed to relay specific statements they have gleaned from a child. As the rules of evidence are designed primarily to protect litigants, they can in this instance handicap a guardian ad litem's ability to truly protect a child. Even though a guardian often is appointed to obviate bringing a child into court to give testimony, these rules of evidence (if not waived) can necessitate bringing children before the court to testify anytime a guardian determines that the information he or she has learned is something the Court must hear, that the testimony is in the best interest of the child, and that there is no other way to present it to the court. In order to avoid all of this, we often consider including language in any order appointing a guardian ad litem that waives the hearsay rules as to the minor children's (and sometimes others, such as doctors') statements. We have used the following language, or some permutation of it:

The Court may consider the information contained in the guardian ad litem's reports and the guardian ad litem may testify before the Court. The technical rules of evidence shall not serve as a ground to exclude from consideration the guardian's written report or the guardian's testimony. The parties have expressly waived the rules of hearsay with regard to the guardian's testimony and written reports and recommendations. The parties also waive objections as to child hearsay and the psychotherapist-patient privilege, subject to the Court's and the guardian's approval.

Such a provision would allow the guardian to testify freely and would avoid having to parade not
only the children, but also various
third parties, such as doctors and
psychologists, through the courtroom
to present what is typically objec-
tive information. Be careful, though,
because if you suspect on any level
that any information from any source
is less than 100% unbiased, or if you
suspect that cross examination of any
third party will be necessary to obtain
the whole truth or to protect your cli-
ent, you should carefully tailor this
 provision accordingly.

In cases involving parenting and
timesharing disputes, we often find
ourselves deciding between a court-
ordered home study, a psychological
evaluation, a comprehensive parent-
ing and timesharing evaluation, and
a guardian ad litem investigation.
The choice to appoint a guardian ad
litem is often one of the most efficient
choices when the best interests of
the children must be determined and
there are no allegations of significant
psychological issues. Clearly, a guard-
ian ad litem, alone, would not be the
appropriate choice in a case involving
allegations of child sexual abuse or
major psychopathology on the part
of the parties or the children. In any
such case, a comprehensive, foren-
sic psychological evaluation involv-
ing significant and specific testing
and other measures by appropriate
trained professionals is an absolute
necessity. Skilled guardians ad litem
tend to be most effective in cases in-
volving allegations of physical abuse;
cases involving alcohol or drug abuse
by a parent; cases where child pref-
erence has been a major considera-
tion; and cases with very discrete
and fact-based parenting issues to be
investigated. A guardian ad litem is
not limited by the stringent protocol
to which a timesharing evaluator
must adhere and, accordingly, can
pick and choose who to interview and
what testing or examinations would
be most helpful. For this reason and
others a guardian's investigation can
be completed much more rapidly than
a comprehensive parenting and time-
sharing evaluation. Further, a guard-
ian ad litem can be agile and provide
a quick recommendation on a time
sensitive or critical issue, whereas
a psychologist will never (at least in
our experience) provide an interim
recommendation while his/her evalu-
ation is ongoing.

Although courts are clear that the
recommendations of a guardian ad
litem shall only assist the court in
making its ultimate decision in a
case, guardians can have a lot of
persuasive power in a courtroom.
Simply put, guardians are able to do
what the Court is not: spend time out
of the courtroom speaking to numbers
of individuals and gathering informa-
tion to which the Court simply does
not have access because of the inher-
ent nature of a judge's involvement
in a case. It is therefore critical to be
diligent in the selection of a guard-
ian ad litem, to choose someone that
is not only unbiased, but also very
experienced in analyzing the difficult
issues we face in contested cases in-
volving children.

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Endnotes:
1 Note guardians serving in civil family law
matters are governed by separate laws than
guardians appointed in Chapter 39 proceed-
ings involving children, which are governed
by Fla. R. Juv. P. §8.215(2010) and Chapter 39
Part XII of the Florida Statutes.
2 See §61.402(1), Florida Statutes
3 This may change in the near future, as
the Family Law Section is currently working
on revamping and instituting Guardian ad
Litem training to offer more specific training
for Guardians ad litem in family law matters.
4 It is important to note that the duties and
responsibilities of a guardian ad litem are very
different than those of an attorney advocate.
See Perez v. Perez, 769 So. 2d 389, 393 (Fla. 3d
Dist. Ct. App. 1999) and Chapter 39 Part XII of the Florida Statutes.
5 See Perez, at 393 (Fla. 3d DCA 1999).
6 See Miller v. Miller, 671 So. 2d 849, 851
(Fla. Dist. Ct. App. 1996) (holding that “the par-
ent in a change of custody case must be allowed
an opportunity to rebut the conclusions of the
report and to cross-examine the preparer)
7 See Scarlenga v. Herrick, 711 So. 2d 204,
205 (Fla. 2d DCA 1998) (holding that “when a
guardian attempts to testify to hearsay state-
ments and a valid hearsay objection is raised,
that objection should be sustained”).
8 See Scarlenga v. Herrick, 711 So. 2d 204, 205
(Fla. 2d DCA 1998), concurring opinion.
Section “Retreats” to Napa Valley!

By G. M. Diane Kirigin and Kathryn Beamer

Chair Diane M. Kirigin’s out-of-state retreat was held at the Villagio Hotel in Yountsville, California in April, 2011. It was very well attended by fifty attorneys and their significant others. Diane, with event chair Douglas Greenbaum, planned an outstanding retreat. The educational seminar, organized by Dr. Deborah Day, addressed the problems of various forms of addiction when dealing with family law proceedings. The speakers were so dynamic almost no one left the room during the presentations!

Diane and Doug organized two wonderful wine tours and attendees were treated to four very different wineries. We first ventured to the Kuleto winery on the top of a mountain. Some of us were white knuckling the one lane dirt road on the side of a mountain to get there but we reached the winery and were treated to a view right out of “A Walk in the Clouds.” We dined atop the mountain before making the trip back down and heading on to the Quixote winery, a small winery with extraordinarily quirky architecture. On the way out we were treated to a weather event not experienced often here in south Florida – sleet! Don’t get a bad impression of the weather however. At all other times it was clear, crisp and beautiful.

The second wine tour took us to Chateau Montelena– the winery made famous as the first American winery to win a European wine contest. Its story is depicted in the movie “Bottleshock”. After a most delightful tasting there, we toured Castella De Amorosa– a winery in an actual castle complete with a moat, dungeons and a torture chamber that was a little too real to be comfortable. The tasting there included a lesson in blending wines that was fascinating. One attendee gave up blending a little of this and a little of that– she dumped the contents of all of the wines in one glass and downed the contents declaring her blending to be the best.

On Saturday morning 30 of us, the brave ones, took a balloon ride over Napa Valley. The day was crystal clear, the scenery divine and we traveled 7½ miles in the air seeing the valley from above. It was truly breathtaking. We came down to a smooth landing and were treated to champagne at Moet de Chandon before returning to the hotel and attending a meeting of the Executive Council.

After a free afternoon, we got together for a farewell dinner before returning to the real world.
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The Evolving Practice of Parenting Coordination

By Debra K. Carter, Ph.D., Bradenton, FL

Since the concept of Parenting Coordination (PC) first emerged in the early 1990s, several approaches to this type of alternative dispute resolution process have developed across North America. Some geographic regions have a “mediator/arbitrator” model where the parenting coordinator has broad authority to arbitrate disputes between parents. Another model is a pseudo-therapeutic model where “therapy” interventions are more a part of the process (AFCC Task Force Report, 2003; Kirkland, & Sullivan, M, 2008). As Parenting Coordination becomes more prevalent, many other models are likely to emerge. The model most widely used in Florida, is an “integrated model” (Carter, 2011). This model is built upon social science research in the areas of child development, effects of divorce on children and families, parenting styles, conflict resolution theory and application, as well as decades of experience with other models of alternative dispute resolution. This model has foundation in the fields of mental health and family law and the integration of specific professional skill sets that make the role of parenting coordination unique and distinct.

A great deal of confusion remains amongst family law professionals about what Parenting Coordination is and is not. Parenting Coordination is NOT a couple or family therapy intervention for high conflict parents nor is it a substitute for a Social Investigation or a mental health assessment. In fact, any dual role would be ill-advised and unethical. Parenting coordination IS an alternative dispute resolution process, usually court-ordered, that allows the well-trained parenting coordinator, as a third party neutral, to assist parents who are unwilling or unable to disengage from their conflict-ridden parenting style to learn how to shield their children from the damaging effects of exposure to chronic conflict. A Parenting Coordinator should remain neutral and unbiased toward either parent. The PC is not an advocate for either parent, but may serve as an advocate for the children when the impact of a parenting plan or a parent’s interventions place the children in danger or at risk for harm, either physical or mental.

The PC should assess parenting strengths and weakness, identify specific needs of children, and develop strategies for intervention that allow the PC process to work effectively and efficiently. It is important to remember that the parenting coordination process should be guided by Orders of the court or decisions agreed upon by the parents.

In 2009, The Florida Chapter of the Association of Family & Conciliation Courts, in conjunction with the University of South Florida, conducted a Survey of parenting coordination practice in Florida. (The complete results of this research will be published in Family Court Review in the Fall of 2011). Some highlights of this Survey identified commonalities in parenting coordination practice. For example, eighty-two percent of Survey respondents use a formal parenting coordination contract with their clients. Sixty percent charge their clients by the hour with standard fees ranging from $90.00 to $220.00 per hour. Seventy-eight percent reported that fees were always split 50/50 between parties.

Approximately fifty percent of respondents in the Survey reported that the average case duration was less than a year and seventeen percent said their cases lasted over two years. Most PCs met with parents either once or twice per month. Most parenting coordinators (56%) estimated that between 60 and 80% of their cases had succeeded. Nine percent of the respondents placed their goal success rate at 80-100%. This Survey also found that the thrust of the work had ultimately gravitated toward realizing one of three distinctively different aims – developing a cooperative co-parenting alliance, achieving a functional parallel co-parenting relationship (in which the parents maintained very limited communication with one another, principally via email or FAX), or settling on a fully disengaged co-parenting relationship (involving no contact at all between parents, with all child-related communication vetted through the PC). In sum, data from this study indicates that Florida parenting coordinators, as a group, believe their casework with families has led to beneficial outcomes in the majority of their cases. However, much more research is needed to guide best practice standards for the parenting coordination process.

While the initial research on parenting coordination was underway, the practice of parenting coordination in Florida changed dramatically in 2009 with the passage of 61.125, Florida Statutes, and in 2010 with the adoption of Rule 12.742, Fla. Fam. L.R.P. This Rule also introduced several forms for the court and the parenting coordinator to use. One of the most substantial changes was a shift from a non-confidential to a confidential process. There were also substantially more safeguards for victims of domestic violence.

By mid-2010, it became clear to parenting coordination professionals and those referring clients to parenting coordination that there was a need to develop additional rules and forms which, among other things, would incorporate standards for training and practice. To address these needs, a Joint Parenting Coordination...
Evolving Practice

from page 11

Parenting Coordination Subcommittee was convened by the Supreme Court of Florida ADR Rules & Policy Committee and The Florida Bar Forms & Rules Committee. The charge was to review parenting coordination practice in Florida and propose any changes deemed necessary and desirable. The development of 61.125, F.S. and the existing Rule 12.742, FL Fam. L.R.P derive from approximately 10 years of work by various committees and subcommittees of the Supreme Court of Florida, The Florida Bar, the Florida Coalition Against Domestic Violence, Florida Legal Aid, the Florida Chapter of the Association of Family and Conciliation Courts, and other organizations including mental health professionals who practice parenting coordination and those who train parenting coordinators. In addition, attorneys, judges and court personnel participated as the justice system’s connection to parenting coordination by providing legal research and application of legal concepts to the consideration of proposed changes to the Rule and forms as well as development of Standards.

The need for Standards of Professional Conduct and Ethical Guidelines for Parenting Coordinators in Florida has become more urgent as this alternative dispute resolution process becomes more widely used. Some circuits have already established practices for authorizing, appointing, or removing parenting coordinators, but uniformity is needed. F.S. 61.125 established the criteria for parenting coordinator eligibility and training which, in turn, necessitated the need for procedures to determine satisfaction of eligibility requirements, standards of conduct in the performance of parenting coordination services, and disqualification for individuals who violate conduct standards and ethical guidelines. The Joint Subcommittee was charged with the responsibility to develop these methodologies in order to achieve compliance with the statute and rules, to advise attorneys, judges, and parenting coordinators of minimum standards, and to protect the public from unqualified or unscrupulous practices.

Unlike the indifferent neutrality of a mediator, the process of parenting coordination may be subtly coercive and, under restricted circumstances, the parenting coordinator may make limited decisions for the parties. In the event that confidentiality is waived, the possibility exists that a parenting coordinator could testify to a party’s unreasonable position and thereby substantially influence a court’s decision. Consequently, parenting coordinators may have considerable power to affect time sharing and parental responsibility. To combat the potential for abuse of this power, the Joint Subcommittee considered the need to make expectations for parenting coordination practice clear and to develop a means whereby inappropriate PC practices might be reviewed.

At present, there is no oversight body to hear concerns or complaints by a party about their parenting coordination. An integral part of standards are processes for an objection to a parenting coordinator’s conduct, a fair assessment of that conduct, and discipline if appropriate. The existing Rule establishes the process for appointing a parenting coordinator but does not designate a process to address problems. The Joint Subcommittee considered changes that would allow for a parenting coordinator to be removed from a particular case either in the event the parenting coordinator no longer meets the criteria to serve or for “good cause shown.” Undoubtedly, a breach of the standards could be the basis for good cause, as well as something not envisioned under the rules or something peculiar to a particular case.

As parenting coordination continues to evolve in Florida and across the U.S. and the globe, it is imperative that the Standards, Ethics, Statute, and Rules of Procedure reflect best practice guidelines that we hope will be informed by emerging social science research to make this ADR process most efficient and effective and, ultimately, protect children’s best interests more effectively when their parents are locked in chronic conflict.

Debra K. Carter, Ph.D. is a Licensed Psychologist with a clinical and forensic practice along the gulf coast of FL. She is also a Qualified Parenting Coordinator and Trainer as well as a FL Supreme Court Certified Family Law Mediator. Dr. Carter is the Co-Founder and Chief Clinical Officer of the National Cooperative Parenting Center (www.TheNCPC.com). Dr. Carter currently serves on the Joint Parenting Coordination Subcommittee, a joint committee of the Florida Supreme Court ADR Rules & Policy Committee and The Florida Bar Rules.
& Forms Committee. She is also Chair of the FLAFCC Parenting Plan Task Force and the Social Investigation and Parenting Plan Evaluation Task Force. She co-Chairs the Parenting Coordination Research Project working in conjunction with the University of South Florida and University of Miami. She is also former President of the Board of Directors for the Association of Family and Conciliation Courts – FL Chapter and served on the FL Supreme Court Parenting Coordination Workgroup. She co-founded the FL 12th Judicial Circuit Family Court Professional Collaborative and serves on the Executive Board of the 12th Circuit Family Law Advisory Group. She is the primary training coordinator for the 12th Judicial Circuit’s Social Investigation and Parenting Plan Recommendation Program, the Social Study and Parenting Plan Facilitation Program, and their Parenting Coordination Program. She has been a frequent speaker for the American Psychological Association, the American Academy of Matrimonial Lawyers, the Association of Family & Conciliation Courts, Florida State Circuit Courts Judicial College, the Family Court Conference, The Florida Bar, the Florida Psychological Association, Marital Inns of Court, and the University of South Florida. Dr. Carter has received numerous awards and honors for her clinical work and contributions to the family law system, including "Psychologist of the Year" and recognition as a “Distinguished Psychologist.” She received the President’s Award from FLAFCC in 2010. She will be presenting her research on parenting coordination in Lyon, France at the International Society for Family Law in Lyon, France in July, 2011. In addition, she has written numerous articles and books, including Empirically Based Parenting Plans: What Professionals Need to Know (2010) and Parenting Coordination: A Practical Guide for Family Law Professionals (2011).

References


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On April 15, 2011, the Florida Chapter of the Association of Family and Conciliation Courts (FLAFCC) presented a seminar on A Primer on Mental Health Issues. The purpose of the seminar was to educate Family Division judges and magistrates and attorneys who practice Family Law in South Florida on the basics of mental health issues as they affect family cases.

The seminar was divided into four segments: The basics of the DSM-IV and psychiatric treatments, child development and attachment, parenting plans and timesharing, and alienation and estrangement.

Anthony Castro, Ph.D., Psy.D., a professor at the University of Miami, gave a basic description of the most common diagnoses in the DSM-IV, the Diagnostic and Statistical Manual of Mental Disorders, which is the “bible” for psychologists, psychiatrists and other mental health professionals. Spencer Eth, M.D., a professor of psychiatry at the University of Miami, spoke about the most common psychotropic medications. Miguel Firpi, Ph.D. and Neena Malik, Ph.D., both of whom teach at the University of Miami, gave a presentation about child development and attachment. Dr. Firpi and Helenann Shapiro, LMFT, spoke about the effect of mental health issues on parenting plans. Vanessa Archer, Ph.D. and Edward Szczewicz, Ph.D. spoke about alienation and estrangement.

Most family attorneys make strategic decisions about how to handle a case or what relief to seek on behalf of clients without thinking in terms of the emotional needs and abilities of our clients and their children. For instance, I currently represent a father who seeks to have overnights with his four-month-old child. The mother felt that the child was too young to spend overnights with the father based solely upon the child’s age. Her attorney vigorously argued that the father should not have any overnights. What he did not understand, as the speakers in the seminar explained, was that the child physically needs to have a close bonding relationship with both of her parents and that by depriving the child of having overnights with the father, the mother and her attorney were actually causing harm to the child’s neurological and emotional development. Had that attorney been educated on the mental health issues that affect families, he would not have taken the litigation tactics that he did.

The feedback that we received from the attendees was that the seminar was excellent. One person said, “I have never felt so educated in such a short span of time.” That is what we were trying to do. Hopefully, the seminar will be presented again on a statewide basis so more family judges, magistrates and attorneys can improve their knowledge of how mental health issues affect what we do. The more we know in this area, the better we will be as professionals.

Robert J. Merlin, Esq. is a partner in the Law Offices of Robert J. Merlin, P.A. in Coral Gables, Florida specializing in Marital and Family Law, especially Collaborative Family Law. He is Florida Bar Board Certified in Marital and Family Law and has been practicing law in Florida for over 30 years. He is a member of the International Academy of Collaborative Professionals, the Collaborative Family Law Institute in Miami and Collaborative Family Lawyers of South Florida in Broward, the last three organizations being dedicated to the promotion of the practice of Collaborative Family Law as a means of amicably dissolving marriages and resolving family disputes. Bob is the President of the Collaborative Family Law Institute and is a member of the Eleventh Judicial Circuit Court Parenting Coordinators Advisory Board and the University of Florida Levin College of Law Center on Children and Families Advisory Board. He is also on the Legislation Committee and is Co-Vice Chair of the Mediation and Collaborative Law Committee of the Family Law Section of The Florida Bar.

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Stress Management

By Dr. Michelle Channing, Psy.D/Licensed Psychologist,
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No matter who you are, where you live, or what you do: you know stress. Stress may be widespread, but it is certainly not simple. You can't eliminate it from your life, and, in fact, you wouldn't want to. Without stress, life is boring and colorless. With no pressure, no challenges, and no struggles, life would be dull. Stress adds flavor and zest to life. The secret to handling it is to learn to strike a balance so that the stress adds spice to your life -- without giving you indigestion.

Human beings are resilient. We can handle a lot without falling apart. In fact, that's one of the positive functions of our stress reaction. It helps us rise to the occasion and get ourselves safely through even the roughest of times, at least temporarily. Stress is with us all the time. It comes from mental, emotional, and physical activity. It is unique and personal to each of us. So personal, in fact, that what may be relaxing to one person may be stressful to another.

Too much stress, however, can seriously affect your physical and mental well-being. A major challenge in this stress-filled world is to make the stress in your life work for you instead of against you. When stress becomes prolonged or particularly frustrating, it can cause harmful distress or “bad stress”. Recognizing the early signs of distress and then doing something about them can make an important difference in the quality of your life.

As you all know, one of the most difficult and potently stressful in clients' lives is divorce and loss. Although, you play an integral part in helping your clients with their transitions, closure, and new chapters in their lives, your conversations with them as well as your physical interactions likely stir up a lot of emotional feelings and reactions from each of them, whether the approaching divorce is voluntary or involuntary. It is also evident that with this economy, more of your clients are opting to live under the same roof with their spouse or future divorcee before, during or after the transitions. This as we can only imagine, can breed intense and serious problems from an emotional, intellectual, and social perspective.

Another important viewpoint is to know and educate your clients on the approaching grieving process they will experience; each divorce is a loss, and we conceptualize their change in marital status similarly to a death even if the divorce is desired. Your clients will likely go through the stages of grief many of us are familiar with (shock, denial, guilt, anger, depression, bargaining, acceptance, etc.). Offering your clients a way to channel their emotional discharge in a safe, nurturing and healthy way with a psychologist or therapist is paramount. Similarly, being thrust in aconflictual, complex, and high pressure environment for you as professional attorneys inevitably manifests stressful conditions which may foster the need or desire to expand your support network as well.

Tips For Reducing Stress

DIVERSIONS

Getaways: Spend time alone. See a movie. Daydream.
Learning: Take a class. Read. Join a club.
Music: Play an instrument. Sing. Listen to music.
Play: Play a game. Go out with friends.

FAMILY

Balancing: Balance time at home, work, and play.

Conflict resolution: Look for win/win solutions. Forgive readily.
Esteem building: Build good family feelings. Focus on personal strengths.
Flexibility: Take on new family roles. Stay open to change.
Networking: Develop friendships with other families. Make use of community resources.
Togetherness: Take time to be together. Build family traditions. Express affection.

INTERPERSONAL

Assertiveness: State your needs and wants. Say “no” respectfully.
Contact: Make new friends. Touch. Really listen to others.
Expression: Show feelings. Share feelings.
Limits: Accept others’ boundaries. Drop some involvements.
Linking: Share problems with others. Ask for support from family/friends.

MENTAL

Imagination: Look for the humor. Anticipate the future.
Life planning: Set clear goals. Plan for the future.
Organizing: Take charge. Make order. Don’t let things pile up.
Problem-solving: Solve it yourself. See outside help. Tackle problems head-on.
Relabeling: Change perspectives. Look for good in bad situations.
Time management: Focus on top priorities. Work smarter, not harder.

PHYSICAL

Biofeedback: Listen to your body. Know your physical limitations.

continued, next page

Nourishment: Eat for health. Limit use of alcohol.

Relaxation: Tense and relax each muscle.

Self-care: Energize your school, work, and play. Strive for self-improvement.

Stretching: Take short stretch breaks throughout your day.

SPIRITUAL

Commitment: Take up a worthy cause. Say yes. Invest in yourself meaningfully.

Faith: Find purpose and meaning.

Valuing: Set priorities. Be consistent. Spend time and energy wisely.

Dr. Michelle Channing is a licensed psychologist in Weston, Florida with twenty years of clinical experience. She is the business founder and owner of InPsych Consultants, P.A. and Dr. Michelle Channing, P.A, and adjunct professor at FIU. She belongs to the American Psychological Association and serves on the Board of Directors of the Florida Initiative for Suicide Prevention (FISP). Dr. Channing conducts assessments, psychotherapy, and consultation services. She also mentors other mental health providers and continues to take pride in her public speaking engagements. She obtained her doctorate and master’s degree in clinical psychology from Nova Southeastern University (NSU). She received her certificate in psychoanalytic psychotherapy from the Post-doctoral Institute of Psychoanalysis and Psychotherapy of NSU. Prior to her doctoral studies, she earned her master’s in mental health counseling from NSU and her bachelor’s degree in psychology from the USF.

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Common Errors Made In Parenting Plan/Timesharing Evaluations

Evaluations Formerly referred to as Child Custody

By Robert A. Evans, Ph.D., Coral Gables, FL

Frequently, family courts turn to mental health professions to help in deciding how children should be sharing their time with each parent and the roles parents are to play in their children’s lives. Courts are appointing mental health professionals to conduct Parenting Plan/Timesharing Evaluations (PPTEs). The primary purpose of these PPTEs is to assess the best fit between children’s needs and each of their parents’ ability to meet those needs.

As part of PPTEs, evaluators provide recommendations regarding the extent of each parent’s involvement with their children. These recommendations carry significant weight in the eyes of courts and can influence greatly the final determinations of custody disputes. PPTEs can also precipitate a settlement in an otherwise highly conflicted case. Because these evaluations are so important in child custody cases, it is critical that PPTEs be conducted in a scientific manner as possible, employing acceptable scientific methods, considering relevant behavioral science research, adhering to professional ethical guidelines and provide a continuity of data that supports their final recommendations (Baergert, D.R., Levy, R.G., Gould, J.W., & Nye, S.G., 2002).

There is a growing body of literature (Gould, J.W., Kirkpatrick, H.D., Austin, W.G., & Martindale, D.A. 2004), however, that has identified PPTEs as frequently falling below professional standards in such areas as quality, reliability and utility of the PPTE reports. More specifically PPTEs have been shown to:

- Lack adherence to scientific methods;
- Fail to be grounded in empirical research;
- Lack acceptable forensic psychological relevance;
- Fail to provide data supporting recommendations.

Some PPTEs do not follow recommended assessment procedures and present data and information to courts inappropriately. This actually misleads the courts and therefore leads to poor and misinformed decisions. In the end, this harms the children. It has been observed, for example, that some PPTEs not only include recommendations that exceed the specific data contained within the report but also exceed present limitations of scientific knowledge.

It is not uncommon for evaluators’ recommendations to be contradictory to the data and statements contained within the body of their PPTE reports. In addition, some clinical professionals use and interpret assessments that may be acceptable in therapeutic settings but are totally inappropriate and misleading in forensic practice. Some evaluators fail to incorporate present child development and relevant divorce literature as support for their recommendations. That is, they present conclusions based on clinical impressions, judgments and opinions that are outside the state of empirical scientific research. The literature, going back 38 years on clinical judgment has demonstrated that clinician judgment is about as accurate as flipping a coin! (Garb, H.N., 1998).

Given the importance these evaluations have on family dispute cases, it is critical, therefore, that the legal community increases their awareness of the reliability and validity of PPTEs that are proffered in their cases. Below is a brief overview of some issues that need to be considered.

Orientation

In clinical practice clinical professionals typically present a supportive and empathetic attitude, such as an unconditional positive regard, toward their patients as a means to enhance the therapeutic alliance. Frequently the clinician becomes an advocate for his or her patient, with little or no confrontation (depending on therapeutic orientation). Also, the clinician is less interested in the truthfulness of the information presented to him or her by the patient. Rather, they are more concerned with the patient’s perceptions of their experiences. Patients who voluntarily seek help, in general, tell the truth as they know it in order to facilitate their therapy.

In a child custody setting, however, the professional strives to present and maintain a neutral, objective and impartial attitude, but may at times be confrontational about discrepancies in case related information. Also court appointed evaluators are generally actively assessing the validity of litigants’ information and are vigilant to any indications of misinformation. Litigants’ coming to a court ordered evaluation may not always tell the truth because some information may not be perceived as complimentary. Litigants frequently strive to present a positive impression on the evaluator. This posture is not necessarily pejorative but is common.

Hypothesis Testing

The clinician, in a clinical practice, generates hypotheses and tests them relative to treatment considerations.

A court appointed evaluator generates and tests hypotheses relative to parenting skills and capacity. The forensic professional seeks other case related and psychological assessment continued, next page
data to either confirm or disconfirm the hypotheses.

**Structure**

Frequently clinicians display little “apparent” structure in a therapeutic environment. That is, the clinician may have a clear sense of the organization of their therapeutic processes but the patient may not be aware of the underlying structure.

The court appointed evaluator, however, operates in a highly structured, focused and organized setting, and frequently with strict time limitations on the processes. With brief and highly focused evaluations, the evaluator is even more limited to a specific area of inquiry.

**Goal**

Therapists assist patients in recovering from emotional distress; therapists frequently advocate for their patients and may maintain a long-term relationship.

Forensic professionals conducting PPTEs assist the trier of facts in acquiring and understanding psychological information relative to parental issues and children’s best interests. Court appointed evaluators in PPTEs do not advocate for litigants, with the possible exception of the children caught in an adversarial, high conflict, divorce. When the evaluation is presented to the count, and when and if the evaluator gives testimony, the case is over for the evaluator and the association between evaluator and litigants is terminated; no other relationships or associations can evolve upon case termination.

**Judgment**

Therapists do not critically judge their patients in an attempt to exercise unconditional positive regard. This stance facilitates the patient-therapist relationship. Clinicians, however, frequently use clinical judgment in their practice and given the limited implications for their decisions, little or no harm is done when such judgments are incorrect. If an error is detected, therapeutic adjustments and corrections are made and resolutions are found and implemented. A decision based on a clinician’s professional experience may be a representation of what is referred to as selection bias. That is, a clinician may be basing their opinion on those patients with whom he or she has been treating but these patients may not represent the entire population of that type of patient. Clinically-derived judgments are highly susceptible to errors.

Court appointed evaluators, however, are making judgments throughout the evaluation process, attempting to uncover contradictory information, assessing complex case facts and integrating factual information with behavioral science research for the benefit of the court.

The therapeutic versus forensic dilemma is when evaluators use clinical judgment in decisions related to PPTEs. The implications for such decisions are very serious and perhaps long standing if not permanent. Research has indicated that decision-making based on actuarial (statistical) data is considerably more predictable and accurate than clinical judgment. Users of PPTEs need to be aware when court appointed evaluators are going beyond the data collected and veering off into clinical decision-making.

**Dual Roles**

The amalgamation of clinical and forensic perspectives allows the evaluator to critically analyze and interpret complex factual information and behavioral science research. The evaluator can bring together clinical judgment and factual information to assist the court in making informed decisions.

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**Congratulations!**

Congratulations and best wishes to our Program Administrator, Summer Hall, who accepted a beautifully orchestrated marriage proposal from Jameel McKanstry at the June Florida Bar Convention at the Gaylord Palms Resort in Kissimmee, FL. A summer 2012 wedding is being planned.
Forensic roles is yet another example of role confusion which clearly does not belong in legal settings. Sometimes clinicians find themselves transitioning from their role as a patient’s therapist to that of a court appointed forensic evaluator, or worse, volunteering to testify on behalf of their patient (i.e., dual roles). This transition can be a very subtle one where, for example, a patient’s therapist provides testimony relative to a person’s parenting abilities and may “slip” into making a timesharing or custody recommendation. Unfortunately these “slips of the tongue” can be encouraged where a therapist-patient relationship conveniently surfaces in a timesharing dispute. The unsuspecting clinician sees such testimony as a continuation of their advocacy for their patient, not realizing that they have overstepped their therapist role by assuming that of a forensic expert. Professional Guidelines from the APA and AFCC clearly state that dual roles should be avoided. Even though a therapist may not be a psychologist, the APA Guidelines can and usually are invoked in cases. In addition, some states, i.e. Florida, have either adopted APA Guidelines in their statutes thereby making them law, or incorporated the intent of such guidelines thus clearly prohibiting such situations.

There are a number of reasons the dual role prohibition is in place. The primary rational is that there is naturally a loyalty bind in that the therapist typically begins a therapeutic relationship with one of the parties. The therapist becomes an advocate for that person and has developed a relationship. When the opportunity for the forensic role surfaces after the therapist established him or herself with a patient, the therapist then has to assume the role of a neutral, third party, ultimately working for the court in aiding the court in deciding on the best interests of the child; it is impossible to present as a neutral and objective professional after establishing a previous relationship.

The most common scenario is when a therapist has met with only one of the parents and is asked to give testimony in a court proceeding about the family and specifically the other parent whom they had only heard about. Giving testimony about a person whom they haven’t met means the therapist is simply guessing (i.e., clinical judgment). If they are opining as to which parent is the most likely to meet a child’s needs then they are violating professional standards that exist in all professions and punishable by their respective licensing board; not to mention such testimony may be a violation of the law.

Relevance

Relevance, for example, can refer to the extent assessment methods used in a PPTE are related to the legal question under consideration. In PPTEs the focus is limited to parenting capacity and timesharing. For example, it is not uncommon for some evaluators to include intelligence tests in their procedures. Standardized intelligence tests, such as the Wechsler Intelligence Test series, are very reliable and valid measures of intellectual capacity. They meet strict scientific standards. One could, however, legitimately question the use of intelligence testing in a PPTE when there is no reasonable suspicion that either parent has or is experiencing decrements in intellectual capacity. In addition, even if one suspected a less than average level of intelligence, the evaluator would have to show research-based relevance between intellectual levels and a parent’s ability to raise children. While at extremely low levels of intelligence one might find that extremely intellectually limited adults may make poor parents. Some evaluators use intelligence tests in PPTEs in cases where both parents are college graduates and successfully employed as professionals. In such circumstances the use of intelligence testing is clearly inappropriate and may be an indication that the evaluator is more comfortable in therapeutic settings than in forensic applications.

Relevance can be demonstrated through investigation of multiple...
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Common Errors from preceding page

viewpoints by multiple methods. The evaluator converges on validating a hypothesis. Looking at a single issue from different data sources will increase the reliability of the information obtained. That is, finding a consistent trend in the data gathered will confirm a hypothesis and support a conclusion on the part of the evaluator. For example, suppose an evaluator tests a litigant and discovers an elevated score on a scale that measures "disregard for authority". The evaluator observed high anti-authority indications on multiple test instruments. An interview with the litigant's treating physician reveals the litigant is generally noncompliant with medical advice. It is also discovered through a public records search that the litigant had been arrested for failure to obey a police officer's direction at an accident scene. Legal documents demonstrate a consistent failure to comply with court orders. Through the use of multiple methods (i.e., testing, interviews, record search, document review, etc.) one could hypothesize with some reliability that this litigant has a tendency to disregard authority and any court order may be ignored in the future. This multi-method assessment is actually presented in the APA and AFCC guidelines.

Conclusion

The above is only a brief presentation of some of the issues that need to be considered when reviewing a PPTE. At this time there is presently no one way to conduct a PPTE. But keeping in mind the focus on a PPTE is to assess parental capacity relative to raising children. That is, what do the parents in a custody case know, understand, and believe about parenting as well as what their capabilities to parent their children are given the children’s specific needs. Embedded in these issues are such competencies as parental values, disciplinary approaches, providing structure, support affection, and expectations.

While there is evidence that PPTEs are becoming more comprehensive and scientifically executed, there appears to be significant room for improvement. Noted in the literature is a need for greater emphasis on the needs of children, improved training for evaluators and use of a standardized protocol. A standardized protocol may emerge from the present automated state-of-the-art as discussed in some research (Garb, H.N., 2007; Evans, R.A., 2010). Improvement in these areas would result in a significant improvement in evidence provided to a court. To do less would represent a failure in our professional duty and ethical obligation to the courts, families and our professions.

Dr. Robert Evans is a licensed School Psychologist in Florida whose practice consists primarily of professional development and child custody evaluations. He has developed the only internet based child custody evaluation system (www.custodyreportpro.com).

References


Litigation Support Services Offered by Forensic Psychological Consultants

By David A. Martindale, Ph.D., A.B.P.P., St. Petersburg, FL

Forensic psychological consultants offer a variety of services to attorneys. In this article, I endorse the use by attorneys of forensic psychological consultants as non-testimonial providers of post-report services and urge caution in requesting pre-evaluation services that involve client preparation.

Post-report litigation support services

I begin by emphasizing what I believe to be the importance of offering work product review services and any subsequent services under the terms of two separate retainer agreements.

Attorneys often find themselves holding reports that they wish to have reviewed. In some cases, the reports are favorable to the attorneys’ clients, but the attorneys anticipate that the reports will be attacked. More often, attorneys seek the assistance of forensic psychological consultants when the reports in their possession weaken their positions before the court. In either case, attorneys can represent their clients more effectively when the work done by evaluators is subjected to reasonable scrutiny by retained consultants who can provide information concerning the strengths and deficiencies of the evaluators’ methods.

Post-report consulting is most efficiently begun with a work product review. The retained consultant reviews the report and whatever file items are immediately available. After having reviewed the materials provided by the attorney, the consultant’s impressions are communicated orally to the attorney. Though this article addresses non-testimonial services, attorneys may wish those who have conducted work product reviews to testify concerning their impressions of the work reviewed. If testimony is to be offered, it is more likely than not that any written impressions communicated to the retaining attorney by the consultant would be discoverable. It is for that reason that I emphasize the importance of oral communication.

When an evaluator’s full file is available for inspection, a consultant can examine and offer commentary on the following:

- (1) methodology, with respect to (a) the use or lack thereof of appropriate procedural safeguards; (b) the techniques utilized in interviewing the parents; (c) the techniques utilized in interviewing the children; (d) the manner in which parental interactions were observed and recorded; (e) the manner in which parent-child interaction sessions were observed and recorded; (f) the quantity and relevance of documents secured by the evaluator for verification purposes; (g) the manner in which collateral sources were selected; (h) the reliability of the collateral source information obtained; (i) the manner in which collateral source information was corroborated; (j) the selection of assessment instruments; (k) the administration of assessment instruments; (l) the interpretation of assessment data; (m) respect for role boundaries; (n) indications that alternative hypotheses were generated and explored; and (o) the creation, maintenance, and production of appropriate records.

- (2) The apparent manner in which opinions were formulated. Specifically, (a) whether alternative hypotheses have been discussed by the evaluator, including but not limited to the evaluator’s adherence or lack thereof to generally accepted guidelines, practice parameters, and standards regarding child custody evaluations; (b) whether test data analyses have been performed by the evaluator and/or reported by the evaluator; (c) the evaluator’s use of insulting terminology in describing non-favored parent; the use of glowing terminology in describing the favored parent; the assignment of minimal importance to possible parenting deficiencies in the favored parent; the assignment of much importance to reported flaws in the non-favored parent; the apparent wholesale acceptance of the favored parent’s perspective; and, the apparent rejection of the non-favored parent’s perspective.

- (3) The effectiveness with which findings and opinions have been communicated to the intended recipients of the evaluator’s report as reflected in (a) the inclusion of all the information reasonably needed by the court; (b) avoidance of personal perspectives presented in the guise of professional opinions; (c) acknowledgements of the known limitations of psychological knowledge, techniques, and data; (d) the inclusion of and discussion of non-supporting data; (e) a reasonably detailed presentation of assessment data; (f) an articulation of the criteria employed in examining the best interests standard; and (g) a cogently articulated nexus between findings reported and opinions expressed.

Even in situations where the only file item available for review by a retained consultant is the evaluator’s report, it is still possible for a consultant to provide useful information about and impressions of (a) the procedures and methodology utilized by the evaluator, including but not limited to the evaluator’s adherence or lack thereof to generally accepted guidelines, practice parameters, and standards regarding child custody evaluations; (b) any test data analyses performed by the evaluator and/or reported by the evaluator; (c) the evaluator’s use of insulting terminology in describing non-favored parent; the use of glowing terminology in describing the favored parent; the assignment of minimal importance to possible parenting deficiencies in the favored parent; the assignment of much importance to reported flaws in the non-favored parent; the apparent wholesale acceptance of the favored parent’s perspective; and, the apparent rejection of the non-favored parent’s perspective.

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of published research literature; and, (d) the logical nexus (or lack thereof) between reported information, observations, and clinical impressions and the opinions expressed by the evaluator.

If, following a discussion of the consultant’s impressions of the reviewed report and file items, it is concluded that the consultant can be of further assistance, a decision is made either to utilize the consultant as a testifying expert or to utilize the consultant as a provider of litigation support services.

The forensic psychological consultant can perform the services that follow.

[1] Where it is felt that deficiencies in the evaluator’s work are numerous and significant, the consultant can assist in the preparation of a Motion in Limine seeking the exclusion of the evaluator’s report.

[2] If the retaining attorney is preparing for trial, the consultant can assist in the development of questions to be posed during the deposition of fact witnesses and expert witnesses.

[3] The consultant can assist in developing a list of items to be subpoenaed from the evaluator.

[4] The consultant can also assist the retaining attorney during depositions, alerting the retaining attorney to expert witness responses that require further exploration.

[5] The consultant can review the applicable literature, provide a summary of the literature, and discuss the ways in which published research findings support or conflict with opinions communicated by the evaluator. The consultant can analyze the methods employed by the researchers whose articles have been summarized. Such an analysis provides the retaining attorney with the information needed to gauge the persuasive power of the research.

[6] The consultant can assist in developing questions for use in the direct examination of fact witnesses and expert witnesses offering favorable testimony.


[8] The consultant can provide assistance at trial.

Ethical consulting does not include coaching
When acting as consultants to attorneys, mental health professionals should not engage in any activities that could reasonably be expected to assist litigants in presenting themselves to evaluators in deceptive ways. Such activities include providing to litigants information of a type that would facilitate efforts on their part to dissimulate either in response to test items or in response to interview questions.

Though no empirical data are available, it appears to those engaged in forensic psychological consulting that there has been a noticeable increase in what is loosely referred to as litigant coaching. As the term is used by most psychologists in the consulting arena, coaching is a euphemism for aiding litigants in presenting themselves as being something that they are not. When psychologists are asked to assist attorneys in “preparing the client,” the service being sought is usually instructional in nature. Specifically, the psychologists are being asked to employ their expertise in order to aid litigants in deceiving those who are evaluating them. The phrase “preparing the client to take the [fill in name of test]” is a polite way of describing a process by which consultants tell litigants what they need to know in order to render psychological tests ineffective and, more specifically, prevent the tests from measuring what they are intended to measure.

Encouraging litigants to provide false information in responding to test items leads, ultimately, to their offering of similarly false information under oath. Thus, encouraging litigants to lie to evaluators is the functional equivalent of suborning perjury. The function of the act (lying to the evaluator) is equivalent to the function of committing perjury; namely, it is to deceive the court concerning a matter that is material to the issues being adjudicated. Additionally, in order for lies told to evaluators to serve their intended function, they must be repeated during testimony.

The American Psychological Association’s Ethical Principles of Psychologists and Code of Conduct contains several ethical principles, the first of which relates to “Beneficence and Nonmaleficence.” It reads, in pertinent part: “In their professional actions, psychologists seek to safeguard the welfare and rights of those with whom they interact professionally and other affected persons. . . .” The right of Litigant B to a fair trial on the issues in dispute is interfered with when a psychologist aids Litigant A in an endeavor to dupe an evaluator and, by extension, the court. Providing litigants with instruction in deception has the same deleterious effect upon the administration of justice as does subornation of perjury. The intended purpose of each act is to deceive the court concerning a matter that is material to the issues being adjudicated.

Dr. David A. Martindale, board certified in forensic psychology by the American Board of Professional Psychology, is the co-author, with Dr. Jon Gould, of The Art & Science of Child Custody Evaluations and is the Reporter for the Association of Family and Conciliation Courts’ Model Standards of Practice for Child Custody Evaluation. The issues explored in this article are among those being considered by the AFCC Task Force on Child Custody Consultation, of which he is a member. He is most easily reached by e-mail at david@damartindale.com.
Definition: A Florida Registered Paralegal is a person with education, training, or work experience, who works under the direction and supervision of a member of The Florida Bar and who performs specifically delegated substantive legal work for which a member of the Florida Bar is responsible and who has met the requirements of registration as set forth in Chapter 20 of the Rules Regulating the Florida Bar. A Florida Registered Paralegal is not a member of The Florida Bar and may not give legal advice or practice law. Florida Registered Paralegal and FRP are trademarks of The Florida Bar.

The paralegal profession in the State of Florida is just beginning to earn the recognition and prestige it so deserves. This, in part, is due to the ability to register with the Florida Bar Association under the Florida Registered Paralegal Program.

The Florida Registered Paralegal program became available in March of 2008. Prior to this time, little was known about the benefits of becoming Florida Registered as a paralegal, as well as the professional responsibilities and regulations that accompany this status.

In 1990, when I became a paralegal, I was considered by many in the legal profession as being “that employee” who would undertake assignments a legal secretary would not normally handle, and an associate would not necessarily embark on. This statement is not intended to be derogatory. Some of the tasks that I was assigned were unique in nature, which afforded me experience in situations I would not have otherwise received. Paralegals have the opportunity, much like attorneys, to specialize in many areas of law. My experience to a great measure has been focused in the family law arena, therefore, some of the tasks have been incredibly interesting; a bit daunting, and occasionally downright frightening. As a result of these assignments, my paralegal responsibilities were hardly monotonous and at times exciting.

While I belong to many associations, both on a national level, as well as local level, something remained remiss in my career as a paralegal. Perhaps lack of recognition within the legal community itself, or a feeling of insignificance being the median between secretary and lawyer. When the Florida Bar Association birthed the Florida Registered Paralegal program, I was ecstatic about this privilege for all bona fide paralegals. The exciting part of being a Florida Registered Paralegal is not just the benefits offered and experience provided, but the cachet of the affiliation.

The Florida Registered Paralegal recognition is not without stringent rules and regulations that must be adhered to. Over the years, there had been a lack of regulation of paralegals and often times, ethical lines would be crossed and go unpunished. Through the Florida Registered Paralegal program, those individuals that violate the Code of Ethics and Responsibility are subject to revocation of their registration status and ultimately, may suffer punishment as a result. From the outset, those that deem themselves to be “paralegals” (although not qualified under the Rules) will be prevented from becoming a Florida Registered Paralegal. I find this to be a revelation in the paralegal profession as it has been in my experience, too many individuals represent themselves to be paralegals when, in fact, they did not complete an appropriate paralegal program, nor have the paralegal experience they portray on a resume or application. Being a Florida Registered Paralegal, we submit ourselves to Rule 20 of The Rules Regulating the Florida Bar and insist on regulation. It’s a refreshing feeling, almost liberating, to know that as true paralegals, we appreciate the regulation in order to maintain and improve our standards.

It is important that the legal community understand the transition from paralegals being unrecognized by the Bar Association to their current status as being able to participate in Florida Bar programs. This participation has accomplished several things: (i) it has solidified the Florida paralegal’s stature as a Florida organization; (ii) elevated the standard by affording them the opportunity to participate in committees and state programs; (iii) afforded the paralegals to recognize amongst themselves that they are a close federation of professionals; and (iv) it has given paralegals throughout the state a voice. Our world has greatly expanded as a result of this program; our services are improving; our profile has been raised and our morale has been bolstered.
The Negative Impact of Divorce on Children


One of the most significant considerations of parents contemplating divorce is the potential impact of this decision on the mental health of their children. There is certainly reason for concern as there is substantial psychological research that demonstrates negative impact on the mental health of children whose parents divorce. Wallerstein’s (2000) landmark 25 year study (using a comparison group) recorded the data from families at eighteen months, five years, ten years and twenty five years post separation. She found that the effects of divorce are long term and negative. Laumann-Billings and Emery (2000) report that young adults who experienced the divorce of their parents still report distress ten years later.

As with many things in psychology, taking things at face value can lead to errant conclusions. For example, a study (Cherlin, Chase-Lansdale, McRae, 1998) conducted in Great Britain assessing the long term effects of parental divorce on individuals’ subsequent mental health after the transition to adulthood suggests that part of the negative effect of parental divorce on adults is a result of factors that were present before the dissolution of the marriage. However, a negative effect of divorce and its aftermath on adult mental health was found to effect individuals into their twenties and thirties. In a similar vein, Strohschen (2005) tracked Canadian children whose parents remained married versus those whose parents divorced. She found that even before the marital dissolution, children whose parents later divorced exhibited greater anxiety and depression and antisocial behavior than children whose parents remained married. She also found evidence of an increase in child anxiety and depression with the event of the parental divorce itself. There was no increase in antisocial behavior.

These children have more difficulty in school, more behavior problems, self-concepts that are more negative, more problems with peers, and more trouble getting along with their parents.

This leads to the question “What are the factors in divorcing families that contribute to children having difficulties?” In 2001, Amato, examined the results of nearly 100 studies involving over 13,000 children ranging from preschool to young adulthood to determine what the overall results indicated. They found that children from divorced families are on “average” somewhat worse off than children who have lived in intact families. These children have more difficulty in school, more behavior problems, self-concepts that are more negative, more problems with peers, and more trouble getting along with their parents. Using a measure of behavioral problems, Mavis Hetherington (1993) found that 90% of adolescent boys and girls in intact families fell within normal range on problems and 10% had serious problems that would generally require professional help. In families of divorce, 74% of the boys and 66% of the girls fell in the normal range and 26% of the boys and 34% of the girls were in the problematic range. This suggests that while the majority of children from divorced families do not have serious problems, a larger percentage from divorced families than intact families are likely to have serious problems. In fact, divorce has been shown to deleteriously affect rates of marriages, drug usage and alcohol usage in children of divorce.

Amato (2001) asserts the following factors in determining the psychological impact of divorce on children.

- **PARENTAL LOSS**-- The loss of contact with one parent and, with this loss, children also lose the knowledge, skills and resources (emotional, financial, etc.) of that parent.
- **ECONOMIC LOSS**-- Children living in single parent families are less likely to have as many economic resources as children living in intact families.
- **MORE LIFE STRESS**-- Divorce often results in many changes in children’s living situations such as changing schools, childcare, homes, etc. Children often also have to adjust changes in relationships with friends and extended family members. These changes create a more stressful environment for children.
- **POOR PARENTAL ADJUSTMENT**-- generally how children fare in families is due in part to the mental health of the parents, this is likely to be true for children in
divorced families as well.

- **LACK OF PARENTAL COMPETENCE**— much of what happens to children in general is related to the skill of parents in helping them develop. The competence of parents following divorce is likely to have considerable influence on how the children are doing.

Children rely on parental contact in order to provide emotional security and structure and parental tutelage in order to learn family and societal values and norms. But at the outset of separation and divorce, parenting may erode, both in terms of time on task and in quality, as an effect of the demands of the new realities of the parents’ lives. Whereas the child previously might have had the full attention of one parent in addition to the extra time from the second parent, economic realities may now require both parents to work. Daily requirements may now include, for example, making dinner after work whereas previously, preparation might have been more leisurely or accomplished while the child was at school. Parents are also now finding themselves alone and may be spending time trying to create new adult based social lives. This leaves children with less direct parent time and greater fending for themselves at a period of significant upheaval.

Kelly and Emery (2003) report that on average, nonresidential fathers have only 4 contacts per month following a divorce and that approximately 20% of children have no contact with their fathers 2-3 years after a divorce. (Non residential mothers engage in and sustain greater contact.) The mitigating factor appears to be the quality of the father – child relationship. When a nonresidential father has frequent contact and there is minimal conflict, children are faring better. Amato and Gilbreth (1999) found that when fathers helped with homework, set appropriate limits and demonstrated warmth, children fared better. In high conflict situations however, frequent visits are related to poorer adjustment of children (Heatherington and Kelly, 2002).

Sustaining two households, women returning to work, vacating the marital home, moving, alternating homes and changing schools may all be the result of economic hardships following divorce and are certainly life stressors. Strohschein (2005) found that controlling for pre-divorce parental socioeconomic and psychosocial resources fully accounted for poorer mental health of the children at the initial interview among children whose parents later divorced, but did not explain the divorce specific increase in anxiety and depression.

Wallerstein (2000) refers to national reports of children in remarrriages leaving home earlier than children of intact families. Whereas the American standard had become college for our children, Wallerstein found that 77% of adult children of divorce attempted college with 24% of those dropping out compared to 100% attempting college from intact families with 11% dropping out. Economic stressors may account for a lack of parental college planning. This of course, affects the financial trajectory of the children of divorce.

And while remarriage of the parents may provide for economic improvement, the potential for emotional disadvantages must be weighed; Zill and Schoenborn (1990) point to national studies which find no significant differences between the psychological and learning problems demonstrated in single parent or remarried families. This suggests that despite economic recovery, the dynamics of the new family may still result in deleterious effects on the children.

In summary, studies suggest that some of the psychological and behavioral issues noted by parents and teachers post-divorce may, in fact, be presenting prior to separation. Most children survive divorce in relatively healthy states. The potentially deleterious effect of divorce is, however, not to be denied, and may be more pronounced in some children. Minimizing the negative effects of divorce has been shown repeatedly to require the inclusion of ongoing, consistent, warm and structured contact with both parents in a low conflict situation.

**References:**


**Doctors Furr, Wasserman and Wasserman** are board certified clinical psychologists in independent practice in Boca Raton, Florida at Psychology Consultants, LLC. They work with divorcing and high conflict families in therapy, psychological evaluations, parenting plan recommendation assessments, and parenting coordination. They have extensive experience offering expert opinion to the Courts on matters of parenting, family dynamics, psychological and developmental needs of children, time sharing and the impact of divorce on children. (www.psychologyconsultantsLLC.com)
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8:45 a.m. - 9:45 a.m.  
**Takin’ Care of Business:**  
Managing Your Parenting Case  
Caroline Black, Tampa

9:45 a.m. -10:35 a.m.  
**Can’t Buy Me Love: Imputing Income**  
Marian McCulloch, Tampa

10:35 a.m. - 10:55 a.m.  
Break

10:55 a.m. – 11:55 p.m.  
**She’s Having My Baby:**  
Paternity Case Challenges  
Ron Reed, Tampa

12:00 p.m. – 1:15 p.m.  
**Lunch (included in registration)**

1:15 p.m. – 2:05 p.m.  
**A Different Dream: Special Needs Children**  
Amy Hamlin, Longwood  
Norman D. Levin, Longwood

2:05 p.m. – 3:00 p.m.  
**The Glare of Contempt:**  
Have Mercy on Me  
Susan Savard, Orlando

3:00 p.m. – 3:15 p.m.  
Break

3:15 p.m. – 4:05 p.m.  
**Life in the Fast Lane: Impaired Parents**  
Katherine Kuenhle, Ph. D, Tampa

4:05 p.m. – 4:45 p.m.  
Panel Discussion and Q&A  
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The Florida Bar Continuing Legal Education Committee and the Family Law Section present

2011 Case Law Update: Family Law

COURSE CLASSIFICATION: INTERMEDIATE LEVEL

Telephonic Seminar: Wednesday, November 2, 2011
12:00 p.m. – 2:00 p.m. Eastern Standard Time

Course No. 1304R

Join Eddie Stephens, Esq. as he provides an update of published Florida family law cases since January 1, 2011 including the following topics:

- Alimony
- Parenting
- Relocation
- Exclusive Use and Possession of Marital Home
- Equitable Distribution
- Child Support
- Paternity
- Enforcement
- Modification
- Attorney's Fees
- Procedure
- Contempt
- Imputation of Income

11:50 a.m. – 12:00 p.m
Connection Time

12:00 p.m. – 12:05 p.m.
Welcome/Introduction of Speaker

12:05 p.m. – 1:45 p.m.
Case Law Update

1:45 p.m. – 2:00 p.m.
Questions and Answers

Eddie Stephens, Esq. is a third generation Floridian. Mr. Stephens was admitted to The Florida Bar in 1997 and is Board Certified in Family and Marital Law.

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